Disadvantaged Business Enterprise Program Participation Plan

Revised June 22, 2018
In Response to 49 CFR Part 26, et al

Washington State Department of Transportation
Office of Equal Opportunity

American with Disabilities (ADA) Act Information

It is Washington State Department of Transportation (WSDOT) policy to ensure that no person shall, on the grounds of disability, as provided by Section 504 and the Americans with Disabilities Act (ADA), be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any WSDOT service, program, or activity.

Requests for materials in alternative formats can be made by calling the ADA Compliance Manager at 360-705-7097. Persons who are deaf or hard of hearing may contact that number via the Washington Relay Service at 7-1-1.

Title VI Notice to the Public

It is Washington State Department of Transportation (WSDOT) policy to ensure that no person shall, on the grounds of race, color, national origin, or sex, as provided by Title VI of the Civil Rights Act of 1964 (and the Federal-aid Highway Act of 1968), be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any WSDOT service, program or activity.

Limited English Proficiency (LEP)

In accordance with the national origin provisions under Title VI of the Civil Rights Act of 1964, WSDOT will take reasonable steps to provide LEP persons meaningful access to its programs and activities. 360-705-7090.

Individuals may also file a complaint with the Federal funding agency, such as Federal Highway Administration (FHWA) or Federal Transit Administration (FTA). FHWA's complaint procedures can be accessed from FHWA's website at https://www.fhwa.dot.gov/civilrights/programs/iecd.cfm or by contacting OEO's Title VI Coordinator at 360-705-7090.

Individuals may also file a complaint with the Federal funding agency, such as Federal Highway Administration (FHWA) or Federal Transit Administration (FTA). FHWA's complaint procedures can be accessed from FHWA's website at https://www.fhwa.dot.gov/civilrights/programs/iecd.cfm. FTA's complaint procedures can be accessed from FTA's website at https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/file-complaint-fta.

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WSDOT Disadvantaged Business Enterprise (DBE)

Program ***Subpart A – General Requirements***

Section 26.1: Objectives

The objectives of the DBE Program are:

a. To ensure nondiscrimination in the award and administration of USDOT-assisted highway, transit, and airport contracts;
b. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
c. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
d. To ensure that only firms that fully meet DBE eligibility standards are permitted to participate as DBEs;
e. To help remove barriers to DBE participation in USDOT-assisted contracts;
f. To promote the use of DBEs in all types of USDOT-assisted contracts and procurement activities conducted by recipients/sub-recipients;
g. To assist the development of firms that can compete successfully in the marketplace outside of the DBE program; and
h. To provide flexibility to recipients/sub-recipients in establishing and providing opportunities for DBEs.

WSDOT has developed this plan as a requirement of 49 CFR Part 26 and as a guideline and procedural manual to ensure DBEs have fair and equal access to compete for contracts, subcontracts and agreements on USDOT financially assisted projects.

Section 26.3: Applicability

Pursuant to 49 CFR Part 26.3, the DBE Program applies to USDOT financial assistance where WSDOT and its sub-recipients expend federal-aid funds including, but not limited to:

a. Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L 102-240, 150 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L 105-178, 112 Stat. 107;

b. Federal Transit funds authorized by Titles I, III, V and VI of ISTEA Pub. L. 102-240 or by Federal transit law in Title 49, U.S. Code or Titles I, III and V of the TEA-21, Pub. L. 105-178;

c. Airport funds authorized by 49 U.S.C. 47101; and

d. FAST Act - Fixing America's Surface Transportation Act.

Entities receiving Federal financial assistance through WSDOT (i.e., sub-recipients) are subject to the requirements of 49 CFR Part 26, and therefore are required to adopt and comply with WSDOT's DBE Program Participation Plan. WSDOT's Local Agency Guidelines (LAG) Manual provides additional guidance to sub-recipients on DBE program expectations.

WSDOT will provide its sub-recipients written notice of the USDOT's approval of WSDOT's DBE Program Participation Plan (including a link to an electronic version of the approved Plan for their use). The sub-recipients shall then provide written confirmation of their adoption of the Plan.

Sub-recipients are expected to work collaboratively with Local Programs and OEO in conducting periodic reviews and/or DBE program audits to ensure their compliance with WSDOT's approved DBE Program Plan and 49 CFR Part 26.

All federal guidance, manuals, policy statements, and directives used or relied upon by WSDOT, or any of its sub-recipients, to implement the DBE Program shall be revised to correspond to the provisions contained within the DBE Program Participation Plan and approved by FHWA. In the event of any conflict between the DBE Program Participation Plan with any manual, policy statement, or directive relied upon by WSDOT or any of its sub-recipients in the implementation of the USDOT approved DBE Plan, the DBE Program Participation Plan shall prevail. Where there is a conflict, federal law prevails over state law.

Section 26.5: Definitions

WSDOT has adopted the DBE program definitions of 49 CFR Part 26.5. For a complete list of official definitions pertaining to the USDOT DBE program, see https://www.ecfr.gov/cgi-bin/textidx?SID=3d4a36cb8c0e45d725d273a4b52e2d4d&mc=true&node=pt49.1.26&rgn=div5#se49.1.26_15a

The following are additional terms/definitions used by WSDOT in its program implementation, as mentioned throughout this document:

CFR means the Code of Federal Regulations.

Commercially Useful Function (CUF) means a DBE is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies

used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

Condition of Award (COA) Goal means an assigned numerical percentage of the bid amount of the contract. This is the minimum amount that the bidder must commit to by submission of the Utilization Certification Form and/or by Good Faith Efforts (GFE) at the time of bid. The COA goal will also be applied to change orders associated with the contract as managed by the project engineer office on WSDOT or Local Agency projects, with OEO approval. To be considered responsive/successful the bidder/contractor must demonstrate good faith efforts in achieving the goal. The bidder/contractor can demonstrate the good faith efforts in either of two ways:

1. The contractor/bidder has obtained sufficient DBE participation to meet the established Condition of Award goal; or
   The contractor/bidder provides documentation that evidences its good faith efforts to meet the goal, even though it did not succeed in obtaining sufficient DBE participation to do so.

Consultant means one who gives expert or professional advice.

Contracting Opportunity means a procurement action (by a recipient/sub-recipient/contractor/subcontractor) to obtain a product or service commercially.

DBE Utilization Certification Form means the form that prime contractors submit on Condition of Award projects, that identifies which DBE(s) the prime contractor is committing to use, the specific element(s) of work that the DBE is contracted to perform on the project, and the associated dollar amount. The form is attached as Appendix 1.

Design–build (or design/build, and abbreviated D–B or D/B accordingly) is a project delivery system used in the construction industry. It is an alternative delivery method (ADM) to deliver a project in which the design and construction services are contracted by a single entity known as the design–builder or design–build contractor.

Directory of Certified Firms or DBE Directory means the OMWBE-created directory of certified DBE firms. This directory is available on OMWBE's website at: http://www.omwbe.wa.gov/. This is the only recognized Directory of DBE firms, and the information contained in the "Description of Work" column must comport with the information contained on the DBE Utilization Certification.

General Contractor/Contractor Managed (GC/CM) is an ADM project that allows an owner to engage a construction manager who provides constructability input during the design phase. At a percentage point in the design completion the owner and the construction manager negotiate a "guaranteed maximum price for the construction."

Goal means an objective, numerically expressed as a percentage of the total project dollar amount, that contractors are required to make good faith efforts to achieve.

North American Industry Classification System (NAICS) Codes means the six digit code used to determine whether or not a business is considered a small business as determined by the Small Business Administration. The NAICS code designations are described in the North American Industry Classification Manual – United States, which is available on the internet at the U.S. Census Bureau website: http://www.census.gov/eos/www/naics. OMWBE, as the Unified Certification Program (UCP) agent for Washington state, determines which NAICS codes firms are certified in.

Sub-recipient means a local agency, other jurisdiction or non-profit organization that receives financial assistance on a project from USDOT through WSDOT.

Section 26.7: Non-discrimination Requirements

WSDOT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, national origin, or disability.

In administering its DBE program, WSDOT will not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, national origin, or disability.

WSDOT has instituted a complaint process for any sub-recipient, contractor, subcontractor, or consultant that believes they have been discriminated against based on the aforementioned factors. See the WSDOT External Discrimination Complaint Procedure and Form (Appendix 2).

Complaints can be filed by the public through email at oeoecrbcomplaints@wsdot.wa.gov and by phone at 360-705-7090.

Section 26.11: Record Keeping Requirements

26.11(a) USDOT Uniform Report

WSDOT will report DBE participation to the FTA and FHWA through the USDOT "Uniform Reports of DBE Awards or Commitments and Payments" Report semi-annually or annually for FAA

The Uniform Report of DBE Awards or Commitments and Payments Form will be completed per the instructions of 49 CFR Part 26, Appendix B.

26.11(b) Other Data

In order to monitor the progress of its DBE Program, WSDOT and its sub-recipients shall maintain a record keeping system that identifies and assesses DBE contract awards, prime contractors' progress in achieving DBE subcontract goals, and other DBE inclusion efforts. WSDOT and its sub-recipients will maintain records showing:

1. Procedures followed by WSDOT and its sub-recipients to identify and assess DBE contract awards and progress in achieving prescribed goals;

2. Specific efforts to identify and award contracts to DBEs and/or purchase from DBEs;

3. Amount paid to each DBE subcontractor by a contractor and reported to WSDOT or its sub-recipient on a monthly basis; and

4. Amount paid to each DBE subcontractor by a contractor based on the information contained in the Diversity Management and Compliance (DMCS) system and/or "DBE Monthly Report" for the Public Transportation Division (PTD) and reported to the WSDOT or its sub-recipient and obtained at the conclusion of each project. This information will be reported from PTD. These reports will include at a minimum:

    a. The number of contracts awarded to DBEs and or purchases using DBEs;

    b. A description of the general categories of contracts awarded to DBEs and/or purchases using DBEs;

    c. The dollar value of contracts awarded to DBEs and/or purchases using DBEs;

    d. The percentage of the dollar value of all contracts awarded to DBEs and/or purchases using DBEs;

e. Whether or not the DBE goal was met or exceeded, and by what amount, specified in the bid documents or proposals;

f. Written confirmation from the prime contractor that no retainage has been withheld from the DBE subcontractor(s);

g. A written certification from the contracting agency engineer on each federal-aid contract with a DBE goal stating that the project staff has reviewed the contracting records and monitored the work site and determined that the DBE(s) committed at contract award (or subsequently) actually performed the work (with their own forces) for which they were committed. If the project goal is not met the agency will document the reason(s) for the shortfall and what, if any enforcement action was taken; and

h. The required records and reports provide information relating to firms owned and controlled by minorities separately from information relating to firms owned and controlled by women.

Records shall be available upon request of an authorized officer or employee of the federal government or WSDOT OEO staff and for projects using FTA funds.

WSDOT and its sub-recipients will submit reports conforming in frequency and format to existing contract reporting requirements of the applicable departmental elements. Where no such contract reporting requirement exists, DBE reports will be submitted quarterly.

WSDOT will submit to FHWA, all reports as listed and defined by the FHWA/WSDOT Stewardship agreement as well as other reports, data and information as required by the federal transportation modals.

26.11(c) Bidders List

WSDOT and its sub-recipients will create and maintain a bidders list consisting of all the firms bidding on USDOT-assisted projects. The bidders list will contain information about bidders submitting quotes, contracts or bids as contractors and subcontractors.

The list will include all firms that bid on prime contracts, or bid/quote subcontracts (successful and unsuccessful) on USDOT-assisted projects including both DBEs and non-DBEs. The list will also include the following information:

a. Firm name;
b. Firm address;
c. Firm’s status as a DBE or non-DBE;
d. The age of the firm; and

e. The annual gross receipts of the firm, in ranges.

WSDOT will conduct an annual survey of contractors and subcontractors. The survey will remain open from April 1 through September 30.

26.11(d)

WSDOT OEO will work collaboratively with the Office of Minority and Women's Business Enterprise (OMWBE) to ensure the following records are maintained in accordance with federal and state statutory requirements:

a. DBE program application packages;
b. Affidavits of No Change;
c. Change Notices; and
d. Certification On-Site Review documents.

Once a DBE is decertified, OMWBE keeps the records for seven years.

These records are scanned and maintained in the DBE Certification program.

WSDOT and its sub-recipients will maintain records for three years past completion of each contract for FHWA and FAA; six years after the life of equipment, life of building or grant services for FTA funded projects; and six years after completion of the project for FTA funded projects.

26.11(e)

WSDOT OEO will work collaboratively with the Office of Minority and Women's Business Enterprise (OMWBE) to report to the USDOT Office of Civil Rights the following information no later than January 1 of each year:

1. The percentage and the location in the state of certified DBE firms listed in the UCPs DBE directory who are controlled by the following:

    a. Women;
    b. Socially and economically disadvantaged individuals (other than women); and
    c. Individuals who are women and are otherwise socially and economically disadvantaged individuals.

OMWBE collects this data at time of certification in the DBE Certification program.

Section 26.13: Assurances

26.13(a)

WSDOT and all sub-recipients will follow the requirements of 49 CFR Part 26, including insertion of DBE clauses in grant agreements and contracts with federal aid. WSDOT will require sub-recipients to take all steps necessary to carry out all applicable parts of 49 CFR Part 26 and will ensure its sub-recipients comply with the regulations. Pursuant to 49 CFR Part 26.13, WSDOT has signed the following assurance applicable to all USDOT-assisted contracts and subcontracts and their administration:

> *The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).*

The above assurance appears in all FHWA and FAA financial assistance agreements with WSDOT sub-recipients. WSDOT also certifies and assures with the FTA annual Certifications and Assurances.

26.13(b)

Pursuant to 49 CFR Part 26.13, each contract WSDOT and its sub-recipients sign with a contractor, and each subcontract signed (all tiers), will include the following assurance:

> *The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract*

or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

a. Withholding monthly progress payments;
b. Assessing sanctions;
c. Liquidated damages; and/or
d. Disqualifying the contractor from future bidding as non-responsible.

On projects with FHWA financial assistance, assurances from subcontractors (all tiers) shall be physically included in each contract/subcontract by way of the FHWA Form 1273, the DBE General Special Provisions (GSPs), or, in the case of a consultant contract, including the assurance statement as a provision of the contract. Office staff will randomly review all subcontracts during the Request to Sublet process to ensure this information is included. If this information is absent, project office staff will notify the appropriate WSDOT Headquarters office, which will in turn work collaboratively with OEO in determining contract administration actions to be taken.

PTD sub-recipients are required every year to sign a certification and assurance for non-discrimination and perform quarterly reporting of DBE activity, as well as meeting the language built into their agreement with WSDOT that contains the FTA required language.

Section 26.15: Exemptions/Waivers

When applying for an exemption and/or waiver WSDOT will follow the requirements of 49 CFR 26.15

Subpart B – Administrative Requirements

Section 26.21: Program Plan Updates

WSDOT will submit DBE Program Participation Plan updates to the appropriate USDOT operating administration (FHWA) for review and approval, on an annual basis or anytime there are significant changes in administration of its DBE program.

WSDOT will inform its sub-recipients of DBE program changes as they occur.

Section 26.23: Policy Statement

WSDOT's Policy Statement is attached to this Plan as Appendix 3.

Section 26.25: DBE Liaison Officer

The WSDOT Office of Equal Opportunity (OEO) Director, is designated as WSDOT's DBE Liaison (DBELO). In that capacity, the DBELO is responsible for all aspects of the

DBE program and ensuring that WSDOT complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to WSDOT's Secretary of Transportation concerning DBE program matters.

An organizational chart displaying the DBELO's position in the organization is found in Appendix 4. The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials, and for managing the Department's civil rights programs. The OEO Director may assign day-to-day DBE program responsibilities to other OEO DBE program staff, as appropriate (i.e., External Civil Rights Program Manager, DBE Community Engagement Manager, etc.). The DBELO is the liaison internally to the various divisions within WSDOT and is responsible for ensuring that those divisions coordinate with the DBELO on matters related to implementation of the DBE program, as well as the community/public.

The responsibilities of the OEO Director and/or his/her designee include, but are not limited to, the following:

a. Advise the Secretary of Transportation and executive and senior managers on achievements to date and on DBE matters currently underway, including receiving direction from the Secretary on unresolved matters. Evaluate and report on the DBE program's effectiveness and provide recommendations to the Secretary for modifying internal processes and procedures to align with federal requirements and to achieve continuous improvement of the DBE program;

b. Establish standard operating procedures (inclusive of data collection methods, performance measures, et al) for implementing the DBE Program requirements; develop reports; and interface with USDOT operating administrations (FHWA, FTA, FAA) regarding program approvals and performance in accordance with federal regulations and the WSDOT-FHWA Stewardship Agreement;

c. Develop and implement policy pertaining to DBE Program implementation, ensure consistency and compliance with program standards, and coordinate and assist with external/internal communications, including communications from the Construction Division and project engineering offices;

d. Monitor and evaluate program effectiveness and provide reports as required by USDOT/USDOT operating administrations, and as directed by WSDOT's Secretary of Transportation;

e. In coordination with division directors, develop WSDOT's contract and overall goals for DBE participation;

f. OEO's data analyst will review and analyze monthly, quarterly, and annual reports of race/gender neutral and race/gender conscious efforts for

progress in achieving overall goal attainment (including maintaining a running tally of DBE participation), and develop plans of action/adjustments, as needed, to improve progress;

g. In coordination with the region administrators and division directors, provide technical assistance and information to DBEs and non-DBE prime contractors and subcontractors to ensure they understand contract specifications related to their work;

h. Ensure consistency in implementation and compliance with the DBE program by confirming that the manuals, processes, procedures and other guidance related to the administration of the DBE program by Local Programs, State Construction Office, Consultant Services, Ferries, Public Transportation, Rail, and Aviation divisions on DBE program matters is consistent with 49 CFR Part 26 and this DBE participation plan;

i. Conduct Commercially Useful Function (CUF) reviews/Comprehensive Contract Compliance reviews of DBEs, and take action, as appropriate, including reporting violations to the respective USDOT operating administration, and potential certification issues to OMWBE;

j. Provide technical assistance and direction to the Construction Division and project engineering offices, Local Programs, Consultant Services, Ferries, Public Transportation, Rail, and Aviation divisions in resolving DBE contract compliance disputes/complaints and perform investigations as appropriate. Resolution goal is 30 days or less from date issue received;

k. Assist WSDOT division directors in determining sanctions for violations of the contract DBE provisions. Sanction letters will be signed by the director of OEO and the director of the applicable division;

l. In coordination with the division directors, develop and evaluate the WSDOT's general specifications, guidelines, policies, and regulations affecting the DBE program, and implement changes to improve performance;

m. Manage the DBE Support Services Program, including community outreach and training, and work with OMWBE regarding DBE recruitment and certification;

n. Manage the interagency agreement between WSDOT and OMWBE, including oversight and direction to the OMWBE regarding DBE certification activities such as outreach and training, and monitoring and annually reviewing DBE certification activities of the OMWBE to ensure

the effective administration of the Unified Certification Program (UCP);

o. Implement changes within OEO as necessary for continuous improvement of program performance;

p. Oversee the civil rights program activities performed by the designated Equal Employment Opportunity (EEO) Officers, located in each of WSDOT's six regions and at Washington State Ferries (WSF);

q. Perform all pre-award and post-award good faith effort determinations (when submitted) on WSDOT and Local Agency federal-aid projects;

r. Perform all administrative reconsideration hearings that are applicable during the bidding process on WSDOT and Local Agency federal-aid projects. The DBELO will ensure that the Reconsideration Hearing Officer has not been involved in the initial determination of non-responsiveness;

s. Ensure that all sub-recipients of the Local Programs and Public Transportation divisions comply with the DBE plan;

t. Network with the women and minority-owned business community to gain additional feedback on program delivery, and proposed process improvements;

u. Network with WSDOT regional and division offices with responsibilities related to the DBE program to gain an understanding of actions being taken related to the DBE program; ensure these actions are consistent with USDOT DBE Program requirements and are effective in improving program performance;

v. Coordinate with each region to develop ongoing networking opportunities with prime and DBE firms, and to inform prime and DBE and non-DBE subcontractors about future contracting opportunities. These networking and outreach activities should occur approximately once per calendar quarter throughout the state, depending on contracting opportunities. OMWBE, OEO, district offices, regional project engineers, and regional Tribal Employment Rights Office (TERO) liaisons should be included in these activities;

w. Work collaboratively with assistant secretaries, division directors, and stakeholders to provide guidance regarding program implementation, compliance monitoring, issue resolution, and process improvements to increase the effectiveness of the DBE Program. Resolution goal is 30 days or less from date issue received;

x. Work collaboratively with OMWBE on strategies to increase the number of certified DBE subcontractors and the capacity of DBE subcontractors to participate in WSDOT projects;

y. Arrange for/conduct DBE program training for internal staff, and contractors/subcontracts; and

z. Other activities that directly relate to the effective implementation of WSDOT's DBE Program.

The DBELO is assisted by other divisions within WSDOT to ensure success of the DBE program. The following describe the role/responsibilities of these liaisons:

Headquarters (HQ) Construction Office

The WSDOT HQ Construction Office oversees the central contract administration of WSDOT highway construction projects. HQ Construction Office will collaboratively work with OEO to administer and resolve contract administration issues related to DBE-related specifications. Following are the responsibilities of the HQ Construction Office, relative to the DBE Program:

a. The contract goal setting process is led by OEO. The HQ Construction Office will assist OEO in goal setting for individual federal-aid construction projects and management of the overall program goal;

b. Project offices and regions will work collaboratively with Headquarters Construction and OEO in conducting periodic reviews and/or DBE program audits;

c. In collaboration and concurrence with OEO, Local Programs, and stakeholders, develop General Special Provisions and contract language to ensure the DBE Program is administered in accordance with the DBE Program Participation Plan and 49 CFR Part 26;

d. Ensure documentation required to effectively implement the DBE Program (e.g., Design-Build DBE Participation Plan, Bid-Challenges, Change Orders involving DBE Participation, Good Faith Efforts, DBE Onsite Review Forms, Design-Build DBE Monthly Participation Report, etc.) adequately reflects DBE program requirements;

e. Assist OEO by providing required contracting/project information necessary to effectively implement the DBE Program, (e.g. change order documentation, field staff documentation, etc.);

f. HQ Construction Ad & Award will receive all DBE Utilization certifications and DBE Written Confirmations. OEO will clear bidders for DBE Program participation;

g. As part of WSDOT's monitoring plan, HQ Construction Ad & Award will report to OEO on the implementation and progress of the DBE Written Confirmation 48-hour delay. This information will be compiled for inclusion in OEO's periodic reports to FHWA;

h. Work with stakeholders to develop clear expectations and accountability measures for contractors with DBE participation requirements;

i. All changes to Condition of Award (COA) DBEs (prime and subcontractors) shall be processed as change orders. The PEO shall process a change order anytime there is a change to or an addition to the work scope the DBE is performing under a COA commitment. Region OEO Staff shall approve all change orders that include changes to a DBE under a COA commitment. The exception to this is when there is a bid item underrun or owner initiated change.

j. Work collaboratively with OEO to administer DBE training to WSDOT construction personnel and the contracting industry, to ensure that construction (HQs & region) staff (project engineers, et al.) possess sufficient knowledge of DBE program requirements to effectively monitor and certify DBE participation during construction, and that contractors are kept abreast of current DBE contract requirements;

k. Coordinate with OEO to ensure Standard Specifications, General Special Provisions, and the Construction Manual are in alignment with the DBE Participation Plan;

l. Ensure that project staff conduct DBE on-site reviews of all DBEs performing on federal-aid projects and promptly report potential violations to OEO for further review and/or investigation;

m. Ensure that project staff support and cooperate with OEO staff in reviewing certified payrolls, verifying/validating through a review of cancelled checks, et al, that payments made are consistent with the DBEs participation;

n. Work with OEO in monitoring and enforcing contract DBE requirements on federal-aid contracts (i.e., prompt payment/return of retainage, termination, substitution, et al.). The Project office will work with OEO to resolve problems as they arise/are identified. OEO Region personnel will work directly with the WSDOT Project Office in providing termination substitution approval with the final authority residing with OEO. Resolution goal is 30 days or less from the date issue is received;

o. Ensure PEOs are assisting OEO in maintaining a monthly running tally of payments made to DBEs on administered federal-aid contracts, comparing attainment to commitments. This data and information will be maintained on internal agency DBE tracking software;

p. Investigate potential violations of contract DBE requirements as appropriate, and provide information and input to OEO when sanctions are being considered. The DBELO in consultation the State Construction Engineer will be responsible for determining what sanctions are taken;

q. Other activities (in coordination with OEO) that directly relate to the effective implementation of WSDOT's DBE Program;

r. For each contract, the WSDOT Project Offices will document CUF (via Final DBE Utilization Plan Report – See Appendix 1).

I. The assigned WSDOT Project Engineer shall report via the Final DBE Utilization Plan Report that they have reviewed the contracting records and monitored the work site and determined that work committed to the DBEs at contract award (and subsequently) was actually performed by said DBEs, via the final DBE Utilization Plan Report – See Appendix 7.

II. Prime contractors and subcontractors will be reporting payment information in the Diversity Management and Compliance System (DMCS), powered by B2GNow, on a monthly basis. DMCS will be monitored internally by region personnel on a bi-monthly basis. The WSDOT Project Office will be the Primary Compliance Officer on all projects and WSDOT Regional OEO will be the Secondary Compliance Officer on all projects.

Local Programs (LP)

The WSDOT Local Programs (LP) Division is responsible for administering all local agency projects with USDOT funding. Since many DBE issues are related to contract administration, LP will work collaboratively with OEO to implement and resolve issues at the local agency level associated with the DBE Program. This will be accomplished by a continued collaborative effort to update the Local Agency Guidelines (LAG) on an immediate, if necessary, and semi-annual basis. Following are the responsibilities of the LP Division, relative to the DBE Program:

a. The contract goal setting process is led by OEO. The LP Division has been delegated goal setting authority for individual local agency federal-aid projects and manages the local agency portion of the overall program goal. Local

Programs will obtain approval from OEO on all goal sets. Once LP has set a project goal, they will send it to OEO for approval. OEO will have 48 hours to review and respond to LP;

b. Local agencies will work collaboratively with Local Programs and OEO in conducting periodic reviews and/or DBE program audits;

c. Coordinate with OEO to ensure that the LAG Manual is in alignment with the DBE Participation Plan;

d. Work in collaboration with OEO, Construction, and stakeholders to develop General Special Provisions and contract language to ensure the DBE Program is administered by local agencies in accordance with the DBE Program Participation Plan and 49 CFR Part 26;

e. Consult with OEO on DBE matters associated with local agency federal-aid projects;

f. Ensure that documentation required to effectively implement the DBE Program is transmitted to OEO in accordance with WSDOT developed processes and procedures;

g. Gather information necessary to effectively implement the DBE Program, (e.g. change order documentation, field staff documentation, etc.);

h. All impacts to Condition of Award (COA) DBEs (prime and subcontractor) shall be processed as change orders. Change orders must be processed for COA DBEs whose scopes of work or dollar totals are changed. OEO must review and approve with these change orders prior to execution;

i. Assist OEO in administering DBE training to local agency personnel and contractors, to ensure that local agency construction staff (i.e., project engineers, et al) possesses sufficient knowledge of DBE program requirements to effectively monitor and certify DBE participation during construction and those contractors are kept abreast of current DBE contract requirements;

j. Assist OEO in reviewing local agency's compliance with WSDOT's DBE Program Plan. Coordinate with OEO to ensure Standard Specifications, General Special

Provisions, and the Construction Manual are in alignment with the DBE Participation Plan;

k. Ensure that project staff conduct DBE on-site reviews of all DBEs performing on federal-aid projects and promptly report potential violations to OEO for further review and/or investigation;

l. Ensure that project staff support and cooperate with OEO staff in reviewing certified payrolls, verifying/validating through a review of cancelled checks, et al, that payments made are consistent with the DBEs participation;

m. Ensure that local agencies monitor and enforce DBE program provisions on federal-aid contracts in accordance with the record keeping requirements outlined in the Local Agency Guidelines (LP will outline issues in the LAG manual under a new section "record keeping requirements"), including monitoring progress payments and return of retainage to ensure compliance with prompt payment requirements, conducting DBE on-site CUF reviews and reporting potential violations to OEO for further review/investigation;

n. Take enforcement action, as appropriate, when local agencies do not comply with the DBE requirements of WSDOT's DBE Program Plan and 49 CFR Part 26;

o. Maintain a monthly running tally of payments made to DBEs on local agency-administered federal-aid contracts, comparing attainment to commitments;

p. Other activities (in coordination with OEO) that directly relate to the effective implementation of WSDOT's DBE Program; and

q. Prime contractors and subcontractors will be reporting payment information in the Diversity Management and Compliance System (DMCS), powered by B2GNow, on a monthly basis. DMCS will be monitored internally by region personnel on a bi-monthly basis. The WSDOT Regional OEO will be the Primary Compliance Officer and the WSDOT Regional Local Programs staff will be the Secondary Compliance Officer. Local Agency staff (non-WSDOT staff) will have view only rights to monitor DMCS. (See Appendix 6 for DMCS Process)

According to the approved LAG Manual, Local Agencies must document in the Final DBE Utilization Plan Report that it has reviewed the contracting records and monitored the work site and determined that work committed to the DBEs at contract award (and subsequently) was actually performed by said DBEs.

Washington State Ferries (WSF)

The WSDOT WSF is responsible for administering all ferry and terminal related projects for WSDOT. As such, WSF is responsible for contract administration and related issues of these projects. Since many DBE issues are related to contract administration, WSF will work collaboratively with HQ Construction and OEO to administer the DBE Program on projects with USDOT funding. Following are key responsibilities of WSF relative to the DBE Program:

a. The contract goal setting process is led by OEO. The WSF will assist OEO in goal setting for individual WSF federal-aid projects and management of the overall program goal;

b. WSF will work collaboratively with OEO in conducting periodic reviews and/or DBE program audits;

c. Ensure that documentation required to effectively implement the DBE Program is transmitted to OEO in accordance with WSDOT developed processes and procedures;

d. Gather contracting/project information necessary to effectively implement the DBE Program, (e.g. change order documentation, field staff documentation, etc.);

e. Ensure that all impacts to Condition of Award (COA) DBEs (prime and subcontractor) shall be processed as change orders. Change orders must be processed for COA DBEs whose scopes of work or dollar totals are changed. OEO must review and approve with these change orders prior to execution;

f. Assist OEO and HQ Construction in administering DBE training to personnel and contractors, to ensure that construction staff (i.e., project engineers, et al) possesses sufficient knowledge of DBE program requirements to effectively monitor and certify DBE participation during construction and those contractors are kept abreast of current DBE contract requirements;

g. Ensure that project staff conducts DBE on-site reviews of all DBEs performing on a federal-aid project and promptly report potential violations to OEO for further review and/or investigation;

h. Ensure that project staff support and cooperate with OEO staff in reviewing certified payrolls, verifying/validating through a review of cancelled checks, et al, that payments made are consistent with the DBEs participation;

i. Monitor and enforce contract DBE requirements on federal-aid contracts (i.e., prompt payment/return of retainage, termination, substitution, et al). Work with OEO as needed to resolve problems as they arise/are identified. Resolution goal is 30 days or less from date issue received;

j. In consultation with HQ Construction and OEO, take enforcement action, as appropriate, when contractors do not comply with the DBE requirements of WSDOT's DBE Program and 49 CFR Part 26;

k. Maintain a monthly running tally of payments made to DBEs on WSF-administered Federal-aid contracts, comparing attainment to commitments;

l. Other activities (in coordination with OEO) that directly relate to the effective implementation of WSDOT's DBE Program;

m. The WSDOT DBELO will be responsible for determining appropriate sanctions where noncompliance is found to exist;

n. For each contract, the WSDOT Project Office will document in the Final DBE Utilization Plan Report that it has reviewed the contracting records and monitored the work site and determined that work committed to the DBEs at contract award (and subsequently) was actually performed by said DBEs; and

r. Prime contractors and subcontractors will be reporting payment information in the Diversity Management and Compliance System (DMCS), powered by B2GNow, on a monthly basis. DMCS will be monitored internally by region personnel on a bi-monthly basis. The WSDOT Regional OEO will be the Primary Compliance Officer and the Agreement Manager will be the Secondary Compliance Officer.

Consultant Services Office (CSO)

The CSO is responsible for administering all WSDOT professional service (e.g. architectural, engineering, etc.) agreements. As such, CSO and OEO work together to develop and administer the DBE Program on projects with USDOT funding. Following are the responsibilities of the CSO relative to the DBE Program:

a. CSO will assist OEO in goal setting for individual Federal-aid projects and management of the overall program goal. Agreement goals are set by OEO;

b. CSO will work collaboratively with Local Programs and OEO in conducting periodic reviews and/or DBE program audits;

c. CSO will develop processes, procedures and methodologies (in coordination with OEO) that are consistent with 49 CFR Part 26, and gather information necessary to effectively implement the DBE Program (e.g. change orders, on-site reviews, prompt payments) on professional service contracts;

d. CSO will ensure that documentation required to effectively implement the DBE Program (e.g., SBE Participation Plan, DBE Onsite Review Forms, etc.) is transmitted to OEO in accordance with WSDOT developed processes and procedures;

e. For contracts with DBE goals, all impacts to DBE consultant and sub-consultants shall be processed as a supplement or amendment. Supplements or amendments must be processed for DBEs whose scopes of work or dollar totals are changed. OEO must review and approve with these supplements or amendments prior to execution;

f. CSO will assist OEO in administering training to WSDOT personnel responsible for originating, administering or managing professional service agreements with consultants, as well as training to the consultant community;

g. CSO will assist OEO and the LP Division in administering professional services contract training to local agency personnel;

h. CSO will maintain a monthly running tally of payments made to DBEs on consultant services agreements, comparing attainment to commitments;

i. CSO will monitor and enforce DBE requirements on federal-aid consultant agreements (i.e., prompt payment, termination, substitution, et al.). Work with OEO to resolve problems as they arise/are identified. Resolution goal is 30 days or less from date issue received;

j. CSO will verify and document that DBE consultants are performing a CUF on consultant agreements, and report potential violations to OEO for further review and/or investigation;

k. For consultant agreements with DBE goals, CSO will ensure that on-site reviews are conducted and assist OEO with further reviews and/or investigations as necessary;

l. CSO will conduct other activities (in coordination with OEO) that directly relate to the effective implementation of WSDOT's DBE Program;

m. The WSDOT DBELO will be responsible for determining appropriate sanctions where noncompliance is found to exist;

n. For each agreement/task order, CSO personnel must document in the Final DBE Utilization Plan Report that it has reviewed the agreement records and monitored the work site and determined that work committed to the DBEs at agreement award (and subsequently) was actually performed by said DBEs; and

o. Prime consultants and sub-consultants will be reporting payment information in the Diversity Management and Compliance System (DMCS), powered by B2GNow, on a monthly basis. DMCS will be monitored internally by region personnel on a bi-monthly basis. The WSDOT Project Manager be the Primary Compliance Officer on all projects and WSDOT OEO will be the Secondary Compliance Officer on all projects.

Public Transportation Division (PTD)

The PTD is responsible for administering transit grants with FTA financial assistance. As such, PTD and OEO work collaboratively to develop and administer the DBE Program on PTD projects with USDOT funding. Following are the responsibilities of the PTD relative to the DBE Program:

a. The contract goal setting process is led by OEO. The PTD will assist OEO in goal setting for individual PTD federal-aid projects and management of the overall program goal;

b. PTD will work collaboratively with OEO in conducting periodic reviews and/or DBE program audits;

c. Develop processes, procedures and methodologies (in coordination with OEO) to oversee contractors and/or sub-recipients that are consistent with 49 CFR Part 26, and gather contractor and/or sub-recipient information necessary to effectively implement the DBE Program. For construction projects PTD will ensure sub-recipients comply with requirements (e.g. change orders, onsite reviews, and prompt payments);

d. Ensure that the documentation required to effectively implement the DBE Program (e.g., Quarterly Report of Amounts Credited as DBE Participation (payments) are submitted by the grantee and reviewed and approved by

PTD. Ensure sub-recipients complete DBE Onsite Review Forms and other associated DBE documentation;

e. For construction projects, all impacts to Condition of Award (COA) DBEs, shall be processed by its sub-recipients as change orders. Change orders must be processed for COA DBEs whose scopes of work or dollar totals are changed;

f. Assist OEO in administering training to PTD personnel responsible for originating, administering or managing professional services contracts with consultants, as well as training to the sub-recipients' community;

g. Assist PTD sub-recipients in complying with FTA DBE requirements. These activities include solicitation, documentation and reporting of DBE opportunities and activity;

h. Track payments made to DBEs on PTD contracts, comparing attainment to commitments; including contracting and/or purchasing made and reported by its sub-recipients;

i. Oversee compliance and enforcement of DBE requirements on federal-aid PTD contracts and those issued by its sub-recipients. Work with OEO to resolve problems as they arise/are identified. The DBELO will be responsible for determining what sanctions are taken. Resolution goal is 30 days or less from date issue received;

j. Other activities (in coordination with OEO) that directly relate to the effective implementation of WSDOT's DBE Program; and

s. Prime contractors and subcontractors will be reporting payment information in the Diversity Management and Compliance System (DMCS), powered by B2GNow, on a monthly basis. DMCS will be monitored internally by region personnel on a bi-monthly basis. The WSDOT Project Office or WSDOT OEO will be the Primary Compliance Officer on all projects and WSDOT OEO will be the Secondary Compliance Officer on all projects.

Section 26.27: Financial Institutions

Per 49 CFR Part 26.27, WSDOT encourages prime contractors to utilize the services of financial institutions owned and controlled by socially and economically disadvantaged individuals. Following is a link to the Federal Reserve Statistical Release of Minority-Owned Depository of Institution, which lists the Minority-Owned banks in Washington State. https://www.federalreserve.gov/releases/mob/current/default.htm.

WSDOT will work with other state and federal agencies such as the Office of Minority and Business Enterprises (OMWBE) or the US Department of Transportation (USDOT) Small Business Resource and Training Center (SBRTC) to identify institutions that are not listed on the above referenced link.

Section 26.29: Prompt Payment

This section applies to WSDOT let projects and to Local Programs projects.

26.29(a)

WSDOT's Standard Specification 1-08.1(1) (http://www.wsdot.wa.gov/publications/manuals/fulltext/M41-10/Division1.pdf) pertaining to prompt payment and return of retainage, is applied to all Federal-aid projects. All Contractors shall comply with these contract specifications in addition to the requirements of RCW 39.04.250, 39.76.011, 39.76.020, and 39.76.040. WSDOT will ensure that prompt payment provisions are included in all contracts and subcontracts. WSDOT and Local Agency personnel will spot-check contracts, subcontracts and other documents, i.e. task orders, master agreements, etc. to ensure compliance with this part.

26.29(b)

Pursuant to 49 CFR Part 26.29(b)(2), WSDOT does not withhold retainage from Prime Contractors on federal-aid contracts. Prime Contractors can, however, withhold retainage from subcontractors. All contractors shall comply with WSDOT Standard Specifications 1-08.1(1), as well as the requirements of RCW 60.28.11.

26.29(c)

The subcontractor shall make a written request to the contractor for the release of the subcontractor's retainage or retainage bond.

When the subcontract has been satisfactorily completed, the 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 that the subcontractor has not achieved satisfactory completion of the subcontract, the contractor must provide the subcontractor with written notice, stating specifically why the subcontract work is not satisfactorily completed and what is required to achieve completion. The contractor shall release the subcontractor's retainage or retainage bond within eight calendar days after the subcontractor has satisfactorily completed the work identified in the notice.

Under the DBE regulations, a subcontractor's work is satisfactorily completed when all of the tasks identified in the subcontract have been completed and documented. In determining whether satisfactory completion has been achieved, the contractor may require the subcontractor to provide documentation as mandated by Federal or State statutes such as an approved affidavit of wages paid. Please note that if there is a conflict between the DBE regulations and what is mandated by a subcontract, the DBE regulations will prevail.

26.29(d)

WSDOT will monitor prompt payment through its electronic tracking system (DMCS). If the contractor fails to comply with the contract prompt payment and return of retainage requirements, the contractor will be subject to the actions described below. The subcontractor may also seek recovery against the contractor under applicable Washington State prompt pay statutes in addition to any other remedies provided for by the subcontract or by law.

Failure by a contractor or subcontractor to comply with prompt pay or return of retainage requirements may result in one or more of the following:

- Reflected in the Prime Contractor's Performance Evaluation;
- Cancellation, termination or suspension of the contract, in whole or in part; and
- Sanctions as provided by the contract, subcontract, or by law under applicable prompt payment statutes including RCW 39.04.250.

26.29(e)

The following further defines WSDOT's procedures that define prompt payment requirements.

On all projects, the Contractor shall certify to the actual amounts paid to all firms that were used as Subcontractors, lower tier subcontractors or certified, manufacturers, regular dealers, or service providers on the Contract (See Final DBE Utilization Plan Report in Appendix 7). This includes all Disadvantaged, Minority, Small, Veteran or Women's Business Enterprise firms. This Certification shall be submitted to the Engineer on a monthly basis each month between Execution of the Contract and Physical Completion of the Contract using the DMCS. A monthly report shall be submitted for every month between Execution of the Contract and Physical Completion regardless of whether payments were made or work occurred.

The Contractor shall comply with the requirements of RCW 39.04.250, 39.76.011, 39.76.020, and 39.76.040, in particular regarding prompt payment to Subcontractors. Whenever the Contractor withholds payment to a Subcontractor for any reason

including disputed amounts, the Contractor shall provide notice within 10 calendar days to the Subcontractor with a copy to the Contracting Agency identifying the reason for the withholding and a clear description of what the Subcontractor must do to have the withholding released. Retainage withheld by the Contractor prior to completion of the Subcontractors work is exempt from reporting as a payment withheld and is not included in the withheld amount. The Contracting Agency's copy of the notice to Subcontractor for deferred payments shall be submitted to the Engineer concurrently with notification to the Subcontractor.

The following procedure shall apply to all subcontracts entered into as a part of WSDOT's DBE Program:

a. Upon request, the engineer will provide a copy of any or all progress payment estimates, with regard to contract payments to any interested party to the project;

b. The contractor shall make payment to the lower tier subcontractor no later than 10 calendar days after receipt of payment for work satisfactorily completed by the lower tier subcontractor, to the extent of the lower tier subcontractor's interest therein;

c. If a contractor believes they have the right under the contract or subcontract to withhold payment, in part or whole, from a lower tier subcontractor, they shall provide immediate notification to that lower tier subcontractor and the WSDOT project or local agency engineer (before the due date for the subcontractor payment). The engineer will then notify OEO through the WSDOT State Construction Office or the Local Programs Division. The notice shall include an accounting of payments to date, the value and reason for the withheld amount, and an explanation of what is required to have the withheld amount released. The lower tier subcontractor shall be paid within eight calendar days after the subcontractor completes the remedial action identified;

d. Every subcontract and lower tier subcontract shall have a dispute resolution process incorporated for resolving issues between the parties to the subcontract, or one shall be established as necessary;

e. If the parties agree, WSDOT or the local agency will make a third party neutral available, provided the parties to the dispute agree that the cost of doing so is split between them;

f. The engineer will withhold the same amount of funds from the contractor as was withheld if the issue is not resolved by the next progress estimate;

g. As stated in Section 26.13 above, failure by a contractor or subcontractor to comply with these requirements may result in one or more of the following:

    1. Reflection in the prime contractor's performance evaluation;
    2. Cancellation, termination or suspension of the contract, in whole or in part; and/or
    3. Other sanctions as provided by the contract, subcontract, or by law under applicable prompt payment statutes, including RCW 39.04.250.

        - Withholding monthly progress payments;
        - Assessing sanctions;
        - Liquidated damages; and/or
        - Disqualifying the contractor from future bidding as non-responsible;

h. The subcontractor shall make a written request to the contractor for the release of the subcontractor's retainage or retainage bond;

i. Within 10 calendar days of the request, the Contractor shall determine if the subcontract has been satisfactorily completed including the release of any liens filed with the Owner Agency against the Prime Contractor's performance bond and shall inform the Subcontractor, in writing, of the Contractor's determination;

j. If the Contractor determines that the subcontract has been satisfactorily completed, the 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 that the Subcontractor has not achieved satisfactory completion of the subcontract, the Contractor must provide the Subcontractor with written notice, stating specifically why the subcontract Work is not satisfactorily completed and what has to be done to achieve completion. The Contractor shall release the Subcontractor's retainage or retainage bond within 10 calendar days after the Subcontractor has satisfactorily completed the Work identified in the notice; and

WSDOT General Special Provisions 1-07.11OPT3

Sanctions

If it is determined that the contractor's failure to meet all or part of the DBE COA commitment is due to inadequate good faith efforts throughout the life of the contract, including failure to submit timely, required good faith

efforts information and documentation; the contractor may be required to pay a DBE penalty equal to the amount of the unmet commitment, in addition to the sanctions outlined in Section 1-07.11(5).

Notice: If the contractor or any subcontractor, consultant, regular dealer, or service provider is deemed to be in non-compliance, the contractor will be informed in writing, by certified mail by the engineer that sanctions will be imposed for failure to meet the DBE COA commitment and/or submit documentation of good faith efforts. The notice will state the specific sanctions to be imposed, which may include impacting a contractor or other entity's ability to participate in future contracts.

WSDOT Standard Specifications 1-07.11(5) Sanctions

In the event that the contractor is found in noncompliance with the provisions of Section 1-07.11 (http://www.wsdot.wa.gov/publications/manuals/fulltext/M41-10/SS2018.pdf), 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. The contract may be suspended, in whole or in part, until such time the contractor is determined to be in compliance by the contracting agency;
2. 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; and
3. The contract may be terminated.

When the subcontractor has finished performing their scope of work under the contract and has presented the prime contractor with all of required documentation, followed by submission of a written request that the retainage be released, the prime contractor has, in accordance with RCW 39.04.250, 10 calendar days to release the subcontractor's retainage or provide in writing stating specifically why the subcontract work is not satisfactorily completed, and what has to be done to achieve completion.

If, after receipt of all required documentation, the prime contractor has not released the subcontractor's retainage within 10 calendar days, the DBE subcontractor should contact the local agency project manager for assistance. If the retainage issue cannot be cleared at this level, the DBE contractor should contact the Office of Equal Opportunity. OEO will investigate the retainage withholding and if there are no business-related reasons for withholding the retainage, OEO will inform the Project Office or Local Programs, who will direct

the owner or the prime to release the funds or direct the surety to pay the DBE subcontractors.

Section 26.31: DBE Directory

The Washington State Office of Minority and Women's Business Enterprises (OMWBE) is the Unified Certification Program approved by USDOT for DBE certification. WSDOT has an interagency agreement with OMWBE to provide DBE certification. As the UCP, OMWBE maintains and regularly updates a directory of certified firms.

a. OMWBE maintains and makes available to all persons an online DBE directory identifying all firms certified by the Washington Uniform Certification Program (UCP). The listings for each firm includes the firm's name, address, phone number, fax number, email, and contact person;

b. The DBE directory lists the type(s) of work as well as the NAICS code(s) for each certified DBE firm. The firm's work description shall be used by prime contractors/proposers to identify the distinct element(s) of work that the DBE firm has been certified to perform;

c. OMWBE's DBE directory includes all certified DBEs that can reasonably be expected to compete for intermodal transportation-related work; and

d. If a firm's DBE certification is temporarily suspended by OMWBE, the firm will be removed from the DBE directory pending OMWBE's determination on continued eligibility.

The DBE directory is located online at http://www.omwbe.wa.gov/directory-certified-firms. OMWBE updates to the online directory daily. A hard copy of OMWBE's DBE directory is available upon request.

Section 26.33: Overconcentration

Per 49 CFR Part 26.33, if WSDOT, or any of its sub-recipients, determine that DBE firms are over-concentrated in a certain type of work as to unduly burden the opportunities of non-DBE firms to participate in this type of work, WSDOT will devise appropriate measures to address the over-concentration.

WSDOT OEO will determine if DBE firms are over-concentrated, statewide or in specific geographic locations, by evaluating the percentage of DBE versus non-DBE participation in the specific scope of work. If DBE contractors are completing an amount of work that is unduly burdening to non-DBE subcontractors on all USDOT financially assisted contracts, then it will be determined that DBEs participating in this scope of work are over-concentrated.

To alleviate over-concentration in a specific scope of work, WSDOT may utilize the following measures:

a. Technical and business development assistance to the DBEs through the DBE Supportive Services Program;

b. Removing that portion of work as a sub-contractible item when setting individual project goals;

c. Decreasing the goals and participation credit counted for DBEs in that specific scope of work (e.g. count Condition of Award attainment at 50 percent versus 100 percent) thereby leaving the remaining 50 percent to be made up by another DBE or other type of work;

d. Encourage prime contractors to utilize DBEs in areas other than those which are over-concentrated; and

e. Any other measure that would assist DBEs in performing other types of work.

In accordance with 26.33, WSDOT will obtain the approval of the concerned federal transportation modal for its determination of overconcentration and the measures WSDOT will use to address the overconcentration. Once approved, the measures become part of WSDOT's DBE program.

Section 26.35: Business Development Program

WSDOT has established a DBE Business Development Program as part of its DBE Supportive Services (DBE/SS) Program. The DBE Business Development Program (BDP) is designed to provide targeted assistance to DBEs, helping them to become self-sufficient and compete successfully outside of the DBE Program. WSDOT's DBE BDP is funded with FHWA's DBE SS funding (23 CFR 230, Subpart B). Consistent with 23 CFR 230, Subpart B and 49 CFR Part 26 Appendix C, assistance is provided to DBEs through consultants and OEO staff in the following areas:

a. General Office Management
    - Record-Keeping/Employee Reporting
    - Budgeting
    - Accounting
    - Human Resources/Staffing
b. Construction Bid Preparation
    - Blueprint Reading/Take-Offs
    - Estimating and Bidding
    - Assembly of Bid Documents

    - Full Service Construction Plan Center
c. Contract Administration/Construction Management
    - Cost Management
    - Project Control
d. Long Term Business Development
    - Business Plan Preparation/Review
    - Feasibility Analyses
    - Marketing
    - Financial Planning
    - Loan/Bonding/Insurance Application Preparation/Review

The OEO Business Development Advisor (BDA) has day-to-day responsibility for implementing WSDOT's BDP for the Office of Equal Opportunity, oversees consultant and DBE BDP caseload management.

The Process for Applying for the DBE Development Program

The OEO BDA markets the BDP in person, on the OEO website, in literature specific to DBE/SS, and in the weekly OEO newsletter. Only DBEs based in and certified in Washington State are eligible. The BDA references the requirements of 49 CFR to interested DBEs. Those interested in enrolling are introduced to OEO's BDP provider. Upon enrollment, the DBE must provide a written request to enroll and adhere to the program requirements. Upon receipt of the request, the six-month window for business plan development begins. Throughout this period, the BDA receives monthly updates on DBE progress to BDP goals in addition to counselor record forms from the provider.

The Community Engagement manager is responsible for a properly administered BDP program, including a statement of work, outreach and consultant agreements.

Other Areas on a Case-by-Case Basis: WSDOT OEO maintains a toll free DBE/SS hotline, (888) 259-9143, and email address, dbess@wsdot.wa.gov. The purpose of the hotline and email is to provide customers with direct access to DBE/SS. OEO DBE/SS personnel monitor both the toll free phone line and the email to respond to requests for assistance. The types of assistance provided are mentioned above. Consultants are determined through processes and procedures administered by the WSDOT Consultant Services Office outlined in Section 26.

Section 26.37: Monitoring & Enforcement Mechanisms

26.37(a)

WSDOT will monitor compliance with the DBE programs requirements as described in the General Special Provisions, Standard Specifications, Construction Manual, and the Local Agency Guidelines (LAG) Manual. WSDOT will conduct the following reviews:

- Contract Provisions – review contract documents to ensure the approved DBE contract provisions and prompt payment requirements are included; and
- Conduct Onsite Reviews of all DBEs participating in the project; and
- Conduct Comprehensive Compliance Reviews; and
- Monitor DMCS reporting.

26.37(b)

WSDOT uses multiple tools to ensure that work committed to DBEs is performed by the DBEs. Such tools are as follow:

- Commercially Useful Function Onsite Review Form – This form is a snap shot review of a DBE's work on the project. The form is completed by Field Inspectors and reviewed by the Project Engineers. These reviews are conducted during the DBE firm's work on the project, including one for each construction season or for a change in work scope.
- Monthly Progress Payment Reporting – Contractors are required to submit Subcontractor progress payment information on a monthly bases into DMCS. Project personnel and OEO Region personnel review submitted information on a monthly basis.
- Final DBE Utilization Plan Report – Upon the project reaching physical completion, the Project Manager or Project Engineer will certify confirming that all DBE program regulations and requirements have been met and fulfilled

If WSDOT or OMWBE staff become aware of suspected or admitted fraud within the DBE program, they are to notify WSDOT OEO within two business days.

In an effort to decrease fraud and abuse in the DBE Program, WSDOT has implemented a Fraud and Abuse Hotline. Individuals can report suspected fraud and abuse in the DBE Program by contacting WSDOT toll free, (877) 856-3770, or email fraudhotline@wsdot.wa.gov. The more information provided, the more expeditiously WSDOT can proceed with the investigation. All complaints can be anonymous; however, if an individual provides contact information, WSDOT can handle the complaint more thoroughly. WSDOT will not investigate vague, ambiguous, or elusive complaints. WSDOT will not investigate complaints where it is the respondent of the complaint. These complaints will be forwarded to the

appropriate USDOT operating administration for investigation.

Comprehensive DBE Contract Compliance Review

WSDOT's Office of Equal Opportunity (OEO) will regularly conduct DBE comprehensive contract compliance reviews. The OEO staff member assigned to each WSDOT region will be responsible for conducting comprehensive DBE contract compliance reviews in their respective region. An outline of the procedures can be found in Appendix 8.

26.37(c)

The sub-recipients are required to track DBE payments using WSDOT DMCS (See Appendix 9 for DMCS Compliance Audit Summary). WSDOT uses DMCS to monitor contractor payments through the life of the project. The prime contractor/consultant shall enter all payment information including payments received from the agency and the amounts paid to all firms involved with the contract monthly. All firms shall confirm the payments amount received and the local agency shall verify these entries in the DMCS.

Changes or adjustment to the project DBE goals shall be documented by change order. Such change order shall be submitted to the Region Local Programs Engineer for review and concurrence by Local Programs and OEO prior to execution.

Section 26.39: Small Business Participation

WSDOT has established a Small Business Program, which was approved by FHWA on July 12, 2012. The program is described in Appendix 10. Elements of the Small Business Program include the following:

- Encouraging DBE participation on emergency service projects;
- Unbundling of large/mega-project prime and subcontracts;
- Ensure small business technical assistance in understanding WSDOT's Small Business Program;

    - Identifying alternative acquisition strategies;
    - Small Works Roster;
    - To increase DBE participation, voluntarily or race-neutral goals are established on projects which are strictly state funded; and
    - Other measures as determined.

Small Works Roster Process

The small works roster process may be used in lieu of published advertisement when the total estimate including sales tax is less than $300,000. This is beneficial to DBEs

because the projects are smaller in size and there is no need for unbundling. In addition, if the project is less than $35,000, the limited public works process can be utilized where the payment and performance bond requirements can be waived. RCW 39.04.155(2)(c)(3). Also, there is no published advertisement is required. Bidders are selected from the appropriate small works roster by prequalification work class and county. All other contract requirements remain the same. The bid opening, award and execution process remains the same as for contracts greater than $300,000 except that these processes may be conducted in the region (See RCW 39.04.155 in Appendix 11 and WAC 468-15 in Appendix 12).

Purpose

1. Provide an alternative advertisement process for selection of bidders in lieu of a published advertisement for projects estimated to cost less than $300,000 including sales tax;

2. Provide a fair, cost effective method of advertising contracts through the small works roster process;

3. Provide a clear, concise method for selection of qualified bidders;

4. Reduction in project cost for published advertisement;

5. Potential reduction in project cost for printing plans and specifications; and

6. Increase contracting opportunities for small companies.

Rules

1. Project estimated cost must be less than $300,000 including sales tax. (RCW 39.04.155);

    - The breaking of any project into units, or accomplishing any projects by phases, is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process. (RCW 39.04.155)

2. Must invite all the bidders on the applicable small works roster. (RCW 39.04.155);

3. Bidders must be prequalified on the applicable small works roster to receive bid documents;

4. WSDOT formally advertises for small works roster applicants once per year each December. However, a firm may request to be placed on a small works roster at any time. A solicitation for small works roster participants is posted at:http://www.wsdot.wa.gov/biz/contaa/prequal/Small%20Works%20Questionnaire_420-020.pdf year around. (RCW 39.04.155);

5. Published advertisement of the project is not required;

6. All other rules as applicable to the Plans Preparation Manual M 22-31 and statutes apply;

7. Olympia Headquarters Contract Ad & Award Office maintains WSDOT's small works rosters and provides a listing of qualified contractors for every small works project; and

8. Bid results shall be submitted to ContractAd&Award@wsdot.wa.gov immediately following bid opening.

   - Results shall be available on the Contract Ad & Award Small Works Roster website available at: www.wsdot.wa.gov/biz/contaa/WSDOTPRO/SWROSTER/default.htm.

Procedures

1. Project staff determines whether or not the project is eligible for the small works roster based on the total estimate including sales tax;

2. Prepare plans and specifications, and bid proposal form per WSDOT's Plans Preparation Manual M 22-31;

   a. Buy America provisions are not required when there are no Buy America eligible items to be permanently incorporated into the contract or when the value of these items is less than $2,500;
   b. State funded non-highway contracts may use a Solicitation for Quotations; and
   c. For questions about contract documents, contact HQ Contract Ad & Award for more information.

3. Determine the length of the advertisement period. Federally funded contracts must be on ad for at least one week; and

4. Contact HQ Contract Ad & Award Office by phone 360-705-7835 or email ContractAd&Award@wsdot.wa.gov and request a Pre-Ad Template and a Small Works Roster Project Check sheet. Complete these forms and return them to ContractAd&Award@wsdot.wa.gov.

a. Request contract number from HQ Contracts Payment Section:
    - HQ Contract Ad & Award will send an advertisement notice to every contractor who is eligible. A list of interested contractors will be provided after the pre-ad period;
    - Provide each of the companies from the list above that indicated an interest in the contract with a bid package;
    - Receive and open sealed bids;
    - Evaluate bids for responsiveness; and
    - Email bid results to HQ Contract Ad & Award Office.

b. Follow all other procedures in the WSDOT Advertisement and Award Manual, http://www.wsdot.wa.gov/publications/manuals/fulltext/M27-02/AdandAward.pdf, for bid opening, award, and execution of the project.

Subpart C - Goals, Good Faith Effort, and Counting

Section 26.45: Overall Goals

Every three years WSDOT develops separate and distinct overall DBE goals for each USDOT funding source: FAA, FHWA, and FTA (e.g., FY 2017-2020). Recognizing the significant differences between the distributions of these funds, separating the DBE goals allows WSDOT to appropriately tailor the DBE program to the relative industry.

In setting its overall goals, WSDOT utilizes a disparity study to determine the level of participation one would expect to achieve in the absence of present and past effects of discrimination. WSDOT's 2017 Disparity Study can be viewed at http://www.wsdot.wa.gov/sites/default/files/2017/09/11/OEO-DisparityStudy-2017.pdf

Unless disapproved by an operating administration (FAA, FHWA or FTA), the proposed overall DBE goals submitted by WSDOT on August 1 are effective October 1 of the applicable year.

A detailed description of WSDOT's most recent methodology for establishing its FHWA, FTA, and FAA overall goals can be found at: http://www.wsdot.wa.gov/sites/default/files/2018/01/12/FHWA-Overall-DBE-Goal-Methodology-FFY-2018-2020.pdf.

Section 26.47: Failure to Meet Goals

26.47(c)

If WSDOT falls short of its overall DBE goal, for a specific fiscal year, WSDOT will analyze the previous year's contracting activities and establish specific steps and milestones to correct the reasons for the non-attainment. WSDOT will develop a corrective action plan (shortfall analysis) and submit it to FHWA, FTA or FAA for approval within 90 days of the end of the fiscal year.

The respective operating administration may impose conditions on WSDOT as part of its approval of the shortfall analysis and corrective actions.

Section 26.49: Transit Vehicle Manufacturer Goals

Transit Vehicle Procurements are excluded from the overall triennial goal calculation process.

Transit vehicle manufacturers wanting to do business with WSDOT or its sub-recipients must establish and submit for FTA's approval an overall percentage goal. These goals should be set in accordance with 49 CFR Part 26.45 and 26.49(b).

Transit vehicle manufacturers may make the certification required by 49 CFR Part 26.49(a) if they have submitted the overall goal to FTA and it has been approved or not disapproved.

WSDOT may, with FTA approval, establish project-specific goals for DBE participation in the procurement of Transit Vehicle Manufacturers in lieu of requiring transit vehicle manufacturers to certify that they have complied with 49 CFR Part 26.

WSDOT may, with FHWA or FAA approval, use the procedures of 49 CFR Part 26.49 with respect to procurements of vehicles or specialized equipment. If WSDOT decides to do so, the manufacturers of the equipment must meet the same requirements, including goal approval by FHWA or FAA, as transit vehicle manufacturers must meet in FTA financially assisted procurements.

Section 26.51(a-c): Means to Achieve Overall Goals

1

WSDOT and its sub-recipients strive to meet the maximum portion of its overall triennial DBE goal by using race-neutral means. Race-neutral participation includes:

a. Any time a DBE wins a prime contract through the customary competitive procurement process.

b. Any time a DBE is awarded a subcontract on a contract which does not contain a COA goal.

c. Any time a DBE is used above and beyond the COA DBE Goal on a project.

WSDOT uses contract goals to meet any portion of its overall DBE goals it is unable to achieve through race-neutral means. WSDOT has a DBE Support Services program (inclusive of a business development element) that provides specialized services to DBEs in order for them to achieve eventual self-sufficiency. WSDOT provides assistance to DBE consulting firms through an FHWA Safe Harbor pilot program which helps firms become compliant with the Federal Acquisition Regulations

Section 26.51(d-g): Contract Goals

To fulfill the Washington State Department of Transportation's (WSDOT) responsibility under 49 CFR § 26.51(e), a weighted methodology to determine the Disadvantaged Business Enterprise (DBE) individual contract goals will be utilized.

WSDOT will only set contract goals on projects which contain subcontracting opportunities. To meet the requirements of 49 CFR § 26.45, WSDOT bases its overall goals on the results of a Disparity Study. The most recent disparity study was conducted for WSDOT in 2017.

WSDOT uses contract goals to meet any portion of its overall DBE goal that it projects will not be met through race-neutral measures. WSDOT expresses its contract goals as percentages of the total amount of a contract. The following process is used by WSDOT for establishing individual project goals on federally assisted projects (i.e. FAA, FHWA and FTA) having a race-conscious DBE goal.

Project goal considerations:

Projects receiving federal financial assistance, with a total contract value in excess of $100,000, are considered for race-conscious goal setting. WSDOT shall not set a condition of award goal of less than two percent. All goals will be rounded to the nearest percentage. Therefore, no individual contract goal will be set at one percent. Both the project size minimum and the two percent goal thresholds will ensure WSDOT is only setting individual contract goals on projects with sufficient subcontract opportunities. WSDOT will only set individual project goals when the preliminary engineers estimate or design process for the project is 80 percent or more complete.

Projects with a dollar value over $100 million will be evaluated to determine if a separate overall goal should be set for the project following the requirements of 49 CFR Part 26.45.

Step 1 Baseline Goal

WSDOT's 2017 Disparity Study provides DBE availability by North American Industry Classification System (NAICS) codes to calculate the goal for step 1. (See NAICS Code Availability in Appendix 13)

This step uses statistical data derived from the Disparity Study to calculate a baseline project goal.

1. Review the bid items and assign NAICS codes to the work scopes.
2. Use the availability percentage from the Study for each work scope by the NAICS code.
3. Work Scope Amount multiplied by DBE Availability percentage equals the estimated DBE Participation Amount (i.e. Work Scope x DBE Availability = DBE Participation Amount)
4. Total DBE Participation Amount divided by the Project Engineer's Estimate (before tax) = the weighted DBE Participation Amount.
5. Until such time as the white women-owned business waiver is rescinded, the weighted DBE Participation figure derived from the previous step will be multiplied by .46 to determine Step One of the individual project goal. This is based upon the Disparity Study's finding that of 19 percent DBE availability, minority-owned businesses comprised 8.7 percent of the market (.46) and white women-owned businesses comprised 10.3 percent (.54).

Step 2 Adjustments

This step considers other evidence available to WSDOT that impacts the availability of certified firms. WSDOT will make a Step 2 adjustment until we have the quantity of historical evidence in DMCS that allows for qualitative assessment. WSDOT may adjust the individual project goal based upon the following factors:

1. Adjustments to the weighted DBE Participation figure in Step 1 may be made based on evidence pertaining to the opportunities for and ability of DBE firms to participate. Such evidence may include, but is not limited to, current overall DBE goal attainment, specialized projects, additional insurance requirements (e.g. longshoreman's insurance) and remote location in combination with small engineers estimate, lack of available certified firms, or other circumstances in which a DBE goal would pose an unreasonable mobilization cost.
2. WSDOT will consider historical DBE attainment information for projects of a similar nature and compare this to the Step 1 statistical result. For similar contracts, the Diversity Monitoring and Compliance System (DMCS), powered by B2GNow, will calculate a weighted value for the goals and participation of the historical contracts. The participation value may be used as the Step 2 DBE Goal.

3. If relevant, the Step 1 DBE Participation Figure will be averaged with the Step 2 Adjustments, listed above, to create an individual project goal.

Final Goal

A Final DBE Project Goal will be used by averaging Step 1 DBE Participation and the Step 2 Goal adjustment. Standard rounding will be applied to arrive at the nearest whole percentage.

EXAMPLE:

Within a WSDOT engineer's preliminary estimate of a typical highway construction project, a breakdown of the total dollar values assigned to each contract is typically included.

Example Work Classification Preliminary Estimate

Mobilization		$54,839.00
Class 1	Clearing, grubbing, grading and draining	$14,445.00
Class 3	Bituminous surface treatment	$230,222.50
Class 4	Asphalt concrete paving	$103,963.00
Class 11	Guardrail	$10,050.00
Class 12	Pavement markings (excluding paining)	$27,169.00
Class 25	Bridge deck repair	$17,635.00
Class 27	Signing	$1,000.00
Class 30	Surveying	$5,000.00
Class 35	Precast median barrier	$7,890.00
Class 37	Impact attenuators	$14,000.00
Class 38	Paint striping	$18,606.80
Class 53	Traffic control	$99,110.00
Contract Total		**$603,930.30**

To create an individual contract goal, the DBE availability percentage is then applied to the individual classes of contract total as illustrated below:

Work Classification Preliminary Estimate

Class	Class Total	NAICS	DBE Availability	DBE Availability Dollar Amount
Mobilization	$54,839.00	N/A	N/A	$0.00
Class 1	$14,445.00	237310	18.90%	$2,730.11
Class 3	$230,222.50	237310	18.90%	$43,512.05
Class 4	$103,963.00	237310	18.90%	$19,649.01
Class 11	$10,050.00	237310	18.90%	$1,899.45
Class 12	$27,169.00	237310	18.90%	$5,134.94
Class 25	$17,635.00	237310	18.90%	$3,333.02
Class 27	$1,000.00	237310	18.90%	$189.00
Class 30	$5,000.00	541370	24.20%	$1,210.00
Class 35	$7,890.00	237310	18.90%	$1,491.21
Class 37	$14,000.00	561990	4.60%	$644.00
Class 38	$18,606.80	237310	18.90%	$3,516.69
Class 53	$99,110.00	561990	4.60%	$4,559.06
Contract Total:	**$603,930.30**		**DBE Total Availability:**	**$87,868.53**

Individual Contract Goal: 14.76%[1]

14.76% x .46[2] = 6.79%

DBE Goal = 7%

Adjustment for predicted annual goal accomplishment

WSDOT will adjust these procedures to establish larger or smaller DBE goals, as appropriate, to accomplish the overall goal on an annual basis.

1. Frequently review the department's overall DBE goal tracking and forecasting.

[1] The individual contract goal, will be expressed only as a percentage of the contract, is the DBE Total Availability in Dollars divided by the Contract Total. Mobilization is not included as a subcontractable item as DBE availability does not exist due to the nature of this scope of work and DBEs cannot grow and develop in Mobilization.

[2] The .46 calculation takes into account the non-minority women waiver.

2. When appropriate, make a recommendation to the DBELO or DBE Program manager to set the multiplication factor higher or lower than 60 percent based upon annual forecasting.

Although operating administration (FAA, FHWA, FAA) approval of each contract goal is not required, an operating administration may review and approve or disapprove any contract goal WSDOT/local agencies establish.

Section 26.53: Good Faith Efforts Procedures

26.53(a): Selection of Successful Bidder

Pursuant to 49 CFR Part 26.53, when WSDOT has established a DBE contract goal, WSDOT will only award a contract to the bidder who makes good faith efforts (GFE) to meet the goal. The following describes GFE procedures for WSDOT and its sub-recipients' contractors and consultants. WSDOT uses these efforts at the time of bid and through the life and end of the project/contract. The successful bidder shall be selected on the basis of having submitted the lowest responsive bid, which demonstrates a good faith effort to achieve the DBE COA Goal. Achieving the DBE COA Goal may be accomplished in one of two ways:

1. Meeting the DBE Goal:

    - The best indication of GFE is to document, through submission of the Disadvantaged Business Enterprise Utilization Certification (Appendix 1) and supporting Disadvantaged Business Enterprise Written Confirmation Document(s), that the bidder has obtained enough DBE participation to meet or exceed the assigned DBE COA Goal; or

2. The bidder made adequate GFE to meet the DBE COA goal through documentation:

    - The bidder may demonstrate a GFE in whole or part through GFE documentation, in the event a bidder's efforts to solicit sufficient DBE participation have been unsuccessful. In this case, the bidder must supply GFE documentation in addition to the Disadvantaged Business Enterprise Utilization Certification form, and supporting Disadvantaged Business Enterprise (DBE) Written Confirmation Document(s).

3. GFE Analysis/Review Process

    - WSDOT OEO will review and analyze all submitted Good Faith Effort documents in Pre-Award status. WSDOT OEO will utilize the requirements established in 49 CFR 26.53 and 49 CFR 26 Appendix A

as the foundation of the review process. WSDOT OEO will use 49 CFR 26 Appendix A to establish review consistency as much as possible. Appendix A is not an all-inclusive list.

- WSDOT OEO will take into consideration the fact that other bidders may have been successful in finding enough participation to meet the goal. This in itself is not the determinant factor in accepting or rejecting the apparent low's good faith effort.

- OEO will also scrutinize and investigate by line item prices that appear overly inflated and align to the potential of being an unrealistic estimate for the sole purpose of meeting a COA goal.

- OEO upon receipt of a GFE analysis request will have 5 days to review, analyze, and write up a determination.

For bid-build projects WSDOT uses the "responsiveness" factor:

Bid-build projects have a condition of award (COA). Once GFE documentation arrives, OEO has five days to create analysis. Once the analysis is complete, it will be sent to state construction or local programs with the findings. The prime contractor then has three days to request a reconsideration hearing, at which time an individual will be chosen as an independent officer.

For design-build and general contractor/construction manager (GC/CM) projects WSDOT uses the "responsibility" factor:

Design-build projects do not have a condition of award (COA). Prime contractors submit an inclusion plan to OEO that is monitored to determine the quality and genuineness of the efforts.

Demonstration of Good Faith Efforts

WSDOT's Office of Equal Opportunity evaluates, documents, and writes the GFE determination. WSDOT and its sub-recipients shall consider the quality, quantity, and intensity of the different types of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere ***pro forma*** efforts are not good faith efforts to meet the DBE contract requirements.

See Appendix N for 49 CFR Appendix A to Part 26, Guidance Concerning Good Faith Efforts.

Local Programs GFE Guidelines

1. The successful bidder shall be selected on the basis of having submitted the lowest responsive bid and, in order to be responsive, making good faith efforts to meet the DBE goal. The bidder can meet this requirement in either of two ways:

    a. The bidder can meet the established DBE goal, documenting they have obtained enough commitments for participation by DBE firms to meet the goal; or
    b. Document that the bidder made adequate Good Faith Efforts (GFE) to meet the established DBE goal. A bidder is required to submit GFE documentation with their proposal only in the event that the bidder's efforts to solicit sufficient DBE participation were unsuccessful.

    GFE means that the bidder must show that it took all necessary and reasonable steps to achieve the DBE goal; and by their scope, intensity, and appropriateness to the objective, the bidder could reasonably be expected to obtain sufficient DBE participation, even if the bidder were not fully successful in meeting the established DBE goal. Efforts done as a matter of form or for the sake of appearance are not considered "good faith efforts" to meet the contract requirements for DBE utilization.

2. Should the low and otherwise responsive bidder fail to attain the goal and not provide adequate GFE documentation in the bid submittal, its bid will be determined to be nonresponsive, and the next low responsive bid will be reviewed for acceptance. All agencies that have projects with mandatory DBE goals must submit the bid tabs, the DBE Utilization Certification, and the DBE Written Confirmation Document of the apparent low bidder to the region Local Programs engineer (LPE) to obtain concurrence to award **before** the contract is officially awarded to the apparent low bidder. Failure to gain LPE concurrence **prior to award** on every project with DBE goals and subsequent award of a contract to a nonresponsive bidder will jeopardize the project's federal funding.

3. If the apparent low bidder submits GFE documentation with the bid, the local agency will submit the documentation to Local Programs for approval action prior to awarding the project. GFE documentation must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

As stated in the DBE General Special Provisions, when a bidder is awarded a contract based on demonstrating adequate GFE, the advertised DBE goal will not be reduced to the bidder's partial commitment. Further, the bidder shall demonstrate a GFE during the life of the contract to attain the DBE goal assigned to the project.

Section 26.53(b): Information to be Submitted

To be considered responsive and eligible for Award of a contract with DBE goals, a bidder should comply with the requirements in Appendix 15- OEO DBE Contract Award Requirements.

Section 26.53(c)

WSDOT OEO will ensure that all DBE Program information is complete and accurate and adequately documents the bidder good faith efforts before committing the agency to the performance of the contract by the bidder.

Following Bid Opening, WSDOT OEO will review and clear all DBE Program related Bid documents.

Section 26.53(d): Administrative Reconsideration

If WSDOT determines the apparent low bidder has submitted good faith effort documentation that was determined to be inadequate, WSDOT will, before awarding the contract, provide the apparent low bidder an opportunity for reconsideration.

During the Administrative Reconsideration process the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts to meet the goal. This documentation shall be provided to the office comprising the initial bid process and from there, it is forwarded to the OEO office for reconsideration. Only documentation of good faith efforts associated with meeting the required condition of award goal made prior to bid opening shall be considered. WSDOT will not consider new documentation during the Administrative Reconsideration process. The process is only available for determining whether the submitted good faith effort packages were sufficient. The Administrative Reconsideration process will not be used for adjudicating any other issue of responsiveness:

1. The bidder must request reconsideration within 48 hours of GFE determination and schedule a reconsideration hearing within seven calendar days of notification of being nonresponsive or forfeit the right to reconsideration;

2. The reconsideration decision will be made by the DBELO or their designated representative who did not take part in the original determination;

3. The bidder shall have the opportunity to meet in person with the reconsideration official for the purpose of setting forth the bidder's position as to why the GFE documentation demonstrates a sufficient effort;

4. The reconsideration official shall provide the bidder with a written decision on reconsideration within five working days of the hearing explaining the basis for the finding; and

5. The results of the reconsideration process are binding and are not administratively appealable to USDOT.

Section 26.53(e)

For design-build and other alternative delivery methodologies, OEO receives an estimate from the Design office providing estimates for both the Design and Construction phases of the project. OEO analyzes the estimates for DBE availability in each phase to establish DBE goals. WSDOT project staff maintains oversight responsibility and validates DBE participation and contract compliance on the project. When it is determined that a design-build and/or GC/CM contract has DBE participation goals the following apply:

1. The DBE requirements of 49 CFR Part 26 apply to this project. To be eligible for award of this contract, each proposer shall submit a DBE Performance Plan in Appendices D and E as part of a responsive proposal; and

2. The DBE Performance Plan is one of the pass/fail factors that will be considered in the technical evaluation scoring. The content of the DBE Performance Plan will be evaluated as part of WSDOT's pass/fail determination for this factor. Failure to achieve a "pass" rating on this factor shall result in the proposal being declared non-responsive and the proposer being disqualified.

See Appendix 16 for Design-Build RFP, RFQ and ITP Templates.

DBE Performance Plan

The DBE Performance Plan shall reflect DBE commitments/methods to be used by the proposer to obtain DBE participation (including good faith efforts, as appropriate), in order to achieve the DBE goal(s). Please refer to Appendix 14.

OEO Personnel reviewing or involved in the review analysis of the performance plans must sign a Statement of Non-disclosure form prior to receiving the submitted performance plans. OEO Personnel involved in the review analysis of the Once Bid documents have been received, the Design-Build Managing Team will provide to the Region OEO individual copies of the submitted performance plans. The Region OEO individual will have 5 days to review, analyze, and write up their findings as to the strengths and weaknesses of the submitted performance plans. The OEO Region individual will provide as an analysis

conclusion to the Project Management Team, a categorical rating of fair, good, very good, or excellent.

Evaluation of good faith efforts and crediting DBE participation will be conducted throughout the life of the project, pursuant to 49 CFR Part 26.

See Appendix 17 for guidance to RCW 39.10.300

Section 26.53(f): Substitutions/Terminations

If WSDOT approves in writing of a DBE being replaced on a contract with a COA goal, the contractor must either replace the DBE with another DBE or make adequate good faith efforts to replace the DBE for the same dollar amount. The good faith efforts in replacing the DBE are evaluated in the same manner listed above.

Termination/substitution of a DBE (or an approved substitute) DBE) is only allowable for good cause, and with prior written approval of the contracting agency (WSDOT/Local Agency). If the contractor terminates a DBE without prior written approval of the contracting agency, the contractor is not entitled to any payment for work or material associated with that subcontract, nor will the contractor receive credit towards the DBE goal for that work. All substitutions/terminations must be approved by the project office, with OEO approval, prior to substituting/terminating a DBE. The contracting agency will only provide written consent if it agrees that the prime contractor has good cause to terminate the DBE.

For purposes of the DBE program, good cause includes the following circumstances:

a. The listed DBE subcontractor fails or refuses to execute a written contract;

b. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

c. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;

d. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

e. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to CFR Parts 180, 215 and 1,200 or applicable state law;

f. WSDOT OEO has determined that the listed DBE subcontractor is not a responsible contractor, i.e. multiple CUF failures;

g. The listed DBE subcontractor voluntarily withdraws from the project and provides WSDOT written notice of its withdrawal;

h. The listed DBE is ineligible to receive DBE credit for the type of work required;

i. A DBE owner dies or becomes disabled and therefore, the listed DBE contractor is unable to complete its work on the contract; and

j. Other documented good cause determined by the contracting agency that compels the termination of the DBE subcontractor.

Before transmitting its request to terminate and/or substitute a DBE subcontractor to the contracting agency, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the contracting agency, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the contracting agency and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the contracting agency should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the contracting agency may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by bidders in negotiated (i.e., design-build) procurements.

Each federal-aid contract containing a DBE goal includes the contract clause required by Part 26.13(b) stating that, “failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies that WSDOT deems appropriate if the prime contractor fails to comply with the requirements of this section.”

WSDOT and its sub-recipients shall apply these requirements to DBE bidders for prime contracts. In determining whether a DBE bidder for a prime contract has met a contract goal, WSDOT shall count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

WSDOT and its sub-recipients will require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that

all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with 49 CFR Part 26.

OEO has final approval authority (with collaboration and recommendations of the appropriate Headquarters Division office) over all substitutions of DBE subcontractors after bid opening and during the execution of the contract. Any DBE firm that is found by WSDOT/sub-recipient to have been decertified/suspended or becomes unable or unwilling to perform their work, will be replaced by the contractor with another certified DBE to meet the project goal, at no additional cost to WSDOT or its sub-recipients. Documentation of a "good faith effort" may be accepted in lieu of an actual substitution of another DBE firm.

Substitutions will not be permitted under the following conditions:

a. The successful low bidder fails to inform the DBE prior to bid submittal that the bidder's union agreements require the bidder's subcontractors to have their own union agreements.

b. The successful low bidder fails to inform the DBE prior to bid submittal of bonding requirements that the bidder will impose on its subcontractors.

c. If the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Section 26.53(g)

Good Faith Efforts Applicable to DBE Substitution

If WSDOT approves in writing of a DBE replacement on a contract with a COA goal, the contractor must either replace the DBE with another DBE or make adequate good faith efforts to replace the DBE for the same dollar amount. The good faith efforts in replacing the DBE are evaluated in the same manner listed above.

When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, WSDOT will require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The contractor shall document the good faith efforts. WSDOT can request documentation under this provision in which the contractor shall submit the documentation within seven days, which may be extended for an additional seven days, if necessary, at the request of the contractor. WSDOT OEO will provide a written

determination to the contractor stating whether or not good faith efforts have been demonstrated.

Per 49 CFR 26.53(j), the successful bidder (contractor) shall make available, upon request, a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts/agreements with DBEs (regardless of tier) contain the requirement that work will be performed in accordance with 49 CFR Part 26.

Section 26.55: DBE Participation Counting

Counting DBE Participation

Only work performed by DBEs in the work description for which they are certified on the DBE Directory shall count towards the goals.

DBEs proposed as COA must be certified prior to the due date for bids on the contract. All non-COA DBEs shall be certified before the subcontract on which it is participating is executed and prior to starting work on that project.

WSDOT will not count DBE participation toward the contractor's contract goal until the amount being counted has been paid to the DBE for work performed.

Pursuant to 49 CFR Part 26.55, When a DBE participates on a contract, WSDOT and its sub-recipients will:

a. Only count the value of the work actually performed by the DBE towards DBE goals, either race-conscious or race-neutral.

b. Count the entire amount of work performed by the DBE that is performed by the DBEs own workforce. This includes the cost of supplies, and materials and other resources obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE, except those purchased or leased from the prime contractor or any of its affiliates.

DBE participation will only be counted when:

a. The DBE is certified by OMWBE in the appropriate work descriptor prior to bid opening.

b. The DBE is performing a CUF**.** The prime contractor shall substitute or make good faith effort to substitute the DBE if WSDOT determines the DBE is not performing a CUF.

Credit shall be deducted from meeting the COA goal or race-neutral participation when:

a. OEO has determined the DBE failed to perform a CUF.

b. When the project engineer (with OEO approval) has determined the DBE is not performing CUF.

c. When the DBE has been decertified. Attainment achieved by a DBE on a project, prior to decertification shall count towards participation.

d. Credit towards meeting the contract goal varies, depending on the type of work the DBE performs. The varying types of credit are as follows:

- DBE prime contractor participation counts as 100 percent only for the work the DBE prime contractor performs with its own resources and personnel forces. All prime contractors are required to perform at least 30 percent of the total contract.
- DBE subcontractors count as 100 percent only for that portion of the subcontract work that the DBE subcontractor is certified to perform. In addition, the DBE must be determined to be performing a CUF (with its own forces) on the subcontract in order to count towards the contract's DBE goal.
- Force account work.

When the contractor elects to utilize force account work to meet the DBE COA goal (as demonstrated by listing this force account work on the DBE Utilization Certification Form), only 50 percent of the proposal amount shall be credited.

One hundred percent of the actual amounts paid to the DBE for the force account work shall be credited towards DBE COA goal or DBE participation.

DBE Manufacturers

a. Per 26.55 (e) (1) (ii), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

b. In order to count as a DBE manufacturer, the firm must be certified by OMWBE as a manufacturer (i.e., 31XXXX - 33XXXX NAICS), with a corresponding work description.

c. If materials or supplies are obtained from a DBE who has been certified by OMWBE as a manufacturer, 100 percent of the cost of materials or supplies can count toward the DBE goal, as long as the DBE performed a CUF.

Regular Dealers

Regular dealer status is determined on a contract-by-contract basis**.** A DBE firm wishing to be approved and listed as a regular dealer for WSDOT/Local Agency federal-aid projects must submit a request in writing to OEO, no less than 5 working days prior to bid opening. (See Regular Dealer Request Form Appendix 18).

a. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract and described by the specifications of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

b. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

c. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.

d. If materials or supplies are obtained from a DBE who has been approved by WSDOT as a regular dealer for the project, 60 percent of the cost of materials or supplies purchased from the regular dealer may be credited toward meeting the DBE goal.

e. If the role of the DBE regular dealer is determined to be that of a broker, then the DBE credit shall be limited to the fee or commission it receives for its services. Documentation will be required to support the fee/commission charged by the DBE.

Once OEO has received the request, an initial onsite visit will be scheduled with the firm and a review will be conducted to review and confirm the requesting firm's qualifications as a regular dealer. If it is determined that the firm qualifies as a regular dealer, OEO will approve the firm's request for regular dealer status for that contract. OEO will list the firm on an Approved Regular Dealers List, which will be maintained by OEO. A list of approved regular dealers (by contract) is available on OEO's website at http://www.wsdot.wa.gov/sites/default/files/2017/12/04/DisadvantagedBusinessEnterprise-list-ApprovedDealers.pdf

Requests for regular dealer status will only be processed if the firm is certified by OMWBE in a NAICS code that falls within the wholesale (supplier) classification.

In order to count DBE participation for the services of trucking firms (certified by OMWBE), the DBE must be performing a CUF. The DBE receives credit for the value

of the transportation services it provides on a contract using trucks that it owns, insures, and operates, using drivers it employs. If the DBE firm is a trucking firm, 100 percent of its participation will be counted towards the goal, so long as all subcontractors are DBE certified.

The WSDOT OEO will be responsible for ensuring that only firms certified for trucking as a UDBE/DBE by the UCP shall be cleared and approved for countable DBE program participation on WSDOT let and Local Programs let projects.

The language in General Special Provisions 1-07.11 includes the requirements pertaining to both DBE Trucking forms and the procedures related to the forms.

When the Contractor lists a DBE/UDBE for trucking/hauling on the Utilization Certification form (Form #272-056, see Appendix 1), the Contractor shall submit an Underutilized Disadvantaged Business Enterprise (UDBE) Trucking Credit Form (WSDOT Form 272-058, see Appendix 19 for Trucking forms) in accordance with Standard Specifications Section 1-02.9, Delivery of Proposal. An incorrect/incomplete form may result in the Contractor's bid being rejected.

The UDBE Trucking Credit Forms, are not required to be submitted with the Proposal. The UDBE Trucking Credit Forms (if any), shall be received either with the Bid Proposal or as a Supplement to the Bid. The documents shall be received no later than 48 hours (not including Saturdays, Sundays and Holidays) after the time for delivery of the Proposal. To be considered responsive, Bidders shall submit a completed UDBE Trucking Credit Form for each UDBE Trucking firm listed on the UDBE Utilization Certification, however, incorrect UDBE Trucking Credit Forms will be returned for correction for a period up to five calendar days (not including Saturdays, Sundays and Holidays) after the time for delivery of the Proposal. UDBE Trucking Credit Forms that are still incorrect after the correction period will be determined to be non-responsive.

When submitting a Request to Sublet for the DBE/UDBE trucking firm, the Contractor will also be required to submit a Truck Unit Listing Log (WSDOT Form 272-057, see Appendix 19 for Trucking forms) to the WSDOT/Local Agency project manager, that lists all trucks that the DBE firm intends to use on the project. If the DBE/UDBE will be supplementing its trucks with rented/leased trucks, the Contractor will be required to include copies of the DBE's/UDBE's truck rental/lease agreements with the Truck Unit Listing Log. In order to count the DBE's/UDBE's participation on the project, one or more of the trucks used by the DBE/UDBE in performance of its work on the project must be owned by the DBE/UDBE. The project engineer will not accept or approve a Request to Sublet for a DBE firm performing any type of trucking until he/she is in receipt of a completed and accepted DBE Truck Unit Log form. The DBE Truck Unit Listing Log shall be updated by the Engineer prior to utilizing any new or additional trucks on the project. Incomplete or incorrect supplemental information will be returned for correction prior to approval of the Request to Sublet Work. The DBE Truck Unit Listing Log shall be updated and submitted to the Engineer for approval prior to the

DBE firm utilizing new trucks for Contract Work form. WSDOT/Local Agency Field Inspectors will validate that the vehicles are on the DBE Program Truck Unit Listing Log.

The following factors will be used in determining whether a DBE trucking company is performing a commercially useful function:

a. The DBE must be responsible for the management and supervision of the entire trucking operation for which credit is being claimed;

b. The DBE must itself own and, with its own workforce, operate at least one fully licensed, insured, and operational truck used on the contract;

c. If a DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, the total value of the hauling services is eligible for DBE credit provided the DBE performed a CUF;

d. The DBE receives credit only for the value of the transportation services it provides on the contract using trucks it owns or leases, licenses, insures, and operates with drivers it employs. If trucks are being leased by the DBE trucking firm, the lease must indicate that the DBE has exclusive use of and control over the trucks. This does not preclude the leased truck from working for others, provided it is with the consent of the DBE and the lease provides the DBE first priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE;

e. The DBE may lease trucks from another DBE firm including an owner-operator who is certified, provided they are certified as a DBE for trucking. The DBE who leases trucks from another DBE may claim participation for the total value of the transportation services the lessee DBE provides on the contract;

f. In any lease or owner-operator situation, as described in requirements d and e above, the following rule applies:

    - A written lease/rental agreement is required for all trucks leased or rented; documenting the ownership and the terms of the agreement. The agreements must be submitted and approved by the contracting agency prior to the beginning of the work. The agreement must show the leaser's name, truck description and agreed upon amount and method of payment (hour, ton, or per load). All lease agreements shall be for a long-term relationship, rather than for the individual project. This requirement does not apply to owner-operator arrangements; and

g. Credit may only be claimed for DBE trucking firms operating under a subcontract or a written agreement approved by WSDOT prior to performing work.

The rental/lease agreement must provide the DBE firm with exclusive authority of use during the duration of the agreement. All rental/lease agreements for trucks must be sent to OEO for approval. OEO will have five business days to provide a response back to the project office, which in turn will advise the prime contractor and DBE of the status of the approval.

WSDOT has chosen not to adopt the option of "one-for-one" counting allowed by 49 CFR 26.55 (d); hence, a DBE trucking firm will not receive credit for any work performed by non-DBE lessees.

Where a DBE trucking firm acts as a broker, it shall only receive credit for its fees and services in accordance with 49 CFR 26.55 (a) (2), provided the firm is certified as a broker on OMWBE's directory of certified firms.

See Appendix 20, USDOT Questions and Answers on Part 26.55(d) (3) (5).

DBE brokers, packagers, ad hoc suppliers and manufacturers representatives' commission or fees on the contract are all that are counted towards DBE participation.

Rental/lease agreements

a. In order to perform a CUF, a DBE must be responsible for the execution of the work for which it is contracted, by actually performing, managing, and supervising the work using its own employees and equipment.

b. All rental/lease agreements need to be pre-approved by OEO prior to the start of work by the DBE firm. The lease agreement should be submitted to the project office, which will then forward it to OEO. OEO will have five business days to provide a response back to the project office, which in turn will advise the Prime Contractor and DBE of the status of the approval.

c. In the case of an emergency where unreasonable hardship could be caused to a project due to such occurrences such as equipment failure, the region EEO officer can approve rental/lease agreements in order to prevent project work stoppage.

d. Count the entire amount of fees or commissions charged by a DBE for providing a bona fide service (e.g. professional, technical or managerial consulting) or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract toward DBE goals, provided WSDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.

e. Count the work a DBE subcontracts to another firm only if the other firm is a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards DBE participation or goal.

f. Prior to contract execution, if a prime contractor has made a commitment to utilize an ineligible DBE but a contract or subcontract has not been executed, the DBE does not count towards the overall triennial goal or COA goal. WSDOT will require the prime contractor to meet the COA goal with an eligible DBE firm or demonstrate good faith efforts to do so.

If a DBE is decertified while working on a contract, as a prime or subcontractor, only the work prior to decertification counts towards the overall triennial goal or COA goals. However, if the DBEs ineligibility is caused solely by graduation, the DBE may continue to count towards the overall triennial DBE goal and COA goal.

Joint Venture

DBEs participating in a joint venture counts towards DBE participation only for the work the DBE contractor has performed using its own resources. OEO has the responsibility for approval of Joint Venture Agreements involving DBEs. The process for WSDOT approving DBE Joint Ventures is as follows:

a. If WSDOT's Contract Ad and Award approves the Joint Venture Contractor Prequalification, the prequalification documentation will be reviewed by OEO to determine if the DBE has sufficient management and financial capabilities.

b. If the DBE is participating in a joint venture as a subcontractor, WSDOT Contract Ad and Award will not be involved in the DBE Joint Venture approval process.

c. OEO will work with WSDOT's Contract Ad and Award Office to determine if the work history, equipment, and key personnel of the DBE firm are adequate to perform the joint venture.

d. OEO will review the Joint Venture Agreement to determine if the information contained within accurately reflects the DBEs present certification.

e. Using business descriptors, OEO will confirm that the DBE is certified to perform the scopes of work indicated on the proposal.

f. OEO will review the certification documentation and review the last on-site review forms to determine if a new on-site review is necessary.

g. If a DBE Joint Venture is determined to be the apparent low bidder on a contract, the DBE partner will submit a bid item break out letter to OEO, PTD, or LP for sub-recipients. This document will contain:

- The item(s) of work the DBE will perform;
- Equipment which will be used to perform the work; and
- Personnel and supervisors who will be performing the work.

h. The non-DBE joint venture partner shall not exercise supervision, management, or control over the elements of work assigned to the DBE partner. Any practice, arrangement, or condition that erodes the independence or inhibits the DBE firm in performing a CUF on its selected items of work shall prevent in that firm's participation from being counted towards project or overall DBE goals. Such practices, arrangements, or conditions may also jeopardize the DBEs certification;

i. Upon approval, the WSDOT Construction Office and OEO, or LP and PTD for sub-recipients, will provide an approval letter to the firms with the following language:

   - *If you are the apparent low bidder, you will be required to provide specific bid items and dollar amounts for the work performed by the (name of the DBE/JV) prior to execution of the contract. (Name of the DBE/JV) shall be held responsible to perform the distinct elements of the work therein described, with its own work force, equipment and supervision to be credited toward the DBE contract goal. Further, (name of non - DBE/JV) shall not exercise direct supervision, management or control over the elements of the work assigned to (name of DBE/JV). Any practice, arrangement or condition that erodes the independence of (name of DBE/JV) or inhibits the firm in the performance of a Commercially Useful Function, on its elements of work shall result in the loss of credit toward the DBE contract goal.*

j. If the DBE joint venture partner becomes unwilling or unable to perform the work, the other joint venture partner shall make good faith efforts to replace the joint venture partner as mentioned in Section 16 – Good Faith Efforts Procedures.

k. If WSDOT does not approve the Joint Venture Agreement, a letter detailing the reasons for the disapproval will be sent to the contractors on the proposed joint venture agreement.

26.55(c): Commercially Useful Function

WSDOT OEO conducts Commercially Useful Function reviews under the authority of 49 CFR Part 26 in order to count a DBE's participation and ensure all obligations under the contract awarded to DBEs are met. Specifically, 49 CFR

Part 26.55(c) (1) provides that a DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

Prime Contractors or Prime Consultants are ultimately responsible for ensuring DBE firms are performing CUF. All WSDOT projects, Sub-recipient projects, or Consultant Service Agreements containing federal-aid funding are subject to CUF reviews. WSDOT project offices and Sub-recipients are responsible for over-seeing the conduct and performance of DBE firms on their projects. WSDOT project offices and Sub-recipients shall inform OEO of suspected CUF violations.

To ensure that all requirements of 49 CFR 26.55 are being met, WSDOT OEO will review the role and performance of DBEs during execution of contracts, to ensure DBEs are performing a Commercially Useful Function (CUF).

WSDOT project staff will complete a DBE Onsite Review Form on every DBE firm working on a project with federal funding regardless of whether or not the DBE firm is performing in a race-neutral or race-conscious capacity. On multi-year projects, a new on-site review will be conducted for each DBE each year:

- Information shall be entered into the Diversity Management Compliance System (DMCS) for WSDOT-administered projects; or
- By the Headquarters Local Programs Division after their review.

See Appendix 21, DBE Onsite Review forms.

In-depth CUF reviews are conducted by OEO staff on select projects/DBEs. These in-depth reviews may be the result of:

- A complaint of alleged non-compliance;
- “Red Flags” noted on the DBE On-Site Review form or based on other information received by OEO (note: sub-recipients shall inform OEO of suspected CUF violations and OEO will conduct a CUF review with the assistance of LP or PTD);
- Randomly selected DBE firms;
- Specific department initiated reviews; or
- At the request of USDOT (FHWA, FTA, FAA).

OEO will, in conducting CUFs review multiple documents, conduct interviews, and observe the DBE firm during work operations. OEO will assess five areas related to the DBE:

- Management
- Personnel

- Equipment,
- Materials
- Performance

The OEO staff person conducting the CUF will determine the finding. However, the DBELO has the authority to override the finding of the OEO staff person.

DBE firms found to be “not performing” will be notified in writing of the finding. They have ten days to request a reconsideration hearing by the DBELO or his/her designated authority.

Only work performed by DBEs in the work description for which they are certified on the DBE Directory shall count towards the goals.

DBEs proposed as COA must be certified prior to the due date for bids on the contract. All non-COA DBEs shall be certified before the subcontract on which it is participating is executed and prior to starting work on that project.

WSDOT will not count DBE participation toward the contractor’s contract goal until the amount being counted has actually been paid to the DBE (for work performed).

Pursuant to 49 CFR Part 26.55, When a DBE participates on a contract, WSDOT and its sub-recipients will:

a. Only count the value of the work actually performed by the DBE towards DBE goals, either race-conscious or race-neutral.

b. Count the entire amount of work performed by the DBE that is performed by the DBEs own workforce. This includes the cost of supplies, and materials and other resources obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE, except those purchased or leased from the prime contractor or any of its affiliates.

For each contract let by WSDOT or local agencies, having federal-aid funding, the project engineer must document in the Final DBE Utilization Plan Report (See Appendix 7) that it has reviewed the contracting records and monitored the work site and determined that work committed to the DBEs at contract award (and subsequently) was actually performed by said DBEs.

Consultant Agreement Compliance

Work committed to DBEs by the prime consultant must be performed by the designated DBE or a WSDOT approved substitute. DBE consultant work items will not be performed by the prime consultant, in lieu of sub-consulting, without prior approval by WSDOT.

In the event work committed to a DBE does not exist within the contract as anticipated, the prime consultant shall make every reasonable good faith effort to meet the contract goal through DBE utilization in other items of work in the scope of work to meet the contract goal.

WSDOT reserves the right to inspect all records of the prime consultant and its sub-consultants and all records of the DBEs concerning consulting agreements.

The prime consultant will provide WSDOT Consultant Services Office copies of the completed and signed agreements with the DBEs. These agreements shall be submitted to OEO, prior to the DBE beginning work.

The prime consultant will provide a letter to WSDOT showing amounts paid to sub-consultants. No credit for DBE participation shall be given until the sub-consultant has received payment.

Consultant Services Office uses the following clause to ensure all consulting contractors pay sub-consultants in a timely fashion:

Sub-consultant Prompt Payment

The following procedure shall apply to all subcontracts entered into as a part of this contract:

Requirements

1. The sub-consultant shall make a written request to the consultant requesting payment. The consultant shall make payment to the sub-consultant within 10 days of receipt of the written request.
2. If the consultant determines that the sub-consultant has not achieved satisfactory completion of the subcontract, the consultant must provide the sub-consultant with written notice, stating specifically why the subcontracted work is not satisfactorily completed and what has to be done to achieve completion. A copy of this letter will be provided to WSDOT, Project Owner (Local Programs) and WSDOT OEO.

Failure by a prime consultant to comply with these directives may result in the following sanctions:

1. Withholding of payments to the consultant under the contract until the contractor complies;
2. Cancellation, termination, or suspension of the contract, in whole or in part; and/or
3. WSDOT OEO reserves the right to apply other sanctions as provided by law if it determines that the prime consultant withholding retainage was acting in bad faith and against the purposes/best interests of the DBE Program.

Remedies for Contract Violations

When a contractor violates the DBE provisions of the contract, WSDOT or its sub-recipients may incur damages. These damages consist of additional administrative costs including, but not limited to, the inspection, supervision, engineering, compliance, and legal staff time and expenses necessary for investigating, reporting, and correcting violations as well as loss of federal funding. Damages attributable to a contractor's violations of the DBE provisions may be deducted from progress payments due to the contractor or from the performance bond held by WSDOT or its sub-recipients. Before any money is withheld, the contractor will be provided with a notice of the basis of the violations and an opportunity to respond in writing. WSDOT will make a final determination as to the sufficiency of the contractor's response to the alleged violation.

A decision by WSDOT or its sub-recipients to recover damages for a DBE violation does not limit their ability to suspend or revoke the contractor's pre-qualification status or seek other remedies as allowed by federal or state law. For instance, in the event of a contractor's noncompliance with any nondiscrimination provision of its contract, WSDOT may impose such contract sanctions as it determines to be appropriate, including but not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding as non-responsible.

In appropriate circumstances, WSDOT or its sub-recipients may also refer the contractor to state or federal authorities for additional sanctions.

Fraud and Abuse

In addition to enforcement mechanisms available under WSDOT's legal authority, WSDOT will bring to the attention of the USDOT (FHWA/FTA/FAA/Office of Inspector General (OIG)) any false, fraudulent, or dishonest conduct in connection with the DBE Program, so that USDOT can take the necessary actions as provided in 49 CFR 26.109.

If OEO conducts a Commercially Useful Function review, or other investigation under the authority of 49 CFR Part 26, and determines the prime and/or DBE is behaving fraudulently, the proper investigative and legal authorities will be notified and may result in contractual and/or fiscal damages.

If WSDOT or OMWBE staff becomes aware of suspected or admitted fraud within the DBE program, they are required to notify WSDOT OEO within two business days.

In an effort to decrease fraud and abuse in the DBE Program, WSDOT has implemented a Fraud and Abuse Hotline. The toll-free phone number is (877) 856-3770 and the email address is fraudhotline@wsdot.wa.gov. The more information a complainant can provide, the more expeditiously the investigation can proceed. Complaints can be anonymous; however, the complaint can be handled more thoroughly if the complainant can provide contact information. WSDOT will not investigate vague, ambiguous or elusive complaints. Complaints against WSDOT will be reviewed/investigated by the appropriate operating administration of the USDOT (FHWA, FTA, and FAA). Complaints against local agencies will be investigated by WSDOT OEO (in coordination with WSDOT Local Programs).

Examples of fraud include, but are not limited to:

- Contract fraud
- Kickbacks
- Wrongful claims

Examples of activities that may result in additional oversight/review include, but are not limited to:

- Unapproved substitutions of DBEs
- Failure to follow contract procedures
- Sharing of equipment and/or employees

26.55(c)(1), 26.71(b): Joint Checks

A joint check is a two-party check between a DBE, a prime contractor/design-builder and the supplier of material/supplies. The check is issued by the contractor/design-builder as payer to the DBE subcontractor and the material supplier jointly (to guarantee payment to the supplier) for items to be incorporated into a project. The DBE must release the check to the supplier, while the contractor/design-builder acts solely as the guarantor.

The DBE firm must be the initiator of a joint check request.

Prior to its use, a joint check agreement, signed by all parties involved, must be submitted to the contracting agency for review and approval, using the DBE Joint Check Request Form (Appendix 22). The joint check agreement must describe the conditions of the arrangement and expected use of the joint checks. The Joint Check Request Form and the Joint Check Agreement must be submitted and approved by OEO prior to its use. The use of joint checks will be closely monitored by the project office to ensure that their use does not conflict with the DBE regulations.

To receive DBE credit for performing a CUF with respect to obtaining materials and supplies, a DBE must "be responsible for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself."

Material costs paid by the Contractor directly to the material supplier are not allowed. If proper procedures are not followed or the engineer/OEO determines that the arrangement results in lack of independence for the DBE involved, no DBE credit will be given for the DBEs participation as it relates to the material cost.

The following are some general conditions that must be met by all parties regarding joint check use:

- Once the joint check agreement is approved, the prime may issue a two party check (signatures of DBE and supplier required as the endorsement to the checks) and provide the check to the DBE firm for delivery to the supplier;

- The DBE firm has 48 hours to deliver the check to the supplier;

The supplier must agree to language in the Joint Check Agreement that stipulates the joint check funds can only be used to pay for materials related specifically to that project, and that the supplier upon receipt of the joint check funds will release said materials to the project and provide a copy of the invoice (stamped paid in full) to the DBE firm who in turn will provide a copy to the prime contractor.

- The use of joint checks must be a commonly recognized business practice in the industry;

- If the prime contractor makes joint checks available to one DBE subcontractor, the service must be made available to all subcontractors (DBE and non-DBE);

- The relationship between the DBE and its suppliers should be established independently of and without interference by the prime contractor. The DBE has final decision-making responsibility concerning the procurement of materials and supplies, including which supplier to use;

- The prime contractor, the DBE, and the supplier must retain documentation to allow for efficient monitoring of the joint check agreement. Copies of cancelled checks must be submitted to the project office with the payment information for the period in which the joint check was issued;

- The Contractor, DBE, and supplier each have an independent duty to report any changes from the original approved joint check agreement; and

- The DBE remains responsible for all other elements of 49 CFR 26.55(c) (1).

Failure by the DBE/Contractor to adhere to the joint check provisions will result in the joint check amount not being allowed to count towards the prime contractor's DBE goal, and the prime may be found in violation of the DBE specifications (subject to penalties, as described in the Assurances section).

Additionally, WSDOT and/or local agency project staff will monitor the use of joint checks on federal aid projects by obtaining copies of the invoices stamped paid in full, collecting copies of the checks processed through the bank and report its observations/reviews to the appropriate operating administration as requested.

26.55(e): Brokering

The Bidder shall indicate on the DBE Utilization Certification form the use of a broker. The value of fees or commissions charged by a DBE Broker, a DBE behaving in a manner of a Broker, or another service provider for providing a bona fide service, such as professional, technical, consultant, managerial services, or for providing bonds or insurance specifically required for the performance of the contract will only be credited as DBE participation, if the fee/commission is determined by the Contracting Agency to be reasonable and the firm has performed a CUF. A reasonable fee/commission shall not be greater than 5% of the value of the brokered service.

Subpart D – DBE Certification Application and Standards

26.61: Burdens of Proof

In determining whether to certify a firm as eligible to participate as a DBE, OMWBE applies the standards of 49 CFR 26.61.

The firm seeking certification has the burden of demonstrating to OMWBE, by a preponderance of the evidence, that it meets the requirements of 49 CFR Part 26 Subpart D & E concerning group membership, business size, economic disadvantage, ownership, and control.

OMWBE holds a rebuttable presumption that members of the designated groups identified in 49 CFR 26.67(a) are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in 49 CFR 26.67(a). Applicants have the obligation to provide OMWBE with information concerning their economic disadvantage (see 49 CFR 26.67).

OMWBE makes determinations concerning whether individuals and firms have met their burden of demonstrating ownership, control, business size, and social and economic disadvantage by considering all the facts in the record, viewed as a whole.

Section 26.63: Group Membership

The presumed to be socially and economically disadvantaged groups are: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, and any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

OMWBE verifies citizenship or permanent residency for all applicants by collecting documentation such as birth certificate, passport, naturalization paper, tribal card, Washington State enhanced driver license, permanent resident card, or any other documents that support citizenship or permanent residency. OMWBE recognizes that being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the presumed to be socially and economically disadvantaged groups.

OMWBE verifies Native Americans are enrolled members of a federally or state recognized Indian tribe, Alaska Natives, or Native Hawaiians by collecting tribal cards or other supporting documentation the applicant offers.

If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see 49 CFR 26.61(c)), OMWBE has a well-founded reason to question the individual's claim of membership in that group, OMWBE will require the individual to present additional evidence that he or she is a member of the group. OMWBE provides the individual a written explanation of its reasons for questioning his or her group membership and a written request for additional evidence. In determining a group membership classification, OMWBE considers whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. OMWBE may require the applicant to produce appropriate documentation of group membership.

In implementing this section, OMWBE takes special care to ensure it does not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate 49 CFR 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR Part 21.

If there is a determination that an applicant claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the applicant will be required to demonstrate social and economic disadvantage on an individual basis using the guidance found in Appendix E of 49 CFR Part 26.

Section 26.65: Business Size Determinations

To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. OMWBE applies current SBA business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts. OMWBE utilizes this website to verify current SBA business size standards: https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards

Even if the applicant meets the requirements of paragraph (1) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of $23.98 million. OMWBE understands that the Secretary adjusts this amount for inflation from time to time.

OMWBE collects the firm's signed, business tax returns to review gross receipts. Audited financial statements and/or income statements and/or other documents may be accepted on a case-by-case basis.

To determine if the firm has any affiliates, OMWBE reviews the firm's responses to questions on the uniform certification application, and reviews the eligible owner's personal tax returns to identify any other businesses that are owned that may need to be further evaluated. OMWBE also performs online licensing searches to determine if there are any undisclosed businesses the eligible owner(s) have an ownership interest in, and asks questions during the onsite interview. OMWBE utilizes the guidance provided in the FAA Online Training, reviews SBA and USDOT decisions concerning affiliation, USDOT's Official Guidance, and the SBA regulations, 13 CFR part 121.

Section 26.67: Determination of Social and Economic Disadvantage

Determination of Social Disadvantage:

OMWBE requires all DBE applicants to submit a signed, notarized certification that the company's disadvantaged owner(s) are a member of one of the groups in 49 CFR Part 26.67(a).

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. OMWBE makes a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. The applicant firm has the burden of demonstrating to OMWBE, by a preponderance of the evidence, that the individuals who own and control are socially and economically disadvantaged. An individual whose personal net worth exceeds $1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, OMWBE uses the guidance found in Appendix E of 49 CFR Part 26. OMWBE requires that applicants provide sufficient information to make determinations under the guidance of Appendix E of 49 CFR Part 26.

Determination of Economic Disadvantage:

OMWBE presumes that citizens of the United States or lawfully admitted permanent residents who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. OMWBE requires applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged. This same affidavit also requires each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed $1.32 million. The affidavit utilized is from the uniform certification application.

OMWBE requires each individual who made the aforementioned certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. OMWBE uses the uniform personal new worth statement provided by USDOT to ensure this statement is not unduly lengthy, burdensome, or intrusive.

OMWBE does not require owners whose ownership and control are not relied upon for DBE certification to submit a personal net worth statement.

OMWBE does not require spouses of owners applying for DBE certification to disclose their assets if they are not involved in the operation of the business. OMWBE does request relevant information on a case-by-case basis. OMWBE does request information concerning the assets of the disadvantaged owner's spouse where needed to clarify whether assets have been transferred to the spouse. OMWBE recognizes the definition of spouse to include same-sex or opposite-sex couples that are part of a domestic partnership or civil union recognized under State law.

In determining net worth, OMWBE excludes an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). Exclusions for net worth purposes are not exclusions for asset valuation or access to capital or credit purposes. OMWBE does not reduce an individual's net worth based on contingent liabilities.

Only the present value, less the tax and interest penalties, that would accrue if the assets were distributed at the present time is counted with respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences. The burden is on the applicant to perform this calculation. OMWBE may request back up documentation to support the calculations.

OMWBE requires signed, personal tax returns. OMWBE collects supporting documentation on a case-by-case basis. OMWBE recognizes that a one-size fits all approach where we substantiate every line item regardless of magnitude, is administratively burdensome.

OMWBE does not request additional documentation that is unduly lengthy, burdensome, or intrusive.

Notwithstanding any provision of Federal or state law, OMWBE does not release an individual's personal net worth statement or any documents pertaining to it to any third party without the written consent of the submitter. OMWBE will transmit this information to DOT in any certification appeal proceeding under 49 CFR Part 26.89 of this part or to any other state to which the individual's firm has applied for certification under 49 CFR Part 26.85

OMWBE rebuts an individual's presumption of economic disadvantage in two ways:

- If the statement of personal net worth that an individual submits under paragraph of this section shows that the individual's personal net worth

exceeds $1.32 million, the individual's economic disadvantage is rebutted. OMWBE does not have a proceeding to rebut the DBEs status as economically disadvantaged in this case.

If the statement of personal net worth and supporting documentation that an individual submits demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. OMWBE considers factors that include, but are not limited to, the following:

a. Whether the average adjusted gross income of the owner over the most recent three year period exceeds $350,000;
b. Whether the income was unusual and not likely to occur in the future;
c. Whether the earnings were offset by losses;
d. Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
e. Other evidence that income is not indicative of lack of economic disadvantage; and
f. Whether the total fair market value of the owner's assets exceed $6 million.

When OMWBE has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged, OMWBE starts a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual.

The proceeding follows the procedures of Part 26.87. In such a proceeding, OMWBE has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. OMWBE may require the individual to produce information relevant to the determination of his or her disadvantage.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility unless and until he or she makes an individual showing of social and/or economic disadvantage.

If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds $1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her personal net worth remains above that amount.

OMWBE does not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are

consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

Except as set forth in the above paragraph, OMWBE will attribute to an individual claiming disadvantaged status any assets that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

OMWBE reviews the uniform certification application, the statement of personal worth submitted with the application, and business and personal tax returns to determine if there have been any transfers within two years. OMWBE also reviews any other supporting documentation submitted such as bank statements, titles, trusts, and separate property agreements. OMWBE also performs property searches to verify answers to the questions on the application and statement of personal net worth. If an applicant is a trustee and/or beneficiary of a revocable or irrevocable trust, OMWBE collects a copy of the trust and analyzes equity attributable to applicant.

OMWBE follows the guidance below when there is an application for DBE certification by an individual who is not a member of a group presumed to be socially and economically disadvantaged.

Social Disadvantage:

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups, and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

- At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged.

- Personal experiences of substantial and chronic social disadvantage in American society, not in other countries.

- Negative impact on entry into or advancement in the business world. OMWBE considers education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

Education - OMWBE considers such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures that discouraged the individual from pursuing a professional or business education.

Employment - OMWBE considers such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

Business history - OMWBE will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

Economic Disadvantage:

- Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged. Information that must be submitted includes:

- Each individual claiming economic disadvantage must describe the conditions that are the basis for the claim in a narrative statement, and must submit personal financial information.

In considering diminished capital and credit opportunities, the factors to be examined, related to the personal financial condition of any individual claiming disadvantaged status, will include:

- Personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not.

- The financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals. This will be used to evaluate the individual's access to credit and capital. The financial profiles to be compared will include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

In considering economic disadvantage, transfers of assets within two years will be considered as following:

- Assets will be attributed to an individual claiming disadvantaged status which have been transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses or some other form of essential support.

- Assets will not be attributed to an individual claiming disadvantaged status which have been transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

In determining an individual's access to capital and credit, assets that may be considered include ones that the individual transferred within such two-year period described above that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

Section 26.69: Determination of Ownership

In determining whether the socially and economically disadvantaged participants in a firm own the firm, OMWBE considers all the facts in the record, viewed as a whole.

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

In the case of a partnership, 51 percent of each class of partnership interest must

be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. OMWBE collects proof of contribution of capital at the time of application. This is typically in the form of a cancelled check or bank statements that show a withdrawal from a personal account and a deposit into a business bank account. If the contribution of capital is through a loan, OMWBE reviews documentation regarding the value of the assets used as collateral for the loan, guarantors, who the loan was from, and in some cases proof of repayment. If the business started more than 3 years prior to application, OMWBE requests proof of ongoing capital contribution. This may include additional cash paid into the business or loans/lines of credits in which the eligible owner is the guarantor. If the applicant is unable to provide any proof of capital contribution, OMWBE accepts a statement sworn to by the eligible owners of the amount of the original investment, where the funds came from, and what was purchased with the funds.

The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. OMWBE reviews business tax returns to ensure that the distributions are commensurate with their ownership interests. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.

All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if:

- The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

- The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a

revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

The owner's expertise must be:

- In a specialized field;
- Of outstanding quality;
- In areas critical to the firm's operations;
- Indispensable to the firm's potential success;
- Specific to the type of work the firm performs; and
- Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

The individual whose expertise is relied upon must have a significant financial investment in the firm.

OMWBE always deems as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by a socially and economically disadvantaged individual:

- As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
- Through inheritance, or otherwise because of the death of the former owner.

OMWBE presumes as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is:

- Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

- Involved in the same or a similar line of business; or

- Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to OMWBE, by clear and convincing evidence, that:

- The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

- The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

OMWBE applies the following rules in situations in which marital assets form a basis for ownership of a firm:

- When marital assets (other than the assets of the business in question) held jointly or as community property by both spouses are used to acquire the ownership interest asserted by one spouse, OMWBE deems the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. OMWBE does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification. OMWBE has created a Spousal Renunciation of Rights form to assist firms.

OMWBE may consider the following factors in determining the ownership of a firm. However, OMWBE does not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

- A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph 8 of this section;

- There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

- Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, OMWBE gives particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

Section 26.71: Determination of Control

In determining whether socially and economically disadvantaged owners control a firm, OMWBE considers all the facts in the record, viewed as a whole. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

In determining whether a potential DBE is an independent business, OMWBE scrutinizes relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. OMWBE collects lease agreements, equipment lists, insurance and bonding agreements, and other documentation to review.

OMWBE considers whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

OMWBE examines the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm. OMWBE collects contracts, when available, to assist in evaluating the applicant's independence.

OMWBE does not require contracts as a condition of certification.

In considering factors related to the independence of a potential DBE firm, OMWBE considers the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions that limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts, or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR 26.69(j)(2).

The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

In a corporation, disadvantaged owners must control the board of directors.

In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in

the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, OMWBE does not deny certification solely on the ground that the person lacks the license or credential. However, OMWBE does take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

OMWBE does consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. OMWBE may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, OMWBE may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity.

Except as otherwise provided in this paragraph, OMWBE will make a judgment about the control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as OMWBE does in other situations, without regard to whether or not the other persons are immediate family members.

If OMWBE cannot determine that the socially and economically disadvantaged owners (as distinct from the family as a whole) control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm can demonstrate to OMWBE, by clear and convincing evidence, that:

The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

In determining whether a firm is controlled by its socially and economically disadvantaged owners, OMWBE may consider whether the firm owns equipment necessary to perform its work. However, OMWBE does not determine that a firm

is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

OMWBE grants certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to OMWBE only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. OMWBE does not, in this situation, require that the firm be recertified or submit a new application for certification, but OMWBE does verify the disadvantaged owner's control of the firm in the additional type of work.

The types of work a firm can perform (whether on initial certification or when a new type of work is added) will be described in terms of the most specific available NAICS code for that type of work. In addition, OMWBE applies a detailed description of work for every NAICS code.
A correct NAICS code is one that describes, as specifically as possible, the principle god or services which the firm would provide to DOT recipients. OMWBE assigns multiple NAICS codes where appropriate.

Firms and OMWBE check carefully to make sure that the work codes are kept up-to-date and accurately reflect work which OMWBE has determined the firm's owners can control. The firm bears the burden of providing detailed company information OMWBE needs to make an appropriate work code designation.

If a firm believes that there is not a work code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that OMWBE, in its certification documentation, supplement the assigned code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and WSDOT will rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

OMWBE is not precluded from changing a certification classification or description if there is a factual basis in the record. However, OMWBE does not make after-the- fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licenser is not affiliated with the franchisee or licensee. In determining whether affiliation exists, OMWBE generally does not consider the restraints relating to standardized quality,

advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the On-the-Job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

Section 26.73: Other Rules Affecting Certification

Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (2) of this section, OMWBE does not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE. OMWBE considers, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

OMWBE evaluates the eligibility of a firm on the basis of present circumstances. OMWBE does not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

OMWBE does not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control

requirements of 49 CFR Part 26, the firm is eligible for certification.

DBE firms and firms seeking DBE certification shall cooperate fully with OMWBE requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph a firm that is not owned by such individuals, but instead is owned by another firm (even a DBE firm) cannot be an eligible DBE.

If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, OMWBE certifies the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

OMWBE certifies such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

> EXAMPLE 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.
>
> EXAMPLE 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.
>
> EXAMPLE 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so the OMWBE may certify the subsidiary, if all other requirements are met.
>
> EXAMPLE 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding

company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, the OMWBE will not certify it because it fails to meet control requirements.

EXAMPLE 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so the OMWBE will not certify the subsidiary.

EXAMPLE 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of 49 CFR 26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

OMWBE does not require a DBE firm to be prequalified as a condition for certification.

A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in 49 CFR 26.71.

OMWBE applies the following special rules to the certification of Alaska Native Corporations (ANCs).

Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

- The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

- The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by

holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

- The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program. Self-certification through the SBA does not meet this standard.

As a recipient to whom an ANC-related entity applies for certification, OMWBE does not use the DOT uniform application form (see Appendix F of 49 CFR Part 26). OMWBE obtains from the firm documentation sufficient to demonstrate that entity meets the requirements.

If an ANC-related firm does not meet all the conditions of paragraph(i)(1) of this section, then it must meet the requirements of paragraph 10 of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

DBE Application/Reporting Changes

To apply for certification, firms should contact OMWBE at (360) 664-9750 or apply online at omwbe.wa.gov.

Each year, prior to the anniversary of a firm's certification, OMWBE requires DBEs to submit an affidavit affirming that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements or any material changes in the information provided in its application form, except for changes they have notified OMWBE about. OMWBE also requests business tax returns to confirm the firm's size and gross receipts.

OMWBE notifies all currently certified DBE firms of these requirements at the time the firm is originally certified. This notification informs DBEs to submit the affidavit regarding the firm's continued eligibility each year. OMWBE also informs the firm's owner(s) that they are required to notify OMWBE in writing of any changes in its ownership, control, size, personal net worth, or activities within thirty (30) days of the change(s).

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81: Unified Certification Programs

WSDOT and its sub-recipients participate in the Unified Certification Program (UCP). OMWBE administers the UCP through an interagency agreement with WSDOT. The current UCP for Washington state, at WSDOT's request, has been approved by the Secretary of the USDOT.

OMWBE makes all certification determinations on behalf of WSDOT and all their determinations shall be binding for WSDOT and its sub-recipients. However, WSDOT has the ultimate responsibility to ensure certification determinations are in compliance with 49 CFR Part 26. If WSDOT has a reason to believe that a certification determination was in non-compliance with the regulations, WSDOT shall request OMWBE to investigate the firm's eligibility.

OMWBE maintains a Directory of Certified Firms as referenced in 26.31 above.

Firms seeking DBE certification are charged an application fee by OMWBE. The OMWBE received approval from FHWA (in March 2013) to charge an application fee of $25.00 and an annual update fee of $20.00. Whenever OMWBE seeks to increase/change fees associated with DBE certification, they will submit the proposal(s) to FHWA for approval.

WSDOT remains ultimately responsible to USDOT for assuring certifications performed by OMWBE are consistent with 49 CFR Part 26, notwithstanding OMWBE as the UCP.

OMWBE is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

OMWBE will ensure an adequate number of certification staff are assigned to the federal program. The OMWBE certification staff consists of 9 certification analysts, a supervisor, and administrative staff.

Section 26.83: Procedures in Making Certification Decisions

OMWBE uses the certification criteria stated above to determine the eligibility of firms to participate as DBEs. OMWBE makes certification decisions based on the totality of the circumstances.

OMWBE ensures that only firms certified as eligible DBEs under this section

participate as DBEs in its DBE program.

OMWBE takes all the following steps in determining whether a DBE firm meets the standards of subpart D of this part.

OMWBE performs on-site visits to the principal place of business of all DBE firms. OMWBE interviews the principal officers of the firm and reviews their resumes and/or work histories. OMWBE will also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in WSDOT's jurisdiction or local area, and such a visit is feasible. OMWBE may rely upon the site visit report of any other recipient with respect to a firm applying for certification.

OMWBE will perform follow up onsite interviews for certified DBEs as specified in the OMWBE and WSDOT interagency agreement.

OMWBE does the following:

- Analyze documentation related to the legal structure, ownership, and control of the applicant firm;

- Analyze the bonding and financial capacity of the firm;

- Determine the work history of the firm, including contracts it has received and work it has completed;

- Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

- Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

- Obtain completed Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years;

- Require potential DBEs to complete and submit an appropriate application form. The OMWBE will use the application form provided in Appendix F of 49 CFR Part 26 without change or revision. OMWBE may provide in its DBE program, with the approval of the concerned operating administration, supplementing the form by requesting additional information not inconsistent with this part;

- OMWBE ensures that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States; and

- OMWBE reviews all information on the form prior to making a decision about the eligibility of the firm. When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information OMWBE has obtained about that firm (e.g., including application materials or the report of a site visit, if OMWBE has made one to the firm), OMWBE promptly makes the information available to the other recipient.

OMWBE safeguards from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

Once OMWBE has certified a DBE, it shall remain certified until and unless OMWBE has removed its certification, in whole or in part, through the procedures of 49 CFR Part 26.87, except as provided in 49 CFR Part 26.67(b)(1).

OMWBE does not require DBEs to reapply for certification or undergo a recertification process. OMWBE may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate, in light of changed circumstances (e.g., of the kind requiring notice or relating to suspension of certification under 49 CFR Part 26.88), a complaint, or other information concerning the firm's eligibility. If information comes to OMWBE that leads OMWBE to question the firm's eligibility, OMWBE may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

All DBEs must inform OMWBE in writing of any change in circumstances affecting the DBEs ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided to OMWBE’s application form. Changes in management responsibility among members of a limited liability company are covered by this requirement. The DBE must attach supporting documentation describing in detail the nature of such changes.

The notice must take the form of an affidavit sworn to by the owners of the firm before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The DBE must provide the written notification within 30 days of the

occurrence of the change. If the DBE fails to make timely notification of such a change, the DBE will be deemed to have failed to cooperate under 49 CFR 26.109(c).

A DBE must provide to OMWBE, every year on the anniversary of the date of the DBEs certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which the DBE has notified the OMWBE above.

The affidavit shall specifically affirm that the DBE firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of the DBE firm's size and gross receipts (e.g. submission of Federal tax returns). If the DBE fails to provide this affidavit in a timely manner, the DBE will be deemed to have failed to cooperate under 49 CFR Part 26.109(c).

OMWBE has 90 days, upon receipt of a complete application, to reach a final determination regarding certification of a DBE. If OMWBE cannot reach a final determination within the 90 days, OMWBE may extend the review process once for 60 days. OMWBE provides the applicant firm written notice explaining the reasons for the extension. If OMWBE fails to make a determination, within 90 days of receipt of a complete application, the application is deemed a constructive denial of the applicant firm, on the basis of which the firm may appeal to USDOT under 49 CFR Part 26.89.

OMWBE advises each applicant within 30 days from our receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

Except as otherwise provided, if an applicant for DBE certification withdraws its application before OMWBE has issued a decision on the application, the applicant can resubmit the application at any time.

OMWBE does not apply the waiting period provided under 49 CFR 26.86(c) before allowing the applicant to resubmit its application. However, OMWBE does place the reapplication at the "end of the line" behind other applications that have been made since the firm's previous application was withdrawn. OMWBE may also apply the waiting period provided under 49 CFR 26.86(c) to a firm that has established a pattern of frequently withdrawing applications before it makes a

decision.

Section 26.85: Interstate Certification

This section applies with respect to any firm that is currently certified in a home state outside Washington.

When a firm currently certified in its home state applies to OMWBE for DBE certification, OMWBE may, at its discretion, accept the home state's certification and certify the firm, without further procedures.

To obtain certification in this manner, the firm must provide to OMWBE a copy of its certification notice from the home state.

Before certifying the firm, OMWBE must confirm that the firm has a current valid certification from the home state. OMWBE can do so by reviewing home state's electronic directory or obtaining written confirmation from the home state.

In any situation in which OMWBE chooses not to accept the home state's certification of a firm as provided in paragraph (2) of this section, the applicant firm must provide the information in paragraphs (3)(a) through (d) of this section to OMWBE. OMWBE has elected to not accept the home state's certification of any firm and require the following of all out of state applicants:

The applicant must provide to OMWBE a complete copy of the application form, all supporting documents, and any other information it has submitted to the home state or any other state related to the firm's certification. This includes affidavits of no change (see 49 CFR 26.83(j)) and any notices of changes (see 49 CFR 26.83(i)) that it has submitted to the home state, as well as any correspondence it has had with the home state's UCP or any other recipient concerning its application or status as a DBE firm.

- The applicant must also provide to OMWBE any notices or correspondence from states other than the home state relating to its status as an applicant or certified DBE in those states. For example, if the firm has been denied certification or decertified in State C, or subject to a decertification action there, it must inform OMWBE of this fact and provide all documentation concerning this action to OMWBE.

If the applicant has filed a certification appeal with DOT (see 49 CFR 26.89), it must inform OMWBE of the fact and provide its letter of appeal and DOT's response to OMWBE.

The applicant must submit an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn

declaration executed under penalty of perjury of the laws of the United States.

This affidavit must affirm that it has submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by 49 CFR 26.85(c)(1), is an identical copy of the information submitted to the home state.

If the on-site report from the home state supporting a firm's certification in the home state is more than three years old, as of the date of its application to OMWBE, OMWBE may require that the affidavit also affirm that the facts in the on-site report remain true and correct.

When it receives from an applicant firm all the information required by paragraph (3) of this section, OMWBE must take the following actions:

- Within seven days contact the home state and request a copy of the site visit review report for the firm [see 49 CFR 26.83(c)(1)], any updates to the site visit review, and any evaluation of the firm based on the site visit.

- As the home state, OMWBE must transmit this information to a requesting state within seven days of receiving the request. A pattern by a state of not making such requests in a timely manner or by not complying with such requests in a timely manner is noncompliance.

OMWBE will determine whether there is good cause to believe that the home state's certification of the firm is erroneous or should not apply in Washington. Reasons for making such a determination may include the following:

- Evidence that the home state's certification was obtained by fraud;

- New information, not available to the home state at the time of its certification, showing that the firm does not meet all eligibility criteria;

- The home state's certification was factually erroneous or was inconsistent with the requirements of this part;

- Washington state law requires a result different from the law of the home state; and

- The information provided by the applicant firm did not meet the requirements of paragraph (3) of this section.

Unless OMWBE determines that there is good cause to believe that the home state's certification is erroneous or should not apply in Washington, OMWBE will, no later than 60 days from the date on which it receives from the applicant firm all

the information required by paragraph (3) of this section, send to the applicant firm a notice that it is certified and place the firm on its directory of certified firms.

If OMWBE determines that there is good cause to believe that the home state's certification is erroneous or should not apply in Washington, OMWBE will, no later than 60 days from the date on which it receives from the applicant firm all the information required by paragraph (3) of this section, send to the applicant firm a notice stating the reasons for its determination.

This notice will state with particularity the specific reasons why OMWBE believes that the firm does not meet the requirements of this part for DBE eligibility and must offer the firm an opportunity to respond to OMWBE with respect to these reasons.

The firm may elect to respond in writing, to request an in-person meeting with OMWBE's decision maker to discuss OMWBE's objections to the firm's eligibility, or both. If the firm requests a meeting, OMWBE will schedule the meeting to take place within 30 days of receiving the firm's request.

The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this part with respect to the particularized issues raised by OMWBE's notice. The firm is not otherwise responsible for further demonstrating its eligibility to OMWBE.

The decision maker for OMWBE is an individual who is thoroughly familiar with the provisions of this part concerning certification.

OMWBE issues a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.

The firm's application for certification is stayed pending the outcome of this process.

A decision under this paragraph may be appealed to the Departmental Office of Civil Rights under 49 CFR Part 26.89.
If OMWBE does not receive from the home state a copy of the site visit review report by a date 14 days after it has made a timely request for it, OMWBE may hold action required by paragraphs (4)(b) through (d) of this section in abeyance pending receipt of the site visit review report. In this event, OMWBE will, no later than 30 days from the date on which it received from an applicant firm all the information required by paragraph (3) of this section, notify the firm in writing of the delay in the process and the reason for it.

When OMWBE denies a firm's application, rejects the application of a firm certified in State A or any other State in which the firm is certified, through the

procedures of paragraph (4)(d) of this section, or decertifies a firm, in whole or in part, the OMWBE will make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. OMWBE will enter the following information:

- The name of the firm;
- The name(s) of the firm's owner(s);
- The type and date of the action; and
- The reason for the action.

OMWBE checks the DOCR website before certifying any firm and for each firm when processing annual updates.

For any such firm that is on the list, OMWBE will promptly request a copy of the listed decision from the UCP that made it.

As the UCP receiving such a request, OMWBE will provide a copy of the decision to the requesting UCP within 7 days of receiving the request.

As the UCP receiving the decision, OMWBE will then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

Section 26.86: Denials of Initial Requests for Certification

When OMWBE denies a request by a firm, which is not currently certified with OMWBE, to be certified as a DBE, OMWBE will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based, will be made available to the applicant, on request.

When OMWBE denies a firm's application, the firm may not reapply until 12 months have passed from OMWBE's action. The time period for reapplication begins to run on the date the explanation required is received by the firm. An applicant's appeal of OMWBE's decision to the Department pursuant to 49 CFR Part 26.89 does not extend this period.

When OMWBE denies DBE certification to a firm certified by the SBA, it will notify the SBA in writing. The notification will include the reason for denial.

When OMWBE makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the USDOT under 49 CFR 26.89.

Section 26.87: Removing a DBEs Eligibility

In the event OMWBE proposes to remove a DBEs certification, OMWBE will follow procedures consistent with 49 CFR 26.87.

To ensure separation of functions in a decertification proceeding, OMWBE has an interagency agreement with the Office of Administrative Hearings to serve as hearing officer and decision maker in decertification proceedings. The assigned Administrative Law Judge is knowledgeable of the DBE Program and eligibility standards, and is not involved in initial eligibility determinations or any decision to initiate a decertification proceeding.

Ineligibility complaints:

Any person may file with OMWBE a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. OMWBE is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in 49 CFR Part 26.109(b).

OMWBE will review records concerning the firm, any material provided by the firm and the complainant, and other available information. OMWBE may request additional information from the firm or conduct any other investigation that OMWBE deems necessary.

If OMWBE determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, OMWBE will provide written notice to the firm that OMWBE proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If OMWBE determines that such reasonable cause does not exist, OMWBE will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

Recipient-initiated proceedings:

If, based on notification by the firm of a change in its circumstances or other information that comes to OMWBE's attention, OMWBE determines that there is reasonable cause to believe that a currently certified firm is ineligible, OMWBE will provide written notice to the firm that OMWBE proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

DOT directive to initiate proceeding:

If the concerned operating administration determines that information in OMWBE's certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm OMWBE certified does not meet the eligibility criteria of this part, the concerned operating administration nay direct OMWBE to initiate a proceeding to remove the firm's certification.

The concerned operating administration must provide OMWBE and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

OMWBE will immediately commence and prosecute a proceeding regarding as provided by paragraph 4 of this section.

Hearing:

When OMWBE notifies a firm that there is reasonable cause to remove its eligibility as provided in paragraph (3), (4), or (5) of this section, OMWBE will give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

In such a proceeding, OMWBE bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

OMWBE will maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under 49 CFR 26.89, the OMWBE will provide a transcript of the hearing to DOT and, on request, to the firm. OMWBE will retain the original record of the hearing. OMWBE may charge the firm only for the cost of copying the record.

The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, OMWBE bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as OMWBE would during a hearing.

Separation of functions:

OMWBE will ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or

seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

OMWBE's method of implementing this requirement will be made part of OMWBE's DBE program.

The decision maker will be an individual who is knowledgeable about the certification requirements of OMWBE's DBE program and this part.

Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

Grounds for Decision:

OMWBE may base a decision to remove a firm's eligibility only on one of the following grounds:

a. Changes in the firm's circumstances since the certification of the firm by the recipient that renders the firm unable to meet the eligibility standards of this part;

b. Information or evidence not available to OMWBE at the time the firm was certified;

c. Information relevant to eligibility that was concealed or misrepresented by the firm;

d. A change in the certification standards or requirements of the Department since OMWBE certified the firm; or

e. OMWBE's decision to certify the firm was clearly erroneous;

f. The firm has failed to cooperate with OMWBE (see 49 CFR Part 26.109(c)).

g. The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see 49 CFR Part 26.73(a) (2)); or

h. The firm has been suspended or debarred for conduct related to the DBE program. The notice required above must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures above.

Notice of decision:

Following OMWBE's decision, OMWBE will provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision.

The notice will inform the firm of the consequences of the OMWBE's decision and of the availability of an appeal to the Department of Transportation under 49 CFR 26.89.

OMWBE will send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed the OMWBE to initiate the proceeding, provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

Status of firm during proceeding:

A firm remains an eligible DBE during the pendency of OMWBE's proceeding to remove its eligibility.

The firm does not become ineligible until the issuance of the notice provided for in paragraph (9) of this section.

Effects of removal of eligibility:

When it removes firm's eligibility, WSDOT will take the following action:

a. When a prime contractor has made a commitment to use the ineligible firm, or WSDOT has made a commitment to use a DBE prime contractor, but a subcontract or contract has not been executed before OMWBE issues the decertification notice provided for in paragraph (9) of this section, the ineligible firm does not count toward the contract goal or overall goal. WSDOT will direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to WSDOT that it has made a good faith effort to do so;

b. If a prime contractor has executed a subcontract with the firm before OMWBE has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where WSDOT has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the OMWBE issued the notice of its ineligibility shall not count toward

WSDOT's overall goal, but may count toward the contract goal;

Exception:

- If the DBEs ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, WSDOT may continue to count its participation on that contract toward overall and contract goals.

Availability of appeal:

- When OMWBE makes an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under 49 CFR 26.89.

Section 26.88: Summary suspension of certification

OMWBE will immediately suspend a DBEs certification without adhering to the requirements in 49 CFR Part 26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

OMWBE may immediately suspend a DBEs certification without adhering to the requirements in 49 CFR Part 26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify OMWBE in writing of any material change in circumstances as required by 49 CFR Part 26.83(i) of this part or fails to timely file an affidavit of no change under Part 26.83(j).

In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this section, OMWBE shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

The concerned operating administration may direct OWMBE to take action pursuant to if it determines that information available to it is sufficient to warrant immediate suspension.

When a firm is suspended, OMWBE shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.

Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under 49 CRF Part 26.87 of this part to determine

whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to OMWBE information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under Part 26.87 of this part. If OMWBE commences a decertification proceeding, the suspension remains in effect during the proceeding.

The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, is appealable to the U.S. Department of Transportation under 49 CFR Part 26.89 of this part, as a constructive decertification.

Section 26.89: Appealing Certification Decisions to the USDOT

Any firm that is denied certification or whose eligibility is removed may appeal OMWBE's decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation Office of Civil Rights
1200 New Jersey AvenueSE4
Washington, DC 20590-0001

Pending the Department's decision in the matter, OMWBE's decision remains in effect. The Department does not stay the effect of OMWBE's decision while it is considering an appeal.

To file an appeal, the firm must send a letter to the Department within 90 days of the date of OMWBE's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that OMWBE failed to consider, or what provisions the recipient did not properly apply. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal or in the interest of justice.

When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If OMWBE is the recipient,

OMWBE will provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, OMWBE will ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to OMWBE to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT OA or other appropriate DOT office; a recipient; or a firm or other private party.

As a recipient, when OMWBE provides supplementary information to the Department, OMWBE shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

The Department affirms OMWBE decision unless it determines, based on the entire administrative record, that OMWBE's decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

If the Department determines, after reviewing the entire administrative record, that OMWBE's decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses OMWBE's decision and directs OMWBE to certify the firm or remove its eligibility, as appropriate. OMWBE will take the action directed by the Department's decision immediately upon receiving written notice of it.

The Department is not required to reverse OMWBE's decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may

remand the record to OMWBE with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to OMWBE for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

The Department does not uphold OMWBE's decision based on grounds not specified in OMWBE's decision.

The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

The Department provides written notice of its decision to OMWBE, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

Section 26.91: Effect of USDOT Certification Appeal Decisions

If OMWBE is the recipient from whose action an appeal under 49 CFR Part 26.89 is taken, the decision is binding. It is not binding on other recipients.

If OMWBE is a recipient to which a DOT determination under 49 CFR Part 26.89 is applicable, OMWBE will take the following action:

- If the Department determines that OMWBE erroneously certified a firm, OMWBE must remove the firm's eligibility upon receipt of the determination without further proceedings on OMWBE's part. This is effective on the date of OMWBE's receipt of the Department's determination, the consequences of a removal of eligibility set forth in 49 CFR Part 26.87(i) take effect;

- If the Department determines that OMWBE erroneously failed to find reasonable cause to remove the firm's eligibility, OMWBE must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in 49 CFR 26.87;

- If the Department determines that OMWBE erroneously declined to certify or remove the eligibility of the firm, OMWBE must certify the firm, effective on the date of OMWBE's receipt of the written notice of the Department's determination;

- If the Department determines that OMWBE erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, OMWBE must take appropriate corrective action as determined by the Department; and

- If the Department affirms OMWBE's determination, no further action is necessary.

Where DOT has upheld OMWBE's denial of certification to or removal of eligibility from a firm, or recommended the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under 49 CFR 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has recommended reversal of OMWBE's denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

26.109 Information Confidentiality Cooperation Retaliation

WSDOT will ensure compliance to this section in accordance with following both Federal and State statutes as they relate to availability of records and confidentiality of information related to complaints.

WSDOT will ensure that all participants in the Department's DBE Program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a

contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

WSDOT will ensure that its work environments are free from intimidation, threats, coercement, and/or discriminatory action against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If one violate this prohibition, one is not in noncompliance with this part.

Questions or Concerns

Questions or concerns regarding the DBE Program Participation Plan should be sent to:

Director
Office of Equal Opportunity
Washington State Department of Transportation
Olympia, Washington 98504-7314
P.O. Box 47314
(360) 705-7090

APPENDICES

Washington State Department of Transportation

Disadvantaged Business Enterprise Utilization Certification

To be eligible for Award of this Contract the Bidder shall fill out and submit, as a supplement to its sealed Bid Proposal, a Disadvantaged Business Enterprise (DBE) Utilization Certification. The Contracting Agency shall consider as non-responsive and shall reject any Bid Proposal that does not contain a DBE Utilization Certification which properly demonstrates that the Bidder will meet the DBE participation requirements in one of the manners provided for in the proposed Contract. **Refer to the instructions on Page 2 when filling out this form or the Bid may be rejected. An example form has been provided on Page 3.** The successful Bidder's DBE Utilization Certification shall be deemed a part of the resulting Contract.

Box 1: _____ certifies that the DBE firms listed below have been contacted regarding participation on this project. If this Bidder is successful on this project and is awarded the Contract, it shall assure that subcontracts or supply agreements are executed with named DBEs. (If necessary, use additional sheets.)

Box 2: _____

Column 1 **Name of DBE** (See instructions)	Column 2 **Project Role** (See instructions)	Column 3 **Description of Work** (See instructions)	Column 4 **Amount Subcontracted to DBE** (See instructions)	Column 5 **Amount to be Applied Towards Goal** (See instructions)

Disadvantaged Business Enterprise Condition of Award Contract Goal _____ Box 3

Total DBE Commitment _____ Box 4

5 ☐ By checking Box 5 the Bidder is stating that their attempts to solicit sufficient DBE participation to meet the COA Contract goal has been unsuccessful and good faith effort will be submitted in accordance with Section 1-02.9 of the Contract

Instructions for Disadvantaged Business Enterprise Utilization Certification Form

Box 1: Name of Bidder (Proposal holder) submitting Bid.

Box 2: Name of the Project.

Column 1: Name of the Disadvantaged Business Enterprise (DBE). Repeat the name of the DBE for each Project Role that will be performed.

Column 2: The Project Role that the DBE will be performing as follows;

- Subcontractor
- Subcontractor (Force Account)
  - Work sublet as Force Account must be listed separately.
- Manufacturer
- Regular Dealer
  - Work sublet to a Regular Dealer must be listed separately.
  - Regular Dealer status must be approved prior to Bid submittal by the Office of Equal Opportunity, Washington State Department of Transportation, on each Contract.
- Broker
  - Work sublet to a Broker must be listed separately.

List each project role to be performed by a single DBE individually on a separate row(s). The role is used to determine what portion of the amount to be subcontracted (Column 4) may be applied toward meeting the goal (column 5).

Column 3: A description of the Work to be performed by the DBE must be consistent with the certified/eligible Description of Work in the OMWBE Directory of Certified DBE firms. The bidder may rely upon the descriptors listed in the Directory of Certified DBE Firms available from OMWBE, online at: http://www.omwbe.wa.gov or Toll Free 1-866-208-1064.

- A Bidder subletting a portion of a bid item shall state **"Partial"** and describe the Work that is included.
  - For example; "Electrical (Partial) – Trenching".
- "Mobilization" will not be accepted as a description of Work.

Column 4: List the total amount to be subcontracted to each DBE for each Project Role they are performing.

Column 5: This is the dollar amount for each line listed in the certification that the prime intends to apply towards meeting the COA Contract goal. It may be that only a portion of the amount subcontracted to a DBE in Column 4 is eligible to be credited toward meeting the goal **See Note 1, Note 2, Note 3.** The Contracting Agency will utilize the sum of this column (Box 4) to determine whether or not the bidder has met the goal. In the event of an arithmetic error in summing column 5 or an error in making appropriate reductions in the amounts in column four, **See Note 1, Note 2, Note 3**, then the mathematics will be corrected and the total (Box 4) will be revised accordingly.

Note 1: For Work sublet as Force Account the bidder **may only claim 50%** of the amount subcontracted (Column 4) towards meeting the goal (Column 5). This information will be used to demonstrate that the DBE contract goal is met at the time that the bidder submits their bid. For example; amount sublet as force account = $100,000 (Column 4) equates to ($100,000 X 50%) = $50,000 (Column 5) to be applied towards the goal.

Note 2: For Work sublet to a Regular Dealer the bidder **may only claim 60%** of the cost of the materials or supplies (Column 4) towards meeting the goal (Column 5). For example; Material cost = $100,000 (Column 4) equates to ($100,000 X 60%) = $60,000 (Column 5) to be applied towards the goal

Note 3: For Work sublet to a Broker the bidder **may only claim the fees** paid to a Broker towards meeting the goal (Column 4). For example; amount sublet to a broker = $100,000 (Column 4) equates to ($100,000 X reasonable fee %) = $ (Column 5) to be applied towards the goal.

Box 3: Box 3 is the COA Contract goal which is the minimum required DBE participation. The goal stated in the Contract will be in terms of a dollar amount or a percentage in the Contract. When expressed as a percentage you must multiply the percentage times the sum total of all bid items as submitted in the Bidder's Proposal to determine the dollar goal and write it in Box 3. In the event of an error in this box, the Contracting Agency will revise the amount accordingly.

Box 4: Box 4 is the sum of the values in column 5. **This value must equal or exceed the COA Contract goal amount written in Box 3 or;**

Box 5: Check Box 5 if insufficient DBE Participation has been achieved and a good faith effort is required. Refer to the subsection titled, *Selection of Successful Bidder/Good Faith Efforts (GFE)* in the Contract.

See *Crediting DBE Participation toward Meeting the Goal* as described in the *Disadvantaged Business Enterprise Condition of Award Participation* specification in the Contract for more information.

Washington State Department of Transportation

Underutilized Disadvantaged Business Enterprise Utilization Certification

To be eligible for Award of this Contract the Bidder shall fill out and submit, as a supplement to its sealed Bid Proposal, an Underutilized Disadvantaged Business Enterprise (UDBE) Utilization Certification. The Contracting Agency shall consider as non-responsive and shall reject any Bid Proposal that does not contain a UDBE Utilization Certification which properly demonstrates that the Bidder will meet the UDBE participation requirements in one of the manners provided for in the proposed Contract. Refer to the instructions on Page 2 when filling out this form or the Bid may be rejected. An example form has been provided on Page 3. The successful Bidder's UDBE Utilization Certification shall be deemed a part of the resulting Contract.

Box 1: _____ certifies that the UDBE firms listed below have been contacted regarding participation on this project. If this Bidder is successful on this project and is awarded the Contract, it shall assure that subcontracts or supply agreements are executed with named UDBEs. (If necessary, use additional sheets.)

Box 2:

Column 1 **Name of UDBE** (see instructions)	Column 2 **Project Role** (see instructions)	Column 3 **Description of Work** (see instructions)	Column 4 **Dollar Amount Subcontracted to UDBE** (see instructions)	Column 5 **Dollar Amount to be Applied Towards Goal** (see instructions)

Underutilized Disadvantaged Business Enterprise Condition of Award Contract Goal _____ Box 3

Total UDBE Commitment Dollar Amount _____ Box 4

Box 5: ☐ By checking Box 5 the Bidder is stating that their attempts to solicit sufficient UDBE participation to meet the COA Contract goal has been unsuccessful and good faith effort will be submitted in accordance with Section 1-02.9 of the Contract.

Washington State Department of Transportation

Disadvantaged Business Enterprise (DBE) Written Confirmation Document

See Contract Provisions: *DBE Document Submittal Requirements*
Disadvantaged Business Enterprise Participation

THIS FORM SHALL ONLY BE SUBMITTED TO A DBE THAT IS LISTED ON THE CONTRACTOR'S DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION CERTIFICATION.

THE CONTRACTOR SHALL COMPLETE PART A PRIOR TO SENDING TO THE DBE.

PART A: To be completed by the bidder

The entries below shall be consistent with what is shown on the Bidder's Disadvantaged Business Enterprise Utilization Certification. Failure to do so will result in Bid rejection.

Contract Title: _____

Bidder's Business Name: _____

DBE's Business Name: _____

Description of DBE's Work: _____

Dollar Amount to be Applied Towards DBE Goal: _____

Dollar Amount to be Subcontracted to DBE*: _____
*Optional Field

PART B: To be completed by the Disadvantaged Business Enterprise

As an authorized representative of the Disadvantaged Business Enterprise, I confirm that we have been contacted by the Bidder with regard to the referenced project for the purpose of performing the Work described above. If the Bidder is awarded the Contract, we will enter into an agreement with the Bidder to participate in the project consistent with the information provided in Part A of this form.

Name (printed): _____

Signature: _____

Title: _____

Address: _____ Date: _____

_____

Washington State Department of Transportation

Underutilized Disadvantaged Business Enterprise (UDBE) Written Confirmation Document

See Contract Provisions: UDBE Document Submittal Requirements
Disadvantaged Business Enterprise Participation

THIS FORM SHALL ONLY BE SUBMITTED TO A UDBE THAT IS LISTED ON THE CONTRACTOR'S UNDERUTILIZED DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION CERTIFICATION.

THE CONTRACTOR SHALL COMPLETE PART A PRIOR TO SENDING TO THE UDBE.

PART A: To be completed by the bidder

The entries below shall be consistent with what is shown on the Bidder's Underutilized Disadvantaged Business Enterprise Utilization Certification. Failure to do so will result in Bid rejection.

Contract Title: _____

Bidder's Business Name: _____

UDBE's Business Name: _____

Description of UDBE's Work: _____

Dollar Amount to be Applied Towards UDBE Goal: _____

Dollar Amount to be Subcontracted to UDBE*: _____
*Optional Field

PART B: To be completed by Underutilized Disadvantaged Business Enterprise

As an authorized representative of the Underutilized Disadvantaged Business Enterprise, I confirm that we have been contacted by the Bidder with regard to the referenced project for the purpose of performing the Work described above. If the Bidder is awarded the Contract, we will enter into an agreement with the Bidder to participate in the project consistent with the information provided in Part A of this form.

Name (printed):

Signature: _____

Title: _____

Address: _____ **Date:** _____

WSDOT OEO DBE COMPLAINT PROCESS

Complaints can be filed by the public through email at oeoecrbcomplaints@wsdot.wa.gov and by phone at 360-705-7090.

When initial complaint is submitted by phone, the complainant still needs to submit it via email for OEO to have a written record of the complaint. Complainant is requested to give the following information:

- Name
- Complainant's Company Name
- Type of complaint
- City/county the complaint occurred
- Project number
- Company Name who is in possible violation
- Contact number, email address of person filing complaint

If paper documents are filed, they are to be date stamped on the date received.

When a complaint has been received, the Administrative Assistant will process the complaint by assigning a case number and enter the information into a tracking system. They will then forward to the DBE managers within one business day upon receiving the complaint and request that they review and assign a staff member to investigate.

The managers will review the complaint to determine if the complaint meets the requirements for their staff to review. If so, they will assign the case to the appropriate staff member to investigate, by notifying them and forwarding any documentation regarding the complaint. They will then inform the Administrative Assistant or their designee who the complaint was assigned to.

The Administrative Assistant or their designee will respond to the complainant through correspondence within three (3) business days of receiving the complaint, acknowledging the complaint has been received and the case number it is has been assigned, along with contact information of the staff member investigating the complaint.

Once the staff member assigned to the case completes the process, and the case is ready to be closed, they forward all final documents to the Administrative Assistant, along with appropriate documentation of their investigation. The documents are attached to the case in SharePoint and the case is marked closed in the tracking system.

If the complaint does not meet required criteria, the managers will respond to the complainant letting them know that additional information is necessary before the complaint can move forward. The manager will contact the Administrative Assistant by email and let them know that additional information was requested from the Complainant. The Administrative Assistant will enter the appropriate documentation into the tracking system. If the manager determines that the information provided does not constitute a complaint, then the Administrative Assistant will enter the appropriate documentation into the tracking system to close the case.

Addendum 2 — WSDOT's External Complaint Procedures for Federally Assisted Programs and Activities

These procedures cover all complaints filed under Title VI of the Civil Rights Act of 1964 (Title VI), including its Disadvantaged Business Enterprises (DBE), Equal Employment Opportunity (EEO) and On-the-Job Training (OJT) Program components, Section 504 of the Rehabilitation Act of 1973 (Section 504), Civil Rights Restoration Act of 1987 (CRRA), and the Americans with Disabilities Act of 1990 (ADA), regarding any program or activity administered by the Washington State Department of Transportation (WSDOT) as they relate to local agencies, contractors and other subrecipients of United States Department of Transportation (USDOT) funds. These procedures apply to complaints filed against a program and/or activity funded by either the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) or the Federal Aviation Administration (FAA).

Intimidation or retaliation is prohibited per Title 49, Code of Federal Regulations, Part 21.11(e).

The procedures do not deny the right of the complainant to file formal complaints with other state or federal agencies or to seek private counsel for complaints alleging discrimination.

These procedures are part of an administrative process, which do not provide for remedies that include punitive damages or compensatory remuneration for the complainant.

Every effort will be made to obtain early resolution of complaints at the lowest level possible and with the guidance of the USDOT modality (FHWA, FTA, FAA) with jurisdiction over the matters per 49 CFR 21.11(d)(1). The option of informal mediation meeting(s) between the affected parties and the investigator may be utilized for resolution, at any stage of the process. The investigator will make every effort to pursue a resolution of the complaint. Initial interviews with the complainant and the respondent will request information regarding specifically requested relief and settlement opportunities.

WSDOT will not investigate complaints in which it appears as a respondent. The matters will be referred to the USDOT modality under which the complained-of program or activity falls.

Procedures

1. Any person, or specific class of persons believing they have been subjected to discrimination prohibited by the legal provisions of Title VI, Section 504, ADA or the CRRA may file a written complaint with WSDOT's Office of Equal Opportunity (OEO).

2. A formal complaint must be filed within 180 calendar days of the date of the alleged act of discrimination or the date when the alleged discrimination became known to the complainant(s), or where there has been a continuing course of conduct, the date on which the conduct was discontinued or the latest instance of the conduct. This timeframe is prescribed by 49 CFR 21.11(b).

3. The complaint must meet the following requirements:

    a. Complaint shall be in writing and signed by the complainant(s).

    b. Present the date of the alleged act of discrimination; date when the complainant(s) became aware of the alleged discrimination; or the date on which that conduct was discontinued or the latest instance of the conduct.

    c. Present a detailed description of the issues including names and job titles of those individuals perceived as parties in the complained-of incident.

    d. Allegations received by fax or e-mail will be acknowledged and processed, once the identity(ies) of the complainant(s) and the intent to proceed with the complaint have been established. For this, the complainant is required to mail a signed, original copy of the fax or e-mail transmittal for OEO to be able to process it.

    e. Allegations received by telephone will be reduced to writing and provided to the complainant for confirmation or revision before processing. A complaint form will be forwarded to the complainant for him/her to complete, sign and return to OEO for processing.

4. Upon receipt of the complaint, OEO will determine its jurisdiction, acceptability or need for additional information before initiating its investigation. In cases where the complaint is against one of WSDOT's subrecipients of federal highway funds, WSDOT will assume the jurisdiction and will investigate and adjudicate the case. Complaints against WSDOT will be referred to the corresponding USDOT modality for proper disposition. In special cases warranting intervention to ensure equity, the USDOT modality (FHWA, FTA, FAA) may assume jurisdiction and either complete or obtain services to review or investigate matters.

5. Acceptance of a complaint will be determined by:

    a. Whether the complaint is timely filed;

    b. Whether the allegations involve a covered basis such as race, color, national origin, gender, disability or retaliation;

c. Whether the allegations involve a program or activity of a Federal-aid recipient, subrecipient, or contractor; or, in the case of ADA allegations, an entity open to the public;

d. Whether the complaint is beyond the administrative authority of WSDOT.

6. A complaint may be dismissed for the following reasons:

   a. The complainant requests the withdrawal of the complaint;

   b. The complainant fails to respond to repeated requests for additional information needed to process the complaint, or otherwise fails or refuses to cooperate in the investigation;

   c. The complainant cannot be located after reasonable attempts to contact him or her.

7. OEO has sole authority for accepting complaints for investigation. Within 5 days of receipt of the complaint OEO will acknowledge its receipt to the parties as well as the course of action on the complaint. The course of action may include acceptance of the complaint for investigation, request for additional information or rejection of the complaint. The complaint will receive a case number and then be logged in OEO's records identifying its basis, alleged harm, the race, color, national origin and gender of the complainant(s).

8. In cases where WSDOT assumes the investigation of the complaint, OEO will provide the respondent with the opportunity to respond to the allegations in writing. The respondent will have 10 calendar days from the date of OEO's written notification of acceptance of the complaint to furnish his/her response to the allegations.

9. Within 40 calendar days of the acceptance of the complaint, the WSDOT's investigator* will prepare a draft investigative report for the review of the External Civil Rights Branch (ECRB) Manager and the Attorney General's Office (AGO). The report shall include a narrative description of the incident, identification of persons interviewed, findings and recommendations for disposition. The AGO will have 10 calendar days to review and provide comments to the investigator.

   * This can be WSDOT's Title VI Coordinator; the Regional Title VI Liaison or any other qualified investigator designated by OEO.

10. Once the investigator addresses any AGO's comments to the preliminary investigative report, the report and its findings will be forwarded to the ECRB Manager.

11. Any comments or recommendations from the AGO will be reviewed by the ECRB Manager. There will be a period of 10 calendar days for the ECRB Manager to discuss the report and any recommendations with the OEO Director, and have the

investigator address any modifications to the existing investigative report. The report will be modified as needed and made final for its release to the corresponding USDOT modality (FHWA, FTA or FAA).

12. WSDOT's final investigative report with the preliminary findings and a copy of the complaint will be forwarded to either FHWA (both, Washington Division Office and Headquarters Civil Rights [HCR]), FTA or FAA, within 60 calendar days of the acceptance of the complaint, per 23 CFR 200.9(b)(3).
13. WSDOT OEO will notify the parties of its preliminary findings, which are subject to the corresponding USDOT modality's concurrence.
14. The corresponding USDOT modality will issue its final agency decision (FAD) to WSDOT based on the state's investigative report.
15. Once the corresponding USDOT modality issue its final decision, WSDOT will notify all parties involved about such determination. USDOT's final determination is not subject to an administrative appeal.
16. A complainant dissatisfied with USDOT's FAD may file action with the appropriate US District Court.

As revised on 9/30/04

Policy Statement

Section 26.1, 26.23 Objectives/Policy Statement

The Secretary of the Washington State Department of Transportation (WSDOT) has established a Secretary's Executive Order E.1009.02 to affirm WSDOT's commitment to promoting equity in contracting. It is one of WSDOT's priorities to expand our efforts to include Disadvantaged Business Enterprise (DBE) participation in federal aid contracts and to afford DBEs fair and equal opportunity to compete for WSDOT contracts.

As a condition of receiving federal financial assistance from the United States Department of Transportation (USDOT), WSDOT has given assurance to USDOT, specifically Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), that it will comply with Title 49 Code of Federal Regulations (CFR) Part 26.

The Secretary's Executive Order directs WSDOT divisions and offices to increase contracting opportunities for DBE businesses and to provide a welcome and responsive environment for contractors and consultants that support such efforts.

The Secretary's Executive Order also directs WSDOT divisions and offices to identify and change internal processes so that WSDOT can achieve the programmatic goal for DBE participation in contracting. Additionally, the Secretary's Executive Order assists WSDOT and its sub-recipients with implementing and monitoring the DBE Program in a manner to achieve the intent of the DBE Program and DBE goal at both the project and program level.

WSDOT benefits from the experience, perspective, knowledge, and innovation from groups, individuals, private companies, associations, and other public agencies. WSDOT is re-organizing the management of the DBE and Civil Rights programs to collaboratively develop recommendations on how best to develop, implement, monitor, and measure directives within the Secretary's Executive Order to deliver a more successful DBE Program.

WSDOT will gather data and measure results with a more structured system of accountability. This system enables WSDOT to track and report expenditures for DBE firms on agency, local program, purchasing, and consulting contracts. It will analyze year-to-year trends to utilize the best monitoring, compliance, and enforcement practices.

It is WSDOT's policy as follows:

Accountability – Office of Equal Opportunity (OEO) and Division Directors Shall:

1. Create a culture/environment in which DBE firms can compete fairly for USDOT-assisted contracts;
2. Tailor administration and compliance enforcement of WSDOT's DBE Program in accordance with applicable laws and regulations;
3. Work with the contracting community and FHWA, FTA, and FAA to create opportunities within the DBE Program to increase DBE participation, provide opportunities for prime contractors to mentor DBE firms, and improve the contractual relationship and opportunities between prime and sub-contractors;
4. Develop and conduct bi-annual agency-wide training (using a variety of delivery mediums), in coordination with FHWA, FTA, and FAA, to reinforce the importance of the DBE Program and clarify roles and responsibilities of personnel;
5. Set goals or monitor the goal setting by other divisions for DBE utilization on all federal aid contracting and purchasing in a manner that maximizes contracting opportunities pursuant to attainment of the programmatic goal;
6. Develop and implement the design-build DBE Participation Plan review process;
7. Prepare specific goals in annual plans that encourage utilization of DBEs in public works contracts, purchasing, and consultant services;
8. Establish monitoring processes and procedures for determining the value of DBE participation specifically applicable to trucking and broker operations;
9. Prevent discrimination in the award and administration of USDOT-assisted contracts in WSDOT's highway, transit, and airport financial assistance program. Verify that only firms that fully meet 49 CFR Part 26 eligibility standards will count towards DBE goal participation; and
10. Target geographic areas in the state in which DBEs are underrepresented. Work in collaboration with the Office of Minority and Women's Business Enterprises to recruit and promote local DBE firms so that local communities may participate in federal aid projects.

Accountability - WSDOT Divisions, Regions, and Offices Shall:

1. Work with OEO to create a culture/environment in which DBE firms are valued for their delivery of work on USDOT-assisted contracts;
2. Administer WSDOT's DBE Program in accordance with applicable laws and regulations and an approved DBE Participation Plan;
3. Submit design-build DBE participation plans to OEO for acceptance/approval;
4. Work with industry, OEO, and the OMWBE to create opportunities within the program to increase DBE participation by improving program communication and providing opportunities between prime and sub-contractors;
5. Provide reports and information to OEO as required to meet DBE Program requirements;

6. Prevent discrimination in the administration of USDOT-assisted contracts in WSDOT's highway, transit, and airport financial assistance program;
7. Work collaboratively with OEO in recommending and determining contractual remedies and/or sanctions for DBE program contractor violations;
8. Provide written certification to OEO for every project containing federal-aid funding, which OEO will in turn forward to FHWA, FTA, and/or FAA. The WSDOT/Local Agency Project Engineer will certify that he/she has reviewed the contract records, monitored work sites, and confirmed that work committed to DBEs was actually performed by the DBEs to which the work was committed;
9. Maintain a monthly running tally of payments to DBEs, comparing attainment to commitments; and
10. Include mandatory competencies in all relevant employee annual evaluations. Program awareness and attainment of DBE goals will be part of each performance evaluation for each division, region, and office.

External Inclusion and Outreach - OEO Shall:

1. Report to FHWA, FTA, and FAA on performance and attainment of the utilization goals in the automated monthly reports, annual plan, and other directives set forth within the Secretary's Executive Order;
2. Provide training and assistance to DBEs so they successfully bid and perform on USDOT-assisted contracts;
3. Work with private companies, associations, and community members to assist in the development and mentoring of DBEs so they can compete successfully in the marketplace outside the DBE Program;
4. Attend outreach events for existing and potential DBE firms and pursue outreach strategies to sustain and improve DBE participation in USDOT-assisted contracts;
5. Identify and remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. Improve and expand technical assistance, business development, training, and mentoring programs for DBEs by greater coordination with organizations, prime contractors/consultants, and individuals, as well as WSDOT divisions, regions, and offices;
7. Encourage DBEs to use technical assistance and business development services; and
8. Coordinate with FHWA, FTA, and FAA to provide training for OMWBE on DBE certification and the assigning of appropriate North American Industry Classification System (NAICS) Codes.

DBE Program Administration – Divisions, OEO and Regions Shall:

1. Collaboratively develop and implement policies, practices, and processes that establish and sustain a culture of WSDOT contracting that is supportive and

responsive to DBEs, businesses, and contractors of all tiers working on USDOT-assisted contracts;

2. Work closely with other departments and offices so that policies, practices, and processes are consistent and helpful for DBEs pursuing WSDOT work;
3. Confirm that prompt payment policies and practices provide timely payments for all work performed;
4. Require expeditious change order approvals by WSDOT OEO and contractors, while maintaining the integrity of the payments being made;
5. Monitor and enforce contract provisions that require contractors of any tier to pay and release retainage per current state and federal law;
6. Identify and implement methods to regularly monitor and measure the DBE Program, including compliance by contractors, subcontractors, consultants, and vendors;
7. Perform timely investigations of issues, concerns, or complaints by either the regions or the DBE community;
8. Provide for appropriate management of goal attainment;
9. Provide for performance of onsite reviews and reporting of results to OEO;
10. Provide required monthly, quarterly, and annual reporting of information to OEO;
11. Develop, provide, and confirm engagement by employees in required training;
12. Work with the Construction Division to review current design-build specifications, incorporate national best practices, collaborate with USDOT modes, and revise as appropriate to be consistent with the DBE Program requirements and provisions set forth within the March 2014 Conciliation Agreement;
13. Work with the OEO to review the current design-build DBE project goal setting methodology and revise as appropriate so that a contract's goals will cumulatively result in meeting any portion of the overall goal that is not anticipated to be met through race-neutral means;
14. Establish a process for reviewing design-build DBE participation plans. The DBE Liaison Officer (DBELO) shall participate in the creation and implementation of the DBE participation plans review process; and
15. Continue meaningful stakeholder engagement.

The Director of OEO is designated as the DBE Liaison Officer (DBELO). The DBELO, with the collaboration of division directors and regions, oversees and implements the DBE Program.

A primary responsibility of this position is to lead efforts to increase opportunities for members of the contracting community by increasing the effectiveness of all divisions and regions.

This collaboration will help WSDOT to use the directives in this Secretary's Executive Order to develop, deliver, monitor, and ultimately achieve a more successful DBE Program.

The DBELO shall network and engage with divisions, regions, OMWBE, FHWA, FTA, FAA, contractors, associations, and the women and minority-owned business community on:

1. Auditing the program's effectiveness and division activities along with suggestions to the Secretary for modifying internal processes and procedures to align with federal requirements and to achieve continuous improvement of the program;
2. Increasing networking opportunities with prime and DBE firms and to inform prime contractors and DBE and non-DBE subcontractors about future contracting opportunities;
3. Providing guidance regarding program implementation, compliance monitoring, issue resolution, and on process improvements to improve effectiveness of the DBE Program;
4. Working collaboratively on strategies to increase the base of DBE subcontractors and the capacity of DBE subcontractors to improve delivery of the DBE Program requirements; and
5. Evaluating the performance of the DBE Supportive Services and external Civil Rights Program.

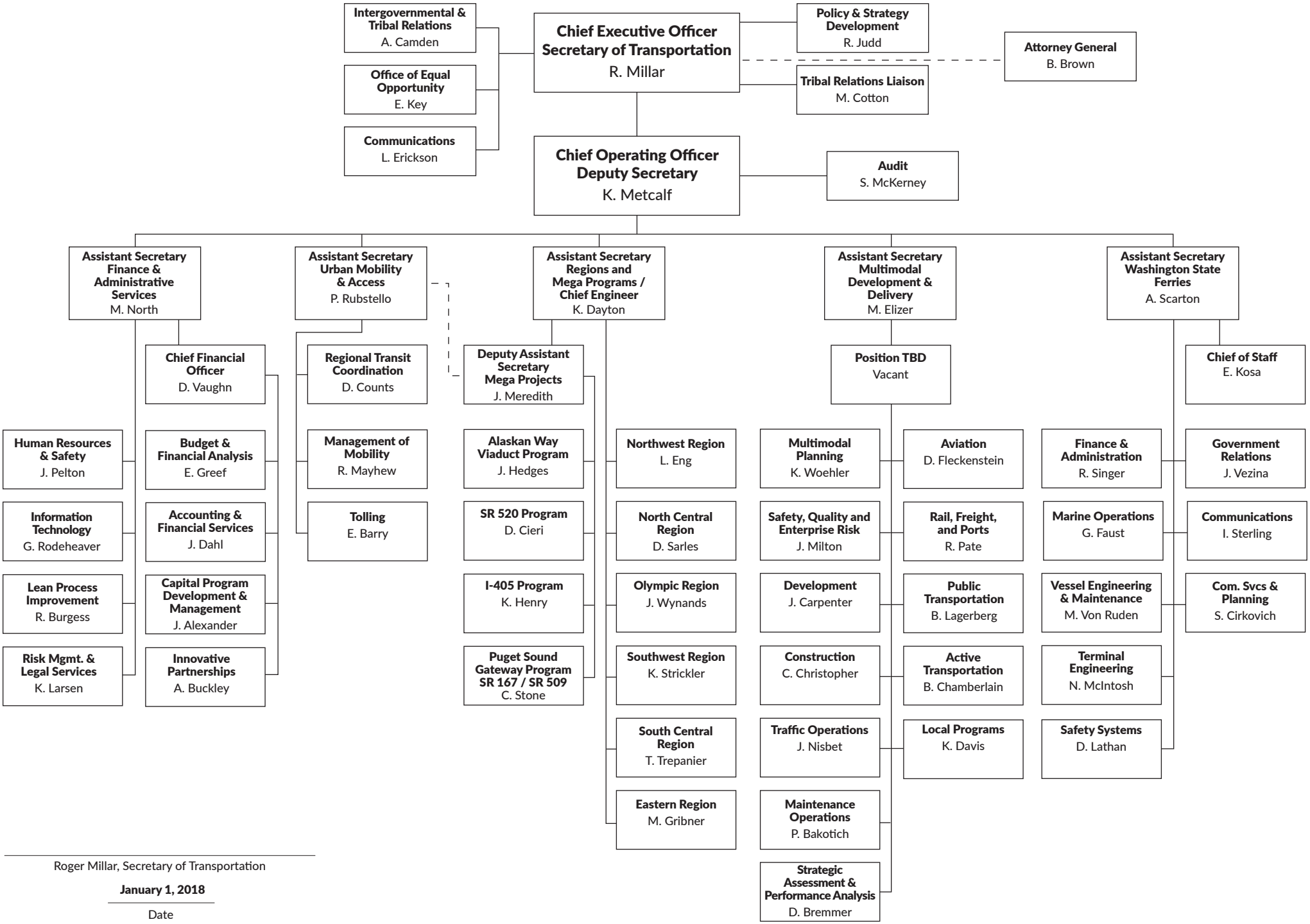
Secretary, Washington State Department of Transportation

4/12/17
Date

APPENDIX 4

Washington State Department of Transportation

Citizens of the State of Washington
Governor Jay Inslee

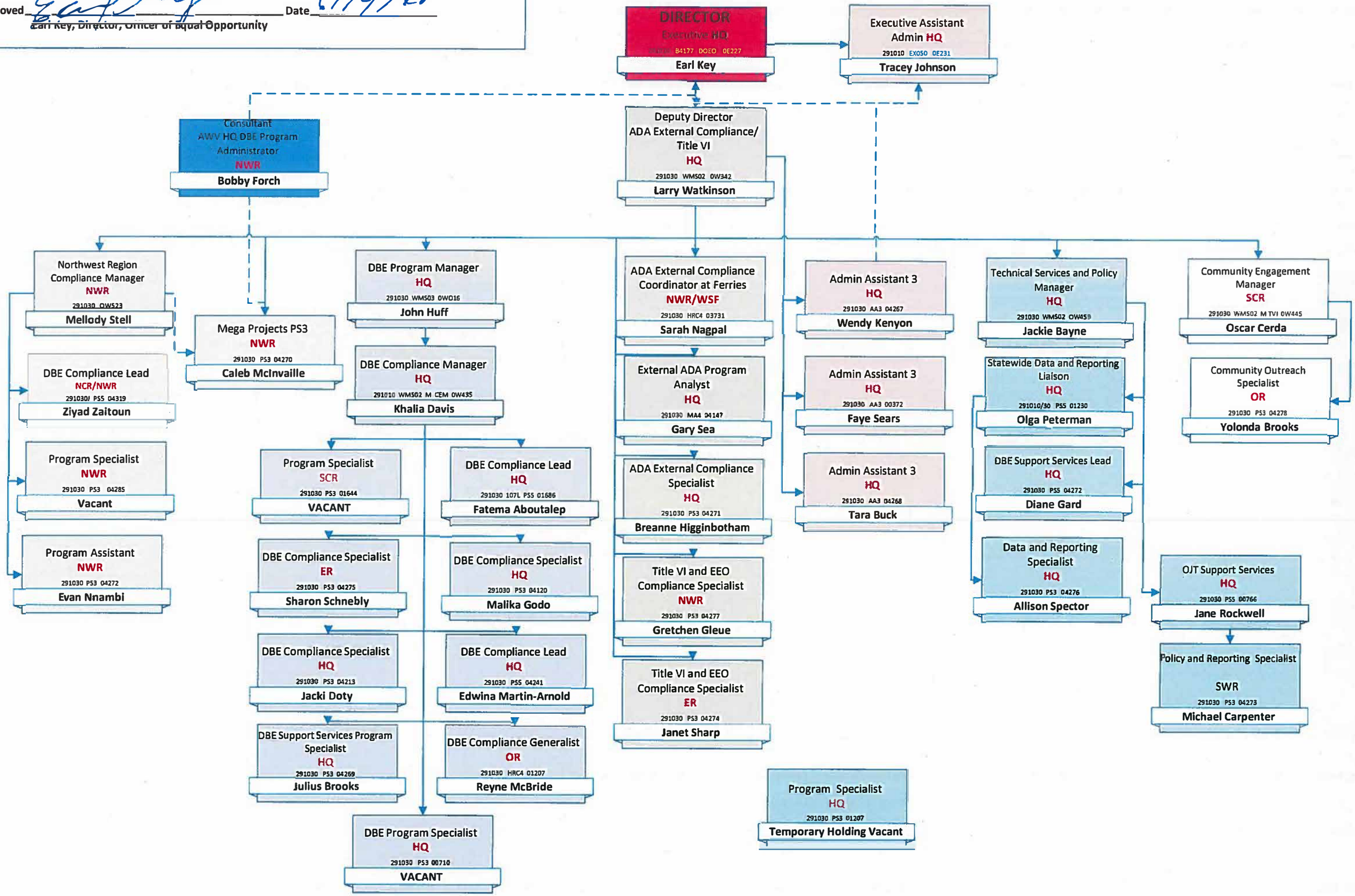


Roger Millar, Secretary of Transportation

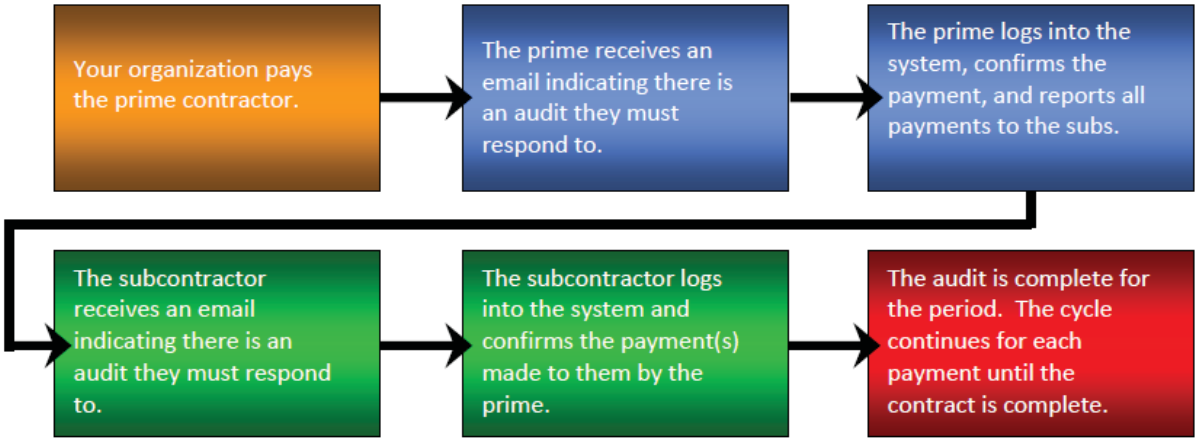
January 1, 2018

Date

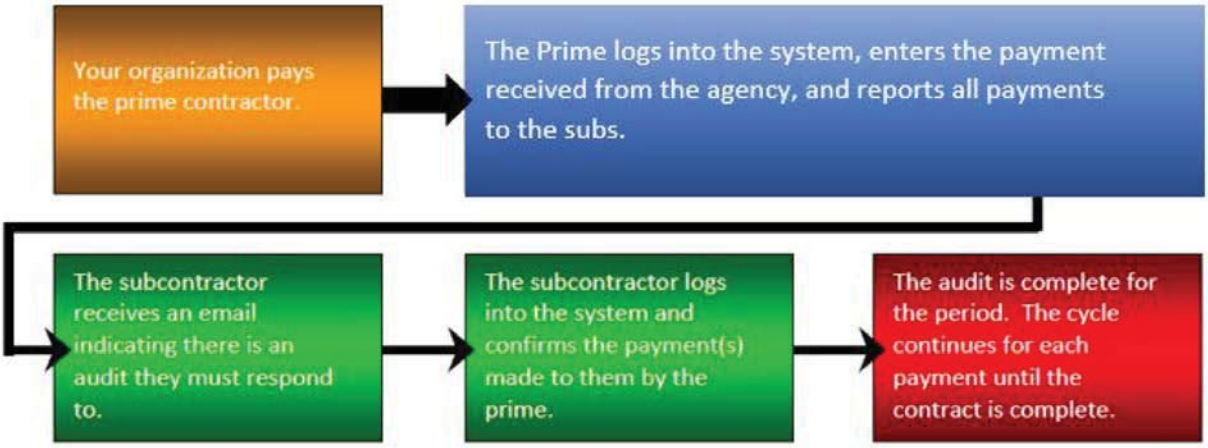
Approved Earl Key Date 6/17/18
Earl Key, Director, Office of Equal Opportunity

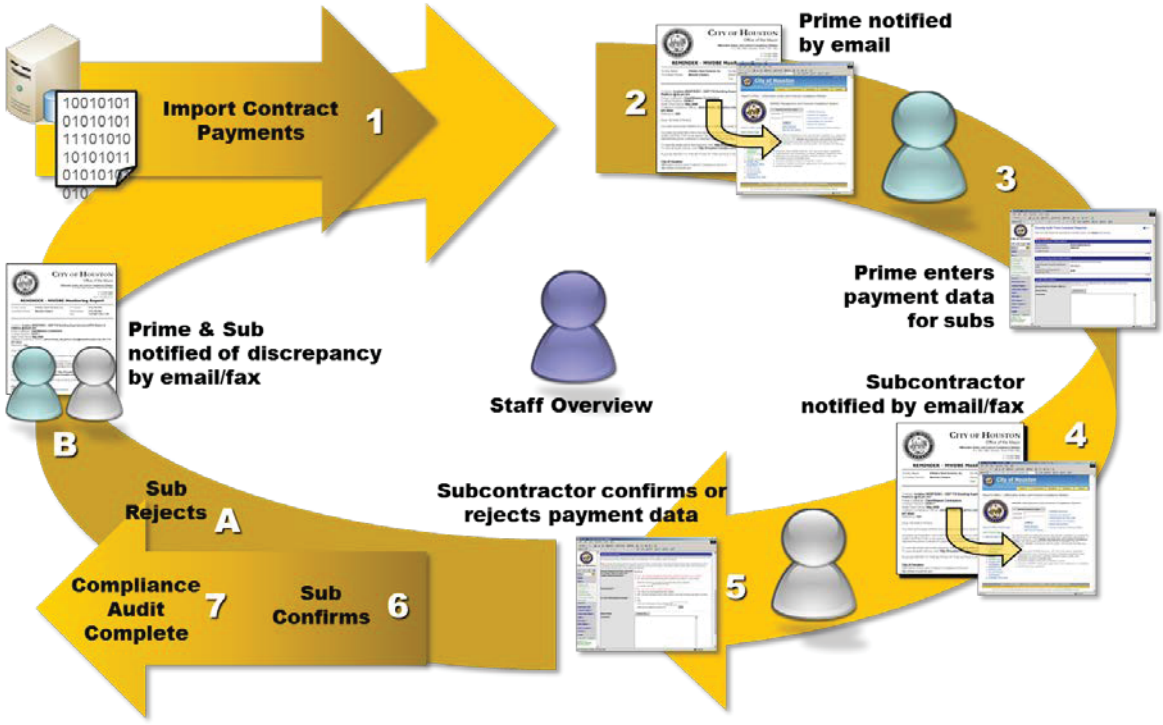


AUDIT PROCESS FOR CONSTRUCTION AND CONSULTANT SERVICES CONTRACTS:



AUDIT PROCESS FOR LOCAL AGENCY CONTRACTS:





Washington State Department of Transportation

Final DBE Utilization Plan Report

Project Number	Federal-Aid Project Number	Region/Agency
Contract Title		

Agency's Certification

I certify that the contracting records have been reviewed and the on-site performance have been monitored. I determined that work committed to the listed DBE's under this contract was actually performed by the listed DBE's.

X _____
Project Manager or Engineer Signature Required

_____
Printed Signature Name

_____
Business Phone Number

_____
Date of Signature

A final report of DBE Contract Payment Reports must be attached in order to certify that the contracting records and on-site performance of the Disadvantaged Business Enterprises has been monitored in compliance with 49 CFR 26.37.

WSDOT Contract Original to:

☐ Temporary Final Project Records/Project Engineer

Copies to:

☐ Region OEO ☐ File

Local Agency Original to:

☐ Project Record

Copies to:

☐ WSDOT Local Programs ☐ Project Manager or Project Engineer

Generated by Washington State Department of Transportation on 6/7/2018

Compliance Audit: Audit Summary for Total Contract

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Compliance Audit List | Compliance Audit Summary | Compliance Audit FY | Reviews | Site Visits | Reports

009018: [redacted]01 COFFEE CREEK - REMOVE FISH BARRIER
Prime: [redacted]
9/28/2017 - 6/30/2021

Status: **Open/Locked In**
Current Award: **$13,889,997**
Goal: **9.00%** Total Paid: **$1,542,694**
% Credit: **2.05%** For Credit: **$31,666**

Audit Summary - Total Contract

	Current Award	Award Percent	Payments	Payments Percent	Difference (Payments - Award)
Prime Contract	$13,889,997.00		$1,542,694.07		
For Credit (3 subs)	$1,250,099.73	9.000%	$31,665.89	2.053%	6.947% below goal
For Credit to DBE Goal (2 subs)	$1,250,099.73	9.000%	$31,665.89	2.053%	6.947% below goal
For Credit to FSBE Goal	$0.00	0.000%	$0.00	0.000%	Goal matched
For Credit to MBE Goal	$0.00	0.000%	$0.00	0.000%	Goal matched
For Credit to SSBE Goal	$0.00	0.000%	$0.00	0.000%	Goal matched
For Credit to VBE Goal	$0.00	0.000%	$0.00	0.000%	Goal matched
For Credit to WBE Goal (1 sub)	$0.00	0.000%	$0.00	0.000%	Goal matched
Contract Progress	11%				
For Credit Progress	3				

Amounts listed in the summary table above are payments retained by each subcontractor after payment of successive lower tier subcontractors. Award values may not match due to differences between overall contract goal and subcontractor assignments.

Not Meeting Goal Letter

Prime Contractor - Total Contract

Prime Contractor		Cert	Inc in Goal	Contracted % Paid %	Paid TO Prime Prime's Share
	Info Payments Profile Email	No	No	94.36% 88.54%	$1,542,694 $1,365,833

*** Amounts listed below are payments retained by each subcontractor after payment of successive lower tier subcontractors.**

Subcontractors - Total Contract (6 subcontractors)

Subcontractor		Cert	Type	Inc in Goal	*Contracted % *Paid %	*Contracted $ *Paid $	For Credit $
1	Info Payments Profile Email	No	Sub	No	4.69% 9.41%	$652,084 $145,195	$0
2	Info Payments Profile Email	✓	Sub 100%	C DBE	0.01% 0.02%	$1,949 $250	$250
2	Info Payments Profile Email	No	Sub	No	0.00% 0.00%	$270 $0	$0
2	Info Payments Profile Email	✓	Sub	No SSBE	0.24% 0.00%	$33,253 $0	$0

1	Info Payments Profile Email		Sub 100%	N WBE	0.02% 0.00%	$3,020 $0	$0
1	Info Payments Profile Email		Sub 100%	C DBE	0.67% 2.04%	$93,063 $31,416	$31,416

Customer Support

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OEO Comprehensive Contract Compliance Review Procedures

INTRODUCTION

As a direct recipient of Federal financial assistance from the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and the Federal Aviation Administration, the Washington State Department of Transportation (WSDOT) is required to implement a narrowly tailored Disadvantaged Business Enterprises (DBE) program that complies with 49 CFR, Part 26. The program must, among other things, ensure that only firms that fully meet the eligibility standards of 49 CFR Part 26 are permitted to participate as DBEs. In addition, WSDOT's DBE program must include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently is actually performed by said DBEs.

The following is an outline of the Comprehensive Compliance Review (CCR) procedures that WSDOT's Office of Equal Opportunity (OEO) will implement for ensuring program compliance with 49 CFR, Part 26. WSDOT's OEO is tasked with the compliance and enforcement of the CFR. OEO personnel have been located in each WSDOT region in an effort to ensure that WSDOT's obligations to administer its DBE program are fulfilled. The OEO staff reviewer will have knowledge of the DBE program regulations, and WSDOT's associated procedures (e.g., construction manual, LAG manual, GSPs, et al) before going out to conduct a review.

CCRs will be performed using a risk-based compliance approach with projects being 50% or more towards completion. Initially, WSDOT OEO will annually perform CCRs on 30 or 10% of FHWA funded projects, whichever is greater. WSDOT OEO will revisit this number annually (following an analysis of the information obtained during the reviews) to determine effectiveness of the review process. Projects selected for review will include small, medium, and large Local Agency and WSDOT let contracts.

I. Review all project documentation for the following

a. **DBE Utilization Certification form -** be sure that the dollar amount listed is not greater than the scopes of work outlined on the bid item breakout. Compare this information with the subcontracts and approved Request to Sublet forms.
b. **Written Confirmation forms –** will be reviewed to ensure that the prime identified (at the time of bid submittal) the UDBE/DBE firms, their role in the contract, the scopes of work to be performed and the dollar value of the amount of compensation to the UDBE /DBE firms.
c. **Written Certification form** – will be reviewed to certify that the assigned Project Engineer or Project Manager has completed and signed the form acknowledging that they have reviewed contract records, monitored the work site, and determined that the UDBE/DBE performed the work of their subcontract in accordance with 49 CFR Part 26. The review will also be cross checked with bid documents to ensure the information on this form is consistent with the DBE program documents submitted at the time of bid.

d. **Bid Item Breakdown form** – will be reviewed to ensure the Bid Item Breakdown form is consistent with the DBE Utilization Certification form, as well the Request to Sublet forms and subcontracts.
e. **Onsite Review forms** – will be reviewed to ensure that there is a DBE on-site review form submitted for every DBE having performed/performing work on the project , and to make sure that there were multiple onsite reviews performed for multi-year projects (if the applicable DBE worked for more than one year). In the process of reviewing the form, OEO personnel will look for Commercially Useful Function (CUF) violations. The content of the form will be reviewed for missing/contradictory information. The form will be cross checked with Inspector's Daily Reports as a means of verification/comparison. OEO will ensure that the form has a completion date that is aligned to the time period when the UDBE/DBE firm was on site working.
f. **The Request to Sublet (RTS) forms** – will be reviewed to ensure that the form is completed and that there is a RTS form for each UDBE/DBE having performed/performing work on the project. OEO will review the form to ensure that the work scopes and associated dollar amounts are equal to or greater than the Bid Item Breakdown form, the amounts listed in the subcontract, and that the form is consistent with the DBE Certification Utilization form.
g. **Substitutions and Terminations** (if applicable)- A PE Office with expected DBE/UDBE underruns must communicate with the OEO Regional staff and demonstrate an attempt to provide additional work to other DBE/UDBE firms in order to meet the COA goal.
    - OEO region personnel will confirm through communication records and documents that the assigned project office has ensured the termination process was correctly followed prior to any UDBE/DBE being terminated .
    - The termination process, as outlined in CFR (and the GSP), must be followed even when the underrun of work is caused by WSDOT or the local agency because of a miscalculation of need at the time of the design or when a contractor does not need the quantity or work initially estimated at the time of the bid.
    - The Prime must provide the DBE/UDBE five days to respond to the letter stating the Prime's intent to terminate the DBE/UDBE. There should be documented proof that the DBE/UDBE was actually contacted by the Prime (.e.g, two-way communication between prime and affected DBE/UDBE). The letter, along with any rebuttal from the DBE/UDBE shall be included together in the submission to WSDOT by the Prime when requesting a termination.
    - GFE is required in termination/substitution situations, and the OEO staff person will review GFE documentation to ensure the termination was for good cause. OEO will not approve a GFE solely based on the prime stating UDBE/DBE solicited costs being too high and unreasonable. In any situation in which the bidder claims UDBE/DBE price gouging, OEO will review all submitted sub-quotes to determine if, in fact, the DBE/UDBE cost was truly unreasonable based upon owner estimates for that scope and industry standards.

OEO region personnel will ensure that any substitution and/or termination of a UDBE/DBE firm will be reviewed prior to starting a review/analysis of GFE documentation.

h. **Inspector's Daily Reports (IDRs) -** OEO personnel will review IDRs to support (along with other documents) that the DBE firms are performing CUF. OEO personnel will review project emails and/or other documentation/correspondence to ensure that any DBE program or CUF issues have been brought to the attention of the Project Engineer and prime contractor for correction.
   - The reviewer should look for the following in the IDRs:
     1. whether the IDRs confirm the presence of the DBE/UDBE (e.g. does the IDR mention the name of the DBE/UDBE representative that is supervising/overseeing the work being performed);
     2. is the work described in the IDR, as being performed by the DBE/UDBE, consistent with that which is described in the bid item breakout and request to sublet?
     3. do the IDRs mention issues/concerns regarding the DBE's/UDBE's work performance?
     4. Do the IDRs list DBE personnel by name and title?
   - The OEO Staff person will look at the IDRs and other documentation to assess whether a more in-depth review of the DBE/UDBE should be done to determine if the DBE/UDBE's performance is consistent with the DBE program requirements.

i. **Good faith efforts** (if applicable) - If a bidder is unable to get enough DBE/UDBE participation on a contract by the time their bid is submitted or within 48 hours for a WSDOT project and 24 hours of a Local Programs project, they must submit a GFE packet (documentation of the efforts made to meet the goal).
   - The bidder must continue to make every effort throughout the life of the contract to obtain DBE/UDBE participation when subcontract opportunities arise.
     1. OEO personnel will review GFE throughout the life of the contract – not just in situations where the bidder failed to obtain sufficient DBE/UDBE participation at time of bid, but also in situations where there is termination and substitution.
   - The OEO Compliance Specialist assigned to review the GFE submitted at the time of the bid will analyze the GFE documentation based on the qualitative effort of the contractor. The analysis should outline the strengths and weaknesses of the GFE in the bidder/contractors efforts to meet Condition of Award requirements pre-award, during the project and prior to physical completion.

j. **Regular dealers** (if applicable) – OEO personnel will confirm that the DBE firm being used as a Regular Dealer on the project is certified as a Supplier/Wholesaler by OMWBE with appropriate NAICS code(s) assigned. OEO personnel will also ensure that the DBE "Regular Dealer" firm completed the Regular Dealer Equipment and Supply form and that the form was submitted timely in accordance with General

Special Provisions. OEO personnel will also ensure that the material/equipment being provided by the Regular Dealer is project related.

k. **Joint Checks** (if applicable) **-** OEO personnel will review joint check agreements and completed Joint Check Request forms to ensure agency policies regarding the use of joint checks are being followed. OEO personnel will confirm that the following requirements have been met:
    - The DBE firm requested the use of joint checks.
    - The DBE firm completed a Request to Use Joint Checks form and had the prime contractor submit to the agency for approval.
    - The prime contractor, DBE firm and the Supplier created, agreed to and signed and dated a joint check agreement.
    - That the DBE firm selected the supplier, determined the quality and quantity of the material, ordered and paid for the material, and received, signed for and inspected the material.
    - There is language in the joint check agreement that states the joint check funds can only be used to pay for materials related to that specific project
    - There is language in the joint check agreement that once the supplier receives the joint check; the supplier must release all materials to the DBE
    - The invoice for the materials needs to show paid in full; and should be made out to the DBE firm and not the prime
    - That the use of the joint check(s) was approved by the project office with concurrence from WSDOT OEO
    - That the DBE remains responsible for all other elements of 26.55(c)(1);

l. **Payment verification –** OEO staff will review DBE payment information reported in DMCS, or DBEP, and request copies of invoices and canceled checks.
    - OEO personnel will review all payment information and documents such as subcontracts, invoices, and Bid Item Breakdowns to validate that payments are commensurate with the type of work performed by the DBE/UDBE. Certified payrolls and IDRs will also be reviewed to support that the DBE/UDBE was, in fact, on the project performing the work. Any discrepancies must be reported.

m. **Subcontracts, Master Agreements, and/or project file** – OEO personnel will review subcontracts and/or the project file to ensure the following:
    - **There is a detailed description (and valuation) of the scope of work to be performed by the DBE/UDBE;**
    - FHWA 1273 (this form is required to be physically inserted into every Federal-aid construction contract);
    - The presence of takeover or termination for convenience clauses, or any other language appears to conflict with the DBE program requirements;
    - Excerpt from 49 CFR 26.13(b) regarding nondiscrimination (this assurance is contained in the Form 1273, so if the 1273 is inserted in the contract, don't expect to see the same assurance elsewhere in the subcontract)
    - Any language that limits the DBE/UDBE from managing, supervising, performing, and supplying materials for the project.

- The Request to Sublet (RTS) form to ensure that the work scopes and the amounts are equal to or greater than with the Bid Item Breakout form.
- Labor & Industries (L&I) "Statement of Intent to Pay Prevailing Wages" document has been submitted.
- Review B2GNow/DMCS - All payments made by WSDOT to the contractor will be tracked by the Project Engineer Office utilizing the Diversity Management and Compliance System (powered by B2GNow)
- Be sure that regular reporting is occurring.
- The OEO Staff member will look at internal documents (if any) held by the Project Engineer Office as they pertain to payment information to ensure compliance with DBE program regulations.

II. **Commercially Useful Function (CUF)**

a. Interviews

- Conduct interviews with the following, and get all contact information for:
    1. WSDOT/Local Agency Field Inspector(s);
    2. Prime contractor's on-site superintendent;
    3. Prime contractor's point-of-contact (Project Manager or Engineer;
    4. Prime Contractor employees (if needed)
    5. DBE's on-site supervisor;
    6. DBE personnel
    7. WSDOT/Local Agency Project Engineer;
    8. WSDOT/Local Agency Assistant Project Engineer (if needed)
    9. WSDOT/Local Agency Documentation Engineer;
    10. Project Office's general phone number;
- Interviews will also be conducted of other individuals who have direct knowledge relating to work performed by the DBE/UDBE firm(s).
- All interviews will be done using the prescribed forms to make certain that all interviewees are being asked the same questions.
- While conducting field interviews, the OEO Staff person will take pictures relevant to the DBEs/UDBEs firms work.
- The owner of the DBEs/UDBEs firms will be interviewed at their respective place of business. Photos will be taken of relevant equipment related to the firm's scope of work on the specific project being reviewed.
- The purpose of the interviews is to assist in determining whether the subcontractor is compliant in the following areas: Management, Personnel, Equipment, Materials, and Performance.
- Owner Interview- be sure to make sure safety measures are in place.
    1. Before owner interview: review all previous interviews to be sure to ask the owner any follow up/clarifying questions based on information discovered from DBE employees and/or WSDOT staff about the project
    2. Acquire previously requested documents from owner
    3. Take photos of the owner's facilities and staging areas
    4. Take photos of the owner's equipment and vehicles

5. Determine whether there are any other facilities or staging areas. If so, schedule visit to those areas

b. Document review

- OEO personnel will (at a minimum) review the following documents:
    1. Rental/Lease agreements (equipment and/or buildings
    2. Vehicle registrations and/or titles
    3. Purchase orders
    4. Bills of lading or delivery invoices
    5. Inspection records
    6. Payment records
    7. Purchase orders
    8. Work orders
    9. Utilization Certification form
    10. Written Confirmation forms
    11. Bid Item Breakdowns
    12. Written Certification forms
    13. Certified Payrolls
    14. Onsite review forms
    15. Inspector Daily Reports
    16. Traffic Control Daily log
    17. Emails (As needed)
    18. Change Orders
    19. Request to Sublet forms
    20. Subcontracts
    21. OMWBE Certification Documents
- On projects occurring for only a single season, all of the certified payrolls for the Prime and the DBE/UDBE subcontractor will be reviewed. On projects of longer lengths, only a selected period of the certified payrolls for the prime contractor and DBE/UDBE subcontractors will be reviewed to make sure that DBE/UDBE employees are not shown on payrolls other than that of the DBE/UDBE firm.
- DBE's/UDBE's certification profile (work description & NAICS code assignment) from OMWBE's DBE directory.
- A copy of the DBE/UDBE firm's Washington State Labor and Industries Intent to Pay Prevailing Wages form will be collected by the OEO Staff person to confirm that the amount listed on the Intent form is the same wages being paid as noted on the certified payroll.

c. Project site visit

- Take photos of the DBE work site, preferably with the DBE employees doing work
- Take photos of the DBE equipment and vehicles
- Acquire previously requested documents

Washington State Department of Transportation

Office of Equal Opportunity

Disadvantaged Business Enterprise Program

COMPREHENSIVE COMPLIANCE REVIEW (CCR)

YYYY-###

FOR

Project Title

Federal Aid Number:

Project Number: TA-0000/00####

Date:

Purpose:

As a direct recipient of Federal financial assistance from the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), the Washington State Department of Transportation (WSDOT) is required to implement a narrowly tailored Disadvantaged Business Enterprises (DBE) program that complies with 49 CFR, Part 26. The program must, among other things, ensure that only firms that fully meet the eligibility standards of 49 CFR Part 26 are permitted to participate as DBEs. In addition, WSDOT's DBE program must include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently is actually performed by said DBEs.

Authority

The following random comprehensive contract compliance review was performed by WSDOT's Office of Equal Opportunity (OEO) to ensuring contract compliance with 49 CFR, Part 26, to ensure that Prime Contractor, DBE Firm, DBE Firm, and DBE Firm are performing all aspects of the contract according to the CFR. The Project has a 12% condition of award (COA) contract goal, in which the prime contractor, Prime Contractor committed to utilizing the following DBE Firms to fulfill the COA goal.

DBE Firms listed as a COA totaling a $Dollar Amount commitment as follows:

- DBE Firm for $Dollar Amount to perform Work Description, for bid item number bid item # under NAICS code(s) NAICS Codes.
- DBE Firm for $Dollar Amount to perform Work Description, for bid item number bid item # under NAICS code(s) NAICS Codes.
- DBE Firm for $Dollar Amount to perform Work Description, for bid item number bid item # under NAICS code(s) NAICS Codes.

The Commercially Useful Function (CUF) portion of this review was performed on the COA DBE Subcontractor, DBE Firm. CUF performance is conducted pursuant to the authority stipulated in 49 CFR, Part 26.55:

49 CFR, Part 26.55, defines the performance of a CUF and how it may be monitored as follows:

> "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating

price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself..."

I. **Review Conducted By:** **Review Date:**

II. **<u>Contact information for personnel (add additional lines if necessary)</u>**

A. Owner agency contact information
   1. Owner name:
   2. Project contact person:
   3. Mailing address:
   4. Physical address:
   5. Telephone number:
   6. Fax number:
   7. Email:

B. Prime contractor contact information
   1. Project Contact Person:
   2. Address:
   3. Telephone Number:
   4. Fax Number:
   5. Email:

C. DBE Contact Information
   1. Owner Name:
   2. Address:
   3. Telephone Number:
   4. Fax Number:
   5. Email address:

D. DBE Contact Information
   1. Owner Name:
   2. Address:
   3. Telephone Number:
   4. Fax Number:
   5. Email address:

E. DBE Contact Information
   1. Owner Name:
   2. Address:
   3. Telephone Number:
   4. Fax Number:

5. Email:

III. **Document Review**

A. **DBE utilization certification form**

1. Is the dollar amount listed greater than the scopes of work outlined on the bid item breakout?
   ☐ Yes ☐ No

   If yes, please indicate discrepency

2. Does this information match with the subcontract?
   ☐ Yes ☐ No

   If no, please explain

3. Does the information match with the request to sublet?
   ☐ Yes ☐ No

   If no, please explain

B. **Written confirmation form**

1. Has the project office reviewed the contract records?
   ☐ Yes ☐ No

   If no, please explain

2. Has the project office monitored the work site and determined that the DBE performed the work of their subcontract with their own forces?
   ☐ Yes ☐ No

   If no, please explain

3. Is the information on this form consistent with the DBE utilization certification form?
   ☐ Yes ☐ No

   If no, please explain

C. **Bid item breakout**

1. Is the bid item breakout consistent with the DBE utilization certification form?
   ☐ Yes ☐ No

   If no, please explain

2. Is the bid item breakout consistent with the Request to Sublet?
   ☐ Yes ☐ No

   If no, please explain

3. Is the bid item breakout consistent with the subcontract?
   ☐ Yes ☐ No

   If no, please explain

D. **Onsite review forms**

1. Is there a DBE on-site review form submitted for every DBE having performed/performing work on the project?
   ☐ Yes ☐ No

   If no, please explain

2. Are there any potential CUF violations indicated on the form?
   ☐ Yes ☐ No

   If yes, please explain

3. Was the onsite review form cross checked with the IDRs for verification?
   ☐ Yes ☐ No

   If there are any discrepancies noted, please explain here

4. Is there any missing or contradictory information?
   ☐ Yes ☐ No

   If yes, please explain

5. Were there multiple onsite reviews performed for multi-year projects (if the applicable DBE worked for more than one year)?
   ☐ Yes ☐ No

   If no, please explain

6. When were the on-site review(s) completed? **Please list DBEs separately**
   a. DBE Firm – Month Day, Year
   b. DBE Firm – Month Day, Year
   c. DBE Firm – Month Day, Year

7. Does the completion date of the form correspond with the time period in which the DBE/UDBE was working?
   ☐ Yes ☐ No

   If no, please explain

8. When did the DBE began work on the project? **Please list DBEs separately**
   a. DBE Firm – Month Day, Year
   b. DBE Firm – Month Day, Year
   c. DBE Firm – Month Day, Year

E. **The Request to Sublet (RTS) form**

1. Is there a RTS form for each DBE having performed/performing work on the project?
   ☐ Yes ☐ No

   If no, please explain

2. Are the work scopes and associated dollar amounts equal to or greater than the Bid Item Breakout form?
   ☐ Yes ☐ No

   If no, please explain

3. Is the subcontract consistent with the DBE Certification Utilization form?
   ☐ Yes ☐ No

If no, please explain

F. **Substitutions and terminations** (if applicable) - A PE Office with expected DBE/UDBE underruns must communicate with OEO Regional staff and demonstrate an attempt to provide additional work to other DBE/UDBE firms in order to meet the COA goal.
   1. Have the correct termination procedures been followed?
      ☐ Yes ☐ No

      If no, please explain

   2. The Prime must provide the DBE/UDBE five days to respond to the letter stating the Prime's intent to terminate the DBE/UDBE. There should be documented proof that the DBE/UDBE was actually contacted by the Prime (.e.g, two-way communication between prime and affected DBE/UDBE).
      a. The letter, along with any rebuttal from the DBE/UDBE shall be included together in the submission to WSDOT by the Prime when requesting a termination. Is the letter included in the file?
         ☐ Yes ☐ No

         If no, please explain

   3. GFE is required for termination/substitutions. Please indicate the prime contractor's reasoning for indicating that they were unable to find a DBE/UDBE replacement.

      Explain here

G. **Inspector's Daily Reports (IDRs) – Copy and paste this section, and respond for each DBE on the project**
   1. Does the IDR mention the name of the DBE/UDBE representative that is supervising/overseeing the work being performed?
      ☐ Yes ☐ No

      If no, please explain

2. Is the work described in the IDR, as being performed by the DBE/UDBE, consistent with that which is described in the bid item breakout and request to sublet?
   ☐ Yes ☐ No

   If no, please explain

3. Do the IDRs list DBE personnel by name and title?
   ☐ Yes ☐ No

   If no, please explain

4. Do the IDRs mention issues/concerns regarding the DBE's/UDBE's work performance?
   ☐ Yes ☐ No

   If yes, please explain

H. **Good faith efforts (GFE)** (if applicable)

1. Was a GFE submitted at the time of bid on this project?
   ☐ Yes ☐ No

   If yes, please explain the circumstances and detailed prime contractor efforts

2. Was a GFE submitted at the end of this project?
   ☐ Yes ☐ No

   If yes, please explain the circumstances and detailed prime contractor efforts

I. **Regular dealers** (if applicable)

1. Is there a DBE acting as a regular dealer on the project?
   ☐ Yes ☐ No

   If yes, which DBE firm was used as a regular dealer on this project, and list the products that they are approved to provide

2. Is the DBE that is listed as a regular dealer certified as a wholesaler or manufacturer in the certified firm directory?

☐ Yes ☐ No

If no, please explain

3. If so, were they approved by OEO as a Regular Dealer for that specific project, prior to being listed as a Regular Dealer by the prime?
☐ Yes ☐ No

If no, please explain

J. **Joint Checks** (if applicable)

1. Were there joint checks used on this project?
☐ Yes ☐ No

If yes, please explain and list all of the amounts, and dates

2. Did the DBE firm complete a Request to Use Joint Checks form and have the prime contractor submit to the agency for approval?
☐ Yes ☐ No

If no, please explain

3. Did the prime contractor, DBE firm and the Supplier create, agree to, and sign and date the joint check agreement?
☐ Yes ☐ No

If no, please explain

4. Is there language in the joint check agreement that states the joint check funds can only be used to pay for materials related to that specific project?
☐ Yes ☐ No

If no, please explain

5. Is there language in the joint check agreement that once the supplier receives the joint check, the supplier must release all materials to the DBE?
☐ Yes ☐ No

If no, please explain

6. Does the invoice for the materials show paid in full?
   ☐ Yes ☐ No

   If no, please explain

7. Is the check made out to the DBE firm and not the prime?
   ☐ Yes ☐ No

   If no, please explain

8. Was the use of the joint check(s) approved by the project office with concurrence from WSDOT OEO?
   ☐ Yes ☐ No

   If no, please explain

9. Did the DBE remain responsible for all other elements of 26.55(c)(1)?
   ☐ Yes ☐ No

   If no, please explain

10. Were invoices and other documents provided that confirm that the materials were ordered by the DBE/UDBE, received by the DBE/UDBE, and paid for by the DBE/UDBE?
    ☐ Yes ☐ No

    If no, please explain

K. **Certified payroll**

1. Do all employees listed on the certified payroll form match with the IDRs for dates and employees?
   ☐ Yes ☐ No

   If no, please explain

L. **Payment verification**

1. Are all payments commensurate with the type of work performed by the DBE/UDBE?
   ☐ Yes ☐ No

   If no, please explain

2. Do certified payrolls and IDRs support that the DBE/UDBE was, in fact, on the project performing the work?
   ☐ Yes ☐ No

   If no, please explain

3. What was the process used by the project office to compare DBE/UDBE payments to the respective commitments?

   Please explain

4. Does payment documentation correspond with information found in DMCS?
   ☐ Yes ☐ No

   If no, please explain

IV. **Review subcontract and/or project file for the following:**

A. Include a detailed description (and valuation) of the scope of work to be performed by the DBE/UDBE

B. Is the FHWA 1273 language present within the contract?
   ☐ Yes ☐ No

   If no, please explain

C. Are there any takeover or termination for convenience clauses?
   ☐ Yes ☐ No

   If yes, please indicate here, and attach relevant section of the subcontract

D. Is there any other language that appears to conflict with the DBE program requirements?
☐ Yes ☐ No

If yes, please indicate here, and attach relevant section of the subcontract

E. Is there an excerpt from 49 CFR 26.13(b) regarding nondiscrimination? (this assurance is contained in the Form 1273, so if the 1273 is inserted in the contract, don't expect to see the same assurance elsewhere in the subcontract)
☐ Yes ☐ No

F. Is there any language that limits the DBE/UDBE from managing, supervising, performing, and supplying materials for the project?
☐ Yes ☐ No

If yes, please indicate here, and attach relevant section of the subcontract

G. Are the work scopes and amounts listed on the Request to Sublet form equal to or greater than the amounts listed on the Bid Item Breakout form?
☐ Yes ☐ No

If no, please explain

H. Does the scope of work listed on the subcontract match the work that was actually performed by the DBE?
☐ Yes ☐ No

If no, please explain

I. Has the Labor & Industries (L&I) "Statement of Intent to Pay Prevailing Wages" document been submitted?
☐ Yes ☐ No

V. **<u>Payment monitoring (in addition to Item "k" under I above)</u>**

1. Review B2GNow/DMCS for all payments made by WSDOT to the contractor

A. Is regular reporting occurring?

☐ Yes ☐ No

If no, please explain

2. Review internal documents (if any) held by the Project Engineer Office as they pertain to payment information to ensure compliance with CFR. Are there any discrepancies?
   ☐ Yes ☐ No

   If yes, please explain

VI. **Interviews- Information from the CUF can be copied and pasted into this area. If there are multiple DBEs on the project, the below information will only be included for the DBE that the CUF review was performed on.**

Interviews of the following personnel were conducted: (if no significant information found from the interview, please indicate)

A. **WSDOT Project Engineer**
B. **WSDOT Assistant Project Engineer**
C. **WSDOT Office/Documentation Engineer**
D. **WSDOT Field Engineer**
E. **WSDOT Field Inspector**
F. **Prime Site Superintendent**
G. **DBE Owner**
H. **DBE Superintendent**
I. **DBE Employee**
J. **DBE Employee**
K. **DBE Employee**
L. **DBE Employee**
M. **DBE Employee**
N. **Olympic Trucking Employee**

VII. **Timeline**

VIII. **Observations**

IX. **CUF ISSUES**

Management ☐**Yes** ☐ **No**

If yes, please provide an explanation

Equipment ☐**Yes** ☐ **No**

If yes, please provide an explanation

Employees ☐**Yes** ☐ **No**

If yes, please provide an explanation

Performance ☐**Yes** ☐ **No**

If yes, please provide an explanation

Materials ☐**Yes** ☐ **No**

If yes, please provide an explanation

DETERMINATION:

Firm is performing a CUF ☐ **Yes** ☐ **No**

**If the DBE firm is not performing CUF, include language explaining why. The explanation should include proper citations to the applicable CFR section(s). Your letter of non-compliance should also include similar language.*

OEO Compliance Specialist	**Date**
DBE Compliance Manager	**Date**
External Civil Rights Manager	**Date**

APPENDIX 10

WSDOT Small Business Enterprise Plan

http://www.wsdot.wa.gov/sites/default/files/2018/01/18/SBE-Participation-Plan.pdf

APPENDIX 11

RCW 39.04.155

Small works roster contract procedures—Limited public works process—Definition.

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of enterprise services in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of enterprise services under chapter **43.19** RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW **39.04.010**. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and

compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred fifty thousand dollars to three hundred thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW **39.04.010**.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW **39.04.010**. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter **39.08** RCW and the retainage requirements of chapter **60.28** RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes imposed under Title **82** RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the department of enterprise services, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW **28B.10.016**, and any other state agency delegated authority by the department of enterprise services to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

[**2015 c 225 § 33; 2009 c 74 § 1; 2008 c 130 § 17.** Prior: **2007 c 218 § 87; 2007 c 210 § 1; 2007 c 133 § 4; 2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.**]

NOTES:

Intent—Finding—2007 c 218: See note following RCW **1.08.130**.

Purpose—2000 c 138: "The purpose of this act is to establish a common small works roster procedure that state agencies and local governments may use to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property." [**2000 c 138 § 1.**]

Part headings not law—2000 c 138: "Part headings used in this act are not any part of the law." [**2000 c 138 § 302.**]

Purpose—Captions not law—1991 c 363: See notes following RCW **2.32.180**.

*Competitive bids—Contract procedure: RCW **36.32.250.***

APPENDIX 12

Chapter 468-15 WAC

Last Update: 12/6/06

SMALL WORKS ROSTER

Chapter Listing

WAC Sections

468-15-010 Purpose and authority.
468-15-020 Contractor prequalification.
468-15-030 Public notice required by department establishing small works roster.
468-15-040 Contractors questionnaire form—Information required.
468-15-050 Denial or removal of contractor from small works roster—Reasons.
468-15-060 Hearings procedure.

468-15-010
Purpose and authority.

This chapter is adopted pursuant to RCW **39.04.155**, which requires a state agency establishing a small works roster or rosters to adopt rules implementing the statute. It is further intended to:

(1) Establish procedures for solicitation of contractors interested in being placed on the department's small works roster(s).

(2) Provide a fair cost effective alternative method of contracting through the small works roster process.

(3) Provide for a clear concise method for a contractor to qualify for placement on the department's small works roster(s).

(4) Provide for an appeal and for a hearing procedure, for denial, suspension, or removal from a small works roster.

[Statutory Authority: RCW **47.01.101**, **39.04.155**. WSR 03-03-012, § 468-15-010, filed 1/7/03, effective 2/7/03.]

468-15-020
Contractor prequalification.

No contract for the construction, alteration, improvement, or repair of any state highway, or of any other public highway to be awarded and administered by the department of transportation, may be awarded to any contractor who has not first been prequalified to perform the work per the requirements of chapter **468-16** WAC. Bidding proposals will be issued only to prequalified contractors. Only prequalified contractors will be placed on a small works roster.

[Statutory Authority: RCW **47.01.101**, **39.04.155**. WSR 03-03-012, § 468-15-020, filed 1/7/03, effective 2/7/03.]

468-15-030
Public notice required by department establishing small works roster.

The department will at a minimum once per year provide a public notice to the contracting community encouraging contractors to submit applications for inclusion on the small works roster. Such notice may be mailed directly to trade associations or to individual contractors, by publishing the notice in one trade publication of general circulation within the state, a minimum once per week for two weeks, preceding the date for establishment of the small works roster, or by any method reasonably calculated to assure that all contractors in the state of Washington are aware of the opportunity to be included on the small works roster. The notice shall include the address and phone number, of the department's contract ad and award office from which to request the required questionnaire form for application and approval to be placed on the small works roster.

[Statutory Authority: RCW **47.01.101**, **39.04.155**. WSR 03-03-012, § 468-15-030, filed 1/7/03, effective 2/7/03.]

468-15-040
Contractors questionnaire form—Information required.

Contractors desiring to be included on a small works roster established by Washington state department of transportation pursuant to RCW **39.04.155**, shall submit a completed small works roster questionnaire on a form prescribed by the secretary of transportation. Copies of the form may be obtained from the department's contract ad and award office. The completed questionnaire shall be prepared and transmitted to the secretary, attention: Contractor prequalification office. The questionnaire shall include the following information:

(1) The contractor's name, address, telephone number, fax number, email address, and type of organization (corporation, partnership, sole proprietorship, etc.);

(2) A statement of ownership of the firm and, if a corporation, the name of the parent corporation, if any, and the names of any affiliated or subsidiary companies;

(3) State contractor's license number;

(4) State of Washington unified business identifier number (UBI) and UBI expiration date;

(5) Federal tax ID number;

(6) List of classes of work as enumerated on the form that the firm desires to be considered for such work class;

(7) Indication of those counties in which the contractor is interested in being considered for small works projects;

(8) Indication whether the contractor is certified as a minority or women's business enterprise or a disadvantaged business enterprise by the office of minority women business enterprises;

(9) List all contracts or subcontracts performed in whole or in part within the immediate three preceding years. Include the contract amount, date of completion, classes of work performed, owner or prime contractor's name, mailing address, phone number, fax number, and name of a contact person for the owner/prime for which the contractor performed the work. Only that work completed by the contractor's own organization under its own supervision will be considered for qualification. A minimum three completed projects must be listed.

(a) Personnel requirements.

(i) List principal officers and key employees indicating their years of experience in the classes of work for which qualification is sought.

(ii) A firm must have, within its own organization, qualified permanent, full-time personnel having the skills and experience including, if applicable, technical or specialty licenses, for each work class for which qualification is sought. Those firms seeking qualification for electrical work (classes 9, 16, 41, and 42) must provide photocopies of current Washington state electrical licenses. The skills and experience must be substantiated by education and practical experience on completed construction projects.

(iii) "Its own organization" shall be construed to include only the contractor's permanent, full-time employed office and site supervisory personnel. Workers of the organization shall be employed and paid directly by the prime contractor.

(b) The applicant shall list the following occurrences within the previous three years:

(i) Instances of having been denied qualification, or a license, or instances of having been deemed other than responsible by any public agency.

(ii) Convictions for felonies listed in WAC **468-16-050**.

(iii) Failure to complete a contract.

(c) The small works roster questionnaire shall be processed as follows:

(i) A small works roster questionnaire will be reviewed and a written notice provided to the applicant, within thirty days of its receipt, stating whether or not the applicant has qualified for or been denied qualification for the small works roster. The applicant will be advised of lack of receipt of data corroborating project completion and error or omissions in the questionnaire and a request for additional information necessary to complete the evaluation of the applicant. If the information is not provided within twenty calendar days of the request, the application will be processed, if possible, with the information available or it will be returned to the applicant without further action.

(ii) The department will enter the contractor's information on the appropriate small works roster. The department will notify the contractor by letter of placement on the appropriate small works roster. An applicant should not consider itself enrolled on the small works roster until receipt of such written notice.

It is the responsibility of the contractor to notify the department of any incorrect information set forth in the notice, and to notify the department of any change in the information set forth in its application.

[Statutory Authority: RCW **39.04.155**, **47.01.101**, **47.28.030**. WSR 06-24-118, § 468-15-040, filed 12/6/06, effective 1/6/07. Statutory Authority: RCW **47.01.101**, **39.04.155**. WSR 03-03-012, § 468-15-040, filed 1/7/03, effective 2/7/03.]

468-15-050
Denial or removal of contractor from small works roster—Reasons.

A contractor may be denied placement on or, after such placement, may be removed from a small works roster for any one or more of the following reasons:

(1) Information set forth in the contractor's application is not accurate or can not be verified;

(2) The contractor fails to notify the department maintaining the small works roster of any changes in the information set forth in its original application for placement on the small works roster within thirty days of the effective date of the change;

(3) The contractor fails to respond to five solicitations for bids on jobs offered through the small works roster;

(4) The contractor's past performance demonstrates a lack of qualification in any specialty area indicated by the contractor in the application for placement on the small works roster;

(5) The contractor fails to complete and return to the department maintaining the small works roster any periodic update submitted by the department to determine the contractor's ongoing interest in maintaining its placement on the small works roster;

(6) Conviction of the firm or its principals of violating a federal or state antitrust law by bid-rigging, collusion, or restraint of competition between bidders; or conviction of violating any other federal or state law related to bidding or contract performance; or

(7) Knowingly concealing any deficiency in the performance of a prior contract; or

(8) Falsification of information or submission of deceptive or fraudulent statements in connection with prequalification, bidding, performance of a contract, or in legal proceedings; or

(9) Debarment of the contractor by a federal or state agency; or

(10) Willful disregard for applicable laws, rules or regulations.

The reasons for the denial or removal from the small works roster must be based on acts or omissions which took place within the five years preceding the date of the most recent submitted questionnaire.

[Statutory Authority: RCW **47.01.101**, **39.04.155**. WSR 03-03-012, § 468-15-050, filed 1/7/03, effective 2/7/03.]

468-15-060
Hearings procedure.

(1) Whenever the department believes that grounds exist to deny the contractor placement on a small works roster or to suspend or remove the contractor from the roster, notice of such grounds shall be given to the contractor by first-class mail. If the contractor fails to object or request a hearing within twenty calendar days after the mailing of said notice, then the denial, suspension or removal shall be made effective. If the contractor requests a hearing by certified mail within twenty calendar days after the mailing of the notice, a hearing shall be conducted in accordance with the procedure set forth in this section. Unless the department is otherwise prohibited from contracting with the contractor, the denial, suspension or revocation shall not become effective until the final decision of the secretary has been rendered.

(2) The secretary shall designate a hearing official to conduct any hearing held under this section. The hearing official shall furnish written notice by certified mail of a hearing to the contractor and any named affiliates at least twenty calendar days before the effective date of suspension or revocation or denial of qualification for placement on the small works roster. The notice shall state:

(a) That suspension or revocation or denial of qualification for placement on the small works roster is being considered.

(b) The effective date of the proposed action.

(c) The facts giving cause for the proposed action.

(d) The cause or causes relied upon for proposing the action, i.e., fraud, statutory violations, etc.

(e) If suspension is proposed, the duration of the suspension.

(f) That the contractor may, within twenty calendar days of receipt of the notice, submit to the hearing official by certified mail, return receipt requested, information and argument in opposition to or in clarification of the proposed action.

(g) When the action is based on a conviction, judgment, or admission, fact finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the denial, suspension or revocation is based or whether the causes relied upon for proposing suspension or revocation exist.

(h) The time, place, and date of the hearing.

(i) The name and mailing address of the hearing official.

(j) That proposals shall not be issued nor contracts awarded to the contractor subsequent to the dispatch of the notice of hearing pending the final decision of the secretary.

(3) The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended beyond forty-five calendar days from the date of the notice. The hearing official shall schedule and conduct the hearing within thirty calendar days of the date of the notice, except when an extension is granted as provided in this subsection.

(4) In the course of the hearing, the hearing official shall:

(a) Regulate the course and scheduling of the hearings;

(b) Rule on offers of proof, receipt of relevant evidence, and acceptance of proof and evidence as part of the record;

(c) Take action necessary to insure an orderly hearing; and

(d) At the conclusion of the hearing, issue written findings of fact and recommended administrative action to the secretary. The hearing officer shall deliver the entire record to the secretary.

(5) The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-examine all witnesses. A transcribed or taped record shall be made of the hearing unless the secretary and the contractor waive the transcript or taping requirement. The transcript or tape shall be made available, at cost, to the contractor and all named affiliates upon request.

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this chapter, that the named contractor has engaged in conduct described in WAC **468-15-050** and the sole issue before the hearing official is the appropriateness of revocation of qualification or the length of suspension of qualification to be recommended to the secretary, prior judicial or administrative decision or findings shall not be subject to collateral attack.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the contractor of his determination in writing.

Upon denial, suspension or revocation of qualification for placement on the small works roster, the respondent may appeal there from to the superior court of Thurston County pursuant to RCW **47.28.070**. If the appeal is not made within the time prescribed in that statute, the department's action shall be conclusive.

[Statutory Authority: RCW **47.01.101**, **39.04.155**. WSR 03-03-012, § 468-15-060, filed 1/7/03, effective 2/7/03.]

APPENDIX 13

NAICS Code DBE Availability – Disparity Study

http://www.wsdot.wa.gov/sites/default/files/2017/09/11/OEO-DisparityStudy-2017.pdf

GUIDANCE CONCERNING GOOD FAITH EFFORTS
49 CFR PART 26 APPENDIX A

(While this is written for DBE Good Faith Efforts, it could also apply to MBE and WBE Good Faith Efforts)

TITLE 49 - TRANSPORTATION

SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION

PART 26 - PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

subpart f - COMPLIANCE AND ENFORCEMENT

Appendix A to Part 26 - Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g.attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

WSDOT OEO DBE Federal funded Contract Award Requirements

To be considered responsive and eligible for Award of a contract with DBE goals, a bidder should comply with the following requirements:

1. DBE Utilization Certification form (form not applicable to design-build projects), filled out and submitted as a supplement to the sealed bid proposal at the time of bid. It includes the name of the bidder (proposal holder) submitting bid, name of the project, name of the Disadvantaged Business Enterprise, their project role, the description of work the DBE will be performing, the amount subcontracted to DBE and the amount to be applied towards goal. If bidder is unsuccessful in their attempts to solicit sufficient DBE participation to meet the COA Contract goal, a good faith effort must be submitted in accordance with Section 1-02.9 of the Contract; and
2. DBE written confirmation, submitted within 48 hours of bid submission. The bidder fills out part A of the form, which includes the contract title, the bidder's business name, the DBE business name, the DBE description of work, the description of work the DBE will be performing, the amount subcontracted to DBE and the amount to be applied towards the goal. The DBE listed on the utilization certification form fills out and signs part B of the form, returns it to the bidder who then submits it to WSDOT. Failure to provide this written confirmation will result in the contractor's bid being deemed non-responsive.

After award and prior to execution, the prime contractor is required to provide the items below within 10 calendar days after the date of award via either fax, email or U.S. mail. Failure to comply shall result in the forfeiture of the bidder's proposal bond or deposit:

a. Correct business name, federal employee identification number (if available) and mailing address;
b. List of all bid items assigned to each DBE firm, including unit prices and total dollar value, with a clear description of the work to be performed;
c. Description of the partial items (if any) to be sublet to each successful DBE specifying the work committed under each item to be performed and including the dollar value of the DBE portion;
d. Total amounts shown for each DBE shall match the amount shown on the DBE Utilization Certification. A breakdown that does not conform to the DBE Utilization form or that demonstrates a different amount of DBE participation will be returned for correction; and
e. A list of all firms who submitted a bid or quote in attempt to participate in this project whether they were successful or not.

Once the documents listed above have been received, reviewed, and approved by the WSDOT OEO DBE team, the information is entered into the WSDOT Construction Contracts Information System (CCIS) and a CCIS report is generated. The WSDOT OEO office sends a memo to the WSDOT regional EEO indicating the DBE manager's approval or non-approval to the prime contractor's bid item breakout letter.

Washington State Department of Transportation

20180216 V4

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Request for Proposal

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Chapter 1: General Provisions

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1-01 Definitions and Terms

1-01.1 *General*

The following abbreviations and terms shall have the meanings set forth herein as they are used in the Contract Documents and Design Documents.

1-01.2 *Abbreviations*

1-01.2(1) Associations and Miscellaneous

AAA	American Arbitration Association
AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADA	Americans with Disabilities Act of 1990
ADO	Award Determination Official
ADR	Alternative Dispute Resolution
AGA	American Gas Association
AGC	Associated General Contractors of America
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
AMS	Aerospace Material Specification
ANSI	American National Standards Institute
APA	American Plywood Association
APE	Area of Potential Effect
API	American Petroleum Institute
APWA	American Public Works Association
ARA	American Railway Association
AREA	American Railway Engineering Association
ARTBA	American Road & Transportation Builders Association
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASNT	American Society for Nondestructive Testing
ASTM	American Society for Testing and Materials
AWPA	American Wood Protection Association

AWS	American Welding Society
AWWA	American Water Works Association
BAT	Bureau of Apprenticeship Training
BAFO	Best and Final Offer
BMP	Best Management Practice
CFR	Code of Federal Regulations
CLI	Chain Link Institute
CRAB	County Road Administration Board
CRSI	Concrete Reinforcing Steel Institute
CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise
DBIA	Design Build Institute of America
DIPRA	Ductile Iron Pipe Research Association
ECY	Washington State Department of Ecology
EEI	Edison Electric Institute
EEO	Equal Employment Opportunity
EIA	Electronic Industries Alliance
EPA	Environmental Protection Agency
EPD	Escrow Proposal Documents
ESAL	Equivalent Single Axle Loads
FHWA	Federal Highway Administration
FOP	Field Operating Procedure
FSS	Federal Specifications and Standards, General Services Administration
GBR	Geotechnical Baseline Report
GDR	Geotechnical Data Report
GP	General Purpose
HAC	High Accident Corridor
HAL	High Accident Location
HOT	High Occupancy Toll
HOV	High Occupancy Vehicle
HUD	United States Department of Housing and Urban Development
ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronics Engineers
IES	Illumination Engineering Society
IGA	Intergovernmental Agreement
IMSA	International Municipal Signal Association
ITE	Institute of Transportation Engineers
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
LID	Local Improvement District

LPI	Lighting Protection Institute
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MP	Milepost
MSHA	Mine Safety and Health Act
MUTCD	Manual on Uniform Traffic Control Devices
MTCA	Model Toxics Control Act
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
NPDES	National Pollution Discharge Elimination System
NRMCA	National Ready Mix Concrete Association
NTP	Notice to Proceed
OEO	Office of Equal Opportunity
OJT	On the Job Training
OMWBE	Office of Minority and Women's Business Enterprises
OSHA	Occupational Safety and Health Administration
PAL	Pedestrian Accident Location
PCA	Portland Cement Association
PPI	Plastic Pipe Institute
P/PCI	Precast/Prestressed Concrete Institute
QA	Quality Assurance
QPL	Qualified Products List
RAM	Request for Approval of Material
RCW	Revised Code of Washington (Laws of the State)
RFC	Released for Construction
RID	Road Improvement District
ROW	Right-of-Way
SAE	Society of Automotive Engineers
SATC	State Apprenticeship Training Council
SEPA	State Environmental Policy Act
SGDR	Supplemental Geotechnical Data Report
SOP	Standard Operating Procedure
SPCC	Spill Prevention, Control, and Countermeasures Plan
SPUI	Single Point Urban Interchange
SR	State Route
SSPC	Steel Structures Painting Council
STA	Station

TESC	Temporary Erosion and Sediment Control
TIA	Telecommunications Industry Association
TIB	Transportation Improvement Board
TR	Technical Requirements
TRB	Transportation Research Board
UL	Underwriters Laboratory
UDBE	Underutilized Disadvantaged Business Enterprise
ULID	Utility Local Improvement District
UMTA	Urban Mass Transit Administration
WAC	Washington Administrative Code
WAQTC	Western Alliance for Quality Transportation Construction
WCLIB	West Coast Lumber Inspection Bureau
WISHA	Washington Industrial Safety and Health Administration
WRI	Wire Reinforcement Institute
WSDOT	Washington State Department of Transportation
WWPA	Western Wood Products Association

1-01.2(2) Items of Work

Agg.	Aggregate
Al.	Aluminum
ATB	Asphalt Treated Base
BST	Bituminous Surface Treatment
CCTV	Closed Circuit Television
Cl.	Class
Cfm	Cubic Feet per Minute
Cfs	Cubic Feet per Second
Comb.	Combination
Conc.	Concrete
CPF	Composite Pay Factor
Crib.	Cribbing
Culv.	Culvert
cy or cu yd.	Cubic Yard
Diam.	Diameter
DBH	Diameter at Breast Height
ESAL	Equivalent Single Axle Loads
Est.	Estimate or Estimated
Excl.	Excluding
F	Fahrenheit
gph	Gallon per Hour
gpm	Gallon per Minute

HDPE	High Density Polyethylene
Hund.	Hundred
HMA	Hot Mix Asphalt
In.	Inch
Incl.	Including
ITS	Intelligent Transportation System
JMCIF	Job Mix Compliance Incentive Factor
JMF	Job Mix Formula
lb	Pound(s)
LED	Light Emitting Diode
LF or Lin. Ft.	Linear Foot (Feet)
LS	Lump Sum
M	Thousand
MBM	Thousand Feet Board Measure
MUTS	Minimum Ultimate Tensile Strength
PCCP	Portland Cement Concrete Pavement
PCPS	Precast/Prestressed
Pres.	Pressure
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
VC	Vitrified Clay
VFA	Voids Filled with Asphalt
VMA	Voids in Mineral Aggregate
VMS	Variable Message Sign

1-01.3 *Definitions*

1-01.3(1) Defined Terms

The following capitalized terms shall have the following meanings:

Active Traffic Management (ATM) – A system of signs, variable message signs, embedded loops, and associated support structures placed at approximately one-half mile intervals to reduce congestion and improve safety. The signs are able to display speed limits for each travel lane, display warning messages to drivers, or indicate that a lane is closed.

Alternative Technical Concept (ATC) - Concepts proposed by the Design-Builder and approved by WSDOT pursuant to the Instructions to Proposers which modify the Basic Configuration or other Contract requirements.

Appendix (Appendices) - Where referred to in the RFP (without other reference), the term Appendix (Appendices) refers to the documents listed in Appendix A1 of the Technical Requirements.

Applicable Law - All applicable laws, codes, rules, ordinances, restrictions, and regulations of the federal, State, regional, or any local government (including those resulting from the initiative or referendum process) and judicial or administrative orders which affect the acquisition of real property for, or the design, construction, operation, or maintenance of the Project including, without limitation, those relating to fire, safety, land use, health, labor, environmental protection, seismic design, conservation, traffic control, parking, handicapped access**,** zoning and building laws, codes, ordinances, rules, and regulations.

As Built Plans - Final drawings and specifications furnished by the Design-Builder, documenting the details and dimensions of the completed Work.

Authorized Utility -A facility that occupies the right of way under a franchise, permit or compensable right**.**

Basic Configuration - The following required elements shown in the Conceptual Plans and/or Pre-Approved Design Analyses, as such elements may have been modified (with WSDOT's permission) in the Proposal:

- ***$$1$$***

Betterment - With respect to the Technical Proposal, any item included in the Design-Builder's Technical Proposal that clarifies the Design-Builder's intention to exceed a requirement included in the Contract Documents.

Betterment (Utility) - With respect to a given Utility facility, any upgrading of such facility that is not attributable solely to the construction of the Project, and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, level of service, efficiency, duration, or function of the relocated or replaced or new facility over that which was provided by the existing facility; provided that the following are not considered Betterments:

1. Any upgrade necessary for safe and effective construction of the Project.
2. Replacement devices or materials that meet equivalent standards although they are not identical.
3. Replacement of devices or materials no longer regularly manufactured with the next highest grade or size.

4. Any upgrading required by applicable Governmental Rules.
5. Replacement devices or materials which are used for reasons of economy (e.g. non-stocked items may be uneconomical to purchase).
6. Any upgrading required by the Utility Owner's Utility Standards in effect as of the date of execution of the applicable Relocation Agreement.
7. Any discretionary decision by a Utility Owner contemplated within a particular Utility Standard.

Notwithstanding the foregoing, in case of any discrepancy between the determination of applicable Utility Standards or the definition of "Betterment" set forth above, and the determination of applicable Utility Standards or the definition of Betterment in the Relocation Agreement applicable to a particular Utility, the terms of the Relocation Agreement shall apply.

Broker - A business firm that provides a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for the performance of the Contract; or, persons/companies who arrange or expedite transactions.

Calendar Day - Any day, or portion of a day, on the calendar including Saturdays, Sundays, and legal holidays, beginning and ending at midnight.

Certified Business Description – Specific descriptions of work the DBE is certified to perform, as identified in the Certified Firm Directory, https://omwbe.diversitycompliance.com/.

Certified Firm Directory – A database of all Minority, Women, and Disadvantaged Business Enterprises, including those identified as a UDBE, currently certified by Washington State. The on-line Directory is available to Design-Builders for their use in identifying and soliciting interest from certified firms. OMWBE's Certification Management System webpage for the directory of Certified Firms is https://omwbe.diversitycompliance.com/.

Change Order - A written amendment to the terms and conditions of the Contract Documents issued in accordance with Section 1-04.4.

Cited References - Any standard or specification (including Mandatory Standards) applicable to the Project established by reference contained in the Contract Documents or Design Documents.

Code of Federal Regulations (CFR)- Regulations that implement and carry out the provisions of federal law relating to the administration of federal aid for highway.

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.

Commercially Useful Function (CUF) - 49 CFR 26.55(c)(1) defines commercially useful function as: "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect

to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors."

Completion Date/Completion - The meaning set forth in Section 1-08.5(3).

Conceptual Design - Preliminary design concept, including the required elements of the Basic Configuration, presented in Appendix M and in the conceptual Utility Relocation plans presented in Appendix U, if any.

Conceptual Plans - The plans included in Appendix M.

Contract - Depending on the context, either (a) the written agreement (Contract Form) between WSDOT and the Design-Builder and/or (b) the Contract Documents.

Contract Bond - The approved form of security furnished by the Design-Builder and the Design-Builder's Surety as required by the Contract that guarantees performance of the Work required by the Contract and payment to anyone who provides supplies or labor for the performance of the Work and performance as required under the warranty requirements of the Contract.

Contract Documents, Contract - The documents identified as such in the Contract Form.

Contract Form (Agreement Form) - The form provided by WSDOT that requires the authorized signatures of the Design-Builder and WSDOT to result in formal execution of the Contract.

Contract Price - The total amount payable by WSDOT to the Design-Builder for performance of the Work under the Contract, as stated in the Contract Form and as adjusted in accordance with the Contract.

Contract Schedule - The price-loaded critical path method schedule setting forth the plan for performance of the Work as described in Section 1-08.3 including the Baseline Contract Schedule and Monthly Contract Schedule Updates.

Contract Time - The period of time in Calendar Days, including adjustment thereto authorized by WSDOT, designated in the Contract Form for Substantial Completion of the Work. Contract Time shall begin on the first Calendar Day after the effective date of Notice to Proceed.

Cost Responsibility - A legal or contractual obligation requiring a Utility Owner to pay for Relocation Costs.

Critical Path - Each critical path on the Contract Schedule which ends on the contractual deadline for Substantial Completion (i.e. the term shall apply only following consumption of all available float in the schedule for Substantial Completion). The lower case term "critical path" shall generally mean the sequence of activities that shows the

longest path through the network that establishes the minimum overall duration for Completion of the Project.

DBE Manufacturer - A DBE firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract. A DBE Manufacturer shall produce finished goods or products from raw or unfinished material or purchase and substantially alters goods and materials to make them suitable for construction use before reselling them.

Deactivated Utility - A Utility facility no longer being used by the Utility Owner. The Utility Owner continues to maintain ownership and responsibility for the facility's disposition.

Description of Work - Specific descriptions of work that the DBE is certified to perform, as identified in the OMWBE Directory of Certified Firms, under the DBE's profile page.

Design-Builder - The firm, partnership, joint venture, or organization that contracts with the Washington State Department of Transportation to perform the Work.

Design-Builder Initiated Change - The meaning set forth in Section 1-04.4.

Design Documents - Documents that manifest the design for the Project developed by the Design-Builder or any portion, component, or element thereof.

Design File - The meaning set forth in the Technical Requirements.

Design Variance - A recorded decision by WSDOT granting approval to the Proposer or Design-Builder to differ from the design level specified in the *Design Manual*, such as an evaluate upgrade (EU) not upgraded, a design exception (DE), a Deviation, a project or corridor analysis, or an ADA maximum extent feasible (MEF) document.

Differing Site Conditions - The meaning set forth in Section 1-04.7.

Disadvantaged Business Enterprise (DBE) - A business firm certified by the Washington State Office of Minority and Women's Business Enterprises, as meeting the criteria outlined in 49 CFR 26 regarding DBE certification. A Underutilized Disadvantaged Business Enterprise (UDBE) firm is a subset of DBE.

Disputes Review Board (DRB) - Three member board created as part of the dispute resolution process pursuant to Section 1-09.11.

Engineer of Record (EOR) - The Design-Builder's engineer(s) who places their professional engineering seal on a document.

Environmental Laws - All Governmental Rules now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases, or threatened releases of hazardous, toxic, or dangerous waste, pollutant, contaminant, substance, or material into the environment including into the air, surface water, or ground water or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, or handling of hazardous, toxic, or dangerous waste, pollutant, contaminant, substance, or material, or

otherwise relating to the protection of public health, public welfare, public safety or the environment (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. ("CERCLA"), as amended by the Superfund Amendment and Reauthorization Act of 1986; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. ("RCRA"), as amended by the Solid and Hazardous Waste Amendments of 1984; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the National Environmental Policy Act, 42 U.S.C. §4321 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Hazardous Materials Transportation Uniform Safety Act; the Oil Pollution Act of 1990; the Endangered Species Act, 16 U.S.C. §1531 et seq.; the Federal Water Pollution Control Act, the Clean Water Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Migratory Bird Treaty Act, 16 U.S.C. §703 et seq.; Fish and Game Code §1600 et seq.; the Washington Model Toxics Control Act, Chapter 70.105D RCW; and the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; the Washington Water Pollution Control Act; the Clean Air Washington Act; the Washington Solid Waste Management laws; the Washington Underground Petroleum Storage Tanks Act, the Washington Industrial Safety and Health Act; the Washington Worker and Community Right to Know Act, and the Washington Oil and Hazardous Substance Spill Prevention and Response Act, all as amended and supplemented previously or in the future.

Environmentally Sensitive Areas - Wetlands, wetland buffers, streams, stream buffers, and jurisdictional ditches as depicted in the Conceptual Plans.

Escrowed Proposal Documents (EPD) - The documentary information used in preparation of the Proposal required to be placed in safekeeping as provided in Section 1-03.15.

Final Acceptance - Acceptance of the Contract and Work following Completion in accordance with Section 1-05.12.

Final Cleanup - The Work described in Section 1-04.11.

Final Contract Voucher Certification - DOT Form 134-146 available from WSDOT.

Final Design Documents - The Design Documents reflecting the final design for the Project, as reviewed by WSDOT.

Forward Compatible - Project elements that are constructed so they can be integrated into the ***$$2$$***, as shown on the Future Channelization Plan, without demolition or reconstruction of the elements.

Forward Compatibility - The degree in which elements are Forward Compatible.

Franchise/Permit Utility - A Utility that is installed in its existing location pursuant to a franchise or permit issued by WSDOT or a Governmental Body.

Future Channelization Plan - A channelization plan that illustrates the Project and the ***$$3$$***.

Geotechnical Baseline Report (GBR) - The Contract Document set forth in Appendix G identifying the geotechnical conditions that the Design-Builder should expect to encounter during underground and subsurface construction.

Geotechnical Data Report (GDR) - The written summary set forth in Appendix G of geotechnical surveying performed by WSDOT upon which WSDOT developed the Geotechnical Baseline Report.

Geotechnical Memoranda - Reference document(s), providing an interpretation of available geologic data and preliminary engineering analyses and recommendations that shall not be used for any of the following: form the basis for Design-Builder design, determine Differing Site Conditions, resolve contractual disputes, or in any way interpret the Contract, intents, or obligations of the parties.

GoLive/GoLive Date - The milestone when the new Toll System becomes operational to the traveling public and toll collection begins.

Good Faith Efforts - Efforts to achieve the UDBE Goal or other requirements of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Governmental Approvals - Any approval, authorization, certification, consent, exemption, filing, lease, license, permit, registration, or ruling, required by or with any Governmental Body in order to perform the Work or any Relocation work being performed by a Utility Owner, including any modification or supplement to any of the foregoing, but excluding (a) any such approvals relating to the work to be performed by other contractors as specifically described in the Contract Documents and (b) any such approvals required by or with a Governmental Body in its capacity as a Utility Owner.

Governmental Body - Any federal, state, local, or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body, or entity other than WSDOT.

Governmental Rules - All applicable federal, state, and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders, and decrees of any Governmental Body having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Owner. The term “Governmental Rule” does not include Governmental Approvals.

Hazardous Materials - Any (a) substance, product, waste, pollutant, contaminant, or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds, or inorganic compounds, as defined by any Environmental Law; (b) substance, product, waste, pollutant, contaminant, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to any Environmental Law; (c) substance, product, waste, pollutant, contaminant, or other material of any nature whatsoever which may give rise to liability under clause (a) or (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, or strict liability or under any reported decisions of a state or federal court; (d) petroleum hydrocarbons excluding de minimus amounts and excluding petroleum hydrocarbon products contained within regularly operated motor

vehicles; and (e) hazardous building materials including but not limited to asbestos or asbestos-containing materials, lead or PCBs in structures and/or other improvements on or in the Site or in subsurface artifacts (other than mineral asbestos naturally occurring in the ground). The term "Hazardous Materials" includes Hazardous Waste.

Hazardous Materials Management - Sampling, stock-piling, treatment, clean-up, remediation, transportation, and/or off-Site disposal of Hazardous Materials, whichever is the most cost effective approach authorized under applicable Governmental Rules and/or Environmental Law.

Hazardous Waste - Waste as defined in 40 C.F.R. Part 261.

High Occupancy Toll (HOT) Lane - A traffic lane that is managed using a dynamic pricing system.

Impact Area Line - The line depicted in the Conceptual Plans (Appendix M) that defines the limit of the permitted footprint of the Project as described in Technical Requirements Section 2.8.

Interim Channelization Plan - A channelization plan developed by the Design-Builder related to temporary conditions such as temporary alignment, stage construction, temporary by-pass, and other conditions as required. For the Project, this includes ***$$4$$***.

Incidental Utility Work - Includes all of the following Work necessary for the construction of the Project:

1. Service Line Relocations.
2. The adjustment of Utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway Work.
3. All Work necessary to remove or deactivate in place any Utility that was taken out of service prior to the Proposal Due Date, in accordance with TR Section 2.10, *Utilities and Relocation Agreements*.

Indemnified Parties - The meaning set forth in Section 1-07.14(1).

Independent Assurance (IA) - The meaning set forth in TR Section 2.28, *Quality ManagementPlan*.

Inspector - The Design Builder's representative who inspects Contract performance in detail.

Instructions to Proposers - The WSDOT-issued document included in the RFP, providing instructions regarding the preparation and submission of the Proposal.

Intelligent Transportation Systems (ITS) - All components and equipment referenced as such in the TR.

Intergovernmental Agreement (IGA) -An agreement between WSDOT and another Governmental Body that is included in the RFP, which addresses Utility Work, roadway design, engineering studies, construction, maintenance, or other services, as the same may be amended. IGAs pertaining to roadway design or engineering studies are located

in Appendix O. IGAs pertaining to maintenance are located in Appendix Q. IGAs pertaining to Utility Work are located in Appendix U.

Interpretive Engineering Decision - The meaning given in Section 1-03.5.

Key Personnel - The personnel described in the Request For Qualifications (RFQ).

Legal Requirements - All applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders, and decrees of any Governmental Body having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Owner. The term "Legal Requirements" does not include Governmental Approvals.

Licensed Professional Engineer- Licensed in the State of Washington under Title 18 RCW.

Local Agency - A Governmental Body that is not a federal or state government.

Major Participants - The entities described in the RFQ.

Major Underground Utility - Any Utility that is buried or placed below ground, other than Service Lines, any street lighting, traffic signals, or irrigation facilities.

Mandatory Standards - The standards and specifications identified as such in the Technical Requirements.

Minority Business Enterprise (MBE) - A minority owned business meeting the requirements of RCW 39.19 and WAC 326-20 and certified by the Washington State Office of Minority & Women's Business Enterprises.

Necessary Basic Configuration Change - Any change in the Basic Configuration which is necessary to correct an error, omission, inconsistency or other defect in the Basic Configuration (with the understanding that a change shall be deemed "necessary" only if the error, omission, inconsistency or other defect creates a conflict with other Contract requirements or another problem that cannot be corrected without a material change in the Basic Configuration).

Nonconforming Work - Work performed that does not meet requirements of the Contract Documents.

Notice to Proceed (NTP) - The written authorization issued by WSDOT that permits the Design-Builder to commence performance of the Work.

Peer Review - An independent review and assessment of elements of work to meet the performance requirements of the work element. The Peer Review shall be performed by a Peer Reviewer.

Peer Reviewer - An independent expert reviewer who performs the Peer Review. The Peer Reviewer shall not be an employee of the Design-Builder or any firm providing engineering for the Design-Builder. The Peer Reviewer shall report to the Design Quality Assurance Manager.

Person - Any individual, corporation, company, limited liability company, voluntary association, partnership, trust, unincorporated organization, or Governmental Body.

Physical Completion Date, Physical Completion - The meaning set forth in Section 1-08.5.

Plain Language - is writing designed to ensure the reader understands as quickly, easily, and completely as possible.

Pre-Approved Design Variances - Design Variances identified by WSDOT in the Technical Requirements as being required to accomplish the Basic Configuration that differ from WSDOT established standards required in the Contract Documents.

Pre-Approved Deviations - Deviations identified by WSDOT in the Technical Requirements as being required to accomplish the Basic Configuration that differ from WSDOT established standards required in the Contract Documents.

Prior Relocation - Utility Relocations to be undertaken by either the Utility Owner or a third party contractor identified as such in TR Section 2.10, *Utilities and Relocation Agreements*.

Prior Relocation Agreement - An agreement (as the same may be amended) between WSDOT and a Utility Owner, included in the RFP and addressing a Prior Relocation. A document is a "Prior Relocation Agreement" if it meets the definitions set forth herein, without regard to the title of the document.

Private Utility - A Utility that is owned or operated by a Private Utility Owner.

Private Utility Owner - A Utility Owner that is not a Public Utility Owner.

Project - The ***$$5$$*** Project.

Project Specifications - Specifications necessary to address Work not covered by the *Standard Specifications*, Amendments to the *Standard Specifications*, Special Provisions, or the Technical Requirements.

Proposal - The proposal submitted by the Design-Builder in response to the Request for Proposal, including the Price Proposal, the Technical Proposal, and all clarifications and supplements thereto.

Proposal Due Date - The date specified for delivery of Proposals in the Instructions to Proposers.

Proposal Price - The total price for performance of the Work set forth in the Proposal.

Protection in Place or Protect in Place - Any action taken to avoid damaging a Utility which does not involve removing or reinstalling it in a new location, including staking the location of the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection in Place; whereas temporarily moving power lines to another location after cutting them would be considered a Temporary Relocation. The term includes both temporary measures and permanent installations meeting the foregoing definition.

Public Utility - A Utility that is owned or operated by a Public Utility Owner.

Public Utility Owner - A Utility Owner that is a Governmental Body.

Qualification (Personnel) - The characteristics or abilities gained through documented training, documented experience, or both, as measured against established standards, written tests, and/or performance tests that qualify an individual to perform a required function.

Quality Assurance (QA) - All those planned and systematic actions performed by the Design-Builder to demonstrate to WSDOT that the Work complies with the Contract and that all elements of the Work will perform satisfactorily for the purpose(s) intended.

Quality Assurance Sample - Samples and testing for Quality Assurance performed under the direction of or by the Construction QA Manager. These tests and samples are for materials acceptance and documentation of the materials quality.

Quality Assurance Team - A joint Design-Builder and WSDOT team effort responsible for reviewing and responding to all quality issues.

Quality Control (QC) - The total of all activities performed by the Design-Builder to assess design, production, and construction processes so as to control the level of quality being produced in the end product. Components may include design reviews and checks, establishing procedures, calibrations and maintenance of equipment, shop drawing review, document control, production process control, and any sampling, testing, and inspection done for these purposes.

Quality Control Sample - Samples and testing performed by the Design-Builder's Quality Control, the producer, or the manufacturer to ensure that a product is of uniform quality meeting the requirements of the Contract.

Quality Management Plan (QMP) - The plan, developed by the Design-Builder, which identifies the Design-Builder's overall framework for implementation of its Quality Control and Quality Assurance programs across all aspects of the Project.

Quality Verification (QV) - A combination of inspections, independent sampling, and testing performed by WSDOT, or their agent, on a random basis to validate that the Design-Builder is following the approved QA procedures and that such procedures appear to be effective in assuring quality.

Reasonable Accuracy - The meaning set forth in Section 1-07.17(9).

Reference Documents - Reference Documents are for information purposes only and the Design-Builder shall rely upon Reference Documents at its own risk. Reference documents are designated as such by WSDOT in Appendix A1.

Regular Dealer (DBE) - A DBE firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a Regular Dealer, the DBE firm shall engage in, as its principal business and in its own name, the purchase and sale of the products in question. A Regular Dealer in such items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as Regular Dealers within the meaning of this definition.

Related Entity - The Design-Builder, Subcontractors, and their employees, agents and officers and all other Persons for whom the Design-Builder may be legally or contractually responsible.

Released for Construction (RFC) Documents - The Design Documents stamped "Released for Construction" by the Design-Builder.

Relocation/Relocate - Each removal, relocation, reconstruction, deactivation, Temporary Relocation, provision of temporary services as necessary, or Protection in Place (whether permanent or temporary), of any existing Utility facility that is necessary in order to accommodate or permit construction of the Project, including backfilling and pavement restoration, and any other Work with respect to such a Utility described in the Technical Requirements or with respect to Utilities in Section 1-07.17.

Relocation Agreement - An agreement (as the same may be amended from time to time) between the Design-Builder and a Utility Owner that provides specific details for the Relocation of one or more particular Utilities. A document is a "Relocation Agreement" if it meets the definition set forth herein, without regard to the title of the document.

Relocation Costs - The direct and indirect costs of performing Relocation Work (including costs incurred by Utility Owners for acquisition of necessary Utility Easements, permit processing fees, and administrative and overhead costs) after applying any customary credits for salvage, depreciation, or both. If the Design-Builder is obligated to reimburse a Utility Owner for Relocation Costs, the term shall encompass all costs that the Relocation Agreement specifies are reimbursable. Costs attributable to Betterments are specifically excluded from the term.

Relocation Work - The Work necessary for Relocation of Utilities to accommodate the Project (excluding any Work necessary for the Prior Relocations that is completed before issuance of the Notice to Proceed), whether performed by the Design-Builder or by or on behalf of the Utility Owner, including labor, equipment, and materials associated with the design, design review, construction, construction management, permit processing, inspection, and real property acquisition.

Request for Proposals (RFP) - The document package issued by WSDOT requesting submittal of proposals for the Project and providing information relevant to the preparation and submittal of proposals, including the Instructions to Proposers, Contract Documents, and Reference Documents.

Review and Comment - The process for review, comment, and resolution of comments on the Design-Builder's submittals in accordance with the Design-Builder's responsibility for Work. Refer to Section 1-07.13 of the General Provisions.

Right-of-Way - Land, property, or property interest, usually in a strip, acquired for or devoted to transportation purposes. The term specifically excludes any Utility Easements and any temporary easements or other real property interests outside of the access control line which the Design-Builder deems necessary or advisable in connection with (a) construction of the Project and/or (b) Relocations.

Secretary of Transportation - The chief executive officer of WSDOT.

Service Line - A line, also referred to as a service lateral or lateral, the function of which is to directly connect the improvement(s) on an individual property, to a Utility that is part of a larger line, facility, or system. Unless noted otherwise in the Technical Requirements, the term Service Line excludes any cable, conduit, or other line that connects a Traffic Control/Illumination System to a Utility that is part of a larger line, facility, or system. Such a cable, conduit, or other line shall be considered to be part of the applicable Traffic Control/Illumination System. A Utility providing service to wireless communication facilities shall not be considered a Service Line.

Significant Revision - Modifications to RFC plans or documents during construction that require typical standard of care EOR approval such as engineering calculations, modifications to drawings, or Change Orders.

Site of Work/Site - Those areas designated by WSDOT for performance of the Work and such additional areas as may be designated in writing by WSDOT for the Design-Builder's use in performance of the Work.

Small Business – A business meeting the Washington State requirements for a "Small business", "Minibusiness" or "Microbusiness" as defined in RCW 39.26.010 and included on the WSDOT Office of Equal Opportunity list of Small Businesses at www.wsdot.wa.gov/equalopportunity/bddirectory.htm.

Special Provisions - WSDOT developed modifications to the *Standard Specifications* listed in Appendix B. The Engineer of Record shall incorporate applicable Special Provisions into the Technical Specifications. The index includes an explanation of when the specification is applicable.

Specialty Report - A complex hydraulic report as defined in Chapter 1 of the *WSDOT Hydraulics Manual*.

Standard Plans - A manual of specific plans or drawings adopted by WSDOT such as the *Standard Plans for Road, Bridge, and Municipal Construction* M 21-01, which show frequently recurring components of work that have been standardized for use.

Standard Specifications - Divisions 2 through 9 of the *Standard Specifications for Road, Bridge and Municipal Construction* M 41-10: published by WSDOT, subject to the modifications set forth in Section 1-03.3 and any modifications contained in the Special Provisions. Division 1 of said publication is superseded in its entirety by these General Provisions.

State - The State of Washington acting through its elected officials and their authorized representatives, including, but not limited to, WSDOT, or the State of Washington in the geographic sense, depending on the context.

Statistical-based Verification - Verification of the Design-Builder's QA test results through statistical comparison, performed by the Design-Builder, with WSDOT's Quality Verification (QV) test results.

Statistical Acceptance - A statistical analysis performed by the Design-Builder, of the Design-Builder's QA test results for compliance with material specifications.

Subcontract - An agreement between the Design-Builder and one or more third parties providing for such third party to perform any part of the Work or any such agreement between a Subcontractor and its lower tier Subcontractor, at any tier.

Subcontractor/Subconsultant- An individual, partnership, firm, corporation, or joint venture who is sublet part of the Contract by the Design-Builder. Suppliers and materialmen are excluded from the term.

Substantial Completion Date, Substantial Completion - The meaning set forth in Section 1-08.5.

Substantially Completed Design Milestone - The date when substantial portion of the design of the Project is complete and all DBE subcontracts commitments have been made with completed DBE Utilization Certification Form(s).

Subsurface Utility Engineering or SUE - An engineering process for accurately identifying the quality of subsurface utility information needed for highway plans, and for acquiring and managing that level of information during the development of a highway project.

Supplemental Geotechnical Data Report (SGDR) - The Contract Document developed pursuant to the ITP that contains factual subsurface data collected prior to the Proposal Due Date, and which is included in Appendix G.

Surety - The company(ies) bound with the Design-Builder 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.

Technical Proposal - The part of a Proposal designated as such in the Instructions to Proposers.

Technical Requirements (TR) - Chapter 2 of the Request for Proposal document package.

Technical Specifications - All specifications developed, assembled, and used by the Engineer of Record.

Temporary Relocation - (a) Any interim relocation of a Utility (i.e., the installation, removal, and disposal of the interim facility) pending installation of the permanent facility in the same or a new location, and (b) any removal and reinstallation of a Utility in the same place with or without an interim relocation.

Toll Equipment - The Toll System elements that shall be designed, procured, installed, and tested by the Toll Vendor. This equipment includes, but is not limited to antennas, readers, and Toll Equipment servers. Refer to the *Illustrative Toll Zone* (Appendix I) for an illustration of a typical Toll Zone.

Toll Gantry - The structure on which the over-the-lane Toll Equipment shall be installed. The Toll Gantry shall be designed, procured, installed, and tested by the Design-Builder.

Toll Infrastructure - The Toll System elements that shall be designed, procured, built, and tested by the Design-Builder. As described elsewhere, these elements shall include, but are not limited to, all signs, TRS, striping, Toll Gantries, roadside toll cabinets, toll reader equipment cabinets and electrical and communications connections.

Toll Infrastructure Completion/Toll Infrastructure Completion Date - The date on which all required testing, inspection and correction of any non-compliant Toll Infrastructure is completed by the Design-Builder and all Toll Zones are made available to the Toll Vendor for Toll Equipment installation and testing.

Toll Rate Sign (TRS) - This sign will convey to drivers the current price to use the ***$$6$$***. The sign will be comprised of static and electronic displays.

Toll System - The new ***$$7$$*** facility constructed within the Project Limits, including all necessary equipment and subsystems.

Toll Vendor - A vendor procured by WSDOT to design, procure, install, test, and maintain the Toll Equipment.

Toll Zone - The specific location(s) along the ***$$8$$*** where vehicles are detected, identified, and assessed a toll. The Toll Zone may consist of one or more Toll Gantries holding Toll Equipment, roadside toll cabinets, toll reader equipment cabinets, associated electrical and communications equipment, induction loops, and other equipment as needed to operate the Toll System.

Traffic Control/Illumination Systems - These systems include traffic signals, ramp metering systems, flashing beacon systems, highway illumination systems (including streetlights), fire or police signal systems, and Intelligent Transportation Systems, regardless of ownership of such system.

Type #1 Utility - A Utility for which the Utility Owner has Cost Responsibility.

Type #2 Utility - A Utility for which the Utility Owner does not have Cost Responsibility.

Underutilized Disadvantaged Business Enterprise (UDBE) – A DBE Firm that is underutilized based on WSDOT's Disparity Study. All UDBEs are DBEs.

UDBE Commitment - The dollar amount that the Design-Builder indicates they will be subcontracting to certified UDBEs as shown in the UDBE Performance Plan submitted with the Design-Builder's Proposal, and for subsequent work opportunities arising from this project. This UDBE Commitment amount will be incorporated into the Contract and shall be considered a Contract requirement. Any changes to the UDBE Commitment shall require WSDOT's approval.**UDBE Goal -** An assigned numerical percentage of the Proposal Price. This is the minimum amount that the Proposer shall commit to by submission of the UDBE Performance Plan including Good Faith Efforts. The UDBE Goal will also be applied to Change Orders associated with this Contract.

UDBE Performance Plan - The plan submitted by Design-Builder with its Proposal pursuant to the Instructions to Proposers.

Utility (ies) - A privately, publicly, or cooperatively owned line, facility, or system (including municipal and/or government lines, facilities, and systems but excluding WSDOT owned lines, facilities, or systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any irrigation system. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines) shall be considered part of such Utility. However, unless noted otherwise

in the Technical Requirements, the term "Utility" or "utility" excludes (a) storm water facilities that provide drainage solely for the Project ROW, (b) Traffic Control/Illumination Systems, and (c) facilities that are the subject of a wireless communication site lease. Without limitation, any Service Line shall be considered a Utility regardless of the ownership of such Service Line.

Utility Agreement - The meaning set forth in Section 1-07.17(2). A document is a "Utility Agreement" if it meets the definition set forth herein, without regard to the title of the document.

Utility Delay - The meaning set forth in Section 1-07.17(12) as the context may require.

Utility Easement - A permanent replacement easement or other interest in real property outside the Project Right-of-Way (excluding a franchise or permit) that is necessary for Relocation.

Utility Information - The information regarding Utilities included in Appendix U, the information about known Utilities included in TR Section 2.10, *Utilities and Relocation Agreements*, and any other information WSDOT includes in the RFP with regard to identification, location, size, type, and ownership of Utilities. In the event of any conflict within the various components of the Utility Information, the more accurate information will prevail.

Utility MOU - A non-binding agreement or memorandum of understanding (as the same may be amended) between WSDOT and a Utility Owner establishing certain understandings as to the Relocation of such Utility Owner's Utilities as necessary for the Project. A document is a "Utility MOU" if it meets the definition set forth herein, without regard to the title of the document. Utility MOU's, if any, are located in Appendix U.

Utility Owner - Any entity or body (including city, county, state, public corporation, or public district) that owns and/or operates a Utility, including cooperative utilities.

Utility Owner Project - The design and construction by or at the direction of a Utility Owner of a new Utility other than (a) as part of Relocation or (b) to provide service to the Project. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

Utility Standards - The standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities constructed by the Utility Owner (or for the Utility Owner by its contractors) at its own expense and that are comparable to the Utilities being Relocated for the Project.

Utility Work - All Relocation Work that is the Design-Builder's responsibility pursuant to the Contract Documents, as more particularly described in Section 1-07.17 and TR Section 2.10, *Utilities and Relocation Agreements*.

Veteran Business – A veteran owned business meeting the requirements of RCW 43.60A.010 and included on the WSDOT Office of Equal Opportunity list of Veteran Businesses at www.wsdot.wa.gov/equalopportunity/bddirectory.htm

Washington State Department of Transportation (WSDOT) - The State Agency authorized by law to administer transportation-related work.

Women Business Enterprise (WBE) – A women owned business meeting the requirements of RCW 39.19 and WAC 326 and certified by the Washington State Office of Minority & Women's Business Enterprises.

Work - All of the administrative, design, engineering, real property acquisition support services, utility support services, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, inspection, labor, materials, equipment, maintenance, documentation, and other duties and services to be furnished and provided by the Design-Builder as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance, except those efforts which the Contract Documents specify will be performed by WSDOT or other persons. In certain cases, the term may also be used to mean the products of the Work.

Working Drawings - Drawings, plans, diagrams, or any other supplementary data or calculations, including a schedule of submittal dates for Working Drawings where specified, which the Design Builder must submit to the WSDOT Engineer.

WSDOT Engineer - The WSDOT representative responsible for making decisions on behalf of WSDOT as outlined in the Contract.

1-01.3(2) Other Definitions

The following terms, whether lower cased or capitalized, shall have the following meanings:

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.

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, an embankment that replaces unsuitable foundation soil beneath the bridge approach embankment.

Final Inspection - Inspection by WSDOT of the construction Work to determine whether the Work conforms to the requirements of the Contract Documents and is complete. Final Inspection of warranted Work will be made at the end of the warranty term.

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.

Hold Point - Mandatory inspection points identified in the Design-Builder's QMP beyond which Work cannot proceed until required QA inspection has been performed and a written release is granted by the Design-Builder's Quality Assurance organization. The Design-Builder shall provide WSDOT with a notification period of 3 Calendar Days prior to the identified Work proceeding to provide WSDOT with the opportunity to witness the Work.

Originator - The engineer, architect, planner, designer, or other Person who develops a specific document. In the case of drawings, the Originator is the individual who provides the design information, sketches, and instructions to the drafter.

Punch List - The list of Work that remains to be completed after achievement of Substantial Completion as a condition precedent to achievement of Physical Completion, limited to minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety, use, or operability of the Project.

Roadbed - The graded part of the roadway within top and side slopes, prepared as a foundation for the pavement structure and shoulders.

Roadway - The portion of the right-of-way within the outside limits of the side slopes.

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.

Structures - Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, service pipes, sewers, underdrains, foundation drains, noise walls, drainage vaults, and other features found during Work that WSDOT determines should be classified 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.
2. The bottom of the block supporting the girder.
3. Arch skewbacks and construction joints at the top of vertical abutment members or rigid frame piers and extending.

Superstructure - The part of the structure above:

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

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

(a) From the face of end diaphragm abutting the bridge approach embankment for end piers without expansion joints.

(b) 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.

Traveled Way - The part of the roadway made for vehicle travel excluding shoulders and auxiliary lanes.

Warranty - An assurance by the Design-Builder that the Work is free of defects, conforms to Professional Engineering Principles in the State of Washington, and meets the requirements of the Contract Documents in which the Design-Builder agrees to repair or replace Work or items that are defective or do not meet the requirements of the Contract for a defined period.

1-02 Certifications and Representations

1-02.1 *Responsibility For Design*

It is the intent of the Contract Documents that the Design-Builder undertake full responsibility for delivery of the Project. The Contract Documents do not provide details of the design necessary to carry out the intent of the Contract Documents. Such detailed designs are the sole responsibility of the Design-Builder to develop. If the Contract Documents omit or misdescribe the Work necessary to be performed in order to deliver the Project in accordance with the intent of the Contract Documents and the standards and criteria for performance of the Project, the Design-Builder shall not be excused from performing such omitted Work (no matter how extensive) or misdescribed details of the Work, and such Work shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed by the Contract Documents.

Design-Builder specifically acknowledges and agrees that:

(a) The Conceptual Design is preliminary and conceptual in nature and has not been signed or sealed.

(b) The Design-Builder is responsible for correcting any errors, omissions, inconsistencies, and other defects in the Conceptual Design through the design and/or construction process. There will be no increase in the Contract Price or extension of the Contract Time for correcting any errors, omissions, inconsistencies, and other defects in the Conceptual Design, except as provided herein with respect to Necessary Basic Configuration Changes.

(c) The Design-Builder's warranties and indemnities hereunder cover errors, omissions, inconsistencies, and other defects in the Project, even though they may be related to errors, omissions, inconsistencies, and other defects in the Conceptual Design, except as otherwise provided herein with respect to Necessary Basic Configuration Changes.

Notwithstanding anything in the Contract Documents to the contrary, no field explanations or interpretations provided by WSDOT at any meetings, and no comments by WSDOT on Design Documents or Released for Construction Documents, shall be deemed, construed, or interpreted to (a) amend, supersede, or alter the terms, requirements, limitations, or meaning of any Contract Document or (b) release or relieve the Design-Builder from full responsibility for the design of the Project in accordance with the Contract Documents. (However, written Interpretive Engineering Decisions from WSDOT pursuant to Section 1-03.5 may be relied upon to provide information, clarifications and interpretations of ambiguous or uncertain design requirements set forth in the Contract Documents.)

1-02.2 *Disclaimer Regarding Documentation*

The Design-Builder is not entitled to rely on any document or information provided by WSDOT, except to the extent expressly provided otherwise in the Contract Documents. The Design-Builder may rely on the Conceptual Design only to the extent it describes the Basic Configuration. WSDOT does not represent or warrant that the information

contained in the Conceptual Design is either complete or accurate or that such information conforms to the requirements of the Contract Documents, except as otherwise provided herein with respect to the Basic Configuration. Unless stated otherwise in the Contract, the Design-Builder is not entitled to rely on the Reference Documents.

The Design-Builder understands and agrees that WSDOT shall not be responsible or liable in any respect for any loss, damage, cost, or expense whatsoever suffered by the Design-Builder or any Related Entity by reason of any use of any information contained in the Conceptual Design or Reference Documents or any action or forbearance in reliance thereon, except to the extent that the Contract Documents provide that the Design-Builder shall be entitled to an increase in the Contract Price and/or extension of Contract Time with respect to such matter. The Design-Builder further acknowledges and agrees that (a) if and to the extent the Design-Builder or anyone on the Design-Builder's behalf uses any of said information in any way, such use is made on the basis that the Design-Builder, not WSDOT, has approved and is responsible for said information, and (b) the Design-Builder is capable of conducting and is obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at the Design-Builder's own risk and at its own discretion.

1-02.3 *Design Professional Licensing Requirement*

All design services furnished by the Design-Builder shall be performed by or under the supervision of personnel licensed to perform such services in accordance with Washington law, by personnel who are careful, skilled, experienced, and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and Released for Construction Documents prepared or checked by them.

WSDOT does not intend to contract for, pay for, or receive any design services that are in violation of any professional licensing laws, and by execution of the Contract Form, The Design-Builder acknowledges that WSDOT has no such intent. It is the intent of the parties that the Design-Builder is fully responsible for furnishing the design of the Project through Subcontracts with licensed design firm(s) as provided herein. References in the Contract Documents to the Design-Builder's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that the Design-Builder shall "furnish" the design for the Project. The terms and provisions of Section 1-02.3 shall control and supersede every other provision of all Contract Documents.

1-02.4 *Examination of Site of Work*

1-02.4(1) General

The Design-Builder has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, reviewed all attached and referenced documents provided by WSDOT, including the GDR, GBR, SGDR (if any), and hydrology reports (if any); inspected and examined the Site and surrounding

locations; and undertaken other appropriate activities sufficient to familiarize itself with surface and subsurface conditions discernible from the surface affecting the Project, to the extent necessary for submittal of a Proposal. As a result of such review, inspection, examination, and other activities; the Design-Builder is familiar with and accepts the physical requirements of the Work, including:

1. The nature and location of the Work.
2. The general and local conditions which can affect the Work or its cost, including:
   (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.
   (f) The Site biological hazards and associated physical hazards.
3. 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), the GDR, GBR, SGDR (if any), as well as from the RFP and information made a part of the Contract.
4. The adequacy of time allowed for the completion of the Work.

The Design-Builder is solely responsible for all Site conditions discoverable from a reasonable Site examination. The Design-Builder further acknowledges and agrees that changes in conditions at the Site may occur after the date hereof, and that the Design-Builder shall not be entitled to any increase in compensation or time extension in connection therewith except as specifically permitted by the Contract. Proposal submission will be considered conclusive evidence that the Proposer has determined that it has performed a reasonable Site investigation.

The actual locations, shape, and other geometrics of the Project features will be determined by the Design-Builder within certain constraints set forth in the Contract. Before commencing any Work on a particular aspect of the Project, the Design-Builder shall verify all governing dimensions at the Site and shall examine all adjoining work which may have an impact on such Work. The Design-Builder shall ensure that the Design Documents and Released for Construction Documents accurately depict all governing and adjoining dimensions and conditions.

It is the Design-Builder's responsibility to make interpretations and draw conclusions with respect to the character of the geotechnical materials encountered and their impact upon its Work, and perform additional explorations and testing, both prior to bid and post-award, to supplement the GBR, GDR, and SGDR(if any) data to design the Project elements.

Any failure of the Design-Builder to take the actions described and acknowledged in this clause shall not relieve the Design-Builder from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or from performance of the Work without additional expense to WSDOT.

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

The Design-Builder shall be familiar and comply with all Federal, State, Tribal, and local laws, ordinances, and regulations which might affect the Work or those engaged in the performance of the Work. WSDOT will not consider any plea of misunderstanding or ignorance of such requirements.

The Contract Price reflects the cost of completing the Work, including but not limited to design, engineering, jobsite and home office overhead, temporary facilities, methods, materials, labor, and equipment. Except as the Contract may provide, the Design-Builder shall receive no payment for any costs in excess of the Contract Price.

Prospective Proposers 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).
2. The State Industrial Insurance (administrated by the Washington State Department of Labor and Industries).

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

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

1. The Design-Builder discovers an ambiguity but fails to notify WSDOT.
2. The Design-Builder failed to discover a patent ambiguity that would be discovered by a reasonably prudent design-build contractor in preparing its Proposal.

1-02.4(2) Subsurface Information

WSDOT has made subsurface investigation of the Site of the proposed Work and has provided the results in the GBR, GDR, and SGDR (if any). However, WSDOT makes no representation or warranty expressed or implied that:

1. The Design-Builder's interpretations from the boring logs are correct.
2. The ground at the location of the borings has not been physically disturbed or altered after the boring was made.

The GBR describes the baseline geotechnical conditions that the Design-Builder should expect to encounter during subsurface construction Work. Whenever there is an inconsistency between geotechnical conditions described in the GBR and the information in the GDR or SGDR (if any), then the geotechnical conditions described in the GBR shall take precedence, and shall be the geotechnical conditions against which actual

geotechnical conditions encountered are compared for the purpose of determining if a Differing Site Condition exists. Design-Builder acknowledges that the Contract Price and the Contract Schedule were developed with full consideration given to the contents of the GBR, GDR, and SGDR (if any), and that it shall not be entitled to an adjustment in the Contract Price or Contract Time as the result of encountering conditions consistent with those described.

The availability of subsurface information from WSDOT shall not relieve the Design-Builder from any risks or of any duty to make examinations and investigations as required by Section 1-02.4(1) or any other responsibility under the Contract or as may be required by law.

The geotechnical information in the RFP does not represent Site conditions for an ATC. As noted in the ITP, the Design-Builder is responsible for conducting its own geotechnical investigation, prior to the Proposal due date, for changes to the Conceptual Design or Basic Configuration, if any, that are approved as part of any ATC included in the Proposal. As part of the ATC, the Design-Builder shall identify and include geotechnical baselines. The Design-Builder proposed baselines shall be the geotechnical conditions against which actual geotechnical conditions encountered are compared for the purpose of determining if a Differing Site Condition exists. The geotechnical investigation, including the geotechnical baselines accepted by WSDOT as part of an approved ATC incorporated in a Proposal will form the basis upon which Differing Site Conditions will be addressed pursuant to Section 1-04.7 for Work implemented as part of said ATC.

1-02.5 *Further Assurances*

The Design-Builder shall promptly execute and deliver to WSDOT all such instruments and other documents and assurances as are reasonably requested by WSDOT to further evidence the obligations of the Design-Builder under the Contract Documents, including assurances regarding the assignments of Subcontracts contained herein.

1-02.6 *VACANT*

1-02.7 *VACANT*

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 any collusion, or otherwise taken any 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 Proposal package will make the bid nonresponsive and not eligible for award consideration." In addition, 23 CFR 635.112(f)(1) requires that WSDOT 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 Proposal, the bidder will be deemed to have signed and agreed to the requirements of the Noncollusion Declaration.

1-02.8(2) Lobbying certification

Section 319 of Public Law 101-121 prohibits payment of federal funds for contract lobbying by the Design-Builder and any Subcontractor whose contract exceeds $100,000. A Certification for Federal-Aid Contracts (Form DOT 272-040) is provided in the Proposal form for contracts exceeding $100,000 to address this requirement.

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

The Design-Builder shall ensure that a Certification for Federal-Aid Contracts (Form DOT 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 Design-Builder 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 federally appropriated funds have been paid or will be paid to any Person for influencing or attempting to influence an officer or employee of any 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 Design-Builder shall complete and submit to WSDOT the Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with the instructions on the form. Any Subcontractor or lower tier Subcontractor whose contract exceeds $100,000 shall disclose in the same manner as the Design-Builder, except that, Standard Form LLL shall be submitted to the Design-Builder for processing to WSDOT.

Audits will be conducted to ensure compliance with this Section. The Certification for Federal-Aid Contracts (Form DOT 272-040) may be reproduced from the Proposal form. The disclosure form is available from WSDOT's Contract Ad & Award Office, Transportation Building, Olympia, Washington.

1-03 Interpretation of Contract Documents

1-03.1 *Contract Documents*

Each of the Contract Documents identified in the Contract Form is an essential part of this Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete contract.

Unless provided otherwise in the Contract, Reference Documents are for information purposes only and the Design-Builder shall rely upon Reference Documents at its own risk.

In the event that a Reference Document or Cited Reference is called out in the Contract Documents as a mandatory requirement then the Reference Document or Cited Reference shall be deemed incorporated in the Contract Documents to the extent that it is so referenced, with the same order of precedence as the highest level Contract Document in which the reference occurs. Addenda and approved, incorporated ATCs shall be addressed at the same order of precedence as the Contract Document to which the addendum or ATC applies.

1-03.2 *Order of Precedence*

Should conflicts appear between any of the following parts of the Contract, a listed part shall take precedence over all those listed below it:

1. Change Orders and supplemental agreements.
2. The Design Build Contract (Contract Form), excluding Exhibit B - WSDOT Identified Betterments.
3. WSDOT Identified Betterments (Exhibit B), from the Design-Builder's Proposal.
4. General Provisions – RFP Chapter 1.
5. Technical Requirements – RFP Chapter 2.
6. All other Documents listed as Contract Documents in RFP Appendix A1.
7. Design-Builder's Proposal.

Notwithstanding the order of precedence listed above:

1. Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document.
2. In the event of a conflict among any Mandatory Standards, the order of precedence designated in the Technical Requirements regarding said standards shall prevail. The Technical Requirements shall take precedence over all Mandatory Standards listed within the Technical Requirements.
3. If the Proposal includes statements or incorporates approved ATC that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or

otherwise contains terms that are more advantageous to WSDOT than the requirements of the Contract Documents, Design-Builder's obligations hereunder shall include compliance with all such statements, offers, and terms.

On plans, Working Drawings, and WSDOT Standard Plans, calculated dimensions shall take precedence over scaled dimensions.

1-03.3 *Integration of WSDOT Standard Specifications and Cited References into Contract*

The *Standard Specifications* Divisions 2 thru 9, excluding measurement and payment Sections, are incorporated by reference into the Contract. Any cross-references to provisions of Division 1 contained therein shall instead be deemed to refer to the appropriate provisions of these General Provisions and other Contract Documents.

References to "plan(s)" in the *Standard Specifications* and Cited References shall be deemed to refer to the Final Design Documents. References to the Project owner shall mean WSDOT, or where Work is being performed on facilities owned by a Governmental Body other than WSDOT, such Governmental Body. References to "bid," "proposal," or "bid proposal" shall be deemed to refer to the Proposal. References to the "Contractor" shall be deemed to refer to the Design-Builder. References to the Engineer in the context of provider of compliance judgment may mean an appropriate representative of the Design-Builder, or it may mean a WSDOT representative, depending on the context, as determined by WSDOT in its sole discretion, or as defined in the Contract.

If any question arises regarding how to apply any provision of the *Standard Specifications* to this Contract, WSDOT's interpretation regarding such matter shall control. WSDOT may, in its sole discretion, allow a deviation from the requirements of the *Standard Specifications*, pursuant to the process described in the Section 1-04.4 of these General Provisions.

1-03.4 *Contract Bond*

The successful Proposer shall provide an executed Contract Bond in an amount equal to 100 percent of the Contract Price allocable to the cost of the Project construction and post-construction phase of the Work.

This Contract Bond shall:

1. Be on the WSDOT furnished form provided in Appendix F.
2. Be signed by an approved Surety (or Sureties) that:
   (a) Is registered with the Washington State Insurance Commissioner.
   (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 Design-Builder within the prescribed time.
4. Be conditioned upon the payment of taxes, increases, and penalties incurred on the project under titles 50, 51, and 82 RCW.

5. Guarantee that the Surety shall indemnify, defend, and protect WSDOT against any claim of direct or indirect loss resulting from the failure of:

   (a) The Design-Builder (or any of the employees, Subcontractors, or lower tier Subcontractors of the Design-Builder) to faithfully perform the Contract.

   (b) The Design-Builder (or the Subcontractors or lower tier Subcontractors of the Design-Builder) to pay all laborers, mechanics, Subcontractors, lower tier Subcontractors, material, or any other Person who provides supplies or provisions for carrying out the Work.

WSDOT may require Sureties or Surety companies on the Contract Bond to appear and qualify themselves. Whenever WSDOT deems the Surety or sureties to be inadequate, it may, upon written demand, require the Design-Builder to furnish additional Surety with the required A.M. Best Co. rating of at least "A" or better and Financial Size Category VIII or better to cover any remaining Work. Until the added Surety is furnished, payments on the Contract will stop.

Release of Contract Bond will be 60 Calendar Days following WSDOT's Final Acceptance of Contract, provided following conditions are met:

1. Payment to the State with respect to taxes imposed pursuant to Title 82, RCW 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 Design-Builder and all Subcontractors are on file with WSDOT (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 (per Section 1-07.10) shows the Design-Builder, Subcontractor(s) and any lower tier Subcontractor(s) are current with payments of industrial insurance and medical aid premiums.
5. All claims, as provided by law, filed against the Contract Bond have been resolved.

1-03.5 *Ambiguities*

The Design-Builder acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and conditions of the Contract Documents and to bring to the attention of WSDOT any conflicts or ambiguities contained therein. The Design-Builder further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, said documents shall not be interpreted or construed against the Person which prepared them and instead other rules of interpretation and construction shall be used.

WSDOT's final answers to the questions posed during the procurement process for the Contract shall in no event be deemed part of the Contract Documents and shall not be

relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

In the event of any ambiguity or uncertainty over any design requirements set forth in the Contract Documents, the Contract shall be interpreted and construed, insofar as is reasonably possible, to be consistent with the standards and criteria for the performance of the Project.

The Design-Builder shall not take advantage of any apparent error, omission, inconsistency, or other defect in the Contract Documents. The Design-Builder shall promptly notify WSDOT of any error, omission, inconsistency, or other defect that the Design-Builder may discover in the Contract Documents, and shall obtain specific instructions in writing from the WSDOT Engineer regarding any such error, omission, inconsistency, or other defect before proceeding with the Work affected thereby.

The Design-Builder may from time to time request in writing that WSDOT provide information, clarifications, and interpretations of ambiguous or uncertain design requirements set forth in the Contract Documents (an Interpretive Engineering Decision). WSDOT may issue a written approval of the Design-Builder's proposed Interpretive Engineering Decision (if any), may issue its own Interpretive Engineering Decision or may disapprove any Interpretive Engineering Decision the Design-Builder proposes. WSDOT shall within 14 Calendar Days respond in writing to any such application for an Interpretive Engineering Decision, including explanation of any disapproval of such application or any differing interpretation; provided that (a) no presumption of approval or disapproval shall arise by reason of delay by WSDOT in issuing its written determination and (b) no Interpretive Engineering Decision by WSDOT shall form the basis for an increase in the Contract Price or extension of the Contract Time, unless WSDOT expressly provides otherwise in writing. If the Design-Builder disputes WSDOT's disposition of the application, such dispute shall be subject to resolution in accordance with the Contract Documents. In any dispute over Interpretive Engineering Decisions, the Design-Builder shall bear the burden of proving that WSDOT's interpretation is incorrect or unreasonable.

1-03.6 *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".
3. Unless otherwise indicated, references to Sections, appendices and exhibits are to the document which contains such references; words such as "herein," "hereof," and "hereunder" refer to the entire document in which they are contained and not to any particular provision or Section.
4. Words not otherwise defined which have well-known technical or construction industry meanings are used in accordance with such recognized meanings.

5. References to Persons include their respective permitted successors and assigns and, in the case of Governmental Bodies, Persons succeeding to their respective functions and capacities.
6. Words of any gender used herein include each other gender where appropriate.

Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive.

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.

1-03.7 *Approvals and Acceptances*

The terms "approved" and "approval," when used in the context of obtaining WSDOT's approval of a specific approach, proposal, plan, schedule, analysis, or design submitted by the Design-Builder, means that WSDOT's representative is in agreement with the specific approach, proposal, plan, schedule, analysis, or design and that the submittal itself and its contents appear to conform to the respective requirements of the Contract Documents for that submittal. In all cases where approvals are required to be provided by WSDOT or the Design-Builder under the Contract Documents, such approvals shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified the decision shall be final, binding, and not subject to dispute resolution hereunder.

The oversight, spot checks, audits, reviews, tests, and inspections conducted by WSDOT do not constitute acceptance of the materials or Work inspected or waiver of any warranty or legal or equitable right with respect thereto. No acceptances or approval by WSDOT shall constitute a waiver of any warranty or legal or equitable right under the Contract Documents, at law or in equity. WSDOT may require remedies for Nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with requirements of the Contract Documents, regardless of whether previous oversight, spot checks, audits, reviews, tests, inspections, acceptances or approvals were conducted by WSDOT. The Design-Builder agrees and acknowledges that any such activity or failure to conduct any such activity by WSDOT is solely for the benefit and protection of WSDOT, does not create or impose upon WSDOT any duty or obligation toward the Design-Builder to cause it to fulfill the requirements of the Contract Documents, may not be relied upon by the Design-Builder or used as evidence in determining whether the Design-Builder has fulfilled the requirements of the Contract Documents, and may not be asserted by the Design-Builder against WSDOT as a defense, legal or equitable, to, or as relief from, the Design-Builder's obligation to fulfill the requirements of the Contract Documents. Regardless of any such activity or failure to conduct any such activity by WSDOT, the Design-Builder at all times shall have an independent duty and obligation to fulfill the requirements of the Contract Documents.

WSDOT shall not be precluded by any measurement, estimate, or certificate made or given by WSDOT under any provisions of the Contract, either before or after Final Acceptance, or by making any payment, from showing that any such measurement, estimate, or certificate is untrue, incorrect, or improper in any particular, or from showing the true amount and character of the Work performed and materials furnished by the

Design-Builder, or from showing that the Work or materials do not conform in fact to the requirements of the Contract Documents. WSDOT shall not be precluded, notwithstanding any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Design-Builder and the Sureties such damages as it may sustain by reason of the Design-Builder'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 WSDOT 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 Design-Builder.

1-03.8 *Computation of Periods*

If the last date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice "within" a specified time period) falls on a non-business day, such act or notice may be timely performed on the next succeeding day which is a business day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-business day, shall be performed as specified, even though the date in question may fall on a non-business day.

1-03.9 *Waiver*

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision of the Contract Documents, notwithstanding any course of dealing or custom of the trade.

1-03.10 *Limitation on Third Party Beneficiaries*

Unless specifically noted otherwise in this Section, 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 Documents. Nothing in this Contract authorizes anyone not a party 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 WSDOT and the Design-Builder in executing the Contract Form that no individual, firm, corporation, or any combination thereof which supplies materials, labor, services, or equipment to the Design-Builder for the performance of the Work shall become thereby a third party beneficiary of this Contract. The Contract Documents shall not be construed to create a contractual relationship of any kind between WSDOT and a Subcontractor or any other Person except the Design-Builder.

1-03.11 *Severability*

If any clause, provision, Section, or part of the Contract is ruled invalid by a court of competent jurisdiction, then the parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, Section, or part, which shall, to the greatest extent legally

permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court which declared such invalidity for a judicial construction of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, Section, or part shall not affect the validity or enforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, Section, or part.

1-03.12 *Headings*

The headings of the Sections of this Contract are for convenience of reference only and shall not be deemed part of this Contract or considered in interpreting this Contract.

1-03.13 *Amendments*

The Contract Documents may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

1-03.14 *Governing Law*

This Contract shall be construed under and shall be governed in accordance with the laws of the State of Washington.

1-03.15 *Escrowed Proposal Documents*

1-03.15(1) Scope and Purpose

The purpose of this specification is to preserve the Design-Builder's Proposal documents for use by WSDOT in litigation between WSDOT and the Design-Builder arising out of this Contract.

The Design-Builder shall submit a legible copy of all EPD documentation to an escrow company designated by WSDOT. Such documentation shall be placed in escrow with the escrow company and preserved by that institution as specified in this specification.

1-03.15(2) EPD Documentation

The EPD documentation as used in this specification means any writings, working papers, computer printouts, charts, and any other data compilations of any nature which contain or reflect all information, data, and calculations used by the Design-Builder to determine the Proposal for this Project. The Design-Builder shall submit its EPD documentation in hardcopy and whenever possible shall also provide electronic copies. The EPD documentation shall include, but is not limited to, equipment rates, overhead rates, labor rates, efficiency and/or productivity factors, and arithmetic extensions. The EPD documentation shall also include detailed information from all Subcontractors identified in the Proposal and any other potential Subcontractors who provided data upon which the Proposal is based. The EPD documentation shall include any manuals which are standard to the industry used by the Design-Builder in determining the Proposal for this Project. Such manuals may be included in the EPD documentation by reference. The

EPD documents do not include documents provided by WSDOT for use by the Design-Builder in developing the Proposal.

1-03.15(3) Submittal of EPD Documentation

The EPD documentation shall be submitted to the designated escrow company within 7 Calendar Days after the Contract has been executed by WSDOT. The EPD documents shall be submitted in a sealed container. The container shall be clearly marked "EPD Documents" and shall also show on the face of the container the Design-Builder's name, the date of submittal, the Project title, and the Contract number.

1-03.15(4) Affidavit

The sealed container shall contain, in addition to the Proposal documentation, an affidavit signed under oath by an individual authorized by the Design-Builder to execute Proposals. The affidavit shall list each EPD document with sufficient specificity so a comparison can be made between the list and the EPD documentation to ensure that all the EPD documents listed in the affidavit have been enclosed in the sealed container. The affidavit shall show that the affiant has personally examined the EPD documents and that the affidavit lists all of the documents used by the Design-Builder to determine its Proposal for the Project and that all such documentation has been enclosed in the sealed container.

1-03.15(5) Verification

The escrow company upon receipt of the sealed container shall place the container in a safety deposit box, vault, or other secure place, and immediately notify WSDOT in writing that the container has been received. Upon receipt of such notice, WSDOT will promptly notify the Design-Builder in writing that WSDOT will open the sealed container to verify that the affidavit has been enclosed and to compare the EPD documents listed in the affidavit with the actual documentation enclosed in the container to ensure that all of the EPD documents have been submitted and that the copies are legible. The notification will advise the Design-Builder of the date and time the container will be opened and the name of the WSDOT employee who will verify the contents of the container. The WSDOT employee verifying the contents of the escrow container will not be involved or connected with the review, evaluation, or resolution of any claim by the Design-Builder made to WSDOT in connection with the Contract for which the verification was made. The Design-Builder may have representatives present at the opening.

1-03.15(6) Supplementation

EPD documents listed in the affidavit but not enclosed in the sealed container through error or oversight shall be submitted in a sealed container within 5 Calendar Days after the opening of the original container. Also, any EPD documents that are illegible shall be replaced with legible copies and furnished within 5 Calendar Days after the opening of the original container. The face of the container shall be marked "Supplemental EPD Documents". The same procedure used in verifying the contents of the original container shall be used in verifying the contents of the supplemental submittal.

1-03.15(7) Duration and Use

The EPD documentation and affidavit shall remain in escrow during the life of the Contract and will be returned to the Design-Builder by the escrow company, provided that the Design-Builder has signed the Final Contract Voucher Certification and has not reserved any claims on the Final Contract Voucher Certification against WSDOT arising out of the Contract. In the event that claims against WSDOT are reserved on the Final Contract Voucher Certification, the EPD documentation and affidavit shall remain in escrow. If the claims are not resolved and litigation ensues, WSDOT may serve a request upon the Design-Builder to authorize the banking institution, in writing, to release the EPD documents and affidavit in escrow to WSDOT. The Design-Builder shall respond to the request within 20 Calendar Days after service of the request. If the Design-Builder objects or does not respond to the request within 20 Calendar Days after service of the request, WSDOT may file a motion under the Civil Rules requesting the court to enter an order directing the banking institution to deliver the EPD documents and affidavit in escrow to WSDOT. The banking institution shall release the EPD documents and affidavit as follows:

1. To WSDOT upon receipt of a letter from the Design-Builder authorizing the release.
2. To WSDOT upon receipt of a certified copy of a court order directing the release of the documents.
3. To the court for an in camera examination pursuant to a certified copy of a court order.
4. The EPD documents and affidavit shall be returned to the Design-Builder if litigation is not commenced within the time period prescribed by law.

The Design-Builder agrees that the sealed container placed in escrow and any supplemental sealed container placed in escrow contain all of the Proposal documentation used to determine the Proposal and that no other Proposal documentation shall be utilized by the Design-Builder in litigation over claims brought by the Design-Builder arising out of this Contract unless otherwise ordered by the Court.

1-03.15(8) Remedies for Refusal or Failure to Provide Bid Proposal Documentation

Failure or refusal to provide EPD documentation shall be deemed a material breach of this Contract. WSDOT may at its option refuse to make payment for progress estimates under Section 1-09.9 until the Design-Builder has submitted the EPD documentation required by the Contract. WSDOT may at its option terminate the Contract for default under Section 1-08.10. These remedies are not exclusive and WSDOT may take such other action as is available to it under the law.

1-03.15(9) Confidentiality of Proposal Documentation

The EPD documentation and affidavit held in escrow are and will remain the property of the Design-Builder. WSDOT has no interest in or right to the EPD documentation and affidavit other than to verify the contents and legibility of the EPD documentation unless litigation ensues between WSDOT and Design-Builder over claims brought by the Design-Builder arising out of this Contract. In the event of such litigation, the EPD

documentation and affidavit may become the property of WSDOT for use in the litigation as may be appropriate subject to the provisions of any court order limiting or restricting the use or dissemination of the EPD documentation and affidavit as provided in Section 1-03.15(7).

1-03.15(10) Cost and Escrow Instructions

The cost of the escrow will be borne by WSDOT. WSDOT will provide escrow instructions to the escrow company consistent with this specification.

1-04 Scope of the Work

1-04.1 *Intent of Contract*

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the parties with respect to its subject matter.

The parties intend for the Contract to obligate the Design-Builder to perform all Work necessary to complete the Project within the Contract Time, for the Contract Price, subject only to certain specified limited exceptions. The Design-Builder will be required to coordinate its Work with WSDOT's other contractors including contractors who are engaged in other WSDOT contracts or other Persons who are engaged in construction work in the overall vicinity of the Project. The Contract includes restrictions affecting the Design-Builder's ability to make claims for an increase to the Contract Price or an extension of the Contract Time.

WSDOT has supplied the Conceptual Design to the Design-Builder for the purpose of defining certain aspects of the Project. The Design-Builder has the right to assume that the Basic Configuration is feasible and represents a reasonable engineering approach to the Project. The Design-Builder's reliance on any aspect of the Conceptual Design other than the Basic Configuration shall be at its own risk.

WSDOT and the Design-Builder both intend for the Design-Builder to assume full responsibility and liability with respect to the design of the Project, including correction of any errors, omissions, inconsistencies, or other defects in the Conceptual Design, subject only to the Design-Builder's right to a Change Order for Necessary Basic Configuration Changes. Except as specifically set forth herein, WSDOT and the Design-Builder both intend for the Design-Builder to indemnify and hold harmless WSDOT and others with respect to any defects in the Project which may relate to errors, omissions, inconsistencies, or other defects in the Conceptual Design.

1-04.1(1) Work Included in the Contract

The Design-Builder acknowledges and agrees that, subject only to the Design-Builder's rights under Section 1-04.4 and its rights to receive Change Orders as expressly provided herein, the Contract Price includes (a) all designs, permits, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit, and services relating to the Design-Builder's performance of its obligations under the Contract Documents (including all Work, equipment, materials, labor, and services provided by Subcontractors and intellectual property rights necessary to perform the Work); (b) performance of each and every portion of the Work; (c) the cost of obtaining all Governmental Approvals (except as specified in the Special Provisions); (d) all costs of compliance with and maintenance of the Governmental Approvals and compliance with Governmental Rules, except for the work to be undertaken by WSDOT or others as described in the Contract (e) payment of any taxes, duties, permit, and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor, or services included therein; and (f) compensation for all risks and contingencies assigned to the Design-Builder under the Contract Documents.

1-04.1(2) General Obligations of the Design-Builder

The Design-Builder, in addition to performing all other requirements of the Contract Documents, shall:

(a) Furnish all services, provide all materials, and undertake all efforts necessary or appropriate (excluding only those services, materials, and efforts which the Contract Documents specify will be undertaken by WSDOT or other Persons):

(i) To construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents, each applicable Contract Schedule, all applicable Legal Requirements, all Governmental Approvals, the Quality Management Plan, the safety program, assist WSDOT with public information, and all other applicable safety, environmental, licensing, and other requirements, taking into account the ROW Plans and other physical limits resulting from constraints affecting the Project, so as to achieve milestone completion, Completion, and Final Acceptance, and by the deadlines specified herein.

(ii) Otherwise to complete all Work and activities required by and in accordance with the Contract Documents;

(b) At all times provide a Project Manager approved by WSDOT who:

(i) Will have full responsibility for the prosecution of the Work.

(ii) Will act as agent and be a single point of contact in all matters on behalf of the Design-Builder.

(iii) Will be present (or its approved designee will be present) at the Site at all times that Work is performed.

(iv) Will be available to execute instructions and directions from WSDOT or its authorized representatives.

(c) Obtain and pay the cost of obtaining all Governmental Approvals including Governmental Approvals required to implement any approved ATCs incorporated into the Contract Documents.

(d) Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, including implementation of all environmental mitigation measures required by the Contract Documents, except to the extent that such responsibility is expressly assigned in the Contract Documents to WSDOT or another Person.

(e) Provide such assistance as is reasonably requested by WSDOT in dealing with any Governmental Person and/or in prosecuting and defending environmental lawsuits in any and all matters relating to the Project, which may include providing information and reports regarding the Project, executing declarations, and attending meetings and hearings, but which shall in no event be deemed to require the Design-Builder to provide design or legal services.

(f) Comply with, and ensure that all Subcontractors comply with, all requirements of all applicable Legal Requirements, including:

(i) Compliance with all Environmental Laws and Requirements.

(ii) Performance of all environmental mitigation and monitoring measures required for the Project, including those set forth in the Technical Requirements.

(iii) Requirements regarding the handling, generation, treatment, storage, transportation, and disposal of Hazardous Materials.

(g) Perform construction inspection, sampling, testing, and all other activities in accordance with the Contract Documents and the Design-Builder's Quality Management Plan.

(h) Provide and maintain facilities as described in the Technical Requirements for the use of the Design-Builder, WSDOT, WSDOT's Engineer, and other Persons designated by WSDOT.

(i) Cooperate with WSDOT in its oversight of the design of the Project, its oversight of construction of the Project including Quality Verification, testing, sampling, and inspection during construction, and other matters relating to the Work.

(j) Supervise and be responsible to WSDOT for acts and omissions of the Design-Builder's employees, agents, officers, Subcontractors, and other Persons performing portions of the Work for whom the Design-Builder may be contractually or legally responsible.

(k) Mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating, or redeploying the Design-Builder's forces to other Work, as appropriate.

(l) Pay all applicable federal, State, and local sales, consumer, use, and similar taxes, property taxes, and any other taxes, fees, charges of levies imposed by a Government Body, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work.

(m) Comply with all applicable terms and conditions of all Utility Agreements.

(n) Obtain and pay the cost of obtaining any third party approvals required to implement any approved ATCs incorporated into the Contract Documents.

(o) Unless otherwise noted in the Contract, be responsible for all costs and/or delays of any nature associated with the implementation of any approved ATC incorporated into the Contract Documents.

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

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 RFP issue date, unless otherwise stated or as required by law.

1-04.3 *Practical Design Workshop*

Within 7 Calendar Days of Contract execution, and prior to issuing Notice to Proceed, the WSDOT Engineer and the Design-Builder shall discuss the merits of a Practical Design Workshop (PDW). If the parties agree there is merit in proceeding with the PDW, the parties will initiate and participate in the PDW. The PDW may last up to 30 Calendar Days. If mutually agreed upon by the Design-Builder and WSDOT, the Design-Builder may be granted Notice to Proceed during the Practical Design Workshop.

The purpose of the PDW is to explore ideas and potential Contract changes that may eliminate or alter certain project design elements yet still satisfy the Project's purpose and need. The 30 Calendar Day duration of the PDW will be used for the parties to identify potential changes, evaluate those changes, and negotiate approved changes, if any. Approved changes shall be executed prior to the conclusion of the PDW, unless otherwise allowed by the WSDOT Engineer.

Changes identified through the PDW shall be submitted and administered as Design-Builder Initiated Changes in accordance with Section 1-04.4(2). If mutually agreed upon by the Design-Builder and WSDOT the PDW may be extended, shortened or conclude at any time.

1-04.4 *Changes*

1-04.4(1) WSDOT-Initiated Changes

WSDOT reserves the right to authorize and/or require changes in the Work within the general scope of the Contract as provided herein. Such changes shall not invalidate the Contract nor release the Surety, and the Design-Builder agrees to perform the Work as altered. Among others, these changes may include:

1. Deleting any part of the Work.
2. Adding new Work.
3. Otherwise modifying the scope of the Work.
4. Otherwise revising the terms and conditions of the Contract Documents.
5. Altering facilities, equipment, materials, services, or Sites provided by WSDOT, and
6. Ordering the Design-Builder to speed up or delay the Work.

The Technical Proposal is a part of the Contract and the concepts contained therein shall not be materially changed unless authorized by WSDOT. Changes in the Design Documents by the Design-Builder to meet Contract requirements or correct deficiencies, that do not materially change the Technical Proposal, are the responsibility of the Design-Builder and are not considered a change in the Work. No adjustment will be allowed to Contract Price or Contract Time for such changes.

If WSDOT determines that a change in the Work directed by WSDOT increased or decreased the Design-Builder's Contract Price or Time required for performance of the Work, WSDOT will make an equitable adjustment, excluding the loss of anticipated profits, to the Contract. The equitable adjustment will be by agreement with the Design-Builder. However, if the parties are unable to agree, WSDOT will determine the amount

of the equitable adjustment in accordance with Section 1-09.4 and adjust the Contract Price as WSDOT deems appropriate. Extensions of Contract Time will be evaluated in accordance with Section 1-08.8. WSDOT's decision concerning equitable adjustment and extension of Contract Time shall be final as provided in Section 1-05.1.

The Design-Builder shall maintain concurrent time and materials records for all Work performed which it believes constitutes extra Work (including non-construction Work), pending issuance of a Change Order or resolution of any dispute in accordance with Section 1-04.5.

The Design-Builder shall proceed with WSDOT-directed changes in the Work upon receiving:

1. A written Change Order approved by WSDOT, or
2. A written order from WSDOT before actually receiving the written Change Order.

Within 14 Calendar Days of delivery of the Change Order, the Design-Builder shall endorse and return the Change Order, request an extension of time for endorsement, or respond in accordance with Section 1-04.5. WSDOT may unilaterally process the Change Order if the Design-Builder fails to comply with these requirements. The Design-Builder shall obtain written consent of the Surety or Sureties if WSDOT requests such consent.

1-04.4(2) Design-Builder Initiated Changes

It is the desire of WSDOT to allow the Design-Builder to have significant flexibility in determining how best to design and construct the Project, within the parameters established by the Contract Documents. The Design-Builder is encouraged to propose changes whenever it identifies potential savings. This Section sets forth the requirements applicable for addressing Design-Builder Initiated Changes. Approval of a Design-Builder Initiated Change is at WSDOT's sole discretion. Design-Builder Initiated Changes fall into one of the following categories:

1. Changes that are based on an idea(s) derived from a Proposal submitted by an unsuccessful Proposer. All cost savings realized shall be shared between the Parties in accordance with Section 1-04.4(2).3.
2. Changes that do not meet the requirements of item 1 above, and are deemed by WSDOT in its sole discretion to be equal or better than the Contract requirement proposed to be changed. All cost savings realized shall be kept by the Design-Builder. These changes if approved will be implemented into the Contract as a no cost Change Order. Section 1-04.4(2).3 Contract Price Adjustments Split Between Parties does not apply to this category of change.
3. Changes resulting from the Practical Design Workshop or other changes that require a Design Analysis. Any cost or time adjustments derived from this change shall be negotiated. Negotiations will take into consideration the value of deletions, additions, cost savings, Contract Time, risk, engineering, short- and long-term financial impacts to WSDOT and the travelling public, and other tangible costs. Section 1-04.4(2).3 Contract Price Adjustments Split Between Parties does not apply to this category of change.

4. Changes that do not meet the requirements of either category 1, 2 or 3 above. Any cost savings derived from this change shall be shared as the parties mutually agree. Section 1-04.4(2).3 Contract Price Adjustments Split Between Parties does not apply to this category of change.

1-04.4(2).1 Required Information

At a minimum, the following information shall be submitted by the Design-Builder with each Design-Builder Initiated Change:

(a) A statement that the submission is a Design-Builder Initiated Change, and a narrative description of the proposed change, including identification of the type of change as described above.

(b) Description of the existing Contract requirements which are involved in the proposed change.

(c) Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item.

(d) Itemization of the Contract requirements (with reference to specific Sections) which must be changed if the Design-Builder Initiated Change is approved.

(e) Justification for changes in function or characteristics of each item, and effect of the change on the performance of the end item, as well as on the meeting of requirements contained in the Contract Documents, including environmental compliance requirements.

(f) A description of any previous use or tests of the proposal and the conditions and results. If the proposal was previously submitted on another WSDOT project, indicate the date, Contract number, and the action taken by WSDOT.

(g) Date or time by which a Change Order adopting the Design-Builder Initiated Change must be issued in order to obtain the maximum cost reduction noting any effect on each applicable Contract Schedule.

(h) A complete cost analysis including (i) a cost estimate for the existing Contract requirements compared to the Design-Builder's cost estimate of the proposed changes, (ii) an estimate of any additional costs that will be incurred by WSDOT, including any additional Right-of-Way and Relocation costs, and (iii) an analysis of cost and schedule risks due to the need to modify permits and other environmental documents as applicable.

(i) Costs of development and implementation by the Design-Builder. Any additional information requested by WSDOT shall be provided in a timely manner. Additional information could include results of field investigations and surveys, design computations, and field change sheets.

1-04.4(2).2 WSDOT Review and Approval or Rejection

Review of Design-Builder Initiated Changes

Upon receipt of a Design-Builder Initiated Change, WSDOT will process it expeditiously, but will not be liable for any delay in acting upon any proposal submitted

pursuant to this Section. The Design-Builder may withdraw all or part of any Design-Builder Initiated Change at any time prior to approval by WSDOT. Each party shall bear its own costs in connection with preparation and review of Design-Builder Initiated Changes.

Approval of Design-Builder Initiated Changes
WSDOT may approve, in whole or in part by Change Order, any Design-Builder Initiated Change submitted. Until a Change Order is issued on a Design-Builder Initiated Change, the Design-Builder shall remain obligated to perform in accordance with the Contract Documents. The decision of the rejection or approval of any Design-Builder Initiated Change will be at the sole discretion of WSDOT and will be final and not subject to partnering, dispute resolution, or appeal.

Rejection of Design-Builder Initiated Changes
WSDOT will determine whether a Design-Builder Initiated Change qualifies for consideration and evaluation. Design-Builder Initiated Changes that require excessive time or costs for review, evaluation, or investigations, or that are not consistent with WSDOT's design policies and basic design criteria may be rejected.

The Design-Builder shall have no claim for any additional costs or delays resulting from the rejection of a Design-Builder Initiated Change, including development costs, loss of anticipated profits or increased material or labor costs. In evaluating Design-Builder Initiated Changes, WSDOT will consider only proven features that have been employed under similar conditions or projects acceptable to WSDOT.

1-04.4(2).3 Contract Price Adjustment Split Between Parties

If WSDOT accepts a Design-Builder Initiated Change submitted by the Design-Builder pursuant to this Section, the Contract Price shall be adjusted in accordance with the following:

Estimated Net Savings
The term "estimated net savings" as used in this Section shall mean the difference between the cost of performing the Work according to the Contract Documents and the actual cost to perform it according to the proposed change, not including the costs of studying and preparing the Design-Builder Initiated Change as proven by the Design-Builder and approved by WSDOT in accordance with the Change Order procedures set forth herein, or any additional costs incurred by WSDOT (including costs relating to any Relocations and Right-of-Way) resulting from the Design-Builder Initiated Change. The Design-Builder's profit shall not be considered part of the cost.

Collateral and Future Savings
Except as specified elsewhere in this Section, the Design-Builder is not entitled to share in either collateral or future Contract savings. The term "collateral savings" means those measurable net reductions in WSDOT's costs of operation resulting from the Design-Builder Initiated Change, including costs of maintenance by WSDOT, logistics, and WSDOT-furnished property. The term "future Contract savings" shall mean reductions in the cost of performance of future construction contracts for essentially the same item resulting from a Design-Builder Initiated Change submitted by the Design-Builder.

Price Adjustment Factor

The Contract Price shall be reduced by an amount equal to the sum of (a) 100 percent of any additional costs incurred by WSDOT resulting from the Design-Builder Initiated Change plus (b) 50 percent of estimated net savings, providing that the Design-Builder's profit shall not be reduced by application of the Design-Builder Initiated Change.

Design-Builder Initiated Changes Affecting ROW Plans

In a case where a Design-Builder Initiated Change involves an adjustment to the ROW Plans (such as a proposal that additional real property be purchased to reduce construction costs), the Design-Builder Initiated Change shall compare:

(a) The incremental reduction in costs (such as for not designing and building a wall).

(b) The costs involved in adjusting the ROW Plans or environmental clearances (which shall be based on the Design-Builder's additional costs, such as for providing real property acquisition support services (including profit), plus WSDOT's additional costs, including land acquisition, appraisals, negotiation, relocation, condemnation, closing, property management, and environmental permitting, specifically including allocated costs of WSDOT personnel involved in the acquisition); or (as appropriate) shall compare:

(i) The incremental reduction in costs (if any) for not acquiring the unnecessary real property.

(ii) The additional construction costs to be incurred.

The estimated net savings shall be shared 50-50 between WSDOT and the Design-Builder. In the event the Design-Builder wishes to propose such a Design-Builder Initiated Change, the Design-Builder shall provide a separate notification to WSDOT describing the proposed impact concurrently with delivery of the Design-Builder Initiated Change to WSDOT.

Payment Due Date

The Design-Builder's share of any Design-Builder Initiated Change cost savings shall be payable at such time as payments would have been made for the Work which is the subject of the Design-Builder Initiated Change had the Design-Builder Initiated Change not been implemented.

1-04.4(2).4 Use of Design-Builder Initiated Changes by WSDOT

All approved or disapproved Design-Builder Initiated Changes will become the property of WSDOT, and shall contain no restrictions imposed by the Design-Builder on their use or disclosure. WSDOT retains the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the proposal on any other or subsequent projects without any obligation to the Design-Builder. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

1-04.4(3) Basic Configuration Changes

The Design-Builder shall not perform any Work that is inconsistent with the requirements of the Contract Documents or that modifies the Basic Configuration unless such Work has been specifically authorized by Change Order or by a written order from WSDOT specifically authorizing the change prior to receiving a written Change Order. This

requirement applies regardless of whether the Work in question is required by a Governmental Approval, is desired by Design-Builder for its benefit, or for any other reason. Design-Builder acknowledges and agrees that constraints set forth in the Contract Documents, as well as Site conditions, will impact Design-Builder's ability to revise the Basic Configuration.

Nevertheless, upon the Design-Builder's fulfillment of all applicable requirements and limitations relating to Change Orders specified herein, if a Necessary Basic Configuration Change increases the cost and/or time to perform the Work, the Design-Builder shall be entitled to an increase in the Contract Price and/or an extension of the Contract Time, excluding any costs and/or time that could have been avoided by the Design-Builder; provided, however, the Design-Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Time in connection with any error, omission, inconsistency or other defect in the Conceptual Plans.

If a Necessary Basic Configuration Change decreases the cost and/or time to perform the Work, the Contract Price and/or Contract Time shall be decreased accordingly.

1-04.4(4) Minor Changes

Payments or credits for any change amounting to $25,000 or less may be authorized as a "Minor Change." At the discretion of WSDOT, this procedure for Minor Changes may be used in lieu of the more formal procedures as outlined in Section 1-04.4, Changes.

The Design-Builder 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 Design-Builder. If the Design-Builder is in disagreement with anything required by an order for Minor Change, the Design-Builder 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 Proposers, WSDOT has entered an amount for "Minor Change" in the Proposal to become a part of the total Price Proposal by the Design-Builder.

1-04.4(5) Matters Not Eligible for Change Orders

The Design-Builder acknowledges and agrees that no increase in the Contract Price is available except in circumstances expressly provided for in the Contract, that such price increases shall be available only as provided in Section 1-04.4, and that the Design-Builder shall bear full responsibility for the costs of all other changes. Matters which are the Design-Builder's exclusive responsibility include the following:

(a) Errors, omissions, inconsistencies, or other defects in the Design Documents (including errors, omissions, inconsistencies, or defects directly attributable to errors, omissions, inconsistencies, or other defects in the Conceptual Design), subject only to the right to a Change Order for Necessary Basic Configuration Changes.

(b) Any design changes required by WSDOT as part of the process of reviewing the Design Documents for consistency with the requirements of the Contract Documents, except to the extent directly attributable to errors, omissions, inconsistencies or other defects in the Basic Configuration as provided herein.

(c) Defects or errors in the Design-Builder's schedule for performance of the Work or changes in the planned sequence of performance of the Work (except to the extent that changes in the planned sequence of performance of the Work arise from causes which otherwise give rise to a right to a Change Order).

(d) Action or inaction of a Subcontractor (unless arising from causes which will require a Change Order).

(e) The action or inaction of an adjoining property owner or of another contractor (including failure to organize and integrate their work with the Design-Builder's Work).

(f) Groundwater levels or subsurface moisture content.

(g) Untimely delivery of equipment or material, or unavailability, defectiveness, or increases in costs of material, equipment, or products specified by the Contract Documents (except to the extent caused by a strike).

(h) Costs associated with any delay not on the Critical Path.

(i) Costs covered by insurance proceeds received by or on behalf of the Design-Builder.

(j) Correction of Nonconforming Work and oversight and related activities in connection therewith by WSDOT (including rejected design submittals).

(k) Failure by the Design-Builder to comply with Contract requirements.

(l) Delays in obtaining Governmental Approvals that are required to be obtained by the Design-Builder.

(m) Delays in obtaining or failure to obtain any third party approvals required to implement any approved ATCs incorporated into the Contract Documents.

(n) Unless noted otherwise in the Contract, any increases in costs or time incurred implementing an ATC.

(o) All events beyond the control of WSDOT except for events that WSDOT has agreed to assume liability for in the Contract.

(p) Delays in obtaining the Governmental Approval that are required to be obtained by WSDOT and/or changes to requirements of Governmental Approvals, where said delay and/or change(s) are the result of the Design-Builder's design choices within the Design-Builder's control.

(q) Changes of any nature to the Environmental Commitments List (Appendix C) that are imposed by, or agreed to by a Governmental Body having jurisdiction, that are the result of the Design-Builder's design choices within the Design-Builder's control.

The Design-Builder hereby assumes responsibility for all such matters, and acknowledges and agrees that assumption by the Design-Builder of responsibility for such costs and delays, and the consequences and costs resulting there from, is reasonable under the circumstances of the Contract and that contingencies included in the Contract Price in the Design-Builder's sole judgment, constitute sufficient consideration for its acceptance and assumption of said risks and responsibilities.

1-04.5 *Procedure and Protest by the Design-Builder*

The Design-Builder accepts all requirements of a Change Order by:

1. Endorsing it.
2. Writing a separate acceptance.
3. Not responding within the allotted time as outlined in Section 1-04.4.
4. Not protesting in the way this Section provides.

A Change Order that is not protested as provided in this Section 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 any Work either covered or affected by the change. By not protesting as this Section provides, the Design-Builder also waives any additional entitlement and accepts from WSDOT any written order (including directions, instructions, interpretations, and determinations).

If in disagreement with anything required in a Change Order, or any other written order from the WSDOT Engineer, including any direction, instruction, interpretation, or determination by WSDOT, the Design-Builder shall:

1. Immediately give a signed written notice of protest to WSDOT before doing the Work;
2. Supplement the written protest within 30 Calendar Days 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 which caused the protest, including names of Persons involved, time, duration and nature of the Work involved, and a review of the Contract Documents/Design Documents 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.
   (d) An analysis of the progress schedule showing the schedule change or disruption if the Design-Builder is asserting a schedule change or disruption.
3. If the protest is continuing, the information required above shall be supplemented every 2 weeks until the protest is resolved.

Throughout any protested Work, the Design-Builder shall keep complete records of extra costs and time incurred. The Design-Builder shall permit WSDOT access to these and any other records related to the protested Work as determined by WSDOT.

WSDOT will evaluate all protests provided the procedures in this Section are followed. If WSDOT determines that a protest is valid, WSDOT 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 an invalid protest.

If WSDOT determines that the protest is invalid, that determination, with an explanation, shall be provided in writing to the Design-Builder. The determination will be provided within 30 Calendar Days after receipt of the Design-Builder's supplemental written statement (including any additional information requested by the WSDOT Engineer to support a continuing protest) described in item 2 above. If the Design-Builder does not accept WSDOT's determination, then the Design- Builder shall pursue the dispute and claims procedures set forth in Section 1-09.11 within 90 Calendar Days of WSDOT's determination, or at such other time as agreed to by the parties.

In spite of any protest, the Design-Builder shall proceed promptly with the Work as WSDOT orders.

By failing to follow the procedures of this Section, the Design-Builder completely waives any claims for protested Work.

1-04.6 *VACANT*

1-04.7 *Differing Site Conditions*

For Work unrelated to an ATC, Differing Site Conditions shall mean (a) actual subsurface or latent physical conditions encountered at the Site that are substantially or materially different from the conditions identified in the GBR, the GDR, or the SGDR (if any) as set forth in Section 1-02.4(2) and which are not discoverable from a reasonable investigation and analysis of the Site, or (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract and the Work Site characteristics, provided in all cases that the Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Due Date.

For Work related to an ATC, Differing Site Conditions shall mean (a) actual subsurface conditions or latent physical conditions encountered at the Site that are substantially or materially different from the conditions indicated in the Design-Builder's geotechnical investigation, including its geotechnical basis of design, included in said ATC (see Section 1-02.4(2)), and which are not discoverable from a reasonable investigation and analysis of the Site, or (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract and the Work Site characteristics, provided in all cases that the Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Due Date.

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. Such notification shall identify the conditions represented in the Contract Documents, the conditions encountered at the Site, and an explanation of the difference.

Upon written notification, WSDOT will investigate the conditions and if it determines that the 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.

WSDOT will notify the Design-Builder of its determination whether or not an adjustment of the Contract is warranted.

Notwithstanding the above, the Design-Builder shall be entitled to an equitable adjustment adjusting the Contract Price only for the actual, reasonable cost increase resulting from Differing Site Conditions which in the aggregate exceeds ***$$1$$***. The responsibility for the first ***$$2$$*** worth of Differing Site Conditions shall rest solely with the Design-Builder.

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

The equitable adjustment will be by agreement with the Design-Builder. However, if the parties are unable to agree, WSDOT 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 WSDOT determines that Differing 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.

No claim by the Design-Builder shall be allowed unless the Design-Builder has followed the procedures provided in Section 1-04.5 and 1-09.11.

1-04.7(1) Burden of Proof

The Design-Builder shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each request for a Change Order under Section 1-04.7 shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by the Design-Builder with respect to the condition of the Site, justifying the basis for such assumptions and explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by the Design-Builder to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

1-04.7(2) Insurance Claims

Prior to filing any request for a Change Order relating to a Differing Site Condition, Design-Builder shall inquire whether insurance proceeds may be available to cover any of its costs. If Design-Builder finds that reasonable grounds for filing an insurance claim exist, then Design-Builder shall so notify WSDOT and shall take appropriate steps to file and pursue the claim in accordance with Section 1-07.18(4). Upon receipt of a Change Order request and evidence that the claim has been properly filed, WSDOT will process the Change Order request pursuant to the Contract.

1-04.8 *Progress Estimates and Payments*

Progress estimates or payments for the Work shall not be used as evidence of performance for the Work. Progress estimates serve only as basis for partial payments. WSDOT may revise progress estimates at any time before Final Acceptance. If WSDOT

deems it proper to do so, changes may be made in progress estimates and in the final estimate.

The failure by WSDOT to deduct from a progress payment any of the sums which WSDOT is entitled to recover from the Design-Builder under the terms of the Contract shall not constitute a waiver of WSDOT's right to such sums.

1-04.9 *VACANT*

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

With the WSDOT Engineer's written approval, the Design-Builder may use the following 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. Such use is not in the best interests of WSDOT as determined by the WSDOT 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 directed by WSDOT.

The Design-Builder shall not create borrow pits on the WSDOT Right-of-Way unless specifically provided for in the Contract.

1-04.11 *Final Cleanup*

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

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

The Design-Builder shall not remove warning, regulatory, informational, or guide signs unless WSDOT approves.

1-05 Control of Work

All Work and materials shall be constructed in accordance with the Contract Documents or as otherwise approved in writing by WSDOT in accordance with Section 1-04.4.

The Design-Builder shall be solely responsible for and have control over the construction means, methods, techniques, sequences, procedures, and Site safety, and shall be solely responsible for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents.

1-05.1 *Authority of The WSDOT Engineer*

The WSDOT 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 WSDOT Engineer authority over the Work. Whenever it is so provided in this Contract, the decision of the WSDOT Engineer shall be final: provided, however, that if an action is brought within the time allowed in this Contract challenging the WSDOT Engineer's decision; that decision shall be subject to the scope of judicial review provided in such cases under Washington case law.

The WSDOT Engineer's decisions will be final on all questions including, at a minimum, the following:

1. Quality and acceptability of materials and Work.
2. Measurement of quantities of Work.
3. Determination as to the existence of changed or Differing Site Conditions.
4. Interpretation of Contract requirements.
5. Fulfillment of the Contract by the Design-Builder.
6. Payments under the Contract including equitable adjustment.
7. Suspension(s) of Work.
8. Termination of the Contract for default or public convenience.

The WSDOT Engineer represents WSDOT on the Project, with full authority to enforce Contract requirements and carry out WSDOT's orders. If the Design-Builder fails to respond promptly to the requirements of the Contract or orders from WSDOT:

1. The WSDOT Engineer may use WSDOT resources, other contractors, other Design-Builders, or other means to accomplish the Work.
2. WSDOT will not be obligated to pay the Design-Builder, and will deduct from the Design-Builder's payments, any costs that result when any other means are used to carry out the Contract requirements or the WSDOT Engineer's orders.

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

Nothing in these General Provisions or in the Contract requires the WSDOT Engineer to provide the Design-Builder with direction or advice on how to do the Work. If the

WSDOT Engineer approves or recommends any method or manner 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 Design-Builder of any risks or obligations under the Contract.
3. Create any WSDOT liability.

At all times during the term hereof, including during the course of, and notwithstanding the existence of, any dispute, the Design-Builder shall perform as directed by the WSDOT Engineer in a diligent manner and without delay, shall abide by the WSDOT Engineer decision or order, and shall comply with all applicable provisions of the Contract Documents. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with these Contract Documents.

1-05.2 *Authority of Assistants and Inspectors*

The WSDOT Engineer may appoint assistants and inspectors to assist in determining that the Work and materials meet the Contract requirements. Assistants and inspectors have the authority to reject defective material and suspend Work that is being done improperly, subject to the final decisions of the WSDOT Engineer or, when appropriate, WSDOT.

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 which does not meet the Contract requirements shall be at the Design-Builder'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 Design-Builder of any faulty Work or materials or infringements of the terms of the Contract; however, failure of the WSDOT Engineer or the assistants or inspectors to advise the Design-Builder does not constitute acceptance.

1-05.3 *Plans and Working Drawings*

1-05.3(1) Obligation to Review the Basic Configuration

Before commencing any design or construction Work in an area, the Design-Builder shall review the design contained in the Basic Configuration for constructability and shall notify WSDOT in writing of any errors, omissions, inconsistencies, or other defects in such design affecting constructability. If, after the start of any design or construction Work, the Design-Builder becomes aware of any such error, omission, inconsistency, or other defect in the Basic Configuration, the Design-Builder shall immediately notify WSDOT of the same.

1-05.3(2) Required Approvals

If it is necessary to modify the Basic Configuration in order to correct any errors, omissions, inconsistencies, or other defects, the Design-Builder shall first obtain

WSDOT's and any third party's written approvals prior to commencing any related Work.

If more than 15 Calendar Days are required for WSDOT's review of any individual submittal or resubmittal, an extension of time will be considered in accordance with Section 1-08.8.

In all cases where approvals, acceptances, or consents are required to be provided by WSDOT or the Design-Builder hereunder, such approvals, acceptances, or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified, and shall not be unreasonably delayed if no response time is specified. In cases where sole discretion is specified, the decision shall not be subject to dispute resolution hereunder.

1-05.3(3) Railroad Approvals

When submittals require review by the railroad, WSDOT will require 60 Calendar Days from the date the submittals are received until the comments are returned to the Design-Builder.

1-05.3(4) Design Documents

The Design-Builder shall furnish the Design Documents to WSDOT and shall address WSDOT's comments prior to designating them as the Released for Construction Documents.

1-05.3(5) Working Drawings

The Design-Builder shall submit Working Drawings for the performance of the Work. Working Drawings shall be submitted by the Design-Builder electronically to WSDOT in PDF format; drawing details shall be prepared in accordance with conventional detailing practices. If the PDF format is found to be unacceptable, at the request of WSDOT, the Design- Builder shall provide paper copies of the Working Drawings on 11 by 17 inch sheets and associated supporting calculations/text on 8 ½ by 11 inch sheets.

Working Drawings will be classified under the following categories:

1. Type 1 – Submitted for WSDOT information. Every submittal shall be submitted to WSDOT a minimum of 7 Calendar Days before work represented by the submittal begins.
2. Type 2 – Submitted for WSDOT Review and Comment. The Design-Builder shall provide a 14 Calendar Day review period for WSDOT Review and Comment on all Working Drawings submittals. WSDOT reserves the right to extend the review time by up to 7 Calendar Days for submittals that are received between November 15th and January 1st. The Design-Builder shall resolve all comments prior to implementation.
3. Type 2E – Same as a Type 2 Working Drawing with Engineering as described below.
4. Type 3 – The Engineer of Record shall review and approve and then submit to WSDOT for review and comment. The Design-Builder shall provide a 14 Calendar Day review period for WSDOT Review and Comment on all Working Drawings

submittals. WSDOT reserves the right to extend the review time by up to 7 Calendar Days for submittals that are received between November 15th and January 1st. The Design-Builder shall resolve all comments prior to implementation.

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 Design-Builder prior to the submittal date, submittals of Working Drawings will be reviewed in the order they are received by WSDOT. In the event that several Working Drawings are received simultaneously without an order of review designated by the Design-Builder the review sequence will be at WSDOT's discretion.

Working Drawings requiring Engineering, Types 2E and 3E, shall be prepared by (or under the direction of) a Professional Engineer licensed under Title 18 RCW, and in accordance with WAC 196-23-00. Associated supporting calculations shall carry the Professional Engineer's seal with registration number, signature, and date of signature on the cover page. The cover page shall also include the Contract number, the Contract title, and a sequential index to the calculation page numbers.

If more than the specified number of Calendar Days is required for WSDOT's review of any individual Working Drawing or resubmittal, an extension of time will be considered in accordance with Section 1-08.8. WSDOT's Review and Comment of Working Drawings shall neither confer upon WSDOT, nor relieve the Design-Builder of, any responsibility for the accuracy of the drawings or their conformity with the Contract. The Design-Builder shall bear all risks and all costs of any Work delays caused by unresolved WSDOT review comments.

1-05.4 *Performance*

1-05.4(1) Performance Standards

The Design-Builder shall furnish the design of the Project and shall construct the Project as designed, in accordance with all professional engineering principles and construction practices generally accepted as standards of the industry in the State of Washington, in a good and workmanlike manner, free from defects (except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents), and in accordance with the terms and conditions set forth in the Contract Documents.

1-05.5 *Vacant*

1-05.6 *Inspection of Work and Materials*

WSDOT may inspect all Work and materials for conformity with the Contract Documents. To ensure WSDOT's safety and access during these inspections, the Design-Builder shall provide any equipment needed, such as walkways, railings, ladders, and platforms.

The Design-Builder shall provide, without charge, samples of materials used or to be used in the Work at WSDOT's request. WSDOT may order the Design-Builder to remove and replace, at the Design-Builder's expense, any materials used without

documented Quality Assurance measures on the part of the Design-Builder's Quality Assurance Organization.

Any inspections, tests, measurements, or other actions by WSDOT employees serve only one purpose: to assure WSDOT that Work, materials, and progress rate comply with the Contract Documents. Such Work by WSDOT employees shall not relieve the Design-Builder from doing any Contract-assigned Work or from performing in accordance with the Contract Documents. The Design-Builder shall correct any substandard Work or materials. WSDOT may reject unsuitable Work or materials even though such Work was previously inspected or paid for.

The Design-Builder shall inform WSDOT of any part of the Work which is about to be covered and offer a full and adequate opportunity to WSDOT to inspect and test such part of the Work before it is covered. If WSDOT requests, the Design-Builder shall remove or uncover any area of the completed Work. After WSDOT inspects it, the Design-Builder shall restore the area to the standard the Contract requires. The Design-Builder shall bear the cost of uncovering, removing, and restoring the exposed Work: (a) if it proves unacceptable, or (b) if it was placed without due notice to WSDOT. WSDOT will pay these costs by agreed price or by force account if the Work proves to be acceptable and the Design-Builder had performed the original Work with the authority of and due notice to WSDOT.

The Design-Builder shall permit representatives from other agencies to inspect the Work when it is to be done:

1. On any railroad, utility, or facility of a public agency.
2. To the satisfaction of any federal, state, or municipal agency.

In any crushing or screening operation, the Design-Builder 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 WSDOT-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.
6. Can be adjusted to take samples of about 100 pounds as often as the QA Inspector or WSDOT Engineer requires.

The Design-Builder shall bear all costs of providing the sampling equipment, the power to operate it, and the space for its use.

The oversight, spot checks, audits, tests, acceptances, and approvals conducted by WSDOT and others do not constitute acceptance of the materials or Work. WSDOT may request remedies for Nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with Contract requirements at any time prior to Final Acceptance, whether or not previous oversight, spot checks, audits, tests,

acceptances, or approvals were conducted by WSDOT or any such Persons. The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, or any of its warranty obligations, by oversight, spot checks, audits, reviews, tests, inspections, acceptances, or approvals performed by any Persons, or by any failure of any Person to take such action.

1-05.7 *Removal of Defective Work*

WSDOT will not pay for defective Work, including any Work and/or materials that do not conform to the Contract. At WSDOT's order, the Design-Builder shall immediately remedy, remove, replace, or dispose of defective Work or materials and bear all costs of doing so.

The Design-Builder shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that WSDOT may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If the Design-Builder fails to correct any Nonconforming Work within 10 Calendar Days of receipt of notice from WSDOT requesting correction (or, for Nonconforming Work which cannot be corrected within 10 Calendar Days, if the Design-Builder fails to begin correction within 10 Calendar Days of receipt of such notice and diligently prosecute such correction to completion), then WSDOT may cause the Nonconforming Work to be remedied or removed and replaced, and may deduct the cost of doing so from any payment due or to become due the Design-Builder and/or obtain reimbursement from the Design-Builder for such cost.

1-05.8 *Vacant*

1-05.9 *Vacant*

1-05.10 *Guarantees*

The Design-Builder shall furnish to WSDOT any guarantee or warranty furnished as a customary trade practice in connection with the purchase of any equipment, materials, or items incorporated into the Project. For additional warranty requirements, refer to Section 1-05.16 General Warranties.

1-05.11 *Final Inspection*

WSDOT will not make the final inspection until the physical Work required by the Contract, including Final Cleanup and all extra Work ordered by WSDOT, 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 Design-Builder must perform all the obligations under the Contract before Completion and Final Acceptance can occur. Failure of the Design-Builder to perform all the obligations under the Contract shall not bar WSDOT from unilaterally accepting the Contract as provided in Section 1-09.9(2). The Secretary accepts the Project as complete and acknowledges the final amount due to the Design-Builder by signature on the Final

Contract Voucher Certification. The date of that signature constitutes the Final Acceptance date.

The Design-Builder agrees that neither Completion nor Final Acceptance shall relieve the Design-Builder of the responsibility to indemnify, defend, and protect WSDOT, or its Agents, assignees' etc. against any claim or loss resulting from the failure of the Design-Builder (or any Subcontractors) to pay all laborers, mechanics, Subcontractors, material suppliers, or any other Person who provides labor, supplies, or provisions for carrying out the Work or for any 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 any unauthorized or non-compliant Work or material. WSDOT shall not be barred from requiring the Design-Builder to remove, replace, repair, or dispose of any Work or material that is defective, unauthorized, or that otherwise fails to comply with the Contract Documents or from recovering damages for any such Work or material. Neither Completion nor Final Acceptance shall relieve the Design-Builder of any obligations and/or responsibilities relating to warranty requirements, if any, designated in the Contract Documents.

1-05.12(1) Overpayments; No Relief From Continuing Obligations

Acceptance of the Work hereunder will not prevent WSDOT from correcting any measurement, estimate, or certificate made before or after Completion of the Work, or from recovering from the Design-Builder or the Surety or both, the amount of any overpayment sustained due to failure of the Design-Builder to fulfill the obligations under the Contract. The occurrence of Final Acceptance shall not relieve the Design-Builder from any of its continuing obligations hereunder.

1-05.12(2) Vacant

1-05.12(3) Assignment of Causes of Action

The Design-Builder hereby offers and agrees to assign to WSDOT all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), arising from purchases of goods, services, or materials pursuant to the Contract or any Subcontract. This assignment shall be made and become effective at the time WSDOT tenders final payment to the Design-Builder, without further acknowledgment by the parties.

1-05.13 *Superintendents, Labor, and Equipment of The Design-Builder*

At all times, the Design-Builder shall keep at the Work Site a set of the released for construction plans, specifications, and Working Drawings. The Design-Builder shall devote the attention required to make reasonable progress on the Work and shall cooperate fully with WSDOT representatives.

All employees shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If WSDOT determines in its sole discretion that any Person employed by the Design-Builder or by any Subcontractor is not performing the Work properly and skillfully, then, at the written request of WSDOT,

the Design-Builder or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior written approval of WSDOT. If the Design-Builder or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then WSDOT may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to the Design-Builder. Such suspension shall in no way relieve the Design-Builder of any obligation contained in the Contract Documents or entitle the Design-Builder to a Change Order. Once compliance is achieved, the Design-Builder shall be entitled to and shall promptly resume the Work.

All design and engineering Work furnished by the Design-Builder shall be performed by or under the supervision of Persons licensed to practice architecture, engineering, or surveying (as applicable) in the State of Washington, and by personnel who are careful, skilled, experienced, and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents, and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and Released for Construction Documents prepared or checked by them.

Competent supervisors experienced in the task being performed shall continuously oversee the Contract Work.

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

WSDOT will rate the Design-Builder's performance and Contract compliance in these categories:

1. Progress of Work.
2. Quality of Work.
3. Equipment.
4. Administration/Management/Supervision.
5. Coordination and Control of Subcontractors.

Whenever WSDOT evaluates the Design-Builder's prequalification under RCW 47.28.070, it will take these reports into account.

No substitution or withdrawal of Major Participants or Key Personnel as identified in the Proposal shall be made without prior written approval by WSDOT. All proposed substitutes shall have qualifications equal to or better than the qualifications of the Person or entity to be replaced. The Design-Builder shall notify WSDOT in writing of any proposed substitution or withdrawal at least 30 Calendar Days in advance of the proposed substitution or withdrawal. Such notification shall include: (i) an explanation of the circumstances necessitating the substitution or withdrawal; (ii) a complete resume of any proposed substitute; and (iii) any other information requested by WSDOT to allow it to evaluate the request. WSDOT is under no obligation to approve such requests and may approve or disapprove a portion of the request or the entire request at its sole discretion.

1-05.13(1) Emergency Contact List

The Design-Builder shall submit an Emergency Contact List to WSDOT no later than 5 Calendar Days after the date the Contract is executed. The list shall include, at a minimum, the Design-Builder's Project Manager, or equivalent, the Construction Manager, 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 Design-Builder and include one or more alternates. The emergency contact shall be available upon WSDOT'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*

WSDOT may perform other work at or near the Site, including any material site, with other forces than those of the Design-Builder. This work may be done with or without a contract. If such work takes place within or next to this Project, the Design-Builder shall cooperate with all other contractors or forces. The Design-Builder shall carry out Work under this Project in a way that will minimize interference and delay for all forces involved. WSDOT will resolve any disagreements that may arise among the contractors or the Design-Builder and WSDOT over the method or order of doing the Work. WSDOT's decision in these matters shall be final, as provided in Section 1-05.1. Refer to TR Sections 2.1, *General Information*, and 2.18, *Intelligent Transportation Systems*, for known projects that are on or near the Project Limits.

The coordination of the Work shall be taken into account by the Design-Builder as part of the Site investigation in accordance with Section 1-02.4 and any resulting costs shall be incidental and included within the Contract Price.

1-05.15 *Method of Serving Notices*

Any written notice to the Design-Builder required under the Contract may be served on the Design-Builder either personally or by mailing or by delivery to the last post office address known to WSDOT.

The Design-Builder shall require all Subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Work to formally communicate with WSDOT only through the Design-Builder.

All correspondence from the Design-Builder shall be directed to the WSDOT Engineer.

1-05.16 *General Warranties*

1-05.16(1) General Warranty

The following general Warranty is in addition to any express Warranties provided for elsewhere in the Contract Documents. The Design-Builder shall represent and warrant the following:

- All design Work performed pursuant to the Contract, including Work performed by Subcontractors and manufacturers, conforms to all professional engineering principles generally accepted as industry standard in the state of Washington.
- The Project is free of defects, including design errors, omissions, inconsistencies, and other defects.
- Materials, plants, and equipment furnished under the Contract are of good quality, and were new when installed, unless otherwise approved by WSDOT.
- The Work meets all of the requirements of the Contract.
- The specifications and/or drawings selected or prepared for use during construction are appropriate for their intended use.
- The Project has been constructed so that it can be used for the intended function.

1-05.16(2) General Warranty– Time of General Warranty

The general Warranty shall commence on the day of Physical Completion. The general Warranty shall remain in effect until ***$$1$$*** year(s) after Physical Completion. At any time during the general Warranty period, if WSDOT determines that any of the Work has not met the standards set forth in the Contract, then the Design-Builder shall correct the Work in accordance with this Section, even if the performance of such correction extends beyond the stated general Warranty period.

Within 7 Calendar Days of receipt of notice from WSDOT, specifying a failure of any Work required satisfying the general Warranty; or specifying a failure of any Subcontractor representation, Warranty, guarantee, or obligation, which the Design-Builder is responsible for enforcing, the Design-Builder and WSDOT shall mutually agree when and how the Design-Builder shall remedy such failure. In the case of an emergency requiring immediate curative action, the Design-Builder shall implement such immediate action it deems necessary, and shall notify WSDOT of the urgency of a mutually agreed-upon remedy. The Design-Builder and WSDOT shall agree on a remedy immediately upon notice by or to WSDOT of such emergency. If the Design-Builder does not use its best efforts to proceed to effectuate a remedy within the 7 Calendar Day period, or if the Design-Builder and WSDOT fail to reach an agreement within the 7 Calendar Day period (or immediately, in the case of emergency conditions), then WSDOT, upon notice to the Design-Builder, shall have the right to order the Design-Builder to perform the Work, or to perform or have performed by others the remedy approved by WSDOT, and the costs shall be paid by the Design-Builder.

1-05.16(3) General Warranty – Subcontractor Warranties

Without in any way derogating the Design-Builder's own representations, warranties, and other obligations with respect to the Work, the Design-Builder shall obtain from all Subcontractors and cause to be extended to WSDOT, appropriate representations, Warranties, guarantees, and obligations with respect to design, material, plants, workmanship, equipment, tools, and supplies furnished by all Subcontractors. All representations, Warranties, guarantees, and obligations of Subcontractors shall be in writing, and shall run directly to and be enforceable by the Design-Builder and/or WSDOT and their respective successors and assigns.

1-05.16(4) General Warranty – Performance Responsibility

The Design-Builder retains responsibility for all Work performed on the Project, including all Work of Subcontractors and all materials and equipment provided by suppliers, vendors, and manufacturers. Upon receipt from WSDOT of notice of a failure of any of the Work to satisfy a warranty, representation, covenant, guarantee, or obligation provided by any Subcontractor, the Design-Builder shall be responsible for enforcing or performing any such warranty, representation, covenant, guarantee, or obligation, in addition to the Design-Builder's other obligations. WSDOT's rights under this Section shall commence at the time the Warranty, representation, covenant, guarantee, or obligation is furnished to WSDOT, and shall continue until the expiration of the Design-Builder's Warranty, including extensions for repaired or replaced Work. Until such expiration, the cost of any equipment, material, plants, labor, including re-engineering, and shipping shall be paid by the Design-Builder, if the cost is covered by the warranty, and the Design-Builder shall be required to repair or replace defective equipment, material, plants, or workmanship furnished by Subcontractors.

1-05.16(5) General Warranty – Extension Of General Warranty

The Warranty shall apply to all repaired or replaced Work pursuant to the terms of the Contract. The general Warranty for repaired or replaced Work shall extend beyond the original Warranty period, if necessary, to provide an additional 1-year warranty period following acceptance by WSDOT of any repaired or replaced Work.

1-05.16(6) General Warranty – No Limitations Of Liability

The Warranty is in addition to all rights and remedies available under the Contract or Applicable Law, and shall not limit the Design-Builder's liability or responsibility imposed by the Contract or by Applicable Law with respect to the Work, including liability for design defects, latent construction defects, strict liability negligence, or fraud.

1-05.16(7) Damages For Breach Of Warranty

In addition to all rights and remedies available under the Contract or Applicable Law, if the Design-Builder fails or refuses to provide the Warranty remedies described in this Section, the Design-Builder shall be liable for the cost of performance of the warranty Work by others.

1-05.16(8) Exclusions

The Warranty shall not require the Design-Builder to perform repair or replacement Work under the following circumstances:

- Normal wear and tear, provided that damage and/or deterioration outside allowable limits specified in the Contract shall not be considered normal wear and tear.
- Failure of Owners to perform routine maintenance consistent with policies and procedures established by WSDOT or other maintenance agencies, including Utility Owners, or in the absence of such policies and procedures in accordance with industry standards of maintenance for similar projects in the United States.
- Rebellion, war, riot, act of sabotage, civil commotion, or acts of vandalism.

- Wind, flood, earthquakes and other acts of God.
- Spill or release of hazardous or contaminated substances not caused by the Design-Builder.

1-05.16(9) VACANT

1-05.16(10) VACANT

1-05.16(11) Warranty Inspections

The failure to conduct any inspection specified shall not invalidate or cancel the warranty provisions, responsibilities, or performance requirements. Notwithstanding the provisions of this Section, WSDOT may inspect any component of the Project at any time prior to the completion of the warranty, and issue notice to the Design-Builder to perform repair or replacement Work.

1-05.16(12) Warranty Performance Requirements

In addition to the Warranty provisions of this Section, the Work shall meet the requirements specified in the Contract.

1-05.16(13) Costs of Correction Work

All costs of repair and replacement Work, including additional testing and inspections, shall be paid by the Design-Builder. The Design-Builder shall reimburse WSDOT within 14 Calendar Days after receipt of WSDOT's invoice.

1-05.16(14) Damages For Breach Of Warranty

If the Design-Builder fails or refuses to provide any Warranty remedy described in this Section, the Design-Builder shall be liable for the cost of performance of the Warranty Work by others.

1-05.16(15) Disputes

Any disagreement between WSDOT and the Design-Builder relating to this Section shall be subject to the dispute resolution provisions described in Section 1-04.5, provided that the Design-Builder proceeds as directed by WSDOT, pending resolution of the dispute.

1-06 Control of Material

In accordance with Buy America requirements contained in 23 CFR 635.410, the major quantities of steel and iron construction material that are permanently incorporated into the project shall consist of American-made materials only. Buy America does not apply to temporary steel items, e.g., temporary sheet piling, temporary bridges, steel scaffolding and falsework.

Minor amounts of foreign steel and iron may be utilized in this project provided the cost of the foreign material used does not exceed one-tenth of one percent of the total contract cost or $2,500.00, whichever is greater.

American-made material is defined as material having all manufacturing processes occurring domestically. To further define the coverage, a domestic product is a manufactured steel material that was produced in one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States.

If domestically produced steel billets or iron ingots are exported outside of the area of coverage, as defined above, for any manufacturing process then the resulting product does not conform to the Buy America requirements. Additionally, products manufactured domestically from foreign source steel billets or iron ingots do not conform to the Buy America requirements because the initial melting and mixing of alloys to create the material occurred in a foreign country.

Manufacturing begins with the initial melting and mixing, and continues through the coating stage. Any process which modifies the chemical content, the physical size or shape, or the final finish is considered a manufacturing process. The processes include rolling, extruding, machining, bending, grinding, drilling, welding, and coating. The action of applying a coating to steel or iron is deemed a manufacturing process. Coating includes epoxy coating, galvanizing, aluminizing, painting, and any other coating that protects or enhances the value of steel or iron. Any process from the original reduction from ore to the finished product constitutes a manufacturing process for iron.

Due to a nationwide waiver, Buy America does not apply to raw materials (iron ore and alloys), scrap (recycled steel or iron), and pig iron or processed, pelletized, and reduced iron ore.

The following are considered to be steel manufacturing processes:

1. Production of steel by any of the following processes:
    a. Open hearth furnace.
    b. Basic oxygen.
    c. Electric furnace.
    d. Direct reduction.
2. Rolling, heat treating, and any other similar processing.
3. Fabrication of the products.
    a. Spinning wire into cable or strand.

b. Corrugating and rolling into culverts.

c. Shop fabrication.

A certification of materials origin will be required for any items comprised of, or containing, steel or iron construction materials prior to such items being incorporated into the permanent work. The certification shall be on DOT Form 350-109 provided by the Engineer, or such other form the Contractor chooses, provided it contains the same information as DOT Form 350-109.

1-07 Legal Relations and Responsibilities to the Public

1-07.1 *Laws to be Observed*

The Design-Builder shall always comply with all Federal, State, Tribal, or local laws, ordinances, regulations, and Governmental Approvals that affect Work under the Contract. The Design-Builder acknowledges and agrees that it will be responsible for all fines and penalties that may be assessed in connection with any failure to comply with such requirements. The Design-Builder shall indemnify, defend, and save harmless the Indemnified Parties against any claims that may arise because the Design-Builder (or any employee of the Design-Builder or Subcontractor or material Person) violated a legal requirement.

The Design-Builder shall be responsible to immediately report to the WSDOT Engineer any deviation 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.

The Design-Builder 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 Chapter 49.17 (WISHA) and as set forth in Title 296 WAC (Department of Labor and Industries). In particular, the Design-Builder'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 Design-Builder 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 Design-Builder shall be submitted to the WSDOT Engineer as a Type 1 Working Drawing. When requested by the WSDOT Engineer, the Design-Builder shall provide training to WSDOT employees working on-site for all activities covered by a safety plan. Costs for training that is provided solely to WSDOT employees will be paid to the Design-Builder in accordance with Section 1-09.4.

U.S. Mine Safety and Health Administration rules apply when the Project includes pit or quarry operations. Among other actions, these regulations require the Design-Builder 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.

Without usurping the authority of other agencies, WSDOT will cooperate to enforce Legal Requirements. Upon awareness of any violation of a legal requirement, WSDOT will notify the Design-Builder in an effort to achieve voluntary compliance. WSDOT shall also notify the agency responsible for enforcement if WSDOT deems that action necessary to achieve compliance with Legal Requirements. WSDOT will help the enforcing agency obtain the Design-Builder compliance to the extent such help is consistent with the provisions of the Contract.

WSDOT will not adjust payment to compensate the Design-Builder 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, WSDOT will compensate the Design-Builder by negotiated Change Order as provided in Section 1-04.4.

Under certain conditions, WSDOT 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 the Design-Builder-paid taxes by more than $500. For items in the original Contract, the tax change must occur after the Proposal 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, WSDOT will adjust compensation by the actual dollar amounts of increase or decrease caused by the tax changes. If WSDOT requests it, the Design-Builder shall certify in writing that the Contract Price does not include any extra amount to cover a possible change in taxes.

WSDOT may audit the records of the Design-Builder as provided in Section 1-09.12, to verify any claim for compensation because of changes in laws or taxes.

1-07.2 *State Taxes*

The Design-Builder shall pay all applicable Federal, State and Local sales, consumer, use, and similar taxes, property taxes, and any other taxes, fees, charges, or levies imposed by a governmental entity, whether direct or indirect, relating to, or incurred in connection with, the Project or performance of the Work, including that portion of the Contract Price relating to design services. The Design-Builder shall include all the Design-Builder paid taxes in the Contract Price unless a specific exception applies. 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 Design-Builder should contact the Contract Payment Section of the Division of Accounting & Financial Services of the Department of Transportation, Olympia, for answers to questions regarding sales tax.

WSDOT will not adjust its payment if the Design-Builder based its Proposal on a misunderstood tax liability.

WSDOT may deduct from its payments to the Design-Builder, withhold from the retainage, or place a lien on the bond, in the amount the Design-Builder owes the State Department of Revenue, whether the amount owed relates to the Contract in question or not. Any amount so deducted will be paid into the proper State fund on the Design-Builder's behalf. For additional information on tax rates and application refer to applicable RCWs, WACs, or the Department of Revenue's website.

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

State Department of Revenue Rule 171 and its related rules apply for this Section.

The *State Sales Tax: Rule 170 and 171 Map* (Appendix R) and the Contract Documents will identify those parts of the Project that are subject to Use Tax under this Section.

For Work designated as Rule 171, Use Tax, the Design-Builder shall include Washington State retail sales taxes in the portion of the Contract Price allocable to such Work. 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.

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

State Department of Revenue Rule 170 and its related rules apply for this Section.

The *State Sales Tax: Rule 170 and 171 Map* (Appendix R) and the Contract Documents will identify those parts of the Project are subject to retail sales tax under this Section.

For Work designated as Rule 170, Retail Sales Tax, the Design-Builder shall collect from WSDOT, Retail Sales Tax on the portion of the Contract Price allocable to such Work. WSDOT will automatically add this Retail Sales Tax to each payment to the Design-Builder and for this reason; the Design-Builder shall not include the Retail Sales Tax in its Contract Price. However, WSDOT will not provide additional compensation to the Design-Builder or Subcontractor for Retail Sales Taxes paid by the Design-Builder in addition to the Retail Sales Tax on the total Contract Price. Typically, these taxes are collected on items such as the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the Project. Such sales taxes shall be included in the Contract Price.

1-07.3 *Forest Protection and Merchantable Timber Requirements*

1-07.3(1) Forest Fire Prevention

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

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

1-07.3(2) Merchantable Timber Requirements

When merchantable timber is to be cut, the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder shall keep all camp sites clean, burn or 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 Work Site. The Design-Builder shall take precautions and perform any necessary Work to provide and maintain a safe and healthful Work Site in accordance with Applicable Laws.

1-07.5 *VACANT*

1-07.6 *Permits and Licenses*

The Design-Builder shall obtain all required permits and licenses that have not been obtained by WSDOT and give any notices these permits call for.

WSDOT will support the Design-Builder in efforts to obtain a temporary operating permit in its name if:

1. A local rule or an agency policy prevents issuing the permit to a private firm.
2. The Design-Builder 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 Design-Builder agrees in writing: (a) to comply with all the issuing agency requirements, and (b) to hold WSDOT harmless for any Work-related liability incurred under the permit.
6. The permit cost to WSDOT is zero dollars.

1-07.7 *Load Limits*

1-07.7(1) General

While moving equipment or materials on any public highway, the Design-Builder shall comply with all laws that control traffic or limit loads. The Contract neither exempts the Design-Builder from such laws nor licenses overloads. At WSDOT's request, the Design-Builder shall provide any facts needed to demonstrate that the weight of equipment used on the Project meets the requirements of Sections 1-07.7(1) and 1-07.7(2).

If the sources of materials provided by the Design-Builder necessitate hauling over roads other than State Highways, the Design-Builder shall, at the Design-Builder's expense, make all arrangements for the use of the haul routes.

Except for the load limit restrictions specified in Section 1-07.7(2), the Design-Builder may operate vehicles which exceed the legal gross weight limitations without special permits or payment of additional fees provided such vehicles are employed in the construction and within the limits of this Project.

When the Design-Builder moves equipment or materials within the Project Limits, legal load limits shall apply on:

1. Any existing road not scheduled for major reconstruction under the current Contract.
2. Any newly paved road (with final lift in place) built under this Contract. The Design-Builder may haul overloads (not more than 25 percent above load limits) on such roads not open to public traffic if this does not damage completed Work. The Design-Builder shall pay all repair costs of any overload damage.

Elsewhere on the Project, the Design-Builder may operate equipment with only the load-limit restrictions in 1, 2, and 3 in Section 1-07.7(2). The Design-Builder shall remain responsible, however, for all load-caused damage. All vehicles subject to license on a tonnage basis shall be licensed to maximum legal capacity before operating under these limits.

If necessary and safe to do so, and if the Design-Builder requests it in writing, WSDOT may approve higher load limits than those in the load-limit restrictions in 1, 2, and 3 in Section 1-07.7(2). The written request shall:

1. Describe loading details.
2. Describe the arrangement, movement, and position of equipment on the structure or over culverts and pipes.
3. State that the Design-Builder assumes all risk for damage.

The Contract Price includes all costs for operating over bridges and culverts. Nothing in this Section affects the Design-Builder's other responsibilities under the Contract or under public highway laws.

1-07.7(2) Load-Limit Restrictions

1. **Structures Designed for Direct Bearing of Live Loads -** The gross or maximum load on each vehicle axle shall not exceed the legal load limit by more than 35 percent. No more than one vehicle shall operate over any structure at one time. The Design-Builder shall immediately remove any dirt, rock, or debris that may gather on the structure's roadway surface.
2. **Underpasses and Reinforced Concrete Box Culverts Under Embankments -** 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 underpass or culvert.

   When the embankment has reached 5 feet above the top of the underpass or culvert, the Design-Builder 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** - 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 Design-Builder 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.

1-07.8 *High Visibility Apparel*

The Design-Builder shall require all personnel under their control (including service providers, Subcontractors, and lower tier Subcontractors) 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 Design-Builder shall ensure that a competent Person as identified in the MUTCD selects the appropriate high-visibility apparel suitable for the job-site conditions.

High visibility garments shall always be the outermost garments.

High visibility garments shall be labelled as, and in a condition compliant with the ANSI/ISEA 107-(2004 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 TR Section 2.22, *Maintenance of Traffic*, (including traffic control supervisors, flaggers, spotters, 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 Class 2 or 3 vest or jacket, and hardhat meeting the high visibility headwear requirements of WAC 296-155-305.

2. During hours of darkness (0.5 hour before sunset to 0.5 hour after sunrise) or other low visibility conditions (snow, fog, etc.), workers shall wear a high-visibility ANSI/ISEA 107 Class 2 or 3 vest or jacket, high visibility lower garment meeting ANSI/ISEA 107 Class E, and hardhats 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 TR Section 2.22, *Maintenance of Traffic*, shall wear high visibility apparel meeting the ANSI/ISEA 107 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 Design-Builder, any Subcontractor, and all individuals or firms required by RCW 39.12, WAC 296-127 and 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. Higher wages and benefits may be paid.

By including the hourly minimum rates for wages and fringe benefits in the Contract Provisions, WSDOT does not imply that the Design-Builder will find labor available at those rates. The Design-Builder shall be responsible for any amounts above the minimums that will actually have to be paid. The Design-Builder shall bear the cost of paying wages above those shown in the Contract Provisions.

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 Design-Builder 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 Design-Builder 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 WSDOT Engineer.

If employing labor in a class not listed in the Contract Provisions on federally funded projects, the Design-Builder shall request a determination of the correct wage and benefit for that class and locality from the U.S. Secretary of Labor through the WSDOT Engineer. Generally, the Design-Builder initiates the request by preparing standard form 1444 Request for Authorization of Additional Classification and Rate, available at

www.wdol.gov/docs/sf1444.pdf, and submitting it to the WSDOT Engineer for further action.

The Design-Builder shall ensure that any firm (Supplier, Manufacturer, or Fabricator) that falls under the provisions of RCW 39.12 because of the definition "Design-Builder" in WAC 296-127-010 complies with all the requirements of RCW 39.12.

The Design-Builder shall be responsible for compliance with the requirements of the DBRA and RCW 39.12 by all firms (Subcontractors, lower tier Subcontractors, Suppliers, Manufacturers, or Fabricators) engaged in any 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 Design-Builder, WSDOT will take action against the Design-Builder, 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 WSDOT 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 Design-Builder, any Subcontractor, any lower tier Subcontractor, or any other firm that is 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. WSDOT will reimburse the Design-Builder 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 Proposal 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.
4. Profit will not be an allowable markup.

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

The Federal wage rates incorporated in this Contract have been established by the Secretary of Labor under United States Department of Labor General Decision No. WA170001.

The State rates incorporated in this Contract are applicable to all construction activities associated with this Contract.

Application of Wage Rates for the Occupation of Landscape Construction

State prevailing wage rates for public works contracts are included in this Contract and show a separate listing for the occupation:

- Landscape Construction, which includes several different occupation descriptions such as: Irrigation and Landscape Plumbers, Irrigation and Landscape Power Equipment Operators, and Landscaping or Planting Laborers.

In addition, Federal wage rates that are included in this Contract may also include occupation descriptions in Federal Occupational groups for work also specifically identified with landscaping such as:

- Laborers with the occupation description, Landscaping or Planting.
- Power Equipment Operators with the occupation description, Mulch Seeding Operator.

If Federal wage rates include one or more rates specified as applicable to landscaping work, then Federal wage rates for all occupation descriptions, specific or general, shall be considered and compared with corresponding State wage rates. The higher wage rate, either State or Federal, becomes the minimum wage rate for the Work performed in that occupation.

The Design-Builder is responsible for determining the appropriate crafts necessary to perform the Contract Work. If a classification considered necessary for performance of the Work is missing from the Federal Wage Determination applicable to the Contract, the Design-Builder shall initiate a request for approval of a proposed wage and benefit rate. The Design-Builder shall prepare and submit Standard Form 1444, Request for Authorization of Additional Classification and Wage Rate available at www.wdol.gov/docs/sf1444.pdf, and submit the completed form to the WSDOT Engineer's office. The presence of a classification wage on the Washington State Prevailing Wage Rates For Public Works Contracts does not exempt the use of form 1444 for the purpose of determining a federal classification wage rate.

The Federal wage rates for Highway Construction incorporated in this Contract have been established by the Secretary of Labor under United States Department of Labor General Decision No. WA170001. These rates are applicable to highway construction.

The Federal wage rates for Heavy Construction incorporated in this Contract have been established by the Secretary of Labor under United States Department of Labor General Decision No. WA68 – WA104. These rates are applicable to heavy construction.

The State rates incorporated in this Contract are applicable to all construction activities associated with this Contract.

1-07.9(2) Posting Notices

Notices and posters shall be placed in areas readily accessible to read by employees and potential applicants. The Design-Builder shall ensure the following are posted:

1. EEOC - P/E-1 -Equal Employment Opportunity IS THE LAW published by US Department Of Labor. Post in English and Spanish versions for projects with federal-aid funding.
2. FHWA-1022 - NOTICE Federal-Aid Project published by Federal Highway

Administration (FHWA). Post for projects with federal-aid funding.

3. WH 1321 - Employee Rights Under the Davis-Bacon Act published by US Department Of Labor. Post for projects with federal-aid funding.
4. WHD 1088 - Employee Rights Under the Fair Labor Standards Act published by US Department Of Labor. Post on all projects.
5. WHD - 1420 - Employee Rights and Responsibilities Under The Family And Medical Leave Act published by US Department Of Labor. Post on all projects.
6. WHD-1462 – Employee Polygraph Protection Act published by US Department Of Labor. Post on all projects.
7. OSHA 3165-04R - Job Safety and Health Law published by Washington State Department of Labor and Industries. Post in English and Spanish versions on all projects.
8. F242-191-909 - Notice To Employees published by Washington State Department of Labor and Industries. Post on all projects.
9. F700-074-909 - Your Rights as a Worker in Washington State by Washington State Department of Labor and Industries (L&I). Post on all projects.
10. EMS 9874- Unemployment Benefits published by Washington State Employment Security Department. Post on all projects.
11. Post one copy of the approved "Statement of Intent to Pay Prevailing Wages" for the Contractor, each Subcontractor, each lower tier Subcontractor, and any other firm (Supplier, Manufacturer, or Fabricator) that falls under the provisions of RCW 39.12 because of the definition of "Contractor" in WAC 296-127-010.
12. Post one copy of the prevailing wage rates for the Project.

1-07.9(3) Apprentices

If employing apprentices, the Design-Builder shall submit to the WSDOT Engineer written evidence showing:

1. Each apprentice is enrolled in a program approved by the Washington State Apprenticeship and Training Council.
2. The progression schedule for each apprentice.
3. The established apprentice-journey level ratios and wage rates in the project locality upon which the Design-Builder will base such ratios and rates under the Contract. Any worker for whom an apprenticeship agreement has not been registered and approved by the Washington State Apprenticeship and Training Council shall be paid at the prevailing hourly journey level rate as provided in RCW 39.12.021.

1-07.9(3).1 Apprentice Utilization

The Design-Builder shall comply with an Apprentice Utilization Requirement. No less than 15.0 percent of Project Labor Hours shall be performed by Apprentices.

1-07.9(3).1.1 Definitions

The following definitions apply to Apprentice Utilization:

1. Apprentice is a person enrolled in a State-approved Apprenticeship Training Program.
2. Apprentice Utilization Requirement is the Apprentice labor hours expressed as a percentage of the project Labor Hours.
3. Good Faith Effort (GFE) is used if the Design-Builder doesn't meet the Apprentice Utilization Requirement. It describes the Design-Builder's efforts to meet the Apprentice Utilization Requirement including but not necessarily limited to the specific steps as described elsewhere in this specification.
4. Labor Hours are the total hours performed by all workers receiving an hourly wage who are directly employed upon the project including hours performed by workers employed by the Design-Builder and all Subcontractors. Labor Hours do not include hours performed by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements.
5. State-approved Apprenticeship Training Program is an apprenticeship training program approved by the Washington State Apprenticeship Council.

1-07.9(3).1.2 Electronic Reporting

The Design-Builder shall use the application available at https://RemoteApps.wsdot.wa.gov/Construction/Training/Apprenticeship/ to submit the Apprentice Utilization Plan, Statement of Apprentice/Journeyman Participation, and to submit Good Faith Effort documentation. After execution of the Contract, the Design-Builder shall send an email to apprenticeship@wsdot.wa.gov containing the following information: the first and last name, email address, title, and phone number of the person that will be submitting the above documents for their company. The email shall include the WSDOT contract number they will be reporting on. After receipt of this information by WSDOT, the Design-Builder will receive an email containing their username and password for the application and a link to the application. Reporting instructions are available in the application.

1-07.9(3).1.3 Apprentice Utilization Plan

The Design-Builder shall submit an Apprentice Utilization Plan through the Apprenticeship Utilization Reporting Application within 30 Calendar Days of execution, demonstrating how and when they intend to achieve the Apprentice Utilization Requirement. The plan shall be updated and resubmitted as appropriate as the Work progresses. The intent is to provide WSDOT with enough information to track progress in meeting the utilization requirements.

1-07.9(3).1.4 Reporting

The Design-Builder shall complete and submit a Statement of Apprentice /Journeyman Participation through the Apprenticeship Utilization Reporting Application on a monthly basis. The report shall be submitted to WSDOT by the last working day of the subsequent

month, until the Physical Completion Date. The data reported shall be cumulative to date and consolidated to include the Design-Builder and all Subcontractors. At the Design-Builder's request, WSDOT may suspend this reporting requirement during periods of minimal or no applicable Work activities on the Project. The Design-Builder shall submit documentation of their Good Faith Effort if; (1) they are unable to provide a plan demonstrating how they intend to meet the Apprentice Utilization Requirement; or, (2) the Project has been completed without meeting the Apprentice Utilization Requirement.

1-07.9(3).1.5 Contacts

The Design-Builder may obtain information on State-approved Apprenticeship Training Programs by contacting the Department of Labor and Industries at:

Specialty Compliance Services Division
Apprenticeship Section
P.O. Box 44530
Olympia, WA 98504-4530
Phone: 360-902-5320

1-07.9(3).1.6 Compliance

In the event that the Design-Builder is unable to accomplish the Apprentice Utilization Requirement, the Design-Builder shall demonstrate that a Good Faith Effort has been made as described elsewhere in this Section. Good Faith Effort documentation shall be uploaded using the application described in Section 1-07.9(3).1.2, Electronic Reporting. Failure to comply with the requirements as specified may result in reduction or revocation of prequalification as allowed by WAC 468-16-190.

1-07.9(3).1.7 Good Faith Efforts

In fulfilling the Good Faith Effort, the Design-Builder shall perform and, when appropriate, require its Subcontractors to perform the following steps:

1. Solicit Apprentice(s) from State-approved Apprenticeship Training Program(s).
2. Document the solicitation and, in the event Apprentice(s) are not available, obtain supporting documentation from the solicited program(s).
3. Demonstrate that the plan was updated as required elsewhere in this specification.
4. Provide documentation demonstrating what efforts the Design-Builder has taken to require Subcontractors to solicit and employ Apprentice(s).

In the event that the preceding steps have been followed, the Design-Builder may also supplement the Good Faith Efforts documentation with the following documentation:

1. Submit documentation demonstrating successful Apprentice utilization on previous contracts.
2. Submit documentation indicating companywide Apprentice utilization efforts and percentages of attainment.

1-07.9(3).1.8 Apprentice Wages

See Section 1-07.9(3).

1-07.9(4) Disputes

If labor and management cannot agree in a dispute over the proper prevailing wage rates, the Design-Builder 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.

1-07.9(5) Required Documents

On forms provided by the Industrial Statistician of State L&I, the Design-Builder shall submit to the Engineer the following for itself and for each firm covered under RCW 39.12 that provided Work and materials for the Contract:

1. A copy of an approved "Statement of Intent to Pay Prevailing Wages" State L&I's form number F700-029-000. WSDOT will make no payment under this Contract for the Work performed until this statement has been approved by State L&I and a copy of the approved form has been submitted to the WSDOT Engineer.
2. A copy of an approved "Affidavit of Prevailing Wages Paid", State L&I's form number F700-007-000. WSDOT will not grant Completion until all approved Affidavit of Wages paid for the Design-Builder and all Subcontractors have been received by the WSDOT Engineer. WSDOT will not release to the Design-Builder any 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 a copy of all the approved forms have been submitted to the WSDOT Engineer.

The Design-Builder shall be responsible for requesting these forms from State L&I and for paying any approval fees required by State L&I.

Certified payrolls shall be submitted by the Design-Builder to the WSDOT Engineer for the Design-Builder and all Subcontractors or lower tier Subcontractors, on all Federal-aid projects and, when requested in writing by the WSDOT Engineer, on projects funded with only WSDOT funds. If these payrolls are not supplied within 10 Calendar Days of the end of the preceding weekly payroll period for Federal-aid projects or within 10 Calendar Days from the date of the written request on projects with only WSDOT funds, any or all payments may be withheld until compliance is achieved. Also, failure to provide these payrolls could result in other sanctions as provided by State laws (RCW 39.12.050) and/or Federal regulations (29 CFR 5.12). All certified payrolls shall be complete and explicit. Employee labor descriptions used on certified payrolls shall coincide exactly with the labor descriptions listed on the minimum wage schedule in the Contract unless the Engineer approves an alternate method to identify the labor used by the Design-Builder to compare with the labor listed in the Contract Provisions. When an apprentice is shown on the certified payroll at a rate less than the minimum prevailing journey wage rate, the apprenticeship registration number for that employee from the State Apprenticeship and Training Council shall be shown along with the correct employee classification code.

1-07.9(6) Audits

WSDOT may inspect or audit the Design-Builder's wage and payroll records as provided in Section 1-09.12.

1-07.10 *Worker's Benefits*

The Design-Builder 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 any payment required by Title 50 or Title 51 is not made when due, WSDOT may retain such payments from any money due the Design-Builder and pay the same into the appropriate fund. Such payment will be made only after giving the Design-Builder 15 Calendar Days prior written notice of WSDOT'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 Calendar Day period, WSDOT 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 Design-Builder 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 Design-Builder shall include in the Proposal all costs for payment of unemployment compensation and for providing either or both of the insurance coverages. The Design-Builder will not be entitled to any 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 Design-Builder with applicable industrial insurance and medical aid classification and premium rates. After receipt of *Revenue Release* from the Washington State Department of Revenue, WSDOT will verify through the Department of Labor and Industries that the Design-Builder is current with respect to the payments of industrial insurance and medical aid premiums.

1-07.11 *Requirements for Nondiscrimination*

1-07.11(1) 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, and other related laws and statutes. These laws (and corresponding regulations) establish the minimum requirements for affirmative action efforts and define the basic nondiscrimination provisions as required by this Section of these General Provisions.

It is the policy of the Washington State Department of Transportation (WSDOT) that Disadvantaged Business Enterprises (DBEs) and other small businesses, as defined in 49

Code of Federal Regulations (CFR) Part 26, shall have equal opportunity to participate in contracts financed in whole or in part with USDOT funds.

DBE goals have been assigned to this project. Accordingly, the Design-Builder shall take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform work on this contract that corresponds with their DBE certification (work descriptors).

1-07.11(2) Contractual Requirements

1. The Design-Builder, and its Subcontractors, consultants, Subconsultants, suppliers, and service providers shall maintain a Work site that is free of harassment, humiliation, fear, hostility and intimidation at all times. Behaviors that violate this requirement include at a minimum:

    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. This Contract, and all contracts the Design-Builder signs with its Subcontractors, consultants, Subconsultants, suppliers, and service providers shall contain the following assurance (49 CFR 26.13(b)):

    The contractor or subcontractor shall not discriminate on the basis race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 as well as the FHWA 1273 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as WSDOT deems appropriate, which may include, at a minimum:

    a. Withholding monthly progress payments.

    b. Assessing sanctions.

    c. Liquidated damages.

    d. Disqualifying the contractor from future bidding as non-responsive.

    For this Contract, each occurance of the terms "contractor" and "subcontractor" shall be replaced by "Design-Builder" in the above assurance. In other contracts,

each occurance of the terms “contractor” and “subcontractor” in the above assurance shall be replaced by “subcontractor”, “consultant”, “subconsultant”, “supplier”, or “service provider”, depending on tier of contract executed by the Design-Builder.

1-07.11(2).1 Title VI Assurances

During the performance of this Contract, the Design-Builder, for itself, its assignees, and successors in interest (hereinafter referred to as the “Design-Builder”) agrees as follows:

1. **Compliance With Regulations** - The Design-Builder will comply with the Acts and the Regulations relative to nondiscrimination in Federally assisted programs of the U.S. Department of Transportation (Federal Highway Administration), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.

2. **Nondiscrimination** - The Design-Builder, with regard to the Work performed by it during the Contract, will not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Design-Builder shall not participate either directly or indirectly in the discrimination prohibited by the Acts and the 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 Design-Builder 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 Design-Builder of the Design-Builder’s obligations under this Contract and the Acts and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.

4. **Information and Reports** - The Design-Builder will provide all information and reports required by the Acts and the Regulations, and directives issued pursuant thereto, and will 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 Design-Builder is in the exclusive possession of another who fails or refuses to furnish this information, the Design-Builder will so certify to the Washington State Department of Transportation, or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance** - In the event of the Design-Builder’s noncompliance with the nondiscrimination provisions of this Contract, the Washington State Department of Transportation will 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 Design-Builder under the Contract until the Design-Builder complies, and/or;

b. Cancelling, terminating, or suspending the Contract, in whole or in part.

6. **Incorporation of Provisions** – The Design-Builder will include the provisions of paragraphs (1) through (5) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Design-Builder shall take action with respect to any Subcontract 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 Design-Builder becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Design-Builder 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 Design-Builder may request the United States to enter into the litigation to protect the interests of the United States.

1-07.11(3) Equal Employment Opportunity

Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity are set forth in various laws, regulations, and executive orders. The following requirements are applicable to this project:

The Design-Builder 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 Design-Builder's employees. The EEO Officer must possess the responsibility, authority, and capability for administering and promoting an active and effective Design-Builder program of equal employment opportunity. The FHWA Required Contract Provisions (Form FHWA 1273) also apply. These FHWA provisions are required to be physically incorporated into every contract and subcontract, regardless of tier.

1-07.11(4) Dissemination of Policy

1-07.11(4).1 Supervisory Personnel

All members of the Design-Builder's staff authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or are substantially involved in such action, shall be fully cognizant of, and shall implement the Design-Builder'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 is 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 Design-Builder's equal employment opportunity policy and its implementation shall be reviewed and explained. The EEO meetings are to be

conducted by the EEO Officer, or another company official who is knowledgeable of the EEO requirements of the contract.

2. **EEO Indoctrination** - All new supervisory or personnel office employees must be provided a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the Design-Builder's equal employment opportunity obligations within 30 Calendar Days following their reporting for duty with the Design-Builder.

3. **Internal EEO Procedures** - All personnel who are engaged in direct recruitment for the project, shall be trained by the EEO Officer (or appropriate designee), in the Design-Builder's procedures for locating and hiring minority group and female employees.

1-07.11(4).2 Employees, Applicants, and Potential Employees

In order to make the Design-Builder'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 Design-Builder shall take the following actions:

1. **Notices and Posters** - Notices and posters setting forth the Design-Builder's equal employment opportunity policy shall be located in areas readily accessible to employees, applicants for employment, and potential employees.

2. **EEO Indoctrination** - The Design-Builder's equal employment opportunity policy and the procedures to implement such policy shall be provided to employees by means of meetings, employee handbooks, or other appropriate means.

1-07.11(5) Sanctions

In the event the Design-Builder is found in noncompliance with the provisions of Section 1-07.11, WSDOT may impose such Contract sanctions as it or the Federal Highway Administration may determine necessary to gain compliance including, at a minimum:

1. Progress payments may be withheld until the noncompliance is remedied to the satisfaction of WSDOT.

2. Immediately upon the WSDOT Engineer's request, the Design-Builder shall remove from the Work site any employee engaging in behaviors that promote harassment, humiliation, fear or intimidation including but not limited at a minimum to those described in these specifications this Section

3. The Contract may be suspended, in whole or in part until such time as the Design-Builder is determined to be in compliance by WSDOT.

4. The Contract may be terminated.

5. The Design-Builder's pre-qualification may be suspended or revoked pursuant to WAC 468-16. WSDOT may refer the matter to the Federal Highway Administration (FHWA) for possible federal sanctions.

6. The Design-Builder's performance rating may be affected for failure to comply

with the civil rights requirements applicable to the contract.

1-07.11(6) Incorporation of Provisions

The Design-Builder shall include the provisions of Section 1-07.11(2), item 2 and Section 1-07.11(5) Sanctions in every Subcontract including procurement of materials and leases of equipment. The Design-Builder shall take such action or enforce sanctions with respect to a Subcontractor or supplier as WSDOT or the FHWA may direct as a means of enforcing such provisions. In the event a Design-Builder becomes involved in litigation with a Subcontractor or supplier as a result of such direction, the Design-Builder may request WSDOT enter into such litigation to protect their interests and WSDOT 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 Design-Builder 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 Design-Builder 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 Design-Builder shall notify all potential Subcontractors and suppliers of the EEO obligations required by the Contract. The Design-Builder shall use their efforts to ensure Subcontractors compliance with their equal employment opportunity obligations.

1-07.11(10) Records and Reports

1-07.11(10).1 General

The Design-Builder shall keep such records as are necessary to determine compliance with the Design-Builder's equal employment opportunity obligations. The records kept by the Design-Builder 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 made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to Design-Builders 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 made in locating, hiring, training, qualifying, and upgrading minority and female employees.

4. **Subcontracting** - The progress and efforts 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).2 Required Records and Retention

All records must be retained by the Design-Builder for a period of 3 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 Design-Builder and each Subcontractor (subject to the above noted criteria). These forms are due by August 25th in every year during which Work was performed in July. The payroll period reflected in the report shall be the last payroll period in July in which Work was performed. This report is required of each Design-Builder and Subcontractor for each federally assisted Contract on which the Design-Builder 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 WSDOT) 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 Design-Builder or Subcontractor's records.

Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Design-Builder's attention is called to the Equal Opportunity Clause and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth herein.
2. The goals and timetables for minority and female participation set by the Office of Federal Contract Compliance Programs, expressed in percentage terms for the Design-Builder's aggregate work force in each construction craft and in each trade on all construction work in the covered area, are as follows:

Women - Statewide

Timetable	***Goal***
Until further notice	6.9%

Minorities - by Standard Metropolitan Statistical Area (SMSA)

Spokane, WA:	
SMSA Counties:	
Spokane, WA	2.8

WA Spokane.

Non-SMSA Counties 3.0

WA Adams; WA Asotin; WA Columbia; WA Ferry; WA Garfield; WA Lincoln, WA Pend Oreille; WA Stevens; WA Whitman.

Richland, WA

SMSA Counties:

Richland Kennewick, WA 5.4

WA Benton; WA Franklin.

Non-SMSA Counties 3.6

WA Walla Walla.

Yakima, WA:

SMSA Counties:

Yakima, WA 9.7

WA Yakima.

Non-SMSA Counties 7.2

WA Chelan; WA Douglas; WA Grant; WA Kittitas; WA Okanogan.

Seattle, WA:

SMSA Counties:

Seattle Everett, WA 7.2

WA King; WA Snohomish.

Tacoma, WA 6.2

WA Pierce.

Non-SMSA Counties 6.1

WA Clallam; WA Grays Harbor; WA Island; WA Jefferson; WA Kitsap; WA Lewis; WA Mason; WA Pacific; WA San Juan; WA Skagit; WA Thurston; WA Whatcom.

Portland, OR:

SMSA Counties:

Portland, OR-WA 4.5

WA Clark.

Non-SMSA Counties 3.8

WA Cowlitz; WA Klickitat; WA Skamania; WA Wahkiakum.

These goals are applicable to each nonexempt Design-Builder's total on-site construction workforce, regardless of whether or not part of that workforce is performing work on a Federal, or federally assisted project, contract, or subcontract until further notice. Compliance with these goals and timetables is enforced by the U. S. Department of Labor's Office of Federal Contract Compliance Programs.

The Design-Builder's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, in each construction craft and in each trade, and the Design-Builder shall make a good faith effort to employ minorities and women evenly on each of its

projects. The transfer of minority or female employees or trainees from Design-Builder to Design-Builder or from project to project for the sole purpose of meeting the Design-Builder's goal shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Design-Builder shall provide written notification to the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of $10,000 or more that are Federally funded, at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number of the Subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed. The notification shall be sent to:

   U.S. Department of Labor
   Office of Federal Contract Compliance Programs Pacific Region
   Attn: Regional Director
   San Francisco Federal Building
   90-7th Street, Suite 18-300
   San Francisco, CA 94103
   (415) 625-7800 Phone
   (415) 625-7799 Fax

   Additional information may be found at the U.S. Department of Labor website: www.dol.gov/ofccp/TAguides/ctaguide.htm

4. As used in this Notice, and in the contract resulting from this solicitation, the Covered Area is as designated herein.

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

   a. Covered Area means the geographical area described in the solicitation from which this Contract resulted.

   b. Director means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

   c. Employer Identification Number means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941.

   d. Minority includes:

      (1) Black, a person having origins in any of the Black Racial Groups of Africa.

      (2) Hispanic, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(3) Asian or Pacific Islander, a person having origins in any of the original peoples of the Pacific rim or the Pacific Islands, the Hawaiian Islands, and Samoa.

(4) American Indian or Alaskan Native, a person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

2. Whenever the Design-Builder, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Design-Builder is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all Work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Design-Builders must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Design-Builder or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Design-Builder's or Subcontractor's failure to take good faith effort to achieve the Plan goals and timetables.

4. The Design-Builder shall implement the specific affirmative action standards provided in paragraphs 7a through 7p below. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Design-Builder should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. The Design-Builder is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Design-Builder has a collective bargaining agreement, to refer either minorities or women shall excuse the Design-Builder's obligations under these General Provisions, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Design-Builder during the training period, and the Design-Builder must have made a commitment to employ the apprentices and trainees at the completion of their

training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Design-Builder shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Design-Builder's compliance with these General Provisions shall be based upon its effort to achieve maximum results from its action. The Design-Builder shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

    a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Design-Builder's employees are assigned to work. The Design-Builder, where possible, will assign two or more women to each construction project. The Design-Builder shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Design-Builder's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

    b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Design-Builder or its unions have employment opportunities available, and maintain a record of the organizations' responses.

    c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Design-Builder by the union or, if referred, not employed by the Design-Builder, this shall be documented in the file with the reason therefor, along with whatever additional actions the Design-Builder may have taken.

    d. Provide immediate written notification to the Director when the union or unions with which the Design-Builder has a collective bargaining agreement has not referred to the Design-Builder a minority person or woman sent by the Design-Builder, or when the Design-Builder has other information that the union referral process has impeded the Design-Builder's efforts to meet its obligations.

    e. Develop on-the-job training opportunity and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Design-Builder's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The Design-Builder shall provide notice of these programs to the sources compiled under 7b above.

    f. Disseminate the Design-Builder's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Design-Builder in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company

newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Design-Builder's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Design-Builder's EEO policy with other Contractors and Subcontractors with whom the Design-Builder does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Design-Builder's recruitment area and employment needs. Not later than 1 month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Design-Builder shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Design-Builder's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Design-Builder's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including

circulation of solicitations to minority and female Design-Builder associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Design-Builder's EEO policies and affirmative action obligations.

8. Design-Builders are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a Design-Builder association, joint Design-Builder-union, Design-Builder-community, or other similar group of which the Design-Builder is a member and participant, may be asserted as fulfilling any one or more of the obligations under 7a through 7p above provided that the Design-Builder actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Design-Builder's minority and female work-force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrate the effectiveness of actions taken on behalf of the Design-Builder. The obligation to comply, however, is the Design-Builder's and failure of such a group to fulfill an obligation shall not be a defense for the Design-Builder's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Design-Builder, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Design-Builder may be in violation of the Executive Order if a particular group is employed in substantially disparate manner (for example, even though the Design-Builder has achieved its goals for women generally, the Design-Builder may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Design-Builder shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Design-Builder shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Design-Builder shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspensions, terminations, and cancellations of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Design-Builder who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Design-Builder, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Design-Builder fails to comply with the

requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Design-Builder shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include, for each employee, their name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, the Design-Builders will not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. Additional assistance for Federal Construction Contractors on contracts administered by Washington State Department of Transportation or by Local Agencies may be found at:

    Washington State Dept. of Transportation
    Office of Equal Opportunity
    PO Box 47314
    310 Maple Park Ave. SE
    Olympia WA
    98504-7314
    Ph: 360-705-7090
    Fax: 360-705-6801
    www.wsdot.wa.gov/equalopportunity/default.htm

1-07.11(11) Minority, Small, Veteran and Women's Business Enterprise (MSVWBE) Participation

This Section is intentionally omitted.

1-07.11(12) Disadvantaged Business Enterprise Participation

The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 applies to this Contract.

UDBE Goal

The WSDOT has established UDBE Goals in the amount of: ***$$1$$*** percent for the Design portion and ***$$2$$*** percent for the Construction portion of the contract.

DBE Eligibility/Selection of DBE's

In order to determine the distinct element(s) of work for which a DBE is certified, Design-Builders should refer to the Certified Business Description. The Design-Builder shall not use NAICS codes on the UDBE Performance Plan.

In order to fulfill a UDBE Goal, the firms named as DBE subcontractors, consultants, Subconsultants, suppliers or service providers in the proposer's UDBE Performance Plan must have been certified as a DBE in the specific work classification (work descriptor), by the Office of Minority and Women's Business Enterprises (OMWBE) prior to release of the RFP. For subcontracts awarded subsequent to the selection of a Proposer, a firm must be certified as a DBE, in the appropriate work classification (work descriptor), prior to the date of the subcontract on which it is committed to perform is executed.

Note: If a UDBE firm is on OMWBE's DBE Directory Suspension List, the firm will not be eligible to meet a contract goal on a new contract if the execution of that contract was subsequent to the DBE's receipt of the Notice of Suspension from OMWBE.

Crediting DBE Participation
In accordance with 49 CFR 26.55, WSDOT will utilize the following guidelines in determining the amount of DBE participation to apply towards the contract's UDBE Goals.

Contracts/subcontracts/leases/agreements with DBEs shall be evidenced in writing; shall comply with the requirements of 49 CFR Part 26; shall include a description of the distinct elements of work/materials that the DBE has agreed (and is certified) to perform/supply (along with respective dollar amounts); and be readily available at the project site for WSDOT review.

To receive credit for DBE participation, DBEs must perform at least 30 percent of the total cost of its contract with its own forces.

The participation of a UDBE toward the Design-Builder's DBE attainment or contract goals, will not be counted until the amounts owed the UDBE(s) for work performed (including return of retainage) has been paid to the UDBE and it has been determined, by the contract owner, that the UDBE(s) has performed a Commercially Useful Function (CUF)).

Joint Venture
When a DBE performs as a participant in a joint venture, only that portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work that the DBE performs with its own forces will be eligible for DBE credit.

DBE Design-Builder
A DBE Design-Builder may only take credit for that portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work that the DBE prime performs with its own forces.

DBE Subcontractor
When a DBE firm participates as a Subcontractor, only the value of the work that the DBE is certified in and actually performs with its own workforce, will be considered for DBE credit. The value of work performed by the DBE includes the cost of supplies and materials purchased by the DBE and equipment leased by the DBE, specifically for performance of their scope of work.

DBE credit cannot be applied to supplies/materials or equipment that are obtained from a DBE who is not certified by OMWBE as a supplier or equipment leasing company.

The Design-Builder may not take credit for supplies, materials, and equipment the DBE Subcontractor purchases or leases from the Design-Builder or its affiliate, including any Design-Builder resources available to the DBE Subcontractors at no cost.

The entire value of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, managerial services, or for providing bonds or insurance specifically required for the performance of the contract, will be considered for DBE credit provided that the DBE is certified in the respective work type(s), and the fee/commission is deemed reasonable. For more information, see “DBE Service Provider” below.

When a UDBE subcontracts to another firm, the value of the subcontracted Work may be eligible for UDBE credit only if the UDBE's lower tier Subcontractor is also a certified UDBE. Work subcontracted to a Lower-Tier Subcontractor that is a DBE, but not a UDBE, may be counted as DBE race-neutral participation but not counted for UDBE credit. Work subcontracted to a non-DBE does not count for UDBE credit nor DBE participation.

When a non-DBE Subcontractor further subcontracts to a lower-tier Subcontractor or supplier who is a certified UDBE, then that portion of the Work further subcontracted may be considered for UDBE credit, provided it is a distinct clearly defined portion of the Work that the UDBE is certified by OMWBE to perform, and the UDBE Subcontractor performs a CUF.

DBE Service Provider

Fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, managerial services, or for providing bonds or insurance specifically required for the performance of the contract, will only be credited DBE participation, if the fee is determined (by WSDOT) to be reasonable and the firm has performed a CUF.submitted in with Section 1-08.1

DBE credit for DBE brokers/transaction expediters, or DBEs acting in the manner of a broker/transaction expediter, is limited to the fee/commission that it receives for its services. The cost of materials and supplies procured by a DBE broker/packager/manufacturer representative do not count towards DBE goals (only the fee, if reasonable). If the DBE does not perform a CUF (i.e., is an extra participant in the transaction), then no DBE credit can be counted.

Trucking

The following applies to counting participation of DBE trucking companies:

The DBE trucking firm receives DBE credit for the value of the transportation (hauling) services that it provides on the Contract using trucks that it owns, insures, and operates using drivers that it employs.

The DBE trucking firm may lease trucks from another certified DBE trucking firm. The Work that a UDBE trucking firm performs with trucks it leases from other certified UDBE trucking firms qualify for 100% UDBE credit.

DBE credit for a certified DBE truck broker is limited to the fees/commissions that the DBE receives for arranging transportation services.

If a UDBE or DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, the total value of the hauling services is eligible for UDBE or DBE participation credit provided the DBE performed a CUF. Work that a DBE trucking company subcontracts to a non-UDBE firm does not count for UDBE credit.

DBE credit for DBE trucking participation is dependent upon submission of required supporting documentation.

DBE Manufacturer and DBE Regular Dealer

If materials or supplies are obtained from a UDBE who has been certified by OMWBE as a Manufacturer, 100 percent of the cost of materials or supplies can count for UDBE credit.

If materials or supplies are obtained from a DBE who has been approved by WSDOT as a Regular Dealer for the project, 60 percent of the cost of materials or supplies purchased from a DBE Regular Dealer may be credited toward meeting the DBE Goal.

If the role of the DBE Regular Dealer is determined to be that of a Broker, then the DBE credit will be limited to the fee or commission it receives for its services. Documentation will be required to support the fee/commission charged by the DBE.

DBE credit is limited to the fee/commission charged by a DBE who is neither a manufacturer nor a regular dealer, for their assistance in procuring/delivery materials/supplies required on the project. WSDOT must determine whether the fee/commission is reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves are not eligible for DBE Goal credit.

A DBE firm, including UDBEs planningto participate as a Regular Dealer on the project, will need to submit a request in writing to WSDOT's Office of Equal Opportunity (OEO) for approval, no later than 10 Calendar Days prior to the Substantially Completed Design Milestone. Once approved, the firm's name will appear on the Regular Dealer list located on OEO's website. Approval for Regular Dealer status is on a contract-by-contract basis.

Commercially Useful Function

The Design-Builder is responsible for ensuring that all DBEs on the project are performing a Commercially Useful Function (CUF). However, in order to count UDBE participation towards a contract UDBE Goal, WSDOT must have performed and documented a CUF review on each DBE, per contract. The Design-Builder may take credit for payments made to a DBE towards the UDBE Goal on a contract, only if the DBE has performed a CUF on the contract, as determined by WSDOT.

A DBE performs a CUF when it is responsible for execution of the work of the contract and is actually performing, managing, and supervising the work it is subcontracted to perform. The DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing, and paying for the material itself. If a DBE has not performed "all" of these functions on a furnish-and-install contract, it has not performed a CUF and therefore, the cost of the materials cannot be counted toward the UDBE goal. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or Project through which funds are passed in order to obtain the appearance of DBE participation.

In regards to CUF and DBE traffic control companies, the DBE must be in control of its Work inclusive of supervision. In other words, the DBE shall employ a Traffic Control Supervisor who is on-site actively managing the work that the traffic control company is contracted to perform, and is supervising the firm's traffic control employees and the services that they provide.

The following are some of the factors that WSDOT will utilize in determining whether a DBE trucking company is performing a CUF:

- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. The truck must be of the type that is necessary to perform the hauling duties required under the contract.
- The DBE trucking company shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on the contract. The owner demonstrates business related knowledge, shows up on-site, and is determined to be actively running the business (not a contrived arrangement).

- The drivers of the trucks owned and leased by the DBE (in performance of their work on the contract), must be exclusively employed by the DBE, and reflected on the DBE's payroll.
- Lease agreements for trucks must indicate that the DBE has exclusive use of and control over the truck(s). This does not preclude the leased truck from working for others, provided it is with the consent of the DBE and the lease provides the DBE absolute priority for use of the leased truck.
- Leased trucks shall display the name and identification number of the DBE.

Joint Checking

Joint checks must be made available to all Subcontractors. For purposes of the DBE program, a joint check is a two-party check between a DBE, a Contractor/Design-Builder, and the supplier of materials/supplies. The check is issued by the Contractor/Design-Builder as payor to the DBE Subcontractor and the material supplier jointly (to guarantee payment to the supplier) for items to be incorporated by the DBE into the Project. The DBE must release the check to the supplier, while the Contractor/Design-Builder acts solely as the guarantor.

A joint check arrangement shall be short term (i.e., one year), sufficient to allow the DBE to establish/increase a credit line with the material supplier.

Prior to its use, a joint check agreement, signed by all parties involved, must be submitted to WSDOT for review and approval. The DBE must use the DBE Joint Check Request Form (form #272-053) when submitting the request. The form shall be accompanied by the DBE Joint Check Agreement, which describes the conditions of the arrangement and expected use of the joint checks.

The DBE must be responsible for both furnishing and installing the materials. To receive DBE credit for performing a CUF with respect to obtaining materials and supplies, a DBE shall be responsible for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. The supplies/materials must be specific to the performance of the DBE's work under its subcontract, (i.e., cannot be a non-proportionate ratio of the DBE's normal capacity to size of contract and quantity of material to be provided under the contract). In addition, the joint check cannot be applied to purchases by the DBE for work on other projects.

Material costs paid by the Design-Builder directly to the material supplier are not allowed. If proper procedures are not followed or WSDOT determines that the arrangement results in lack of independence for the DBE involved, no DBE credit will be given for the DBE's participation as it relates to the material cost.

Joint checks are not allowed to be used to pay for equipment purchases, union dues, or other items not physically incorporated into the project.

Prompt Payment

Prompt payment to all Subcontractors shall be in accordance with Section 1-08.1(1) of these General Provisions. Prompt payment requirements apply to progress payments as well as return of retainage.

Procedures after Execution

After execution of the Contract, the Design-Builder shall provide the additional information described below.

As described in the ITP, each Proposer for this Contract was required to submit a UDBE Performance Plan as part of a responsive Proposal. Following execution of the Contract and

during both the design and construction portions of the Project, the Design-Builder shall submit monthly progress reports described in the section below entitled "Reporting", to show efforts being made by the Design-Builder towards achieving the UDBE Goal for the Project. Evidence of Good Faith Efforts, as described in 49 CFR Part 26 Section 26.53, will be monitored by WSDOT throughout the duration of the Contract.

If Trucking is listed on the UDBE Performance Plan, the following is required for each DBE trucking firm prior to hauling services being performed:

a) A list of trucks by license plate number and vehicle identification number (VIN) that the DBE firm owns. Include the size and type of each truck and the year/make of each truck.

b) If applicable, a list of trucks to be leased and the information listed in "a." above for each truck and a copy of the lease agreement.

c) Number of hours contracted.

d) Quantities to be hauled.

Reporting

The Design-Builder/Consultant and all Subcontractors/Subconsultants/suppliers/service providers that utilize DBEs to perform work on the project, shall maintain appropriate records that will enable WSDOT to verify DBE participation throughout the life of the project.

The Design-Builder, as part of implementing its UDBE Performance Plan, shall provide monthly DBE Progress Reports to WSDOT, due on the 10th of each month following award of the Contract. The DBE Progress Report shall contain a summary of all DBE subcontracts/agreements entered into to date, along with the name of each firm/company (and their respective contact person), their address, telephone number, dollar amount of the subcontract/agreement, a description of work to be performed under the subcontract/agreement, and the duration of the subcontract/agreement.

The progress report shall also include information on any changes to a DBE's subcontract/agreement, a running tally comparing commitments to payments, and a forecast of upcoming opportunities for additional DBE participation. If DBE participation is determined to be lagging, WSDOT will require the Design-Builder to provide documentation/action plan on how they intend to make up missed planned participation.

In addition, the Design-Builder shall provide a list of firms (DBE and non-DBE) who submit a bid or quote in an attempt to participate in this project, whether they were successful or not. The list must include the firm's name, federal tax identification number and mailing address.

Before execution of a DBE subcontract, the Design-Builder, Subcontractor, or lower-tier Subcontractor shall submit the following information to the WSDOT Engineer (using the DBE Utilization Certification Form, DOT Form 272-056):

- Correct business name, federal employee identification number (if available), and mailing address.
- Description of the Work sublet to the DBE firm. The description must reflect the distinct element(s) of work that the DBE will perform. The dollar value of the DBE's work items must also be included.
- Written confirmation from each DBE firm that it is participating in the contract in the kind and amount of work provided in the Design-Builder's commitment (using DOT Form 422-031).

The Design-Builder is required to report payments (including return of retainage) made to all Subcontractors/Subconsultants/suppliers/service providers who have performed work on the

project. This report shall be submitted monthly to the WSDOT Engineer between Execution of the Contract and Physical Completion of the Contract. For WSDOT projects, the Design-Builder must use the application available at: https://omwbe.diversitycompliance.com**.**

The monthly report is due 20 Calendar Days following the end of the month. A monthly report shall be submitted for every month regardless of whether payments were made or Work occurred.

After Execution of the Contract, the Design-Builder shall send an e-mail to CRP@wsdot.wa.gov containing the following information: the first and last name, email address, title, and phone number of the person that will be submitting the above documents for their company. The email shall include the WSDOT contract number they will be reporting on. After receipt of this information by WSDOT, the Design-Builder will receive an email containing their username and password for the application and a link to the application. Reporting instructions are available in the application. In the event that payments were made to a DBE by a lower-tier Subcontractor or supplier, the Design-Builder shall obtain the certification from the paying entity and submit these payments to WSDOT with their monthly reports using the application available at: https://omwbe.diversitycompliance.com.

Changes in Work Committed to UDBE
A change in work that was committed to a UDBE requires WSDOT's approval and may be subject to the termination and substitution requirements described below. The Design-Builder will not be entitled to any payment for Work or material that was committed to a UDBE, but was subsequently completed by the Design-Builder or other Subcontractors.

Owner-Initiated Changes
In instances where WSDOT changes work that impacts the work of a UDBE, WSDOT will evaluate the impact on UDBE participation. In such instances, WSDOT may direct UDBE participation or solicitation of UDBEs as part of a change order.

Design-Builder-Initiated Changes
The Design-Builder cannot reduce the amount of Work committed to a UDBE without good cause. Reducing a UDBE commitment is viewed as partial UDBE termination, and therefore subject to the termination procedures below.

Original Work Committment
In the event that Work committed to a UDBE is reduced, the Design-Builder is encouraged to look at other work scopes where UDBE opportunities may be available.

Design-Builder Proposed UDBE Substitutions
Requests to substitute a UDBE commitment shall follow the same process as described below for UDBE termination. The Design-Builder may only replace a UDBE with another certified UDBE. When changes are encountered between Contract Award and Execution that result in substitution of a UDBE commitment, the substitute UDBE must be certified prior to execution of its subcontract.

UDBE Termination
Termination of a UDBE (or an approved substitute UDBE) is only allowable for good cause and with prior written approval of WSDOT. If the Design-Builder terminates a UDBE commitment without prior written approval by WSDOT, the Design-Builder is not entitled to any payment for work or material associated with that subcontract, nor will the Design-Builder receive credit towards the UDBE Goal for that work.

For purposes of the UDBE program, good cause may exist if:

- The UDBE fails or refuses to execute a written contract.

- The UDBE fails or refuses to perform the Work of its subcontract in a way consistent with industry standards.
- The UDBE fails or refuses to meet the Design-Builder's reasonable nondiscriminatory bond requirements.
- The UDBE becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The UDBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to Federal law or applicable State law.
- The UDBE voluntarily withdraws from the Project and provides written notice of its withdrawal.
- The UDBE's owner dies or becomes disabled with the result that the UDBE is unable to complete its Work on the Contract.

Good cause does not exist if:

- The Design-Builder seeks to terminate a UDBE so that the Design-Builder can self-perform the Work.
- The Design-Builder seeks to terminate a UDBE so the Design-Builder can substitute another UDBE contractor or non-UDBE contractor after execution of the UDBE subcontract.
- The failure or refusal of the UDBE to perform its Work on the subcontract results from the bad faith or discriminatory action of the Design-Builder (e.g., the failure of the Design-Builder to make timely payments or the unnecessary placing of obstacles in the path of the UDBE's Work).

Prior to requesting termination, the Design-Builder shall provide written notice to the UDBE, with a copy to WSDOT, of its intent to request to terminate and/or substitute and the reasons for doing so. The UDBE shall have 5 Calendar Days to respond to the Design-Builder's notice. The UDBE's response shall either support the termination or advise WSDOT and the Design-Builder of the reasons it objects to the termination of its subcontract.

When a UDBE Subcontractor is terminated or fails to complete its Work on the Contract for any reason, the Design-Builder shall make good faith efforts to substitute with another UDBE for the same amount of work under the original contract that was terminated. The Design-Builder shall submit substitution information and/or documented good faith efforts to WSDOT within 3 Calendar Days of the approval of termination.

Decertification

When a DBE is "decertified" (no longer qualifies under the DBE program) from the DBE program during the course of the Contract, the participation of that DBE shall continue to count towards the DBE Goal as long as the subcontract with the DBE was executed prior to the decertification notice. If a contract/subcontract/agreement was not executed with the DBE prior to the decertification notice, the Design-Builder will be required to meet the goal by obtaining participation with another certified DBE firm or provide documentation of its good faith efforts.

Consequences of Non-Compliance

Breach of Contract

Failure to carry out the DBE requirements specified in the Contract documents constitutes a breach of contract. WSDOT will notify the Design Builder and the USDOT of such breach, including notification that the breach may result in termination of the Contract by WSDOT or imposition of other appropriate sanctions. This notice is given pursuant to 49 CFR Part 26.

Notice

If the Design-Builder or any Subcontractor, Consultant, Subconsultant, Supplier or Service Provider is deemed to be in non-compliance, the Design-Builder will be informed in writing, by certified mail by WSDOT, that sanctions will be imposed for failure to meet UDBE utilization goals and/or submit documentation of good faith efforts. The notice will state the specific sanctions to be imposed.

Sanctions
If it is determined that the Design-Builder's failure to meet all or part of the UDBE Goal is due to the Design-Builder's inadequate good faith efforts throughout the life of the Contract, including failure to submit required good faith efforts information and documentation, the Design-Builder may be required to pay a UDBE penalty equal to the amount of the unmet Commitment, in addition to the sanctions outlined in Section 1-07.11(5) of these General Provisions**.**

Payment
Compensation for all costs involved with complying with the conditions of these General Provisions and any other associated DBE requirements is included in the Proposal Price, except as otherwise provided in the Contract Documents.

1-07.11(13) Special Training Provisions

General Requirements

The Design-Builder's equal employment opportunity, affirmative action program shall include the requirements set forth below. The Design-Builder shall provide on-the-job training aimed at developing trainees to journeyman status in the trades involved. The number of training hours shall be ***$$1$$***. Trainees shall not be assigned less than 400 hours. The Design-Builder may elect to accomplish training as part of the work of a Subcontractor, however, the Design-Builder shall retain the responsibility for complying with these General Provisions. The Design-Builder shall also ensure that this training provision is made applicable to any Subcontract that includes training.

Trainee Approval
The federal government requires WSDOT to include these training provisions as a condition attached to the receipt of federal highway funding. The federal government has determined that the training and promotion of members of certain minority groups and women is a primary objective of this training provision. The Design-Builder shall make every effort to enroll minority groups and women trainees to the extent such Persons are available within a reasonable recruitment area. This training provision is not intended and shall not be used to discriminate against any applicant for training, whether that Person is a minority, woman or otherwise. A non-minority male trainee or apprentice may be approved provided the following requirements are met:

1. The Design-Builder is otherwise in compliance with the Contract's Equal Employment Opportunity and On-the-Job Training requirements and provides documentation of the efforts taken to fill the specific training position with either minorities or females.
2. If not otherwise in compliance, furnishes evidence of his/her systematic and direct recruitment efforts in regard to the position in question and in promoting the enrollment and/or employment of minorities and females in the craft which the proposed trainee is to be trained.
3. The Design-Builder has made a good faith effort towards recruiting of minorities and women. Good faith effort shall include at a minimum the following:

Distribution of written notices of available employment opportunities with the Design-Builder and enrollment opportunities with its unions. Distribution should include at a minumum minority and female recruitment sources and minority and female community organizations.

Records documenting the Design-Builder's efforts and the outcome of those efforts, to employ minority and female applicants and/or refer them to unions.

Records reflecting the Design-Builder's efforts in participating in developing minority and female on-the-job training opportunities, including upgrading programs and apprenticeship opportunities;

Distribution of written notices to unions and training programs disseminating the Design-Builder's EEO policy and requesting cooperation in achieving EEO and OJT obligations.

Efforts shall reflect two-way communications.

No employee shall be employed as a trainee in any classification in which the employee has successfully completed training leading to journeyman status or in which the employee has been employed as a journeyman. The Design-Builder's records shall document the methods for determining the trainee's status and findings in each case. When feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

For the purpose of this specification, acceptable training programs are those employing trainees/apprentices registered with the following:

1. Washington State Department of Labor & Industries — State Apprenticeship Training Council (SATC) approved apprenticeship agreement:

a) Pursuant to RCW 49.04.060, an apprenticeship agreement shall be:

i. An individual written agreement between an employer and apprentice.

ii. A written agreement between (an employer or an association of employers) and an organization of employees describing conditions of employment for apprentices.

iii. A written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization.

All such agreements shall conform to the basic standards and other provisions of RCW Chapter 49.

2. Apprentices must be registered with U.S. Department of Labor — Bureau of Apprenticeship Training (BAT) approved program.

3. Trainees participating in a non-BAT/SATC program, which has been approved by the FHWA based on WSDOT recommendation for the specific project.

4. For assistance in locating trainee candidates, the Design-Builder may call WSDOT's OJT Support Services Technical Advisor at 360-704-6314.

Obligation to Provide Information

Upon starting a new trainee, the Design-Builder shall furnish the trainee a copy of the approved program the Design-Builder will follow in providing the training. Upon completion of the training, the Design-Builder shall provide WSDOT with a certification showing the type and length of training satisfactorily completed by each trainee.

Training Program Approval

The Training Program shall meet the following requirements:

1. The Training Program (DOT Form 272-049) must be submitted to the WSDOT Engineer for approval prior to commencing contract Work and shall be resubmitted when modifications to the program occur.
2. The minimum length and type of training for each classification will be as established in the training program as approved by WSDOT.
3. The Training Program shall contain the trades proposed for training, the number of trainees, the hours assigned to the trade and the estimated beginning work date for each trainee.
4. Unless otherwise specified, Training Programs will be approved if the proposed number of training hours equals the training hours required by Contract.
5. After approval of the training program, information concerning each individual trainee and good faith effort documentation shall be submitted on (DOT Form 272-050).
6. In King County, laborer trainees or apprentices will not be approved on contracts containing less than 2,000 training hours as specified in this Section. In King County, no more than 20 percent of hours proposed for trainees or apprentices shall be in the laborer classification when the contract contains 2,000 or more hours of training as specified in this Section. Trainees shall not be assigned less than 400 hours.
7. Flagging programs will not be approved. Other programs that include flagging training will only be approved if the flagging portion is limited to an orientation of not more than 20 hours.
8. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some off-site training is permissible as long as the training is an integral part of an approved training program.
9. It is normally expected that a trainee will begin training on the project as soon as feasible after start of work, utilizing the skill involved and remain on the project as long as training opportunities exist in the work classification or upon completion of the training program. It is not required that all trainees be on board for the entire length of the Contract. The number trained shall be determined on the basis of the total number enrolled on the Contract for a significant period.
10. Wage Progressions: Trainees will be paid at least the applicable ratios or wage progressions shown in the apprenticeship standards published by the Washington State Department of Labor and Industries. In the event that no training program has been established by the Department of Labor and Industries, the trainee shall be paid in accordance with the provisions of RCW 39.12.021 which reads as follows:

Apprentice workmen employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the State Apprenticeship Council pursuant to RCW 49.04, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any workman for whom an apprenticeship agreement has not been registered and approved by the State Apprenticeship Council shall be considered to be a fully qualified journeyman, and, therefore, shall be paid at the prevailing hourly rate for journeymen.

Compliance

In the event that the Design-Builder is unable to accomplish the required training hours but can demonstrate a good faith effort to meet the requirements as specified, then WSDOT may consider

an adjustment to the training goals. Noncompliance with the Special Training Provisions may also result in suspension of qualifications per WAC 468-16-180.

Requirements for Non BAT/SATC Approved Training Programs
Design-Builders who are not affiliated with a program approved by BAT or SATC may have their training program approved provided that the program is submitted for approval on DOT Form 272-049, and the following standards are addressed and incorporated in the Design-Builder's program:

1. The program establishes minimum qualifications for Persons entering the training program.
2. The program shall outline the work processes in which the trainee will receive supervised work experience and training on-the-job and the allocation of the approximate time to be spent in each major process. The program shall include the method for recording and reporting the training completed shall be stated.
3. The program shall include a numeric ratio of trainees to journeymen consistent with proper supervision, training, safety, and continuity of employment. The ratio language shall be specific and clear as to application in terms of job site and workforce during normal operations (normally considered to fall between 1:10 and 1:4).
4. The terms of training shall be stated in hours. The number of hours required for completion to journeyman status shall be comparable to the apprenticeship hours established for that craft by the SATC. The following are examples of programs that are currently approved:

CRAFT	HOURS
Laborer	4,000
Ironworker	6,000
Carpenter	5,200-8,000
Construction Electrician	8,000
Operating Engineer	6,000-8,000
Cement Mason	5,400
Teamster	2,100

5. The method to be used for recording and reporting the training completed shall be stated.

1-07.12 *Federal Agency Inspection*

Federal laws, rules, and regulations shall be observed by the Design-Builder on Federal-Aid projects. This work is subject to inspection by the appropriate federal agency. The Design-Builder 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 WSDOT or the Design-Builder.

Required Federal Aid Provisions
The *Required Contract Provisions Federal Aid Construction Contracts (FHWA 1273)* (Appendix B) Revised May 1, 2012 supersede any conflicting provisions of the *Standard Specifications* and are made a part of this Contract; provided, however, that if any of the provisions of FHWA 1273 are less restrictive than Washington State Law, then the Washington State Law shall prevail.

The provisions of FHWA 1273 included in this Contract require that the Design-Builder insert the FHWA 1273 in each subcontract, together with the wage rates which are part of the FHWA 1273. Also, a clause shall be included in each subcontract requiring the Subcontractors to insert the FHWA 1273 thereto in any lower tier Subcontracts, together with the wage rates. The Design-Builder shall also ensure that this Section, Required Federal Aid Provisions, is inserted in each

subcontract for Subcontractors and lower tier Subcontractors. For this purpose, upon request to the WSDOT Engineer, the Design-Builder will be provided with extra copies of the FHWA 1273, the applicable wage rates, and this Special Provision.

1-07.13 *The Design-Builder's Responsibility for Work*

1-07.13(1) General

All Work and material for the Contract, including any Change Order work, shall be at the sole risk of the Design-Builder until the entire improvement has been completed as determined by WSDOT, except as provided in this Section.

The Design-Builder shall maintain, rebuild, repair, restore, or replace all Work that is injured or damaged prior to the date of acceptance of Physical Completion by WSDOT or third parties 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 provided, however, that these exceptions shall not apply should damages result from the Design-Builder'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 for which the Design-Builder is not responsible under the Contract, 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 Design-Builder of responsibility for, or damage resulting from, the Design-Builder's operations or negligence, nor shall the Design-Builder be relieved from full responsibility for making good any defective Work or materials as provided for under Section 1-05.7.

WSDOT will review the Design-Builder's submittals and issue comments. The Design-Builder shall resolve the comments in accordance with the Quality Management Plan approved by WSDOT.

If WSDOT does not issue comments or propose changes within the time periods set forth in the RFP, the Design-Builder may proceed with the use and application of such Released for Construction document, design reports, and other submittals as applicable. However, WSDOT's lack of comment shall in no event constitute a concurrence or approval of the Design-Builder's submittal or prevent WSDOT from subsequent comment and/ or disapproval at a later time. The Design-Builder inherently retains the risk for contractual compliance until Project acceptance.

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

Upon written request, the Design-Builder 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 WSDOT provides written approval, the Design-Builder 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 Design-Builder's operations or negligence.

Portions of the Work for which the Design-Builder may be relieved of the duty of maintenance and protection as provided in the above paragraph include the following:

1. The completion of a logical Section of roadway, such as interchange to interchange, as approved by WSDOT, of a divided highway or a frontage road including the traveled way, shoulders, drainage control facilities, planned roadway protection Work, lighting, and any required 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 which is functionally complete and open to the public.

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 Design-Builder will be relieved of responsibility for damages to permanent improvements caused by public traffic under the following circumstances:

1. The improvements conform to applicable Contract requirements.
2. The improvements are on a Section of roadway required by the Contract to be opened to public traffic.
3. The traffic control is in accordance with the approved traffic control plans.

If traffic is relocated to another Section of roadway, the Design-Builder shall resume responsibility for the Work until such time as the Section of roadway is again open to public traffic or the Design-Builder 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 Design-Builder shall promptly repair all damage to either temporary or permanent Work as directed by WSDOT. For damage qualifying for relief under Sections 1-07.13(1), 1-07.13(2) or 1-07.13(3), payment will be made in accordance with Section 1-09.4.

In the event the WSDOT pays for damage to the Design-Builder's Work or for damage to the Design-Builder's equipment caused by third parties, any claim the Design-Builder had or may have had against the third party shall be deemed assigned to WSDOT, to the extent of WSDOT'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.

1-07.14 *Responsibility for Damage*

The State, Commission, Secretary, and all officers and employees of the State, including but not limited to those of WSDOT, will not be responsible in any manner: for any loss or damage that may happen to the Work or any part; for any loss 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 any persons, either workers or the public; or for damage to the public for any cause which might have been prevented by the Design-Builder, or the workers, or anyone employed by the Design-Builder.

The Design-Builder shall be responsible for any 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.

1-07.14(1) General Indemnities

Subject to Section 1-07.14(1).2, the Design-Builder shall release, defend, indemnify, and hold harmless the State, Governor, Commission, Secretary, and all officers and employees of the State, the State's agents, consultants, and their respective successors and assigns and their respective shareholders, officers, directors, agents, and employees, (collectively referred to in this Section as the "Indemnified Parties") from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of Persons or damage to or loss of property (including damage to Utility facilities), and including attorneys' and expert witness fees and costs, arising out of, relating to or resulting from:

(a) The breach of the Contract (or any representation or warranty herein) by the Design-Builder, its employees, agents, officers, Subcontractors, or any other Persons performing any of the Work for whom the Design-Builder may be contractually or legally responsible. (The requirement to provide an indemnity for breach of contract set forth in Section 1-07.14(1) (a) is intended to provide protection to WSDOT with respect to third party claims associated with such breach. It is not intended to provide WSDOT with an alternative cause of action for damages incurred directly by WSDOT with respect to such breach).

(b) The failure or alleged failure by the Design-Builder or its employees, agents, officers, Subcontractors, or any other Persons for whom the Design-Builder may be contractually or legally responsible, to comply with any applicable Environmental Laws or other Legal Requirements (including Legal Requirements regarding handling, generation, treatment, storage, transportation and disposal of Hazardous Materials) or Governmental Approvals in performing the Work.

(c) Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights, or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to WSDOT or another Indemnified Party pursuant to the Contract; provided that this indemnity shall not apply to any infringement resulting from WSDOT's failure to comply with specific written instructions regarding use provided to WSDOT by the Design-Builder.

(d) The alleged negligent act or omission or willful misconduct of the Design-Builder, its employees, agents, officers, Subcontractors, or any other Persons performing any of the Work for whom the Design-Builder may be contractually or legally responsible.

(e) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases, or sales, the use of any property or income of the Design-Builder or any of its Subcontractors or any of their respective agents, officers, or employees with respect to any payment for the Work made to or earned by the Design-Builder or any of its Subcontractors or any of their respective agents, officers, or employees under the Contract Documents.

(f) Any and all stop notices and/or Liens filed in connection with the Work, including all expenses and attorneys' fees incurred in discharging any stop notice or Lien, provided that WSDOT is not in default in payments owing to the Design-Builder with respect to such Work.

(g) Any release or threatened release of a Hazardous Materials:

(i) Attributable to the negligence, willful misconduct, or breach of contract by the Design-Builder or its employees, agents, officers, Subcontractors, or any other Persons for whom the Design-Builder may be contractually or legally responsible.

(ii) Which was brought onto the Site by the Design-Builder or its employees, agents, officers, Subcontractors, or any other Persons for whom the Design-Builder may be contractually or legally responsible.

(h) The claim or assertion by any contractor of inconvenience, disruption, delay, or loss caused by interference by the Design-Builder (or its employees, agents, officers, Subcontractors, or any other Persons for whom the Design-Builder may be contractually or legally responsible) with or hindering the progress or completion of work being performed by other contractors as described in Section 1-05.14, or failure of the Design-Builder or its employees, agents, officers, Subcontractors, or any other Persons for whom the Design-Builder may be contractually or legally responsible to cooperate reasonably with other contractors in accordance therewith.

Within 60 Calendar Days following the date a claim is sent by WSDOT to the Design-Builder, the Design-Builder shall notify the Claimant and WSDOT (Risk Management Office, PO Box 47418, Olympia, WA 98504-7418) of the following:

(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.

(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 Design-Builder fails to provide the above notification within 60 Calendar Days, then the Design-Builder shall yield to WSDOT sole and exclusive discretion to allow all or part of the claim on behalf of the Design-Builder, and the Design-Builder shall be deemed to have WAIVED any and all defenses, objections, or other avoidances to WSDOT's allowance of the claim, or the amount allowed by WSDOT, under common law, constitution, statute, or the Contract and these general provisions. If all or part of a claim is allowed, WSDOT will notify the Design-Builder via certified mail 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 WSDOT to claimant(s) under this Section will be made on behalf of the Design-Builder and at the expense of the Design-Builder, and the Design-Builder shall be unconditionally obligated to reimburse WSDOT for the "total reimbursement amount", which is the sum of the amount paid to the claimant(s), plus all costs incurred by WSDOT in evaluating the circumstances surrounding the claim, the allowance of the claim, the amount due to the claimant, and all other direct costs for WSDOT's administration and payment of the claim on the Design-Builder's behalf. WSDOT will be authorized to withhold the total reimbursement amount from amounts due the Design-Builder, or, if no further payments are to be made to the Design-Builder under the Contract, the Design-Builder shall directly reimburse WSDOT for the amounts paid within 30 days of the date notice that the claim was allowed was sent to the Design-Builder. In the event reimbursement from the Design-Builder is not received by WSDOT 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 Design-Builder was notified that the claim was allowed. WSDOT's costs to enforce recovery of these amounts are additive to the amounts owing.

1-07.14(1).1 Design Defects

Subject to Section 1-07.14(1).2, the Design-Builder shall release, defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs, and expenses, including attorneys' fees, arising out of, relating to, or resulting from errors, omissions, inconsistencies, or other defects in the Design Documents, regardless of whether such errors, omissions, inconsistencies, or other defects were also included in the Basic Configuration, Conceptual Design, or Reference Documents, except to the extent that an error, omission, inconsistency, or other defect in the Design Documents is directly attributable to an error, omission, inconsistency, or other defect in the Basic Configuration and the Design-Builder did not act negligently in finalizing the design of the Project. The Design-Builder agrees that, because the Basic Configuration, Conceptual Design, and Reference Documents are subject to review and modification by the Design-Builder, except as provided otherwise in this Section, it is appropriate for the Design-Builder to assume liability for errors, omissions, inconsistencies, and other defects in the completed Project even though they may be related to errors, omissions, inconsistencies, and other defects in the Basic Configuration, Conceptual Plans, or Reference Documents.

1-07.14(1).2 Losses Due to Negligence of Indemnified Parties

The Design-Builder will not be required to indemnify, defend, or save harmless an Indemnified Party as provided in this Section if the claim, suit, or action is caused by the sole negligence or willful misconduct of such Indemnified Party. Where such claims, suits, or actions result from the concurrent negligence of (a) an Indemnified Party or the Indemnified Party's agents or employees and (b) the Design-Builder or the Design-Builder's agent or employees, the indemnity provisions provided in this Section shall be valid and enforceable only to the extent of the Design-Builder's negligence or the negligence of its agents and employees.

1-07.14(1).3 Claims by Employees

In claims by an employee of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Design-Builder or a Subcontractor under the Washington State Industrial Insurance Act, Title 51 RCW, workers' compensation, disability benefit, or any other employee benefits laws. **In addition, for purposes of indemnification only, the Design-Builder specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW**. The Design-Builder's waiver of immunity by the provisions of this Section does not extend to claims by the Design-Builder's employees directly against the Design-Builder.

1-07.14(1).4 Reliance on the Design-Builder's Performance

The Design-Builder hereby acknowledges and agrees that it is the Design-Builder's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on the Design-Builder's performance of such obligation. The Design-Builder further agrees that any review and/or approval by WSDOT and/or others hereunder shall not relieve the Design-Builder of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations to provide indemnities hereunder.

1-07.14(1).5 WSDOT Hazardous Materials Indemnity

Except with respect to Design-Builder responsible Hazardous Materials pursuant to Section 1-07.14(1) item (g), WSDOT shall indemnify, protect, defend, and hold harmless Design-Builder including Subcontractors and their respective shareholders, directors, officers, employees, agents, and representatives from all third party claims (including but not limited to claims for response and remediation costs, administrative costs, fines, charges, penalties, attorney fees and cost recovery, or similar actions brought by a governmental or private party, including costs incurred in connection with an independent remedial action under MTCA and including third party tort liability) arising, directly or indirectly, from any presence or release of any Hazardous Materials on the Project Right-of-Way, and including any claims that arise out of the transport and disposal of any Hazardous Materials for which WSDOT has been identified as the generator. Except with respect to Design-Builder responsible Hazardous Materials as designated in Section 1-07.14(1) item (g)(ii), WSDOT shall be identified as the generator of any Hazardous Waste manifest for the transport or disposal of Hazardous Materials present at, on, in, or under the Project Right-of-Way and transported or disposed of by Design-Builder or a Subcontractor in connection with and during the course of performance of the design and construction Work.

1-07.15 *Vacant*

1-07.16 *Protection and Restoration of Property*

1-07.16(1) Private/Public Property

The Design-Builder shall protect private or public property on or in the vicinity of the Work Site. The Design-Builder 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 in the Contract Documents or not.

If WSDOT requests in writing, or if otherwise necessary, the Design-Builder shall install protection, acceptable to WSDOT, for property such as that listed in the previous paragraph. The Design-Builder is responsible for protecting all property that is subject to damage by the construction operation.

If the Design-Builder (or agents/employees of the Design-Builder) damage, destroy, or interfere with the use of such property, the Design-Builder shall restore it to original condition. The Design-Builder shall also halt any interference with the property's use. If the Design-Builder refuses or does not respond immediately, the WSDOT Engineer may have such property restored by other means and subtract the cost from money that will be or is due the Design-Builder.

The Design-Builder may access the Work Site from adjacent properties. The Design-Builder shall not use or allow others to use this access to merge with public traffic. During non-working hours, the Design-Builder shall provide a physical barrier that is either locked or physically unable to be moved without equipment. The access shall not go through any existing structures. The access may go through fencing. The Design-Builder shall control or prevent animals from entering the Work Site to the same degree that they were controlled before the fence was removed. The Design-Builder shall prevent Persons not involved in the Contract Work from entering the Work Site 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 Design-Builder will ensure the safe passage of trail or pathway users. The Design-Builder 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 Design-Builder shall be responsible for obtaining all haul road agreements, permits, and/or easements associated with the access. The Design-Builder shall replace any fence, repair any damage, and restore the Site to its original state when the access is no longer needed. The Design-Builder shall bear all costs associated with this Work Site access.

1-07.16(2) Vegetation Protection and Restoration

Where shown in the Conceptual Plans, as indicated elsewhere in the Contract Documents, and where further designated in the Design-Builders' Proposal and Released for

Construction Documents, existing vegetation shall be saved and protected through the life of the Contract. Prior to any construction, the Design-Builder shall designate the vegetation to be saved and protected by high visibility construction fencing and/or individual flagging.

Damage which may require replacement of vegetation includes 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 any 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 Design-Builder's operation, they shall be wrapped with heavy burlap for protection and to prevent excessive drying. The burlap shall be kept moist and securely fastened until the roots are covered to finish grade. All burlap and fastening material shall be removed from the roots before covering. All roots 1-inch or smaller in diameter, which are damaged, shall be pruned with a sharp saw or pruning shear. Damaged, torn, or ripped bark shall be removed as directed by the WSDOT Engineer.

If due to, or for any reason related to the Design-Builder's operations, any tree, shrub, 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 WSDOT Engineer, it shall be removed by the Design-Builder at the direction of the WSDOT Engineer.

The Design-Builder will be assessed damages equal to triple the value of the vegetation as determined in the *Guide for Plant Appraisal*, 9th 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. Any damage so assessed will be deducted from the monies due or that may become due the Design-Builder.

1-07.16(3) Fences, Mailboxes, Incidentals

The Design-Builder shall maintain any temporary fencing to preserve livestock, crops, or property when working through or adjacent to private property. The Design-Builder 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 of the *Standard Specifications* will apply. If the mail or paper boxes are rendered useless solely by acts (or inaction) of the Design-Builder or for the convenience of the Design-Builder, the Work shall be performed in accordance with Section 8-18 of the *Standard Specifications* at the Design-Builder'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 Design-Builder, shall not be further

disturbed. The Design-Builder shall immediately notify the WSDOT Engineer of any such finds.

The WSDOT Engineer will determine if the material is to be salvaged. The Design-Builder may be required to stop Work in the vicinity of the discovery until such determination is made. The WSDOT Engineer may require the Design-Builder to suspend Work in the vicinity of the discovery until salvage is accomplished.

If the WSDOT 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 WSDOT Engineer will make an adjustment in the Contract Price and/or the Contract Time required for the performance of the Work in accordance with Sections 1-04.4 and 1-08.8.

1-07.17 *Utilities Relocations*

Section 1-07.17 describes the scope of the Design-Builder's responsibilities with respect to Utility Relocations, and how the risks associated with Relocations will be allocated between WSDOT and the Design-Builder. Section 2.10, *Utilities and Relocation Agreements*, further describes the scope of the Work with respect to Utility Relocations. Utilities impacted by the Project include both Public Utilities and Private Utilities.

The Public Utilities on this Project are owned by ***$$4$$***. These Utility owners may be parties to Intergovernmental Agreements with WSDOT that govern the Relocation of their respective Utilities. The Intergovernmental Agreements are Contract Documents and the Design-Builder shall comply with the Intergovernmental Agreements in performing its Work with respect to applicable Utility Relocations.

Except as provided otherwise in Section 1-07.17, the Design-Builder is responsible for performing all work related to Public Utilities that is necessary to accommodate the Project, and the Contract Price includes all Relocation Costs incurred by the Design-Builder for such Work. In addition, except as otherwise provided in Section 1-07.17, any reimbursement owed by or to a Public Utility Owner for Utility Relocations will be addressed directly between WSDOT and the respective Public Utility Owner pursuant to the Intergovernmental Agreement.

Private Utilities fall into two categories – Type #1 and Type #2, as determined pursuant to Section 1-07.17(3).2. Except as otherwise provided in Section 1-07.17, the Design-Builder shall negotiate and enter into a Relocation Agreement with the Private Utility Owners covering each Private Utility Relocation, whether Type #1 or Type #2.

For each Type #1 Utility that requires Relocation and occupies its existing location pursuant to a franchise or permit, WSDOT shall assign certain rights (including the right to require Relocation at the Utility Owner's expense) and delegate certain obligations under the applicable franchise or permit to the Design-Builder. See *Assignment/Delegation of Utility Franchise/Permit Rights and Obligations* (Appendix U).

For any Type #1 Utility that does not occupy its existing location pursuant to a franchise or permit, WSDOT will direct the Utility Owner to Relocate the Utility as necessary to accommodate the Project.

The Design-Builder shall seek reimbursement of any Relocation Costs it incurs for Type #1 Utilities directly from the Utility Owners pursuant to the applicable Relocation Agreement. By its execution of the Contract, the Design-Builder shall be deemed to have certified that the Contract Price does not include any amounts covering Relocation Costs to be incurred or paid for by the Design-Builder for any Type #1 Utility. See Utility Certification, Form L, which is included in the Design-Builder's Proposal.

Except as otherwise specified in Section 1-07.17, all Relocation Costs for Type #2 Utilities shall be the Design-Builder's responsibility, without regard to whether the cost is incurred by the Design-Builder, the Utility Owner, or an agent of the Utility Owner. As such, the Design-Builder shall reimburse such Utility Owners for their Relocation Costs. The Contract Price shall include this reimbursement obligation as well as any Relocation Costs incurred by the Design-Builder with respect to Type #2 Utilities.

The Design-Builder will be entitled to a Change Order relating to Utility Relocations only as specified in Section 1-07.17, subject to Sections 1-04.4 and 1-08.8. In all other respects, the Design-Builder assumes all risk and responsibility for any additional or unanticipated costs and/or time resulting from Utilities affecting, or affected by, the Project.

1-07.17(1) Design-Builder's Responsibility For Utility Work

1-07.17(1).1 General Scope

The Design-Builder is responsible for performing, and the scope of the Utility Work includes, all Relocation Work except for (a) any efforts and costs which are identified as the responsibility of the Utility Owners or of WSDOT or are otherwise specifically excluded from the Utility Work in Section 1-07.17 or in Section 2.10, *Utilities and Relocation Agreements*, and (b) those efforts and costs which are allocated to the Utility Owners in the Intergovernmental Agreements or in the Utility MOUs, if any.

Without limiting the generality of the foregoing, the Design-Builder is responsible for performing, and the scope of the Utility Work includes:

(a) All investigative work necessary to confirm the exact location, size, and type of each Utility (including Prior Relocations) located within the Project Right-of-Way or otherwise potentially impacted by the Project.

(b) The Incidental Utility Work.

(c) Reimbursement of Utility Owners for their Relocation Costs for Type #2 Utilities.

(d) All tasks, obligations and duties, and all costs, if any, that are the responsibility of the Design-Builder pursuant to any Utility Agreements (unless otherwise specified in the Contract Documents).

(e) Any Betterments added to the Utility Work pursuant to Section 1-07.17(6).

(f) Any other efforts and costs by the Design-Builder that are necessary in order to accomplish the Work described in Section 1-07.17 and/or in Section 2.10, *Utilities and Relocation Agreements*.

The Utility Work does not include acquisition of Utility Easements, but it does include the obligation to reimburse Utility Owners for costs of acquiring Utility Easements, if necessary for the Relocation of any Type #2 Utilities hereunder.

Utility Relocations may be necessitated by: (a) a physical conflict between the Utility and the Project (including their respective construction, operation, maintenance, or use), and/or (b) an incompatibility between the Project as designed and the Utility based on the applicable Utility Standards and/or applicable Governmental Rules (even though there is no physical conflict). The limits of Relocation of existing Utilities extend as far as is necessary to accommodate or permit construction of the Project in accordance with the foregoing, whether inside or outside the Project Right-of-Way. The Design-Builder shall ensure that all Utility Relocations are compatible with and interface properly with the Project.

The Design-Builder shall coordinate and cooperate with WSDOT and Utility Owners to ensure that all Relocation Work, whether performed or furnished by Utility Owners or by the Design-Builder, is completed in a timely fashion in accordance with the Contract Schedule.

For all Utilities at the Site (whether or not they are being Relocated pursuant to Section 1-07.17) the Design-Builder shall minimize disruption in services provided by Utility Owners by (a) coordinating planned outages, (b) incorporating and implementing a contingency plan for unplanned outages, (c) developing a framework for coordination among Utility Owners, the Design-Builder, and any affected property owners, as well as a framework for handling of questions and claims, and (d) coordinating with Utility Owners to develop a plan so that the Utility Owners can access their facilities during Project construction.

1-07.17(1).2 Prior Relocations

The Utility Work includes such coordination between the Design-Builder and others performing work on Prior Relocations as may be necessary for orderly and timely progress on the Prior Relocation and the Project, including assisting in the determination of an appropriate location for installation of the Relocated Utility (if not yet determined) in conjunction with the development of the design for the Project.

1-07.17(1).3 Incidental Utility Work

Notwithstanding any contrary provision of the Contract Documents, the Design-Builder shall be responsible for performing all Incidental Utility Work, without regard to the allocation of responsibility for performing Relocation Work otherwise established in Section 1-07.17. The Design-Builder shall make all arrangements and perform all work necessary to accomplish the Incidental Utility Work, including locating Utilities, identifying conflicts, performing any necessary coordination with Utility Owners and property owners, furnishing design, performing construction, and obtaining and complying with all required Governmental Approvals and WSDOT franchises/permits.

If a Utility Owner accepts the responsibility to perform any Incidental Utility Work, the Design-Builder shall confirm that the Utility Owner in fact timely performs such

Incidental Utility Work, or the Design-Builder shall perform such Incidental Utility Work itself in accordance with the Contract Schedule.

1-07.17(1).4 Design-Builder's Responsibility to Perform

The Design-Builder shall perform all Utility Work without regard to any of the following: (a) whether an impacted Utility was indicated in the Utility Information, or if indicated, whether the Utility was accurately indicated therein; (b) the feasibility, estimated duration of work time, cost or any other characteristic of any proposed disposition (e.g., Relocation, Protection in Place) stated for the Utility in the Utility Information; (c) whether the Design-Builder is entitled to additional compensation or an extension of the Contract Time with respect to such Work; and (d) whether the Utility Work is the Utility Owner's Cost Responsibility.

1-07.17(2) Utility Agreements

The Utility Agreements for the Project are: (a) the Utility MOUs (if any), (b) the Relocation Agreements that will be entered into by the Design-Builder and the Private Utility Owners, (c) the Intergovernmental Agreements, and (d) the Prior Relocation Agreements (if any).

1-07.17(2).1 Memoranda of Understanding

The Design-Builder acknowledges that the purpose of the Utility MOUs (if any) is to promote cooperation by the Utility Owners with the Project, but that the Utility MOUs are not binding on the Utility Owners. Nevertheless, the Design-Builder is required to comply with any Utility MOUs (Appendix U), unless otherwise directed by WSDOT. In the event of any conflict between the terms of any Utility MOU and the terms of the Contract Documents, the Contract Documents shall prevail as between WSDOT and the Design-Builder. WSDOT shall have no obligation to enter into a Utility MOU with any Utility Owner.

1-07.17(2).2 Relocation Agreements

Each Relocation of a Private Utility (other than Prior Relocations and temporary Protections in Place) shall be addressed in a Relocation Agreement between the Design-Builder and the Utility Owner. A single Relocation Agreement may address more than one Utility Relocation for the same Utility Owner, unless otherwise directed by WSDOT. The Design-Builder shall prepare and negotiate its Relocation Agreements in accordance with Section 2.10, *Utilities and Relocation Agreements*. The Design-Builder shall comply with the terms and conditions of all Relocation Agreements.

The Design-Builder shall have no right to enter into any agreement with a Utility Owner that purports to bind WSDOT to its terms. Relocation Agreements entered into by the Design-Builder shall not be considered Contract Documents. In no event shall any Relocation Agreement be deemed to amend the terms of any other agreement to which WSDOT is a party, provided that a Relocation Agreement may deviate from the requirements of a Utility MOU if WSDOT has agreed to such deviation in writing. In the event of any conflict between the terms of any Relocation Agreement and the terms of

the Contract Documents, the Contract Documents shall prevail as between WSDOT and the Design-Builder.

1-07.17(2).3 Intergovernmental Agreements and Prior Relocation Agreements

The Design-Builder shall comply with the Intergovernmental Agreements and the Prior Relocation Agreements (if any), all of which are Contract Documents.

1-07.17(3) Work Responsibility and Cost Responsibility

1-07.17(3).1 Work Responsibility

The responsibility (as between the Design-Builder and the Utility Owners) for performing particular Relocation Work shall be initially determined in accordance with the following:

(a) For any Prior Relocations (whether for Public or Private Utilities), the Design-Builder shall be responsible for coordinating its Work on the Project (and the Relocation Work by any Utility Owners in the vicinity) with any such Relocation. See Section 1-07.17(1).2. The Design-Builder shall have no other responsibility for performing Relocation Work on Prior Relocations.

(b) For Public Utilities other than any identified as a Prior Relocation, the Design-Builder is responsible for performing all Relocation Work, except as provided otherwise in the applicable Intergovernmental Agreement or Utility Standards. In case of conflict between the applicable Intergovernmental Agreement and Utility Standards as to this issue, the Intergovernmental Agreement shall prevail.

(c) For Private Utilities other than any identified as a Prior Relocation, the Design-Builder and the affected Utility Owner shall determine the allocation of responsibility for performing particular Relocation Work in the course of negotiating the applicable Relocation Agreement, as more particularly described in Section 2.10, *Utilities and Relocation Agreements*.

Any subsequent modification of Work responsibility for a Prior Relocation or for Relocation of any other PublicUtility shall be decided by WSDOT (together with the Utility Owner) and implemented in accordance with Sections 1.04.4 and 1.08.8, as applicable.

For any other Private Utility, the Design-Builder, and the affected Utility Owner may modify the initial allocation of responsibility for performing Relocation Work by amending the Relocation Agreement in accordance with Section 2.10, *Utilities and Relocation Agreements*. Any such changes in Work allocation shall be addressed in accordance with Section 1-07.17(13).1.

Regardless of the arrangements made with the Utility Owners, and except as may be otherwise provided in Section 1-07.17, the Design-Builder shall continue to be the responsible party to WSDOT for timely performance of all Relocation Work in accordance with the requirements of the Contract Documents.

1-07.17(3).2 Cost Responsibility

For each Private Utility identified in the Utility Information, the initial determination of whether the Utility is a Type #1 Utility or a Type # 2 Utility shall be in accordance with Section 2.10, *Utilities and Relocation Agreements*, or if not specified therein, then in accordance with the applicable Utility MOU included in the RFP, if any. Except for Incidental Utility Work, if the Cost Responsibility for a particular Private Utility is not indicated in either location, then the Utility shall initially be considered a Type #1 Utility. Any changes from the initial determination of Cost Responsibility for a Private Utility shall be addressed in accordance with Section 1-07.17(10).1.

The determination of Cost Responsibility with respect to Public Utilities will be addressed directly between WSDOT and the respective Utility Owner. Consequently, any changes in Cost Responsibility which may occur in regards to Public Utilities will not affect either the scope of the Utility Work or Design-Builder's compensation hereunder.

1-07.17(4) Collection From and Reimbursement To Utility Owners

1-07.17(4).1 Collection from PrivateUtility Owners

The Design-Builder shall collect the appropriate reimbursement directly from the Utility Owner for any Utility Work the Design-Builder performs for a Type #1 Utility, as addressed in the applicable Relocation Agreement.

The Design-Builder also shall collect the appropriate reimbursement directly from the Utility Owner for any increased costs the Design-Builder may incur as a result of actions or inactions on the part of any Private Utility Owner. If the Design-Builder asserts that any Private Utility Owner has failed to comply with its obligation under a Relocation Agreement or has otherwise hindered or interfered with the progress or completion of the Work, then except as otherwise set forth in Sections 1-07.17(11) and 1-07.17(12), the Design-Builder’s sole remedy shall be to seek recourse against the Utility Owner.

1-07.17(4).2 Failure to Pay

If for any reason the Design-Builder is unable to collect amounts due from a Utility Owner pursuant to Section 1-07.17(4).1, the Design-Builder shall notify WSDOT and shall resolve such dispute directly with the Utility Owner, subject to the requirements of Section 1-07.17(7).

1-07.17(4).3 Reimbursements to Utility Owners

The Design-Builder shall reimburse Utility Owners for all Relocation Costs for Type #2 Utilities, excluding Prior Relocations.

Except for Relocation Costs incurred by Utility Owners for Public Utilities (for which any reimbursement owed will be addressed between WSDOT and the Public Utility Owner), the Design-Builder also shall make any other reimbursements to Utility Owners required under any Utility Agreement in connection with the Relocation Work or shall reimburse WSDOT for making such payments as applicable (for example, for damage to a Public Utility Owner's facilities caused by the Design-Builder's work). The Design-Builder shall make all payments required by this Section in accordance with the time and

other requirements of the applicable Utility Agreement(s). The provisions of this Section shall not limit any other obligations of the Design-Builder to WSDOT pursuant to the Contract Documents, for damage caused to Utility Owner facilities or otherwise.

1-07.17(5) Reliance on Utility Information

WSDOT has performed preliminary investigations of existing Utilities located within the Project Right-of-Way, as described in Section 2.10, *Utilities and Relocation Agreements*. The Design-Builder acknowledges that (a) the Utility Information generally does not identify Service Lines impacted by the Project, and (b) information contained in the Utility Information, including the descriptions of the affected Utilities, their locations, and any concepts regarding the nature and extent of Relocation (if any) required for a Utility, is preliminary and may not be accurate. The Design-Builder shall verify all Utility Information included in the RFP, and shall perform its own investigations in accordance with the Contract Documents. The Design-Builder shall not proceed with any construction Work at any location until such investigations have been completed for that location.

If the Design-Builder's investigations identify Utilities (excluding Service Lines) not described in the Utility Information, or if the Design-Builder determines that any Major Underground Utility was not described in the Utility Information with Reasonable Accuracy (as defined in Section 1-07.17(9).3 the Design-Builder shall notify WSDOT immediately upon such discovery. The Design-Builder shall be responsible for confirming the exact location (horizontal and vertical) of each Utility (including Prior Relocations) potentially affected by the Project, regardless of whether information with respect to such Utility has been provided by WSDOT or by the Utility Owner.

The Design-Builder shall comply with chapter 19.122 RCW regarding underground Utilities. The Design-Builder shall refresh and maintain the location ground markings in all areas on a daily basis where excavation is in progress.

1-07.17(6) Betterments and Utility Owner Projects

1-07.17(6).1 Betterments

1-07.17(6).1.1 Betterments for Private Utilities

With respect to a Private Utility, Work that is identified in the Contract Documents as part of the Design-Builder's original scope shall not be considered a Betterment unless expressly identified as such in the Contract Documents. The Design-Builder may agree in a Relocation Agreement to design and/or construct a Betterment for a Utility at the Private Utility Owner's expense, subject to compliance with Section 1-07.17(6).3. Such Betterment shall be treated as an addition to the scope of the Utility Work upon WSDOT's approval and the parties' execution of such Relocation Agreement; however, such addition shall not be treated as a change in the Work directed by WSDOT, and the Design-Builder shall not be entitled to any increase in the Contract Price or extension of the Contract Time on account thereof. Instead, the Design-Builder shall arrange to collect payment for such work directly from the Utility Owner.

The Design-Builder shall promptly notify WSDOT of any request or requirement by a Private Utility Owner that the Design-Builder considers to give rise to a Betterment, and shall keep WSDOT informed as to the status of negotiations with the Private Utility Owners concerning such requests. If the Design-Builder and a Private Utility Owner disagree as to whether a particular Utility Owner request or requirement constitutes a Betterment, the Design-Builder shall notify WSDOT and shall resolve such dispute directly with the Utility Owner, subject to the requirements of Section 1-07.17(7).

$$1$$

1-07.17(6).1.2 Betterments for Public Utilities

$$Any work with respect to a PublicUtility that is required by an IGA (in its original form, absent any amendments entered into after the Proposal Due Date) shall not be considered a Betterment, whether or not treated as a Betterment as between WSDOT and the Utility Owner pursuant to said IGA. Any upgrades to existing facilities described in Exhibit A to such IGA with the ***$$1$$ are required, and shall be treated as part of the original scope of the Work.

Any Utility Owner requests or requirements for a Public Utility Betterment shall be addressed pursuant to Section 1-04.4 and Section 1-08.8, as applicable.

1-07.17(6).2 Utility Owner Projects

The Design-Builder may enter into an agreement with a Utility Owner to design and/or construct a Utility Owner Project at the Utility Owner's expense, subject to compliance with Section 1-07.17(6).3. Any such Utility Owner Project shall be considered to be work outside of the Contract and the Work. The Design-Builder's compensation for a Utility Owner Project shall not involve WSDOT. Utility Owner Projects within the Project Right-of-Way are subject to normal WSDOT permitting requirements.

1-07.17(6).3 Restrictions on Betterments and Utility Owner Projects

Except as may be otherwise set forth in Section 1-07.17(6) or in Section 2.10, *Utilities and Relocation Agreements*, all the terms and conditions of the Contract Documents that apply to the Utility Work shall apply to any Betterment added to the Work.

The Design-Builder shall not proceed with any Private Utility Betterment or with any Utility Owner Project that is incompatible with the Project or cannot be performed within the constraints of applicable Governmental Rules, Governmental Approvals, any applicable franchises/permits, and the Contract Documents, including the contractual deadline for Substantial Completion. The Design-Builder shall not be entitled to any additional compensation from WSDOT or any extension of the Contract Time on account of any Private Utility Betterment or any Utility Owner Project.

The Design-Builder shall provide WSDOT with such information, analyses, and certificates as WSDOT may request in order to determine compliance with Section 1-07.17(6).

1-07.17(7) Failure of Utility Owners to Cooperate

1-07.17(7).1 Disputes

The Design-Builder shall make diligent efforts to obtain the cooperation of each Utility Owner as necessary for the Project. The Design-Builder shall notify WSDOT immediately if (a) the Design-Builder is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement within a reasonable time with a Private Utility Owner on a necessary Relocation Agreement, (b) the Design-Builder believes that any Utility Owner would not undertake or permit a Relocation in a manner consistent with the timely completion of the Project, (c) the Design-Builder becomes aware that a Utility Owner is not cooperating in providing needed work or approvals, (d) a Utility Owner fails to timely pay amounts due to the Design-Builder as described in Section 1-07.17(4), or (e) any other dispute arises between the Design-Builder and any Utility Owner with respect to the Project, including any dispute as to whether or not a particular Utility Owner request or requirement constitutes a Betterment.

Except as noted below, the Design-Builder shall take the lead in resolving any disputes involving Private Utilities. Subject to Section 1-07.17(7).2, WSDOT shall provide assistance as reasonably requested by the Design-Builder; provided that such assistance shall be at no cost to WSDOT other than the time of its staff, and WSDOT shall have no obligation to pursue any legal proceedings against the Utility Owner.

WSDOT shall take the lead in resolving any disputes relating to Relocations subject to a Prior Relocation Agreement or an Intergovernmental Agreement or where the Design-Builder has after diligent effort been unable to enter into a Relocation Agreement for a Type #1 Utility not accommodated by a franchise or permit. WSDOT also may, in its sole discretion, participate in the resolution of any other dispute between the Design-Builder and a Utility Owner, whether or not requested to do so by the Design-Builder, and may, in its sole discretion, take the lead in resolving any such dispute involving a Type #2 Utility. Once a Relocation Agreement has been executed between the Design-Builder and the owner of a Private Utility, any further disputes regarding that Utility shall be addressed pursuant to the preceding paragraph.

Any notice provided to WSDOT or assistance requested from and/or provided by WSDOT shall not relieve the Design-Builder of its responsibility hereunder for the satisfaction of its obligations and timely completion of all Relocations.

As requested by WSDOT, the Design-Builder shall cooperate with WSDOT in any efforts to resolve disputes in accordance with the preceding paragraph, including in connection with any lawsuit or alternate proceedings undertaken by WSDOT for such purpose. Such cooperation shall include the Design-Builder's staff and consultants acting as witnesses in such lawsuits and proceedings and providing testimony, information, reports, graphs, photos, plans, renderings, and similar materials to WSDOT's counsel at the Design-Builder's expense. WSDOT shall remit to the Design-Builder any amounts collected on the Design-Builder's behalf as a result of any such action or proceeding, after first deducting there from all costs (including attorneys', courts' and expert witness fees and costs) incurred by WSDOT in pursuing such action or proceeding.

1-07.17(7).2 Conditions to WSDOT's Assistance

WSDOT shall not be obligated to take action pursuant to Section 1-07.17(7).1 unless all of the following conditions are satisfied:

1. The Design-Builder has provided a written report to WSDOT explaining the nature and history of the dispute, the names and contact information for the representatives of each disputant, a description of the assistance requested by the Design-Builder, and such other information as WSDOT may reasonably request.
2. The Design-Builder has provided evidence reasonably satisfactory to WSDOT that:
   (a) The Design-Builder has made diligent efforts to obtain the Utility Owner's cooperation or to otherwise resolve the dispute, but that such efforts have not succeeded.
   (b) Any assistance requested by the Design-Builder from WSDOT is reasonable.
   (c) If applicable, the Design-Builder has provided a reasonable Relocation plan to the Utility Owner that has been approved by WSDOT.
   (d) The Design-Builder or the Utility Owner has obtained, or is in a position to timely obtain, any Governmental Approvals and WSDOT franchises/permits required in order to implement the Relocation plan proposed by the Design-Builder.
   (e) The time for completion of the Relocation established in the Contract Schedule is reasonable.
   (f) The Design-Builder's position in the dispute is otherwise reasonable.

1-07.17(8) Avoiding Relocations and Minimizing WSDOT Costs

The Design-Builder shall consider the location of Utilities and the potential impact of Utility Relocations in finalizing the design of the Project, with the goals of minimizing Relocation Costs, related construction and disruption to the public, and avoiding schedule delay, to the extent practical and at all times conforming to requirements of the Contract Documents. Notwithstanding the foregoing, the Design-Builder shall take all reasonable steps, including revising the Design Documents to work around a newly identified Utility, to minimize costs for which WSDOT is required to reimburse a Utility Owner or for which the Design-Builder is entitled to additional compensation pursuant to Section 1-07.17.

The Design-Builder shall endeavor to avoid multiple Relocations of the same Utility, whether by the Utility Owner or by the Design-Builder. Accordingly, after a Utility has been relocated once in order to accommodate the Project (including Prior Adjustments), the Design-Builder shall be responsible for all Relocation Costs incurred by either the Design-Builder or the Utility Owner in order to subsequently relocate such Utility to accommodate the Project. The Design-Builder shall reimburse such costs incurred by Utility Owners either directly (for Private Utilities) or by reimbursing WSDOT for amounts paid by WSDOT to the Utility Owner (for Public Utilities). Notwithstanding any contrary provision of the Contract Documents, the Design-Builder shall not receive any extension of the Contract Time or increase in the Contract Price on account of or in connection with such subsequent Relocation. Section 1-07.17(8) relating to multiple

Relocations shall not apply to Temporary Relocations that are necessary for construction of the Project.

1-07.17(9) Price Adjustments and Time Extensions for Inaccurate Utility Information

1-07.17(9).1 Eligibility for Change Orders –Public Utilities and Prior Relocations

Subject to Sections 1-07.17(9).4, 1-07.17(12), and 1-07.17(13) and to any other Contract requirements relating to entitlement to Change Orders, if (1) any Major Underground Utility that is a Public Utility and/or (2) any Major Underground Utility that is a Prior Relocation is not identified in the Utility Information with Reasonable Accuracy, then the Design-Builder shall be entitled to:

(a) An extension of the Contract Time to the extent that any delay in a Critical Path is directly attributable to the correction of such inaccurate information.

(b) Delay and disruption damages that are directly attributable to the inaccuracy.

(c) An increase in the Contract Price on account of any other increased costs of the Work which are directly attributable to the correction of such inaccurate information.

WSDOT shall be entitled to a credit if any such Major Underground Utility is not described in the Utility Information with Reasonable Accuracy and correction of the inaccuracy has the effect of reducing the Design-Builder's costs.

1-07.17(9).2 Eligibility for Change Orders – Other Utilities

Subject to Sections 1-07.17(9).4, 1-07.17(12), and 1-07.17(13) and to any other Contract requirements relating to entitlement to Change Orders, if any Major Underground Utility not addressed in Section 1-07.17(9).1 is not identified in the Utility Information with Reasonable Accuracy, then the Design-Builder shall be entitled to:

(a) An extension of the Contract Time to the extent that any delay in a Critical Path is directly attributable to the correction of such inaccurate information.

(b) Delay and disruption damages that are directly attributable to the inaccuracy.

(c) For Type #1 Utilities only, an increase in the Contract Price on account of any other increased costs of the Work (excluding Relocation Costs) which are directly attributable to the correction of such inaccurate information.

(d) For Type #2 Utilities only, an increase in the Contract Price on account of any other increased costs of the Work (including Relocation Costs) which are directly attributable to the correction of such inaccurate information.

WSDOT shall be entitled to a credit if a Type #2 Major Underground Utility is not described in the Utility Information with Reasonable Accuracy and correction of the inaccuracy has the effect of reducing the Design-Builder's costs.

1-07.17(9).3 Reasonable Accuracy Defined

"Reasonable Accuracy" shall mean that a Major Underground Utility is referenced in the Utility Information, and

1. the Utility's actual centerline location is within 10 feet of the horizontal centerline location indicated in the Utility Information (with no limitation on vertical location), unless noted otherwise in Section 2.10, *Utilities and Relocation Agreements*.

2. one of the following applies, with regard to any difference (whether larger or smaller) between the Utility's actual inside diameter (as applicable to pipe style Utilities) or actual cross Sectional area (as applicable to duct bank style Utilities), excluding casings and any other appurtenances (the "actual size") and the inside diameter or cross Sectional area, as applicable, indicated for such Utility in the Utility Information (the "stated size"):

Stated size (pipe style)	Actual size
12" or less	not more than 24"
greater than 12" but less than or equal to 36"	stated size ± 50%
greater than 36" but less than or equal to 72"	stated size ± 25%
greater than 72"	stated size ± 15%

For example, if the stated size of an underground pipeline listed in the Utility Information is 36 inches, but the pipeline's actual size is 48 inches and its centerline is actually located 8 feet away from the horizontal centerline location shown in the Utility Information, such pipeline shall be deemed indicated with Reasonable Accuracy and the Design-Builder shall not be entitled to a Change Order for any increased costs or delays resulting from the increased size or differing location of the pipeline. As a further example, if the stated size of a Type #2 underground pipeline listed in the Utility Information is 36 inches, but the pipeline's actual size is 60 inches and its centerline is actually located 8 feet away from the horizontal centerline location shown (without regard to vertical location), then such pipeline shall be deemed not indicated with Reasonable Accuracy, and the Design-Builder shall be entitled to a Change Order for any increased costs or delays resulting from the increased size (but not from the differing location) of the pipeline.

Stated size (duct bank style)	Actual size
4 to 16 conduits	Nominal cross Section ± 50%
16 to 36 conduits	Nominal cross Section ± 25%
More than 36 conduits	Nominal cross Section ± 15%

Duct bank size calculations are performed as follows: the nominal duct bank cross Section is calculated based on number, size, and orientation of conduit with 2-inch edge to edge spacing between conduit, 3-inch outside cover; and 6-inch over pour to sides and top. Example calculation:

For a 2x3 duct bank with 5-inch conduit the nominal cross Section is calculated as follows:

width = 3"+5"+2"+5"+3"+6" = 24"

depth = 3"+5"+2"+5"+2"+5"+3" +6"= 31"

Nominal cross Section area = 24"x31" = 744 in^2

Actual cross Section may be (744 in^2 x 0.5) = 372 in^2 to (744 in^2 x 1.5) = 1116 in^2

Location accuracy standards for duct bank style Utilities are determined in the same manner as for pipe style Utilities noted above.

In case of any discrepancy between the information provided by one component of the Utility Information and information provided by another component of the Utility Information, only the more accurate information shall be relevant in determining Reasonable Accuracy.

1-07.17(9).4 Limitations and Exclusions

The Design-Builder shall not be entitled to a Change Order pursuant to this Section for any of the following:

1. Any inaccuracies in the Utility Information to the extent that the correct information:
   (a) Was known to the Design-Builder as of the Proposal Due Date.
   (b) Would have been apparent during a surface inspection of the area conducted prior to the Proposal Due Date.
   (c) Could have been inferred from the presence of other facilities or surface features, such as buildings, meters, junction boxes, manholes, vaults, or identifying markers.
2. Increased costs or time attributable to inaccuracies in the Utility Information, to the extent that such costs could have been avoided by timely identifying the correct information and addressing the actual field conditions in the "Released for Construction" Design Documents for the Work in question.
3. Any inaccuracies in the Utility Information regarding Utilities other than Major Underground Utilities.

1-07.17(10) Certain Other Price Adjustments

1-07.17(10).1 Change in Type Assignment of Private Utility

WSDOT may, at any time, notify the Design-Builder of a change in the Cost Responsibility type assignment for a particular Private Utility. Such a change between Types #1 and #2 directed by WSDOT shall be treated in accordance with Section 1-04.4, resulting in either an increase or a decrease in the Contract Price (but not Contract Time), as applicable.

1-07.17(10).1.1 Early Relocation Work

If, prior to issuance of NTP, WSDOT advances funding to, or reimburses a Utility Owner for, Relocation Work for a Category #2 Utility , or a Utility Owner performs Relocation Work for a Public Utility that is Design-Builder's responsibility pursuant to Section 1-07.17(3).1 (in either case (i) to the extent such work may be performed prior to NTP under applicable Law, and (ii) other than with regard to a Prior Relocation), the resulting reduction in the scope of the Work shall be treated as a change in the Work directed by WSDOT in accordance with Section 1-04.4, entitling WSDOT to a decrease in the Contract Price.

1-07.17(11) Delayed Prior Relocations

Subject to Sections 1-04.4, 1-07.17(13), and 1-08.8, and to any other Contract requirements relating to entitlement to Change Orders, if the Utility Owner fails to complete a Prior Relocation on or before the completion deadline specified in the applicable Prior Relocation Agreement, or if there is no applicable Prior Relocation Agreement, then on or before the time reasonably scheduled by the Design-Builder for completion of such Work (as stated in the Contract Schedule approved by WSDOT), Design-Builder shall be entitled to:

(a) An increase in the Contract Price on account of any increased costs of the Work directly resulting from such failure.

(b) An extension of the Contract Time to the extent that any delay in a Critical Path is directly attributable to such failure.

1-07.17(12) Utility Delays

Except as specified in this Section, any time frames for completion of the Relocation Work or components thereof included in the RFP are estimates only and shall not be relied upon by the Design-Builder.

The provisions of Section 1-07.17(12) shall not apply to any Prior Relocations.

1-07.17(12).1 Utility Delays – Private Utilities

1-07.17(12).1.1 Type #1 Private Utilities Subject to an Assigned Franchise/Permit and/or a Relocation Agreement

Design-Builder shall not be entitled to any extension in Contract Time or to any increase in the Contract Price for Project delays or increased costs incurred by Design-Builder resulting from a Utility Owner's failure to timely complete any task for Relocation of a Type #1 Utility that is accommodated by a franchise/permit and/or a Relocation Agreement.

1-07.17(12).1.2 Type #1 Private Utilities Not Subject to an Assigned Franchise/Permit and not Addressed in a Relocation Agreement.

For purposes of Section 1-07.17(12).1.2, the term “Utility Delay” means an unavoidable delay to a Critical Path that is directly attributable to a Utility Owner’s failure to complete any task necessary for Relocation of its Type #1 Utility (excluding Prior Relocations) not accommodated by an assigned franchise/permit before the deadline for performance of such task under the applicable Utility MOU (if there is no applicable Utility MOU or it does not specify a deadline, the time reasonably scheduled by Design-Builder for such task as stated in the Contract Schedule approved by WSDOT), where the Design-Builder has been unable with due diligence to enter into a Relocation Agreement with the Utility Owner covering such Relocation or is not required to do so.

The Design-Builder shall be entitled to:

(a) An increase in the Contract Price on account of any increased costs of the Work that are directly attributable to a Utility Delay as defined in Section 1-07.17(12).1.2.

(b) An extension of the Contract Time based on the number of days of Critical Path delay that are directly attributable to such Utility Delay.

Section 1-07.17(12).1.2 does not apply to any Type #1 Utilities that are addressed in a Relocation Agreement between the Design-Builder and the respective Private Utility Owner regardless of the existence of a franchise/permit addressing said Utility.

1-07.17(12).1.3 Type #2 Private Utilities

For purposes of Section 1-07.17(12).1.3 the term "Utility Delay" means an unavoidable delay to a Critical Path that is directly attributable to a Utility Owner's failure to complete any task necessary for Relocation of its Type #2 Utility before the later to occur of: (a) the deadline for performance of such task under the applicable Utility MOU (or if there is no applicable Utility MOU or it does not specify a deadline, the time reasonably scheduled by the Design-Builder for such task as stated in the Contract Schedule approved by WSDOT), and (b) the deadline in the applicable Relocation Agreement.

Subject to the conditions and applicable limitations in this section, and to any other Contract requirements relating to entitlement to Change Orders, Design-Builder shall be entitled to an extension of the Contract Time based on the number of days of Critical Path delay that are directly attributable to a Utility Delay, but any such delay shall not be grounds for any increase in the Contract Price.

1-07.17(12).2 Utility Delays – Public Utilities

For purposes of Section 1-07.17(12).2, the term "Utility Delay" shall mean an unavoidable delay to a Critical Path that is directly attributable to a Utility Owner's failure to complete any task necessary for Relocation of a Public Utility (excluding Prior Relocations) before the later to occur of: (a) the deadline for performance of such task under the applicable Intergovernmental Agreement, and (b) the time reasonably scheduled by the Design-Builder for such task.

The Design-Builder shall be entitled to:

a) An increase in the Contract Price on account of any increased costs of the Work which are directly attributable to a Utility Delay as defined in Section 1-07.17(12).2.

b) An extension of the Contract Time based on the number of days of Critical Path delay that are directly attributable to such Utility Delay.

1-07.17(12).3 Conditions to Time Extension for Utility Delays

The Design-Builder shall not be entitled to any time extension for a Utility Delay unless all of the following conditions are satisfied:

1. The Design-Builder has provided evidence reasonably satisfactory to WSDOT that:

(a) The Design-Builder took advantage of Float available early in the Contract Schedule for coordination activities with respect to the Utility(ies) to which such Utility Delay relates.

(b) The Design-Builder has fulfilled its obligation to coordinate with the Utility Owner to prevent or reduce such Utility Delay.

(c) The Design-Builder has otherwise made diligent efforts to obtain timely cooperation of the Utility Owner but has been unable to obtain such timely cooperation.

2. If applicable, the Design-Builder has provided a reasonable Relocation plan to the Utility Owner that has been submitted to WSDOT for review and comment.

3. The Design-Builder or the Utility Owner has obtained, or is in a position to obtain in a timely manner, all Governmental Approvals and any WSDOT franchises/permits required in order to design and construct such Relocation.

4. There exist no circumstances which have delayed or are delaying the affected Relocation, other than those that fit within the definition of a Utility Delay.

5. The time extension is otherwise allowable under Section 1-08.8.

1-07.17(13) Additional Provisions Concerning Utility Change Orders

The Design-Builder's entitlement to any increase in the Contract Price or extension of the Contract Time relating to Utility Relocations shall be subject to the restrictions and limitations set forth in this Section, in addition to the other specified requirements and limitations.

1-07.17(13).1 Changes in Work Allocation

The Work includes responsibility for causing all Relocation Work to occur in a timely fashion, including reimbursing the Utility Owners for their Relocation Costs for Type #2 Utilities (except as may be otherwise provided in Section 1-07.17) and scheduling all Relocation Work (whether performed by the Design-Builder or by the affected Utility Owner) so as to attain Substantial Completion by the contractual deadline. Accordingly, if a Utility Owner performs or furnishes Relocation Work that was initially anticipated to be performed or furnished by the Design-Builder, or if the Design-Builder performs or furnishes Relocation Work that was initially anticipated to be performed or furnished by the Utility Owner, the following shall apply:

(a) There shall be no resulting extension of the Contract Time for Utilities either Public Utilities or Private Utilities.

(b) For Type #2 Public Utilities, any resulting increase or decrease in the costs of the Work shall be reflected in an increase or decrease in the Contract Price, as applicable, in accordance with Section 1-04.4.

(c) For Type #1 Private Utilities, there shall be no resulting change in the Contract Price (either up or down).

The provisions of Section 1-07.17(13).1 shall not apply to any delayed Prior Relocations.

1-07.17(13).2 Changes in Utility Standards

There shall be no increase or decrease in the Contract Price pursuant to Section 1-07.17 on account of any change in Utility Standards, whether or not such change qualifies as a Betterment. However, any change in Utility Standards that constitutes or results from a change in Governmental Rules may be grounds for a Change Order under other Contract provisions.

1-07.17(13).3 Unavoidable Costs and Delays Only

The Design-Builder shall not be entitled to a Change Order for any cost or delay that could have been avoided by timely request for information under the Underground Utilities One Number Locating Service Statute (chapter 19.122 RCW), or for any amount that the Design-Builder has the right to obtain from a Utility Owner under said statute.

The Design-Builder shall provide documentation satisfactory to WSDOT evidencing compliance with Section 1-07.17(8). The Design-Builder shall be responsible for any increased costs of the Work and any time that could have been avoided by such compliance.

1-07.17(13).4 Incremental Costs Only

Any increase in the Contract Price pursuant to Section 1-07.17 shall include only the incremental costs arising from the circumstances giving rise thereto; i.e. the amount payable shall take into account the costs that would have been incurred absent such circumstance and a credit shall be allowed for any avoided costs.

1-07.17(13).5 No Adjustment for Incidental and Coordination Work

All Incidental Utility Work and all costs of coordinating with Utility Owners as necessary for the Project are included in the Contract Price, regardless of the classification of an associated Utility as a Type #1, Type #2, or Public Utility, and regardless of whether or not (a) the Utility Information reveals the circumstances requiring such Incidental Utility Work and/or coordination, or (b) the Utility is the subject of a Prior Relocation. Accordingly, no adjustment in the Contract Price or extension of the Contract Time will be allowed on account of costs incurred, cost savings, or delays associated with the performance of Incidental Utility Work by the Design-Builder or by any Utility Owner, regardless of whether or not the Utility Information reveals the circumstances requiring such Incidental Utility Work. Furthermore, the Design-Builder shall not be entitled to any increase in the Contract Price for any costs of coordinating with Utility Owners.

1-07.17(13).6 No Adjustment for Voluntary Action by Design-Builder

If the Design-Builder elects to make payments to Utility Owners or to undertake any other efforts with respect to Relocation of Utilities that are not required by the terms of the Contract Documents, then unless the Design-Builder has received direction from WSDOT in accordance with Section 1-04.4, to do so, the Design-Builder shall not be entitled to any extension of the Contract Time or increase in the Contract Price in connection therewith. The Design-Builder shall promptly notify WSDOT of the terms of any such arrangements.

1-07.17(14) FHWA Utility Requirements

The provisions of this Section apply to the Project unless WSDOT advises the Design-Builder otherwise. The Project is subject to 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and FHWA's associated policies, and accordingly all Relocation Agreements shall incorporate by reference 23 CFR Part 645 Subpart A. The Design-Builder shall be responsible for preparing and processing any submittals to FHWA that may be required with respect to the Utility Relocations. The Design-Builder shall comply (and shall require the Utility Owners to comply) with 23 CFR Part 645 Subpart A as necessary for any Utility Relocation Costs to be eligible for reimbursement from any federal financing or funding.

1-07.18 *Public Liability and Property Damage Insurance*

The Design-Builder shall procure and maintain insurance as specified in Section 1-07.18. The insurance provided hereunder shall be available for the benefit of the Indemnified Parties and the Design-Builder with respect to covered claims, but shall not be interpreted to relieve the Design-Builder of any obligations hereunder. Unless otherwise specified in the Contract, all insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by WSDOT and with companies or through sources approved by the State Insurance Commissioner pursuant to Chapter 48.05 RCW. If an insurer is not an admitted carrier (unauthorized insurer), the insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC. Unless otherwise indicated below, the policies shall be kept in force from the execution date of the Contract until the date of Final Acceptance, as determined pursuant to Section 1-05.12.

1-07.18(1) Minimum Insurance Requirements

1-07.18(1).1 Workers' Compensation

The Design-Builder and each Related Entity shall provide industrial insurance and medical aid as required under Title 51 RCW. The Design-Builder shall also provide coverage for claims asserted under the Longshore and Harbor Workers Compensation Act (LHWCA) and the Jones Act, as required. The Design-Builder shall maintain such insurance through the expiration of the Warranty periods described in Section 1-05.16. The Design-Builder shall be the named insured on these policies. A Design-Builder who is self-insured under Title 51 RCW shall also provide an endorsement extending coverage to all State operations on an "if any" basis.

To the extent not provided under a Design Builder's multi–state workers' compensation policy, the Design Builder shall also provide "stop-gap" liability insurance under its commercial general liability (for bodily injury or disease) with minimum limits of $1,000,000 per accident for bodily injury by accident, $1,000,000 per employee for bodily injury by disease, and $1,000,000 aggregate limit for bodily injury by disease.

1-07.18(1).2 Commercial General Liability

The Design-Builder shall provide commercial general liability coverage (CGL), on a primary basis, for bodily injury, property damage, personal injury, and advertising injury liability written on an occurrence form that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) form CG 00 01 12 04. The Design-Builder shall maintain such insurance through the Physical Completion Date, and during any warranty Work.

The commercial general liability insurance shall include, at a minumum, coverage for liability arising out of: (i) fire legal liability in an amount not less than ***$$1$$***; (ii) blanket contractual; (iii) independent contractors; (iv) premises operations; (v) products and completed operations for a minimum of 3 years following Completion; and (vi) the acts, errors, and omissions in the rendering or failure to render professional services under the Contract Documents or in the performance of the Work. This coverage shall have an annual minimum limit of ***$$2$$*** per occurrence, ***$$3$$*** general annual aggregate, and ***$$4$$*** products/completed operations aggregate. If commercial general liability insurance with a general aggregate limit and products and completed operations aggregate limit is used, then both the general liability and products/completed operations aggregate limits shall apply separately and exclusively to the Project, or the Design-Builder may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of the Design-Builder.

The Design-Builder shall be the named insured. Each of the Indemnified Parties shall also be added to the CGL as either (a) named insured or (b) additional insureds with respect to liability arising out of the Project or any acts, errors, or omissions of any Related Entity, whether occurring on or off of the Site. If the State is added to this policy as a named insured, then the Design-Builder is not required to obtain the owners and contractors protective (OCP) coverage pursuant to Section 1-07.18(1).11.

1-07.18(1).3 Automobile Liability

The Design-Builder shall provide commercial automobile liability insurance covering the ownership, maintenance, or use of all owned/leased, non-owned and hired vehicles used in the performance of the Work, both on and off the Site, including loading and unloading, with limits of not less than ***$$1$$*** per accident, combined single limit for bodily injury and property damage liability. The Design-Builder shall maintain such insurance through Completion; provided, however, that such coverage shall be maintained for vehicles used in the performance of Warranty Work until the expiration of the Warranty periods described in Section 1-05.16. Coverage shall be provided on Insurance Services Office form number CA 0001 or an equivalent and shall include endorsement CA9948 (in transit pollution risks coverage). The Design-Builder shall be the named insured and the Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or any acts, errors, or omissions of any Related Entity. The required limits can be satisfied by a combination of a primary policy and an excess policy.

1-07.18(1).4 Environmental Liability

The Design-Builder shall provide environmental liability coverage, on an occurrence or claims made basis, with annual limits of not less than ***$$1$$*** per claim and in the aggregate, including liability arising out of transportation and non-owned disposal sites. The policy shall include as named insureds the State, the Design-Builder and any Related Entity of any tier performing Work for which such coverage is appropriate. The remaining Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or any acts, errors or omissions of any Related Entity, whether occurring on or off of the Site:

The policy shall have a 5-year extended reporting period and cover claims made on and prior to Final Acceptance and claims made after Final Acceptance, but within the extended reporting period. The required limits can be satisfied by a combination of a primary policy and an excess policy.

1-07.18(1).5 Excess Liability

Design-Builder shall provide excess liability insurance with limits not less than ***$$1$$*** which will provide coverage at least as broad as the primary coverages set forth herein, including Workers' Compensation, Commercial General Liability, Automobile Liability, and Aircraft Liability, in excess of the amounts set forth in Sections 1-07.18(1).1 (for Jones Act and LHWCA liability), 1-07.18(1).2, 1-07.18(1).3, 1-07.18(1).8, and 1-07.18(1).9, respectively. The Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or any acts, errors or omissions of any Related Entity, whether occurring on or off the Site to the extent that they are not named on any of the foregoing policies as named insureds.

1-07.18(1).6 Professional Liability

The Design-Builder shall provide professional liability coverage with limits not less than ***$$1$$*** per claim and aggregate. The professional liability coverage shall protect against any negligent act, error, or omission arising out of design or engineering activities with respect to the Project. The policy shall be a Project-specific policy and shall have a retroactive date no later than the date on which the RFP was issued and shall remain in place through Final Acceptance. The policy shall have an extended reporting period of not less than 6 years after Final Acceptance. The coverage shall include design Subconsultants of any tier. This policy may be excess over coverage for claims which may also be covered pursuant to the commercial general liability policy required in Section 1-07.18. The coverage shall also include an indemnity endorsement to provide coverage for the Indemnified Parties for liability arising out of the activities or any act, error, or omission of any Related Entity providing professional services hereunder.

1-07.18(1).7 Builders Risk

*minimum annual aggregate limit per occurrence applicable to this Project.*The Design-Builder shall procure and maintain builder's risk insurance for the Project as specified below. The policy shall be written by insurers authorized to conduct business in the State of Washington with a minimum A.M. Best's Rating of A-, Class X. The insureds shall be the Design-Builder, any Related Entity (excluding those solely responsible for design Work),

WSDOT and the Indemnified Parties, as their interests may appear. The insurance shall be maintained until the date of Final Acceptance; provided that Design-Builder shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to WSDOT.

a. Minimum Scope

The policy shall be a blanket builder's risk insurance policy on an "all risk" basis for the entire Project including: (1) coverage for any ensuing loss from faulty workmanship, Nonconforming Work, omission or deficiency in design or specifications; (2) coverage against damage or loss caused by earth movement, flood, fire, accidental breakdown of machinery, theft, vandalism and malicious mischief; (3) coverage for removal of debris, (4) coverage for buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the Project; (5) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (6) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to WSDOT.

In satisfaction of the requirements of subSection (4) above concerning “ocean marine coverage”, the Design-Builder may obtain separate ocean marine insurance on an “All Risk” basis known as “Institute Cargo Clauses (A)” including war, riots and strikes, covering all materials and equipment associated with the Work at full replacement value while in transit, shipment and/or moorage until the date of Completion.

b. Minimum Coverage Limits

Coverage shall be for the replacement value thereof for "all risks" of direct physical loss or damage, including earth movement and flood coverage, with a minimum limit of liability equal to the greater of (a) ***$$1$$***or (b) the probable maximum loss of the Project and the components thereof. Coverage shall include earthquake insurance with sub limits of ***$$2$$*** minimum annual aggregate limit and flood insurance with sub limits of ***$$3$$*** minimum annual aggregate limit. The coverage shall be written without risk of liability of WSDOT for payment and without deduction for depreciation. There shall be no coinsurance penalty provision in any such policy. Deductibles or self-insured retentions shall be no greater than 2 percent of the total value of each insured unit at the time of loss.

1-07.18(1).8 Railroad Protective Liability

The Design-Builder shall provide any coverage as may be required by any railroad as a condition of the railroad’s consent for entry onto railroad facilities or property. Said policy shall be effective during the period any Work is being performed across, under, or adjacent to any railroad tracks or any railroad right-of-way.

1-07.18(1).9 Aircraft Liability

annual limit amount per The Design-Builder shall provide insurance, with annual limits of not less than ***$$1$$*** per occurrence, in all cases where any aircraft is used on the

Project that is owned, leased, or chartered by any Related Entity, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the Work, the aircraft crew, flight path, and altitude, including landing of any aircraft on the Site or on any property owned by the State shall be subject to review and written acceptance by WSDOT prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable but must be provided prior to use of the aircraft. The Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or any acts, errors, or omissions of any Related Entity, whether occurring on or off the Site.

1-07.18(1).10 Marine Liability

The Design-Builder shall provide marine protection and indemnity (P&I) insurance for all liabilities arising out of the operation of a watercraft or vessel used on the Project that is owned, leased or chartered by the Design-Builder or any Related Entity. The policy shall include, among other things, coverage for bodily injury, illness and/or loss of life to any person or crew member (including any and all claims arising pursuant to the Jones Act and LHWCA and claims for maintenance and cure), damage to cargo while loading, carrying or unloading cargo, damage to piers and docks, pollution liability, charterer's liability, and removal of wreckage as required by law. Such coverage shall have primary limits of not less than ***$$1$$*** per occurrence, and excess limits of not less than ***$$2$$*** shall be required in all cases where any watercraft or vessel is used on the Project that is owned, leased, or chartered by any Related Entity. If any watercraft or vessels are leased or chartered with crew, evidence of non-owned watercraft liability insurance complying with the requirements of this Section will be acceptable but must be provided to WSDOT prior to use of the watercraft or vessel. The Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or any acts, errors or omissions of any Related Entity, whether occurring on or off the Site.

1-07.18(1).11 Owners and Contractors Protective Liability Insurance

The Design-Builder shall either include the State as a named insured under the CGL policy required above or provide owners and contractors protective (OCP) liability insurance, with an annual minimum limit of ***$$1$$*** per occurrence, ***$$2$$*** general annual aggregate, providing bodily injury and property damage liability coverage until the Final Acceptance date, as determined pursuant to Section 1-05.12, under Insurance Services Office form CG 0009, together with WSDOT Amendatory Endorsement No. CG 29 08, specifying the State as named insured.

1-07.18(2) General Insurance Requirements

1-07.18(2).1 Premiums and Deductibles

WSDOT and the Design-Builder Owners and Contractors Protective Insurance policy shall not be subject to a deductible or contain provisions for a deductible. The Commercial General Liability policy and the Commercial Automobile Liability Insurance policy may, at the discretion of the Design-Builder, contain such provisions. If a deductible applies to any claim underthese policies, then payment of that deductible will be the responsibility of the Design-Builder, notwithstanding any claim of liability

against the WSDOT. However, in no event shall any provision for a deductible provide for a deductible in excess of $50,000.00

1-07.18(2).2 Verification of Coverage

The Design-Builder shall file with WSDOT, Contract Payment Section, P.O. Box 47420, Olympia, WA 98504-7420, certified copies of all policies required hereunder evidencing the minimum insurance coverages required to be provided, at least 10 Calendar Days prior to Contract execution. WSDOT shall have no duty to pay or perform under the Contract Documents until such policies, in compliance with all requirements of Section 1-07.18, have been provided. By accepting the policies as required hereunder, WSDOT does not acknowledge or represent that the insurance requirements of Section 1-07.18 have been satisfied. WSDOT expressly reserves all rights against the Design-Builder to assert claims for breach of the terms and conditions of Section 1-07.18 at any time in the future. The Design-Builder shall promptly deliver to WSDOT a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such certificates shall be delivered to WSDOT not less than 45 Calendar Days prior to the expiration date of any policy and bear a notation evidencing payment of the premium therefore. If requested by WSDOT from time to time, certified duplicate copies of any renewal policy shall also be provided.

1-07.18(2).3 Subcontractor Insurance Requirements

The Design-Builder shall require each Subcontractor to provide and maintain insurance that complies with the requirements for the Design-Builder-provided insurance set forth in Section 1-07.18 in circumstances where the Subcontractor is not covered by the Design-Builder-provided insurance; provided that the Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained by the Subcontractors (if any), which determination shall be made in accordance with reasonable and prudent business practices. The Design-Builder shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds under such Subcontractors' insurance policies obtained pursuant to Sections 1-07.18(1).2, 1-07.18(1).3, 1-07.18(1).4, 1-07.18(1).5, 1-07.18(1).8, 1-07.18(1).9, and 1-07.18(1).10 above. The Design-Builder shall require each such Subcontractor to require that its insurer agree to waive any subrogation rights the insurers may have against the Indemnified Parties. If requested by WSDOT, the Design-Builder shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. WSDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

1-07.18(2).4 Endorsements and Waivers

All insurance policies required to be provided by the Design-Builder hereunder shall contain or be endorsed to comply with the following provisions, provided that, for the workers' compensation policy, only subsections (d) and (g) shall be applicable:

(a) For claims covered by the insurance specified herein, all insurance coverage shall be primary insurance and non-contributory with respect to the named insureds, additional insureds, and their respective members, directors, officers, employees,

agents, and consultants, and shall specify that coverage continues notwithstanding the fact that the Design-Builder has left the Site. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an Indemnified Party, 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.

(b) Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project, or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds (and their respective members, directors, officers, employees, agents, and consultants).

(c) All liability insurance to be provided herein shall include a “separation of insureds” clause and shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability. No policy shall contain any provision or exclusion (including but not limited to a “cross-liability” or similar exclusion) that in effect would prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim that would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy. The requirements of this subsection do not apply to claims by the Design-Builder against any of its Subcontractors or suppliers or to claims between Subcontractors and/or suppliers.

(d) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, modified, or reduced in coverage or in limits except after 45 Calendar Days (10 Calendar Days for non-payment of premium) prior written notice by certified mail, return receipt requested, has been given to WSDOT. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(e) All endorsements adding additional insureds to required policies shall be on form CG-20-10 (1985 edition) or an equivalent form and shall contain no limitations or exclusions with respect to “products/completed operations” coverage. The coverage shall be primary and non-contributory with respect to any other insurance maintained by 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.

(f) The automobile liability insurance policy shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90) or its equivalent and Form CA 2048.

(g) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of pollution liability, and earth movement policies).

(h) The commercial general liability insurance policy shall be endorsed to state that coverage for bodily injury to Related Entity employees shall not be excluded.

1-07.18(2).5 Waivers of Subrogation

The Design-Builder waives all rights against the Indemnified Parties, against each of their agents and employees and against Subcontractors and suppliers and their respective members, directors, officers, employees, agents, and consultants for any claims arising out of the performance of Work under this Contract. The Design-Builder shall require all Subcontractors and any Related Entity to provide similar waivers in writing each in favor of the Indemnified Parties. The waivers required in this subsection do not apply to claims between Subcontractors and/or Subconsultants of the Design-Builder or those claims asserted by the Design-Builder against any Subcontractors and/or suppliers. Each policy, including, but not limited to, workers' compensation coverage, but excluding owners and contractors protective liability insurance, shall include a waiver of any right of subrogation against the Indemnified Parties and any other additional insureds (and their respective members, directors, officers, employees, agents, and consultants).

1-07.18(2).6 Changes in Requirements

WSDOT shall notify the Design-Builder in writing of any changes in the requirements applicable to insurance required to be provided by the Design-Builder. Except as set forth in Section 1-07.18(2), any additional cost from such change shall be paid by WSDOT and any reduction in cost shall reduce the Contract Price pursuant to a Change Order.

1-07.18(2).7 No Recourse

All costs for insurance shall be considered incidental to and included in the Contract Price and no additional payment will be made by WSDOT unless expressly specified in Section 1-07.18(2).

1-07.18(2).8 Support of Indemnifications

The insurance coverage provided hereunder by the Design-Builder shall support but is not intended to limit the Design-Builder's indemnification obligations under the Contract Documents.

1-07.18(2).9 Commercial Unavailability of Required Coverages

If, through no fault of the Design-Builder, any of the coverages required in Section 1-07.18 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, WSDOT will consider in good faith alternative insurance packages and programs proposed by the Design-Builder, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein. The Design-Builder must demonstrate to WSDOT's reasonable satisfaction that it has used diligent efforts in the global insurance markets to obtain the required insurance coverages, and shall advise WSDOT of the specific results of those efforts. The Design-Builder shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. WSDOT shall be entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the Escrowed Proposal Documents escrowed pursuant to Section 1-03.15 (or

based on other evidence of insurance premiums as of the Proposal Date if the Escrowed Proposal Documents do not provide adequate information).

1-07.18(3) WSDOT's Right to Remedy Breach by Design-Builder

The Design Builder shall provide WSDOT with notice of any cancellation of a policy required hereunder, by facsimile transmission and U.S. Mail, within 2 business days of receipt. Failure on the part of the Design-Builder to maintain the insurance as required hereunder shall constitute a material breach of the Contract, upon which WSDOT may, after giving 5 business days' notice to the Design-Builder to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to WSDOT on demand, or at the sole discretion of WSDOT, offset against funds due to the Design-Builder from WSDOT.

1-07.18(4) Insurance Proceeds and Prosecution of Claims

Unless otherwise directed by WSDOT in writing, the Design-Builder shall be responsible for reporting and processing all potential claims by WSDOT or the Design-Builder against the insurance required to be provided under Section 1-07.18. Except as noted otherwise, the Design-Builder shall not be entitled to receive a Change Order for any costs, which it could have recovered from the insurer. The Design-Builder agrees to report timely to the insurer(s) any and all matters, which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of WSDOT, the Indemnified Parties, and any additional insureds, whether for defense or indemnity or both. WSDOT agrees to promptly notify the Design-Builder of WSDOT's incidents, potential claims, and matters which may give rise to an insurance claim by WSDOT, to tender its defense of the claim to Design-Builder, and to cooperate with the Design-Builder as necessary for the Design-Builder to fulfill its duties hereunder.

1-07.18(5) Claims relating to differing site conditions

The Design-Builder shall be responsible for reporting and processing all potential insurance claims relating to Differing Site Conditions. The proceeds of all such claims shall be paid directly to WSDOT. The Design-Builder agrees to report timely to the insurer(s) any such matters which may give rise to an insurance claim and to promptly and diligently pursue such claims on behalf of WSDOT. The Design-Builder shall maintain contemporaneous records of all costs incurred by it with respect to the Differing Site Condition pending a determination by the insurance company regarding the claim. WSDOT agrees to cooperate with the Design-Builder as necessary for the Design-Builder to fulfill its duties hereunder.

1-07.18(6) Commencement of Work

The Design-Builder shall not commence Work under this Contract until it has obtained the insurance required under Section 1-07.18, has furnished original policies of insurance evidencing the required coverage as required hereunder, nor shall Design-Builder allow any Subcontractor to commence Work under any Subcontract until the insurance required of the Subcontractor has been obtained and approved by Design-Builder.

1-07.18(7) Disclaimer

The Design-Builder and each Subcontractor shall have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein. Nothing in this Contract shall be construed as limiting in any way the extent to which the Design-Builder may be held responsible for any claims resulting from its performance of the Work hereunder. The Design-Builder's obligations to procure insurance are separate and independent of its contractual defense and indemnity obligations. The coverage limits set forth in Section 1-07.18 are minimum requirements and WSDOT does not represent that the minimum coverages and limits required hereunder will necessarily be adequate to protect the Design-Builder.

1-07.19 *Gratuities*

The Design-Builder shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee or officer of WSDOT. The Design-Builder shall not rent or purchase any equipment or materials from any employee or officer of WSDOT. Before payment of the final estimate will be made, the Design-Builder shall execute and furnish WSDOT an affidavit certifying compliance with these provisions of the Contract.

The Design-Builder 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 WSDOT officer or employee who has or will participate with the Design-Builder regarding any aspect of this Contract is prohibited from seeking or accepting any gift, gratuity, favor, or anything of economic value from the Design-Builder. Accordingly, neither the Design-Builder nor any agent or representative of the Design-Builder 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 Design-Builder 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, Commission, Secretary, and their duly authorized agents and employees from all actions of any nature for, or on account of the use of any patented devices, materials, or processes.

1-07.21 *Rock Drilling Safety requirements*

It shall be the Design-Builder'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 Design-Builder 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 Design-Builder 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 Design-Builder’s insurance shall contain a special clause permitting the blasting.

1-07.23 *Public Convenience and Safety*

The Design-Builder 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 Design-Builder shall perform any measures or actions necessary to protect the public and property. The responsibility and expense to provide this protection shall be the Design-Builder’s except that, if any, which is to be furnished by WSDOT as specified in this Contract. 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. See TR Section 2.22, *Maintenance of Traffic*.

1-07.24 *Rights-of-Way*

WSDOT has supplied sufficient ROW to construct the Project. In the event the Design-Builder requests additional ROW, WSDOT shall cooperate with the Design-Builder; however, all responsibilities for all costs and delays are the responsibility of the Design-Builder. (See TR Section 2.24, *Right-of-Way*.)

1-07.25 *Opening of Sections to Traffic*

WSDOT reserves the right to use and open to traffic any portion of the Work before the Physical Completion Date of the entire Project without constituting acceptance of any of the Work. This action will not cause WSDOT to incur any liability to the Design-Builder except as may otherwise be provided in the Contract.

If WSDOT opens any portion of the Project prior to the Physical Completion Date of the entire facility because early opening is specified in the Contract or when the Design-Builder has failed to prosecute the Work continuously and efficiently, any Work remaining shall be performed by the Design-Builder without any right to an increase in the Contract Price. No additional payment will be made for costs incurred by the Design-Builder 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.

(3) Additional flagging costs necessary to protect the operations and the traveling public. The Design-Builder acknowledges and agrees that it took all costs due to traffic using portions of the Work into account when submitting the Proposal, and that the Contract Price includes all such costs.

1-07.26 *Personal Liability of Public Officers*

Neither the Commission, the Secretary, nor any other officer or employee of the State 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 State.

1-07.27 *No Waiver of State's Legal Rights*

The Design-Builder and the State recognize that the impact of overcharges to the State by the Design-Builder resulting from antitrust law violations by the Design-Builder's suppliers or Subcontractors adversely affects the State rather than the Design-Builder. Therefore, the Design-Builder agrees to assign to the State any and all claims for such overcharges.

1-07.27(1) No Waiver of Subsequent Rights

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

1-07.27(2) Custom Does Not Constitute Waiver

No act, delay, or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such party under any Contract Document, or to relieve the other party from the full performance of its obligations under the Contract Documents. No custom or practice between the parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of the Contract Documents.

1-07.27(3) Waivers Must Be in Writing

No waiver of any term, covenant, or condition of the Contract Documents shall be valid unless in writing and signed by the party providing the waiver.

1-08 Prosecution and Progress

1-08.1 *Subcontracting*

The Design-Builder's records pertaining to the requirements of this provision shall be open to inspection or audit by representatives of WSDOT and FHWA during the life of the Contract. Work done by the Design-Builder's own organization shall account for at least 30 percent of the awarded Contract Price. Before computing this percentage, however, the Design-Builder may subtract (from the Contract Price at award) the costs of any subcontracted Work on items the Contract designates as specialty items.

The Design-Builder shall not Subcontract Work unless WSDOT approves in writing. The Design-Builder shall submit all requests to Subcontract on the form WSDOT provides. If WSDOT requests, the Design-Builder shall provide proof that the Subcontractor has the experience, ability, and equipment the Work requires. Along with the request to sublet, the Design-Builder shall submit the names of any contracting firms that the Subcontractor proposes to Subcontract Work to.

Prior to subcontracting any Work, the Design-Builder shall verify that every first tier Subcontractor meets the responsibility criteria stated below at the time of Subcontract execution. The Design-Builder shall include these responsibility criteria in every Subcontract, and require every Subcontractor to:

1. Possess any electrical contractor license required by 19.28 RCW or elevator contractor license required by 70.87 RCW, if applicable.
2. Have a certificate of registration in compliance with chapter 18.27 RCW.
3. Have a current state unified business identifier number.
4. 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. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3).
6. Verify these responsibility criteria for every lower tier Subcontractor at the time of Subcontract execution.
7. Include these responsibility criteria in every lower tier Subcontract.

The Design-Builder shall require each Subcontractor to comply with Section 1-07.9 and to furnish all certificates and statements required by the Contract.

Subcontracting shall not:

1. Relieve the Design-Builder of any responsibility to carry out the Contract.
2. Relieve the Design-Builder of any obligations or liability under the Contract and the Contract Bond.

3. Create any Contract between WSDOT and the Subcontractor.
4. Convey to the Subcontractor any rights against WSDOT.

WSDOT will not consider as subcontracting: (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. However, the Washington State Department of Labor and Industries may determine that RCW 39.12 applies to the employees of such firms identified in 1 and 2 above in accordance with WAC 296-127. If this should occur, the provisions of Section 1-07.9, as modified or supplemented shall apply.

The Design-Builder shall not use businesses (material suppliers, vendors, subcontractors, etc.) with federal purchasing exclusions. Businesses with exclusions are identified using the System for Award Management web page (SAM.gov).

On all projects, the Contractor shall certify to the actual amounts paid to all firms that were used as Subcontractors, lower tier subcontractors, manufacturers, regular dealers, or service providers on the Contract. This includes all Disadvantaged, Minority, Small, Veteran or Women's Business Enterprise firms. This Certification shall be submitted to the WSDOT Engineer on a monthly basis each month between Execution of the Contract and Physical Completion of the Contract using the application available at: https://omwbe.diversitycompliance.com. A monthly report shall be submitted for every month between Execution of the Contract and Physical Completion regardless of whether payments were made or work occurred.

The Design-Builder shall comply with the requirements of RCW 39.04.250, 39.76.011, 39.76.020, and 39.76.040, in particular regarding prompt payment to Subcontractors. Whenever the Design-Builder withholds payment to a Subcontractor for any reason including disputed amounts, the Design-Builder shall provide notice within 10 Calendar Days to the Subcontractor with a copy to the WSDOT Engineer identifying the reason for the withholding and a clear description of what the Subcontractor must do to have the withholding released. Retainage withheld by Design-Builder prior to completion of the Subcontractor's Work is exempt from reporting as a payment withheld and is not included in the withheld amount.The Design-Builder must report when withhelded retainage is paid after all of the Subcontractor's Work is complete.

If dissatisfied with any part of the subcontracted Work, WSDOT may request in writing that the Subcontractor be removed. The Design-Builder shall comply with this request at once and shall not employ the Subcontractor for any further Work under the Contract.

Prior to any Subcontractor or lower tier Subcontractor beginning Work, the Design-Builder shall submit to the WSDOT Engineer a certification (WSDOT Form 420-004) that a written agreement between the Design-Builder and the Subcontractor or between the Subcontractor and any lower tier Subcontractor has been executed. Such agreements shall follow the standard form developed by the DBIA for "Design-Builder and Design Consultant" and for "Design-Builder and Subcontractor". This certification shall also

guarantee that these Subcontract agreements include all the documents required by Section 1-07.12, Federal Agency Inspection.

A Subcontractor or lower tier Subcontractor will not be permitted to perform any work under the Contract until the following documents have been completed and submitted to the WSDOT Engineer:

1. Request to Sublet Work (Form 421-012).
2. Design Builder and Subcontractor or Lower Tier Subcontractor Certification for Federal Aid Projects (Form 420-004).

The Design-Builder's records pertaining to the requirements of this provision shall be open to inspection or audit by representatives of WSDOT during the life of the Contract and for a period of not less than 3 years after the date of acceptance of the Contract. The Design-Builder shall retain these records for that period. The Design-Builder shall also guarantee that these records of all Subcontractors and lower tier Subcontractors shall be available and open to similar inspection or audit for the same time period.

The Design-Builder shall ensure that a Certification for Federal-Aid Contracts (Form DOT 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 Design-Builder shall keep evidence in their files that such Subcontractor has committed to this requirement.

The Design-Builder shall require any Subcontractor or lower tier Subcontractor whose contract exceeds $100,000 to submit Standard Form LLL, “Disclosure of Lobbying Activities”, in accordance with the instructions on the form, except that, Standard Form LLL shall be submitted to the Design-Builder for submittal to WSDOT.

1-08.1(1) Subcontract Completion and Return of Retainage Withheld

The following procedure shall apply to all Subcontracts entered into as a part of this Contract:

Requirements

1. Upon request, the WSDOT Engineer will provide a copy of any or all progress payment estimates, with regard to Contract payments to any interested party to the Project.
2. The Design-Builder or Subcontractor shall make payment to the Subcontractor or lower tier Subcontractor not later than 10 Calendar Days after receipt of payment for Work satisfactorily completed by the Subcontractor or lower tier Subcontractor, to the extent of the Subcontractor’s or lower tier Subcontractor’s interest therein.
3. In the event the Design-Builder believes they have the right under the Contract or Subcontract to withhold payment in part or whole from a lower tier Subcontractor they shall provide immediate notification to that lower tier Subcontractor and the WSDOT Engineer. The notice shall include an accounting of payments to date, the value and reason for the withheld amount, and an explanation of what must be done to have the withheld amount released. The lower tier Subcontractor shall be paid

within 8 Calendar Days after the Subcontractor completes the remedial action identified.

4. Every subcontract and lower tier subcontract shall have a dispute resolution process incorporated for resolving issues between the parties to the subcontract, or one shall be established as necessary.
5. If the parties agree, the WSDOT Engineer will make a third party neutral available provided the parties to the dispute agree that the cost of doing so is split between them.
6. The WSDOT Engineer will withhold the same amount of funds from the Design-Builder as was withheld if the issue is not resolved by the next progress estimate.
7. Failure by a Design-Builder or Subcontractor to comply with these requirements may result in one or more of the following:
   a) Reflected in the Design-Builder's Performance Evaluation.
   b) Cancellation, termination, or suspension of the Contract, in whole or in part.
   c) Sanctions as provided by the Contract, subcontract, or by law under applicable prompt payment statutes including RCW 39.04.250.
8. The Subcontractor shall make a written request to the Design-Builder for the release of the Subcontractor's retainage or retainage bond.
9. Within 10 Calendar Days of the request, the Design-Builder shall determine if the subcontract has been satisfactorily completed including any required lien releases, documentation, and material testing and shall inform the Subcontractor, in writing, of the Design-Builder's determination.
10. If the Design-Builder determines that the subcontract has been satisfactorily completed, the Subcontractor's retainage or retainage bond shall be released by the Design-Builder within 10 Calendar Days from the date of the written notice. If the Design-Builder determines that the Subcontractor has not achieved satisfactory completion of the Subcontract, the Design-Builder shall provide the Subcontractor with written notice, stating specifically why the subcontract Work is not satisfactorily completed and what has to be done to achieve completion. The Design-Builder shall release the Subcontractor's retainage or retainage bond within 10 Calendar Days after the Subcontractor has satisfactorily completed the Work identified in the notice.
11. In determining whether satisfactory completion has been achieved, the Design-Builder may require the Subcontractor to provide documentation such as certifications and releases, showing that all laborers, lower-tiered Subcontractors, suppliers of material and equipment, and others involved in the Subcontractor's Work have been paid in full. The Design-Builder may also require any documentation from the Subcontractor that is required by the Subcontract or by the Contract between the Design-Builder and WSDOT or by law such as affidavits of wages paid, and material acceptance certifications to the extent that they relate to the Subcontractor's Work.
12. If the Design-Builder fails to comply with the requirements of the Specification and the Subcontractor's retainage or retainage bond is wrongfully withheld, the

Subcontractor may seek recovery against the Design-Builder under applicable prompt pay statutes in addition to any other remedies provided for by the subcontract or by law.

Conditions

1. This clause does not create a contractual relationship between WSDOT and any Subcontractor as stated in Section 1-08.1. Also, it is not intended to bestow upon any Subcontractor, the status of a third-party beneficiary to the Contract between WSDOT and the Design-Builder.
2. This Section of the Contract does not apply to retainage withheld by WSDOT from monies earned by the Design-Builder. WSDOT shall continue to process the release of that retainage based upon the Completion Date of the Project as defined in Section 1-08.5, Time for Completion and in accordance with the requirements and procedures set forth in RCW 60.28.

Payment

The Design-Builder shall be solely responsible for any additional costs involved in paying retainage to the Subcontractors prior to Completion. Those costs shall be deemed included in the Contract Price.

1-08.2 *Assignment*

The Design-Builder shall not assign all or any part of the Work unless WSDOT approves in writing. WSDOT will not approve any proposed assignment that would relieve the original Design-Builder or Surety of responsibility under the Contract.

Money due (or that will become due) to the Design-Builder may be assigned. If given written notice, WSDOT will honor such an assignment to the extent the law permits. Any such assignment shall be subject to all setoffs, withholdings, and deductions required by law and the Contract.

1-08.3 *Contract Schedule*

1-08.3(1) General

The Design-Builder shall create and maintain a price loaded design and construction schedule for its own use as well as for use by WSDOT. WSDOT will use this schedule and periodic updates thereof to evaluate the Design-Builder's progress in performing the Work. In addition, WSDOT will use the price-loaded features on the Baseline Schedule and the monthly update schedules to calculate progress payments. (See Section 1-09.9 Payments.)

During the course of the Project, the Design-Builder shall provide a variety of schedules and schedule reports to satisfy specific Contract needs. The Design-Builder shall submit a Preliminary 90-day Look Ahead Schedule, a Baseline Contract Schedule, Monthly Contract Schedule Updates, and an As-Built Contract Schedule each as provided herein.

The Design-Builder shall have the right to modify the schedule, as it deems necessary to properly represent the progress of the Work and the remaining Work to Completion.

Notwithstanding the foregoing, WSDOT will retain final authority to accept or reject every schedule described herein.

WSDOT's acceptance of any schedule shall not relieve the Design-Builder from its responsibilities for adjusting workforces, equipment, and Work schedules to ensure Completion of the Project within the time specified in the Contract. Similarly, WSDOT's acceptance of any schedule does not in any way relieve the Design-Builder from its responsibility to produce and utilize a complete, accurate, and appropriate schedule for managing its Work.

If WSDOT deems that any schedule fails to provide the information required in this Section, WSDOT may withhold progress payments until the schedule containing the required information has been submitted by the Design-Builder and accepted by WSDOT.

1-08.3(2) Scheduling Requirements

Except as noted elsewhere in this Section, all schedules shall:

1. Not have any activity duration greater than 30 Calendar Days unless approved by WSDOT.
2. Identify self-imposed and/or regulatory non-work periods arising out of climatological, environmental, or other concerns. The Design-Builder may constrain Work scheduling in these periods by using special calendars or other equally effective means.
3. Incorporate the following specific restrictions, constraints, activities, and milestones:
   (a) Milestones including those reported on Form D of the Design-Builders Proposal.
   (b) Definition of Project calendars as they apply to scheduled activities.
   (c) Procurement of any materials critical for the performance of specific activities.
   (d) Submittal dates and durations for review of Design Documents by WSDOT.
   (e) Dates for delivery of access to Rights-of-Way by WSDOT and for delivery of WSDOT furnished materials, if any.
   (f) Schedules for identification and Relocation of Utilities and for the Design-Builder's acquisition of temporary easements and other real property interests necessary for construction of the Work.
   (g) Allocations of the Contract Price among the scheduled activities as described in this Section and Section 1-09.9.
   (h) Dates for obtaining Governmental Approvals for which the Design-Builder is responsible.
4. Show the sequence in which the Design-Builder intends to perform the Work from Notice to Proceed through Completion.
5. Be prepared using precedence diagram methodology, which clearly delineates the relationship between Contract activities.

6. Show activities which contain all attributes normally associated with contemporary critical path schedules, such as ID number, description, early and late dates, original and remaining durations, float, and percent complete. In addition, each activity must include the following calculated or assigned attributes:
   (a) The activity calendar that identifies work days and non-work days.
   (b) All activities shall have both predecessor(s) and successor(s) assigned except Project start/finish may only have one as appropriate.
   (c) Budget price, periodic and total to date contract value as required in Section 1-08.3(9).
   (d) Resources, Cost Accounts, Roles, and other codes as required for grouping, sorting, and reporting as required in Sections 1-08.3 and 1-09.9.
7. Sequence design submittals to enable design packages to build upon previous submittals. The sequence of design submittals shall enable designs to be reviewed for consistency with previous submittals and for compliance with Technical Requirements.

No schedule shall conflict with any time and sequencing requirement in the Contract. All schedules shall be submitted both electronically and on suitable, industry standard hard copy media. Schedule submittals shall be in accordance with Section 1-08.3(4) below.

1-08.3(3) Software Requirements

The scheduling software that will be utilized by WSDOT on this Project is Primavera P6 version 7 compatible format. In order to ensure 100 percent compatibility with WSDOT, the Design-Builder shall use the same program, revision number, and service pack. If the Design-Builder wishes to use an alternative schedule program it must demonstrate 100 percent compatibility to WSDOT's satisfaction and obtain written acceptance by WSDOT pre-bid.

The Design-Builder shall maintain and provide a computer generated log report listing all changes made between every submitted schedule and its last submitted predecessor schedule using the Claim Digger schedule comparison module provided in the Primavera Project Management software bundle.

At a minimum this report shall show changes for:

- General Project Data
- General WBS Data
- Project Budget Data
- Scheduling Options
- Added/Deleted Activities
- General Activity Data
- Constraints
- Added/Deleted Assignments
- General Resource Assignment Data

- Added/Deleted Expenses
- Constraints
- General Expense Data
- Relationships
- Activity Code Assignments
- Notebook Topics and Steps

The Design-Builder shall submit these schedules and reports in accordance with Section 1-08.3(4).

1-08.3(3).1 Schedule Software Settings and Restrictions

The Design-Builder shall comply with the following software settings and restrictions:

1. **Activity Constraints** - Date constraint(s), other than those required by the Contract, will not be allowed unless approved by WSDOT. The Design-Builder shall identify any constraints proposed and provide an explanation for the purpose of the constraint.
2. **Lags** - Lags shall not be used when the creation of an activity will perform the same function (e.g., concrete cure time). The Design-Builder shall identify any lag proposed and provide an explanation for the purpose of the lag.
3. **Default Progress Data Disallowed** - Actual Start and Actual Finish dates shall not be automatically updated by default mechanisms that may be included in the scheduling software system. Actual Start and Actual Finish dates on the schedule shall match the dates contained in the Design-Builder's QA/QC documentation. Work activities shall be updated by actual work progression rather than being cash flow driven. If used, labor and equipment hours associated with activities shall be derived from the Design-Builder's contemporaneous Project diaries and daily reports.
4. Software Settings shall include:
   (a) The updating of "cost % complete" and "activity % complete" of any activity shall be independent functions; program features that calculate one of these parameters from the other shall be disabled.
   (b) All activity durations and float values shall be shown in days; time shall not be shown in the duration display. Date format shall be dd-mmm-yy (i.e., 11-DEC-02).
   (c) Duration type shall be "Fixed Duration and Units".
   (d) Percent complete type shall be "Physical".
   (e) Activity type shall be set to "Task Dependent".
   (f) Prices allocated to schedule activities shall be assigned to the Non-labor cost category.
5. Schedule Calculations shall include:
   (a) Ignore relationships to and from other projects.
   (b) Make open-ended activities critical.

(c) Use Expected Finish Dates.

(d) When scheduling progressed activities use: Retained Logic.

(e) Calculate start-to-start lag from: Early Start.

(f) Define critical activities as: Longest Path.

(g) Compute Total Float as: Finish Float = Late Finish – Early Finish.

(h) Calendar for scheduling Relationship Lag: Successor Activity Calendar.

6. **Calendars** - The Design-Builder shall not change, add, or delete calendars used in the Baseline Contract Schedule, or any Working or Monthly Contract Schedule Update, without prior agreement from WSDOT.

7. Resource curves (if used) shall be linear unless otherwise agreed to by WSDOT.

1-08.3(4) Submittal Requirements

Except for the Preliminary 90-Day Look-Ahead Schedule, all schedules, reports, and supporting data shall be submitted to WSDOT in hard copy and in electronic PDF file format as further described below:

1. All required or voluntary schedule submittals shall include a Primavera P6.2, v.7 Export *.xer format file;

2. For each schedule submit one (1) Gantt Chart of the entire schedule in the following format:

   (a) Formatting

   - Activities in early start sequence within logical grouping such as WBS or activity code.
   - Minimum font size 8-pt at 85 percent normal.
   - Distinctive pattern and/or colored bars for critical path, completed Work, remaining (non-critical) Work, level of effort and expected finish date activities.

   (b) Contents

   - Activity ID Number and Description.
   - Activity Calendar.
   - Original and Remaining or Actual Duration.
   - Total Float.
   - Early Start, Early Finish or Actual Dates.

3. For each update schedule submit one (1) Gantt Chart of the entire schedule in the above format and printed on 11-inch x 17-inch or 8.5-inch x 11-inch, hard copy media and electronic text searchable PDF file.

4. For each Claim Digger report described in Section 1-08.3(3) submit one electronic HTML file.

5. For each required narrative report submit one hard copy on 11-inch x 17-inch or 8.5-inch x 11-inch media and one electronic text searchable PDF file.

6. For each tabular report submit one hard copy on 11-inch x 17-inch or 8.5-inch x 11-inch media and one electronic text searchable PDF file.
7. For monthly Invoice Data Sheets, submit one Primavera-generated tabular report as required in Section 1-09.9(1).6 in letter-size hard copy, text searchable PDF electronic file format, and in Comma-delimited ASCII electronic file format.
8. At the request of WSDOT, but not more often than once a month, submit one Gantt Chart printed on large-format media suitable for display in the Project conference room.

1-08.3(5) Preliminary 90-Day Look-Ahead Schedule

The Design-Builder shall submit a Preliminary Schedule within 14 Calendar Days of effective Notice to Proceed. This may be a 90-Day Look-Ahead Schedule meeting the following requirements or a full-featured critical path schedule meeting the requirements of Section 1-08.3(6) below. The purpose of this schedule is to facilitate early Project planning and coordination and to provide a vehicle for progress payments prior to acceptance of the Design-Builder's Baseline Contract Schedule. Accordingly, this schedule shall be price-loaded and shall be sufficiently detailed to facilitate an understanding of the Design-Builder's mobilization plans and early Work and the consistency of those plans with the overall Project schedule goals.

This schedule may be developed and submitted in manual, bar-chart format and the price loading may be accomplished by spreadsheet software compatible with Microsoft Office Excel. This schedule must show Mobilization activities which shall be price loaded consistent with Section 1-09.7. Other activities must be price loaded consistent with Section 1-08.3(9).

The proposed Preliminary 90-Day Look-Ahead Schedule shall be submitted for WSDOT's acceptance in a suitably sized hard copy of the Gantt Chart and a tabular report of the proposed price-loading in hard copy, a PDF file and a Microsoft Excel-compatible electronic spreadsheet.

Upon submission of the Preliminary 90-Day Look-Ahead Schedule, WSDOT will review and accept/reject the submittal within 7 Calendar Days. If rejected, the Design-Builder shall re-submit the Preliminary 90-Day Look-Ahead Schedule within 7 Calendar Days. Each subsequent re-submittal (if necessary) will allow WSDOT 5 Calendar Days to review and accept/reject and the Design-Builder will have 5 Calendar Days to re-submit after a rejection.

Upon acceptance of the Preliminary 90-Day Look-Ahead Schedule, said schedule shall be used for monthly progress updating and progress payments until the Design-Builder's Baseline Contract Schedule is accepted. In this regard, monthly updates and progress payments using the Preliminary 90-Day Look-Ahead Schedule shall conform as closely as practical to the detail requirements in the update and payment provisions of this Section and of Section 1-09.9.

Schedule Updates and Payment requests based on the Preliminary 90-day Schedule shall include one hard copy of the updated Gantt Chart plus a tabular report showing the period and total to date amount requested for each activity together with the total accepted value

of the activity. The tabular report shall be furnished in one hard copy and electronic, text searchable, PDF file and a Microsoft Excel compatible spreadsheet.

1-08.3(6) Baseline Contract Schedule

Within 30 Calendar Days after the effective date of the Notice to Proceed, the Design-Builder shall prepare and submit for WSDOT's acceptance a comprehensive critical path method Baseline Contract Schedule for the performance of the Work. The Baseline Contract Schedule shall be a logic-driven activity network developed as an outgrowth of the Preliminary Baseline Contract Schedule included in the Design-Builder's Proposal. It shall be price-loaded, and shall include, in addition to construction activities, activities for design Work (including all aspects of design review), submittal review, traffic control, environmental compliance, quality assurance construction inspection, and other activities required to be performed by the Design-Builder or others in order to achieve Substantial Completion.

The Baseline Contract Schedule shall reflect use of all Contract Time, shall not provide for early Substantial Completion, and must conform to any milestone schedule included in the Proposal unless WSDOT directs otherwise. Schedule activity float is the number of days the activity can be delayed without delaying the Project Substantial Completion and/or any Contract milestone dates. All float contained in the Baseline Contract Schedule shall be considered a Project resource available to either party or both parties as needed. Contingency activities shall not be used in the Baseline Contract Schedule or any Monthly Contract Schedule Updates. The Baseline Contract Schedule and successor Monthly Contract Schedule Updates, when accepted by WSDOT, will form the basis of payment and the basis from which to measure delay for the Project.

Upon submission of the Baseline Contract Schedule, WSDOT will have 30 Calendar Days to review and accept or reject the submittal. If rejected, the Design-Builder shall have 14 Calendar Days to re-submit the Baseline Contract Schedule. WSDOT will then have 14 Calendar Days to review and accept or reject the re-submittal. Each subsequent re-submittal will follow the 14 Calendar Day time requirement.

If the Baseline Contract Schedule is not accepted within 4 months of the Notice to Proceed date, the monthly progress payment may be withheld until said schedule has been accepted by WSDOT.

The initial schedule submittal will be known as "Baseline Candidate 0." Subsequent re-submittals will be called Candidates 1, 2, 3, and 4 as required. The form and content of these submittals shall be as follows:

1. For the initial Baseline Candidate (Candidate 0):

   (a) A summary narrative report generally describing the similarities and differences from the Preliminary Baseline Contract Schedule submitted with the Design-Builder's original Proposal. This narrative shall specifically address any change in philosophy and Work sequence from that shown in the Preliminary schedule.

   (b) The Baseline Candidate shall show and meet the milestone dates included in the Design-Builder's Proposal. Nonetheless, the narrative shall also describe the basis for any changes in the start, duration, or completion of major elements of

the Work that vary more than 3 months from that shown in the Preliminary schedule.

(c) The price loading scheme proposed by the Design-Builder under the provisions of Section1-08.3(9).

(d) The data backup, schedule archiving, and baseline establishment and maintenance plan the Design-Builder proposes to implement.

(e) Description of all variances and deviations from the requirements of Sections 1-08.3(2), 1-08.3(3), and 1-08.3(4) with justification therefore together with a detailed list of activities affected.

(f) A tabular Primavera-generated report that details all price loaded activities as described in Section 1-09.9(1).

(g) A letter or ledger size Gantt Chart of the proposed schedule in the format described in Section 1.08.3(4).

2. For subsequent Baseline Candidate submittals:

(a) A summary narrative report describing changes from the previous submittal.

(b) Tabular detail of additions or deletions to the list of requested variations/deviations.

(c) An updated tabular, Primavera-generated report that details all price loaded activities as described in Section 1-09.9(1).

(d) A letter or ledger size Gantt Chart of the proposed schedule as described in Section 1-08.3(4).

Once accepted, the Baseline Contract Schedule shall not be modified in any way. It shall be archived and a copy known as the "Working Schedule" shall be used on the Project. Updated Working Schedules shall be used to report progress, logic, and activity changes, and earnings as further described below.

1-08.3(7) Monthly Contract Schedule Updates

Immediately following acceptance of the Baseline Contract Schedule, and before proceeding with monthly updates, the Design-Builder shall modify the Working Schedule copy of the Baseline by adding Work and price progress reported and paid through the most recent update period. An update shall be required for each past pay period. Beginning with the first payment, Work and payment information shall be added to the Working Schedule and period performance will be stored before proceeding to the next pay period. In this manner a cumulative Past Period Performance record from the beginning of the Project will be built and carried forward with the remaining Monthly Updates as follows.

WSDOT will establish the cutoff date for Progress Payments. Based on this cutoff date, the Design-Builder shall update the then current Working Schedule based on its progress to date, changes to Work sequence and activity durations and earnings for Work completed and in place. The Design-Builder and WSDOT will agree upon the updated Work and price completed. The agreed updates shall be submitted with the Design-

Builder's monthly invoices as provided in Section 1-09.9. Upon acceptance of a Monthly Contract Schedule Update, said schedule shall be archived by the Design-Builder before making any further changes and before storing period performance, by exporting to an XER format file. The exported file shall be uniquely identified with the schedule period that it represents. A copy of the XER file shall be submitted to WSDOT with the monthly update.

In addition, the Design-Builder may update a current Working Schedule at any time that it deems appropriate. Should the Design-Builder initiate an interim update separate and apart from the Monthly Contract Schedule Updates, the Design-Builder shall submit said update to WSDOT for review and acceptance. WSDOT may also request an interim Contract Schedule Update, in which case, the Design-Builder shall update the then current Working Schedule and submit said update to WSDOT within 14 Calendar Days of receipt of a written request from WSDOT. All requirements of this Section applicable to Monthly Contract Schedule Updates shall apply to any interim update.

The Design-Builder shall document and make appropriate changes to the Monthly Contract Schedule Updates to allow said schedules to accurately reflect progress to date and the remaining Work of the Contract. At a minimum, the Design-Builder shall examine any activity, or chain of activities, whose finish date contributes to the apparent completion of Contract milestones later than the accepted schedule dates. The narrative progress summary submitted with each update shall describe in detail the reason for all changes in logic and duration. In addition, the Design-Builder shall explain reasons for not updating any activity that appears to be driving the late completion of any Contract milestone.

The Design-Builder is expected to do all things necessary in order to achieve Substantial Completion within the Contract Time. Accordingly, it is anticipated the Design-Builder will take special measures as necessary to meet the Substantial Completion date. These measures may include such things as applying additional resources, working longer or additional shifts, or other measures chosen by the Design-Builder. If a Monthly Contract Schedule Update includes such special measures, the accompanying narrative shall describe those measures and their anticipated impact.

All Monthly Contract Schedule Update Submittals shall include:

1. Calculations, Reports, and Narratives listed in Section 1-08.3(4) Submittal Requirements.
2. Description of any changes from last month's variances and deviations from the requirements of Sections 1-08.3(2), 1-08.3(3), and 1-08.3(4) with justification therefore together with a detailed list of activities affected.
3. A Schedule-specific narrative generally describing changes in this period's schedule from the previous period including:
   (a) A statistical comparison of the current schedule to the previous and expected final schedule.
   (b) Work in any area which is different from the previous report sequence.
   (c) Changes to activity logic and durations and expected impact of the changes.

(d) Discussion of milestones that are being calculated to finish later than the Contract milestone completion dates and how they might be improved.

(e) Discussion of schedule recovery techniques (if any) incorporated into the current schedule.

The Monthly Contract Schedule Update Submittal package shall be submitted with the Progress Report described in Section 1-09.9(1).4.

Submittal and approval of a working schedule, with supporting Project narrative, does not constitute or substitute for any notice the Design-Builder is required, under the terms of the Contract, to provide to WSDOT.

1-08.3(8) As-Built Contract Schedule

An As-Built Contract Schedule shall be submitted within 30 Calendar Days following Physical Completion of the Project. All activities shall have accurate start and completion dates and all associated contract values paid completely. All dates shall be consistent with dates contained in the Design-Builder's QA/QC documentation. In addition, the total of all prices in the schedule must be reconciled to the total amount paid to the Design-Builder.

This As-Built Contract Schedule submittal shall include:

1. One (1) electronic *.xer file of the As-Built Contract Schedule in accordance with Section 1-08.3(4) (USB Flash Drive).
2. One (1) letter or ledger size hard copy and electronic text searchable PDF file of a Gantt Chart showing the as-built schedule for the entire Project, in the format described in Section 1.08.3(4).

1-08.3(9) Price Loading

The periodic compensation due the Design-Builder throughout the performance of the Contract shall be calculated using the price-loaded Baseline Contract Schedule or Monthly Contract Schedule Updates, as applicable, in effect during each respective payment period. In developing the Baseline Contract Schedule, the Design-Builder shall apportion its Contract Price across multiple activities that, in aggregate, represent all of the Contract Work.

The Design-Builder shall select a price loading method and scheme compatible with the Primavera version selected for the Project. The Design-Builder's method must have the ability to, at the schedule activity level, track each price-loaded activity value as a "budget" against periodic, total to date, and final Contract earnings for that activity. The price-loading structure will be reviewed by WSDOT for concurrence.

The Design-Builder shall devise a system for tracking, grouping and sorting price-loaded activities using alpha-numeric codes compatibles with WSDOT's Contract Administration and Payment System (CAPS). The system shall also be able to simultaneously distinguish as between activity prices subject to Revenue Rules 170 and 171. The Design-Builder shall allocate the total Contract Price among these activities as

further described below. Each line item in the Design-Builder's Proposal Form B shall include one or more price-loaded activities scheduled on the Baseline Contract Schedule.

The Design-Builder shall devise an account structure representing the major categories of the Work in consultation with WSDOT. The Design-Builder shall allocate the total Contract Price among the accounts as further described below. Each account will include one or more price-loaded activities scheduled on the Baseline Contract Schedule. The price for each activity shall accurately represent the value of the Work identified in the activity. The price-loaded activities shall not be front-end loaded. No single schedule activity may be assigned a value greater than $500,000 without the approval of the WSDOT Engineer. The sum of the prices of all activities in the Baseline Contract Schedule shall equal the total Contract Price. Prices assigned to activities in the Baseline Contract Schedule shall include, and reconcile with, prices included with the 90-Day Look-Ahead Schedule. Once the Baseline Contract Schedule has been accepted, no changes to any allocated amount may be made without WSDOT approval.

The Contract includes provisions for payment of Mobilization. The Design-Builder shall price load one or more mobilization activities so that the budget allocation for these items is in compliance with Section 1-09.7. Similarly, the Contract includes provisions for separate payment of materials to be incorporated into the Work. If the Design-Builder so desires, and it is consistent with Section 1-09.8, it shall identify separate and distinct procurement activities to be price-loaded with the value of materials to be incorporated into the Work.

All payments to the Design-Builder under this Contract will be represented by price-loaded activities in the schedule. In addition to the original Contract price shown in the Baseline Contract Schedule it is possible that there may be some adjustments to the Contract Price. These adjustments might include:

- Unit Price Change Orders [see Section 1-09.3].
- Equitable Adjustments [see Section 1-09.4].
- Deleted Work [see Section 1-09.5].
- Force Account [see Section 1-09.6].
- Other adjustments such as material price adjustments and incentive/disincentive awards and other items shown in Form B and described elsewhere in this Contract.

See Section 1-09.9(1).6.

1-08.4 *Prosecution of Work*

1-08.4(1) General

The Design-Builder shall begin Work within 14 Calendar Days from the date of Notice to Proceed, unless otherwise approved in writing. The Design-Builder shall diligently pursue the Work to Completion within the time specified in the Contract. Voluntary shutdown or slowing of operations by the Design-Builder shall not relieve the Design-Builder of the responsibility to complete the Work within the time(s) specified in the Contract.

The Design-Builder shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve Completion within the specified time and in accordance with the Contract Schedule, including furnishing such employees, materials, facilities, and equipment and working such hours (including extra shifts, overtime operations, Sundays, and Holidays) as may be necessary to achieve such goal, all at the Design-Builder's own expense, except as otherwise specifically provided in the Contract.

1-08.4(2) Prerequisites for Start of Construction

The Design-Builder shall not start construction (or recommence construction following any suspension) of any portion of the Project until all the following events have been fully satisfied with respect to the Work proposed to be constructed:

1. The Quality Management Plan has been approved and all preconstruction requirements have been completed.
2. All Governmental Approvals (including environmental permits) necessary for construction of the applicable portion of the Project shall have been obtained and all conditions of such Governmental Approvals which are a prerequisite to commencement of such construction shall have been performed.
3. All identified environmental requirements and commitments have been met, including but not limited to, installation of construction fencing at all sensitive areas and installation of all applicable TESC measures.
4. All required insurance and bonds are in full force and effect.
5. WSDOT or the Design-Builder shall have obtained all necessary rights of access for such portion of the Project.
6. The Design-Builder shall have completed all required reviews in accordance with Section 1-05.3.
7. All applicable traffic control plans have been released for construction.

1-08.5 *Time for Completion*

The Design-Builder shall complete all Work necessary to achieve Substantial Completion within the Contract Time, and all Work necessary to achieve Physical Completion and Completion of the Project within the times specified in the Contract. The grounds upon which the Design-Builder may obtain a Change Order granting a time extension are set forth in Section 1-08.8.

1-08.5(1) Substantial Completion

1-08.5(1).1 Notice by Design-Builder

As a prerequisite to Substantial Completion, the Design-Builder shall provide notice to WSDOT when all of the following have occurred:

(a) The Design-Builder has completed all Site Work such that WSDOT and the traveling public have full and unrestricted use and benefit of the facilities from both the operational and safety standpoint, and only minor incidental Work, replacement of

temporary substitute facilities, or correction or repair remains for the Physical Completion of the total Contract.

(b) The Design-Builder has ensured that all Work completed to achieve Substantial Completion has been performed in accordance with the requirements of the Contract Documents.

(c) The Design-Builder has ensured that the facilities may be operated without damage to the Project or any other property on or off the Project Site, and without injury to any Person.

(d) The Design-Builder has obtained all design and construction approvals by Utility Owners.

1-08.5(1).2 Response by WSDOT

Promptly after receipt of the above referenced notice, and in no event later than 30 Calendar Days thereafter, WSDOT will advise the Design-Builder in writing of any of the following of which WSDOT has knowledge:

(a) Defects in the Work.

(b) Deficiencies in the Project relating to the items described in clauses (a) through (e) of Section 1-08.5(1).1.

(c) Deviations of any installed equipment, materials, and workmanship from the requirements of the Contract Documents. The Design-Builder shall, at its own cost and expense, promptly correct such defects, deficiencies, and deviations.

1-08.5(1).3 Requirements for Substantial Completion

Substantial Completion shall be deemed to have occurred when:

(a) The Design-Builder has corrected, pursuant to the provisions of Section 1-08.5(1).2 all defects, deficiencies, and deviations with respect to the Project and WSDOT has notified the Design-Builder in writing of its acceptance (or waiver pending Physical Completion) of such corrections; provided that Final Cleanup, initial planting, and the items described in Section 1-08.5(2) shall not be required to be performed as a condition to Substantial Completion.

(b) The Design-Builder has received all applicable Governmental Approvals required to be obtained by the Design-Builder pursuant to the Contract.

(c) The Design-Builder has obtained all design and construction approvals by Utility Owners.

(d) A Punch List for the Project to be performed after Substantial Completion has been mutually agreed to by WSDOT and the Design-Builder.

Upon compliance with all requirements, the WSDOT Engineer will give the Design-Builder written notice of the Substantial Completion Date.

1-08.5(2) Physical Completion

The Design-Builder shall achieve Physical Completion within ***$$1$$*** Calendar Days of Substantial Completion. Physical Completion shall be deemed to have occurred when:

(a) Design-Builder has completed all construction Work, including initial planting, correction of any defects, deficiencies, and deviations with respect to the Project which were waived pending Physical Completion, and completion of all Punch List items.

(b) Design-Builder has satisfied all conditions to acceptance by Utility Owners.

(c) Design-Builder has satisfied all requirements regarding Final Cleanup pursuant to Section 1-04.11.

(d) Design-Builder has furnished the Design Documentation Package and Project File in compliance with TR Section 2.12, *Project Documentation*.

The Design-Builder shall provide notice to WSDOT when all of the above referenced conditions have been met. Upon receipt of the notice, WSDOT will perform final inspection pursuant to Section 1-05.11. Should WSDOT identify any defects or deficiencies in the Work, the Design-Builder shall immediately remedy such defects or deficiencies at no additional cost. Upon full compliance with items (a) through (d) listed above in this Section, the WSDOT Engineer will give the Design-Builder written notice of the Physical Completion Date for the Project.

1-08.5(3) Completion

WSDOT will give the Design-Builder written notice of the Completion Date of the Contract after all of the Design-Builder's obligations under the Contract (with the exception of warranty Work) have been performed by the Design-Builder. Completion of the Contract shall occur within 90 Calendar Days of Physical Completion. The following events must occur before the Completion Date can be established:

(a) The Work on the Project must be complete pursuant to the Contract Documents.

(b) The Design-Builder must furnish all documentation required by the Contract and required by law.

1-08.5(4) Completion of Interim Milestones

*" type of completion for the Project.****$$1$$*** is a Project interim milestone. WSDOT will give the Design-Builder written notice of ***$$2$$*** Completion when the ***$$3$$***.

1-08.6 *Suspension of Work*

WSDOT may, at any time and for any reason, order the Design-Builder to suspend all or any part of the Work required under the Contract Documents for the period of time that WSDOT deems appropriate for the convenience of WSDOT. Such a suspension shall be deemed a suspension for convenience.

WSDOT may order suspension of all or any part of the Work under the Contract Documents if the Design-Builder does not comply with the Contract or WSDOT orders. Such a suspension shall be deemed a suspension for cause.

When ordered by WSDOT to suspend or resume Work, the Design-Builder shall do so immediately.

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 WSDOT 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), WSDOT will make an adjustment for any increase in the cost and time for the performance of the Contract (excluding profit) necessarily caused by the suspension, delay, or interruption. However, no adjustment will be made for any suspension, delay, or interruption if (1) the performance would have been suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Design-Builder, or (2) an equitable adjustment is provided for or excluded under any other provision of the Contract.

If the Design-Builder 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 WSDOT, the Design-Builder shall immediately submit a written notice of protest to WSDOT as provided in Section 1-04.5. No adjustment shall be allowed for any costs incurred more than 10 Calendar Days before the date WSDOT receives the Design-Builder's written notice of protest. If the Design-Builder contends damages have been suffered as a result of such suspension, delay, or interruption, the protest shall not be allowed unless the protest (stating the amount of damages) is asserted in writing as soon as practicable, but no later than the date of the Design-Builder's signature on the Final Contract Voucher Certification. The Design-Builder shall keep full and complete records of the costs and additional time of such suspension, delay, or interruption and shall permit WSDOT to have access to those records and any other records as may be deemed necessary by WSDOT to assist in evaluating the protest.

WSDOT will determine if an equitable adjustment in cost and/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 any increase in cost necessarily caused by the suspension, delay, or interruption.

Request for extensions of time will be evaluated in accordance with Section 1-08.8.

WSDOT's determination as to whether an adjustment should be made will be final as provided in Section 1-05.1.

No claim by the Design-Builder under this Section shall be allowed unless the Design-Builder has followed the procedures provided in this Section and in Sections 1-04.5 and 1-09.11.

1-08.7 *Maintenance During Suspension*

Before and during any suspension (as described in Section 1-08.6) the Design-Builder shall protect the Work from damage or deterioration. Suspension shall not relieve the Design-Builder from anything the Contract requires unless this Section states otherwise.

At no expense to WSDOT, the Design-Builder 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 Technical Requirements). This may include a temporary road, alternative pedestrian access route, or detour.

If WSDOT determines that the Design-Builder failed to pursue the Work diligently before the suspension, or failed to comply with the Contract or WSDOT's orders, then the Design-Builder shall maintain the temporary roadway in use during suspension. In this case, the Design-Builder shall bear the maintenance costs. If the Design-Builder fails to maintain the temporary roadway, WSDOT will perform the maintenance and deduct all resulting costs from payments due to the Design-Builder.

If WSDOT determines that the Design-Builder has pursued the Work diligently before the suspension, then WSDOT will maintain the temporary Roadway (and bear its cost). This WSDOT-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.
3. All barricades, signs, and lights needed for directing traffic through the temporary roadway or detour in the construction area.

The Design-Builder shall protect and maintain (and bear the costs of doing so) all other Work in areas not used by traffic.

After any suspension during which WSDOT has done the routine maintenance, the Design-Builder shall accept the traveled roadway or detour as is when Work resumes. The Design-Builder shall make no claim against WSDOT for the condition of the roadway or detour.

After any suspension, the Design-Builder shall retain all responsibilities the Contract assigns for repairing or restoring the roadway, its slopes, and its drainage system to conform to the approved Design Documents.

1-08.8 *Extensions of Time*

The Design-Builder shall submit any requests for time extensions to the WSDOT Engineer in writing no later than 14 Calendar Days after the delay occurs. The request shall be limited to demonstrable delays in the Critical Path attributable to the change or event giving rise to the request. To be considered by WSDOT, the request shall be in sufficient detail (as determined by WSDOT) to enable WSDOT to ascertain the basis and amount of the time requested. The Design-Builder shall be responsible for preparing a Contract Schedule update demonstrating to WSDOT's reasonable satisfaction that the event or circumstance: (1) had a specific impact on the Project Critical Path, and except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by re-sequencing of the Work or other reasonable alternatives. If a request

for time extension, combined with previous extension requests, equals 20 percent or more of the original Contract Time, the Design-Builder shall provide with the request a written consent of the Surety or Sureties if WSDOT requests such consent. In evaluating any request, WSDOT will consider how well the Design-Builder used the time from Notice to Proceed up to the point of the delay and the effect the delay has on any completion times included in the Contract Documents.

Extensions of Contract Time will be allowed only for that period equal to the time WSDOT determines the Critical Path was delayed because of:

1. Any action, neglect, or default of WSDOT, its officers, or employees, or of any other contractor or Design-Builder employed by WSDOT.
2. Fire or other casualty for which the Design-Builder is not responsible.
3. Strikes.
4. Any other conditions for which these General Provisions permit time extensions such as:
   (a) In Section 1-04.4 if a change directed by WSDOT increases the time necessary to achieve Substantial Completion.
   (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 which caused a delay in achieving Substantial Completion.
   (d) In Section 1-07.13 if the performance of the Work is delayed as a result of damage for which the Design-Builder is not responsible under the Contract.
   (e) In Section 1-07.17 with respect to Utility Delays and Major Underground Utilities not identified with Reasonable Accuracy.
   (f) In Section 1-07.24 if a delay results because of WSDOT's failure to provide access to Right-of-Way necessary for the construction by the date specified in the Contract.
   (g) 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 WSDOT.
   (h) 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.
5. Exceptional causes not specifically identified in items 1 through 4, provided the request letter proves the Design-Builder had no control over the cause of the delay and could have done nothing to avoid or mitigate the delay, and that the delay did not result from a risk allocated to the Design-Builder under the Contract.

The Design-Builder shall not be entitled to an extension of the Contract Time for Project delays unless such delays impact the ability of the Design-Builder to achieve Substantial Completion by the specified deadline. Delays that impact the Design-Builder's ability to

achieve planned early achievement of a Substantial Completion Date shall not be the subject of a time extension.

WSDOT will not allow a time extension for any cause listed above if it resulted from the Design-Builder's default, collusion, action or inaction, or failure to comply with the Contract.

The Design-Builder stipulates the Contract Time to be sufficient to do all the Work. For this reason, WSDOT will not grant a time extension for:

1. Unsuitable Weather.
2. Failure to obtain all materials and workers unless the failure was the result of exceptional causes as provided above in Section 1-08.5.
3. Changes, protest, or changed conditions (Section 1-04) that do not delay the completion of the Work or prove to be an invalid or inappropriate time extension request.
4. Delays caused by WSDOT's disapproval of Design or Released for Construction Documents as provided in Section 1-05.3 or the Technical Requirements.
5. Rejection of faulty or inappropriate equipment as provided in Section 1-05.7.
6. The Design-Builder's failure to meet the requirements of the Contract Documents.
7. Delays related to Relocations, except as provided in Section 1-07.17.
8. Delays that do not affect the Design-Builder's ability to meet the Substantial Completion deadline.
9. Delays in obtaining Governmental Approvals that are required to be obtained by the Design-Builder.

The Design-Builder's entitlement to, and duration of, any time extensions shall be determined by WSDOT, and such determination will be final as provided in Section 1-05.1.

1-08.9 *Liquidated Damages*

Time is of the essence of the Contract. Delays in completion of the Work and lane closures at times and in locations not consistent with the requirements of the Contract Documents result in inconvenience to the traveling public, obstruct traffic, interfere with and delay commerce, impeded toll collections, 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 parties agree to liquidate damages for such delays as specified herein.

1-08.9(1) Liquidated Damages for Late Completion

In the event the Design-Builder fails to meet the completion deadlines specified herein, the Design-Builder agrees to pay WSDOT liquidated damages in the following amounts:

1. For failure to achieve Substantial Completion by the Substantial Completion Date: ***$$1$$*** per day until the date Substantial Completion is achieved.

2. For failure to achieve Physical Completion by the Physical Completion Date: ***$$2$$*** per day, until the date Physical Completion is achieved.
3. For failure to achieve Completion by the Completion Date: ***$$3$$*** per day until the date Completion is achieved.

WSDOT is authorized to deduct these liquidated damages from any money due or coming due to the Design-Builder.

Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Design-Builder from further obligations and liabilities pursuant to the Contract.

1-08.9(2) Liquidated Damages for Failure to Open Lanes and Roadway

In addition to any Liquidated Damages that may be payable by Design-Builder under Section 1-08.9(1), the Design-Builder agrees to pay WSDOT Liquidated Damages in the following amounts in the event of any failure by the Design-Builder to open any lane, ramp, or street by the scheduled opening times specified in TR Section 2.22, *Maintenance of Traffic*. Payment in accordance with this Section shall liquidate all damages for failure to open lanes as specified.

1. To pay ***$$1$$*** liquidated damages per ***$$2$$*** for each ***$$3$$*** period (prorated to the nearest 5 minutes) per lane, that all lanes of ***$$4$$*** are not open by the scheduled opening time following a ***$$5$$*** closure.

The Design-Builder authorizes WSDOT to deduct these liquidated damages from any money due or coming due to the Design-Builder.

1-08.9(3) Liquidated Damages for ITS and Signal Disruptions

Unplanned disruptions to the ITS and Signals will result in impacts to the traveling public, increased fuel consumption, vehicle operating costs, pollution, and other inconveniences and harm far in excess of those resulting from delay of most projects.

Accordingly, the Design-Builder agrees:

1. To pay ***$$1$$*** in liquidated damages per element (including, but not limited to, a ramp meter, a CCTV camera/cabinet, a VMS, a data station, a HAR, a signal, a maintenance radio, and fiber backbone cable) per ***$$2$$*** for each ***$$3$$*** period (prorated to the nearest ***$$4$$*** that the Design-Builder fails to restore the proper operation of a signal or existing ITS element following an unplanned disruption, as specified in the Special Provisions and in Sections 2.17, *Traffic Signal*, and 2.18, *Intelligent Transportation Systems*.
2. To authorize WSDOT to deduct these liquidated damages from any money due or coming to the Design-Builder.

1-08.9(4) Liquidated Damages For Loss Of Tolling Revenue – Lane Closures

WSDOT collects tolls in both directions of ***$$1$$*** of the Project limits. WSDOT will also collect tolls within the Project limits beginning at GoLive. Roadway and lane closures on ***$$2$$*** by the Design-Builder, outside of the hours approved for lane

closures as described in TR Section 2.22, *Maintenance of Traffic*, will result in a loss of tolling revenue. Accordingly, in addition to liquidated damages for ITS disruptions as described in Section 1-08.9(3), liquidated damages for failure to open lanes as described in Section 1-08.9(2), and liquidated damages for late completion as described in Section 1-08.9(1), the Design-Builder agrees to pay liquidated damages for lost toll revenue as follows:

1. Liquidated damages for lost toll revenue shall accrue for the duration of time any lane (or lanes) on ***$$3$$*** is closed outside of the allowable hours of lane closures in accordance with TR Section 2.22, *Maintenance of Traffic*.
2. Damages for lost toll revenue will be calculated using the following formula:

   TL = Tavg – Tact

   Where:

   TL = Damages for lost toll revenue. When TL is a negative number it shall be rounded to zero.

   Tavg = The toll revenue that WSDOT would have collected on ***$$4$$*** during the lane closures outside of allowable hours. This value shall be determined by averaging actual tolls collected on five tolling periods which (1) occur on the same day of the week and times of day as the event that generated the lost toll revenue, (2) had no lane closures, (3) were not during holidays as defined in TR Section 2.22, *Maintenance of Traffic*, and (4) were the first five such tolling periods to occur previous to the event that generated the lost toll revenue.

   Tact = The toll revenue actually collected for the direction of ***$$5$$*** that had lane closures beyond the allowable hours, for the duration of those lane closures that extended beyond the allowable hours.
3. Damages for lost toll revenue shall not accrue during those times when lane(s) are closed in accordance with the allowable hours of lane closures as described in TR Section 2.22, Maintenance of Traffic.
4. ***$$6$$***
5. ***$$7$$***
6. The Design-Builder authorizes WSDOT to deduct these liquidated damages from any money due or coming due to the Design-Builder. Liquidated damages for lost toll revenue is in addition to all other liquidated damages referenced above relating to lane closures.

1-08.9(5) Liquidated Damages For Loss Of Tolling Revenue – ITS and Power Disruptions

WSDOT collects tolls in both directions of ***$$1$$*** of the Project limits. WSDOT will also collect tolls within the Project Limits beginning at GoLive. Unplanned

disruption to ITS or power may also result in a loss of tolling revenue. Accordingly, in addition to liquidated damages for ITS disruptions as described in Section 1-08.9(3), liquidated damages for failure to open lanes as described in Section 1-08.9(2), and liquidated damages for late Completion as described in Section 1-08.9(1), the Design-Builder agrees to pay the following liquidated damages for lost toll revenue as follows:

1. Liquidated damages for lost toll revenue shall accrue for the duration of time any unplanned disruption in ITS or power causes a disruption in toll collection.
2. Damages for lost toll revenue will be calculated using the following formula:

   TL = Tavg – Tact

   Where:

   TL = Damages for lost toll revenue. When TL is a negative number it shall be rounded to zero.

   Tavg = The toll revenue that WSDOT would have collected on ***$$2$$*** during the ITS or power disruption. This value shall be determined by averaging actual tolls collected on five tolling periods which (1) occur on the same day of the week and times of day as the event that generated the lost toll revenue, (2) had no lane closures, (3) were not during holidays as defined in TR Section 2.22 Maintenance of Traffic, and (4) were the first five such tolling periods to occur previous to the event that generated the lost toll revenue.

   Tact = The toll revenue actually collected for the direction of ***$$3$$*** that had the ITS or power disruption.
3. ***$$4$$***
4. ***$$5$$***
5. The Design-Builder authorizes WSDOT to deduct these liquidated damages from any money due or coming due to the Design-Builder. Liquidated damages for lost toll revenue is in addition to all other liquidated damages referenced above relating to ITS disruptions.

1-08.9(6) Liquidated Damages For Delayed Toll Infrastructure Completion

WSDOT has a separate contract with a Toll Vendor to install Toll Equipment, test the Toll System and GoLive. As required by the Instructions to Proposers, the Design-Builder shall commit to a Toll Infrastructure Completion milestone date on Form D. The Toll Vendor will rely on this date. If the Design-Builder should fail to meet this milestone date, WSDOT will incur additional costs. Accordingly, the Design-Builder agrees to pay the following liquidated damages for Toll Vendor:

1. ***$$1$$*** liquidated damages per Calendar Day for each additional Calendar Day past the Toll Infrastructure Completion date on Form D day that it takes to reach Toll Infrastructure Completion.

1-08.10 *Termination of Contract*

1-08.10(1) Termination for Default

WSDOT may terminate the Contract upon the occurrence of any one or more or the following events:

1. If the Design-Builder fails to supply sufficient skilled workers or suitable materials or equipment.
2. If the Design-Builder refuses or fails to prosecute the Work with such diligence as will ensure its Substantial Completion within the original Contract Time and any extensions of time which may have been granted to the Design-Builder by Change Order or otherwise.
3. If the Design-Builder is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Design-Builder or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Design-Builder, or if a trustee or receiver is appointed for the Design-Builder or for any of the Design-Builder's property on account of the Design-Builder's insolvency, and the Design-Builder 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 WSDOT.
4. If the Design-Builder disregards laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction.
5. If the Design-Builder disregards the authority of WSDOT.
6. If the Design-Builder performs Work which deviates from the Contract, and neglects or refuses to correct rejected Work.
7. If the Design-Builder otherwise violates in any material way any provisions or requirements of the Contract.

Once WSDOT determines that sufficient cause exists to terminate the Contract, written notice shall be given to the Design-Builder and its Surety indicating that the Design-Builder is in breach of the Contract and that the Design-Builder 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 WSDOT, WSDOT may, by serving written notice to the Design-Builder and Surety either:

1. Transfer the performance of the Work from the Design-Builder to the Surety.
2. Terminate the Contract and at WSDOT's option prosecute it to Completion by contract or otherwise. Any extra costs or damages to WSDOT shall be deducted from any money due or coming due to the Design-Builder under the Contract.

Should WSDOT elect to terminate the Contract, the Design-Builder shall immediately deliver to WSDOT, upon request, possession of any or all Design Documents of whatsoever nature and all other completed or partially completed drawings (including plans, elevations, Sections, details, and diagrams), specifications, records, information,

schedules, samples, shop drawings, electronic files, and other documents and facilities related to the Project that WSDOT deems necessary for completion of the Work. WSDOT shall have the unequivocal right to use said documents to complete the Work. Irrespective of the termination, the Design-Builder shall remain fully responsible and liable for all errors or omissions of any nature in completed, stamped Design Documents or 'Released For Construction' drawings as said errors or omissions exist at the time of termination, or as negotiated under the termination.

If WSDOT elects to pursue one remedy, it will not bar WSDOT 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 WSDOT 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 Design-Builder to make any claim.

If WSDOT terminates the Contract or provides such sufficiency of labor or materials as required to complete the Work, the Design-Builder 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 Design-Builder shall bear any extra expenses incurred by WSDOT in completing the Work, including all increased costs for completing the Work, and all damages sustained, or which may be sustained, by WSDOT by reason of such refusal, neglect, failure, or discontinuance of Work by the Design-Builder. If liquidated damages are provided in the Contract, the Design-Builder 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, WSDOT 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 Design-Builder, except as provided below, the excess will be paid by WSDOT to the Design-Builder.

In exercising WSDOT's right to prosecute the Physical Completion of the Work, WSDOT 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 WSDOT or the Surety takes bids for remedial Work or Physical Completion of the Project, the Design-Builder 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 WSDOT against the Design-Builder. The rights and remedies of WSDOT 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 Design-Builder by WSDOT will not release the Design-Builder from liability.

If a notice of termination for default has been issued and it is later determined for any reason that the Design-Builder 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 Section 1-08.10(2). The foregoing shall include a termination for default predicated upon a failure to prosecute the Work where the underlying delay was found to be excusable under the provisions of Section 1-08.8.

1-08.10(2) Termination for Public Convenience

WSDOT may terminate the Contract in whole, or from time to time in part, whenever:

1. The Design-Builder 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 Design-Builder 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 Design-Builder.
3. WSDOT determines that such termination is in the best interests of WSDOT.

1-08.10(3) Termination for Public Convenience Payment Request

After receipt of a notice of Termination under Section 1-08.10(2), the Design-Builder shall submit to WSDOT 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 Design-Builder agrees to make all records available to the extent deemed necessary by WSDOT to verify the costs in the Design-Builder'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 WSDOT and the Design-Builder 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 Design-Builder and Surety

Termination of the Contract shall not relieve the Design-Builder 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.

1-08.11 *Incentives and Disincentives*

1-08.11(1) Incentives

1-08.11(1).1 Purpose and Amount of Incentive Award

General. An incentive award program has been established to provide the Design-Builder the opportunity to earn awards commensurate with superior performance in certain components of the Project relating to construction. The program is designed to encourage and reward the Design-Builder for exceeding technical specification and administrative program requirements. An incentive award will be earned only by clear and constant superior performance that exceeds minimum technical and administrative requirements. It is WSDOT's desire that the Design-Builder perform in such a superior manner as to ultimately earn the maximum possible incentive award. The UDBE Performance Plan is not elligible for incentives

Total Incentive Award. The maximum incentive award pool under the Incentive/Disincentive Program is listed in Table 7. This amount will not be increased if Work is added to the Project, but may be reduced if Work is deleted.

Periodic Award Earnings. With regard to incentive category designated as Periodic Incentive in Table 7 below, an incentive award may be earned by the Design-Builder in whole or in part, based upon WSDOT's monthly evaluations of the Design-Builder's performance. This program allows incremental portions of the incentive award to be earned and paid quarterly. The amount potentially available for each quarter for any given Periodic Incentive category will be determined by the WSDOT Engineer after receiving an approved cost-loaded schedule for the Project. For planning purposes, the first planned incentive period will be the first full quarter following the start of construction with all further incentive periods running quarterly thereafter.

Project Incentive Award Earnings. With regards to the category designated as Project Incentive in Table 7 below, the designated incentive criteria will be evaluated by WSDOT pursuant to the Contract, and payment, if any, will be made upon the Project reaching Substantial Completion.

Incentive Criteria. The incentive criteria established herein are objective, definable, and quantifiable, and will measure the actual achievements of the Design-Builder. The various incentive criteria are predefined and weighted appropriately to encourage Design-Builder achievements in the Project elements that are the most critical to WSDOT.

1-08.11(1).2 Determination and Payment of Periodic Incentive Award

General. The Periodic Incentive evaluation process shall have a two-tiered organization: the Award Determination Official (ADO) and the Performance Evaluation Team. Periodic Incentive evaluations will not begin until the actual start of physical construction.

Award Determination Official. WSDOT will designate the ADO. The ADO reviews the findings and recommendations of the Performance Evaluation Team and determines the amount of earned award for each period of Project activities. No changes to the

evaluation criteria or incentive award assignments can be made without the approval of the ADO.

Performance Evaluation Team. The Performance Evaluation Team (PET) will consist of WSDOT employees, and representatives and stakeholders designated by the WSDOT Engineer. The Design-Builder staff or employees shall not be official members of any PET. The PET will prepare Monthly Evaluation Reports for all periodic award program criteria. The Design-Builder's performance and activities will be observed and continuously evaluated. The PET will prepare Quarterly Incentive Award Performance Reports and provide the Design-Builder with a copy for comment and corrective actions, if any.

The Design-Builder shall prepare a self-assessment regarding performance relative to the incentive award criteria and submit a written summary with each monthly invoice. The Design-Builder's self-assessment may be considered by WSDOT in deciding incentive payment amounts, but determination of actual periodic incentive payments rests in the sole discretion of the ADO.

1-08.11(1).3 Quarterly Incentive Award Performance Reports and Review Schedule

The Quarterly Incentive Award Performance Report, prepared by the PET, shall include a recommendation for the incentive award amount, the rationale supporting the evaluation and assessment of each incentive award criteria, and identification of areas of performance that need improvement.

Within 7 Calendar Days of receiving the Quarterly Incentive Award Performance Report, the ADO will review the recommendations and other pertinent information and determine the amount of the earned periodic incentive award, if any. Within 10 Calendar Days after the ADO receives the recommendations from the PET, the Design-Builder will be notified in writing of the determination of incentive award earned for the quarter.

1-08.11(1).4 Project Measures

Key Measures. All incentive award payments will be based on the key measures and maximum possible award shown in Table 7, Allocation of Incentive Award Among Key Measures.

TABLE 7
ALLOCATION OF INCENTIVE AWARD AMONG KEY MEASURES

Key Measure	Maximum Possible Award
Periodic Incentive	
Environmental Compliance	
Environmental Awareness	***$$1$$***
Environmental Inspections and Compliance Monitoring	***$$2$$***
Reacting to Non-Compliance Events	***$$3$$***
Subtotal	***$$4$$***

TABLE 7 ALLOCATION OF INCENTIVE AWARD AMONG KEY MEASURES	
Key Measure	**Maximum Possible Award**
Project Incentives	
Pavement Smoothness	***$$5$$***
Closure Reduction Incentive	***$$6$$***
Subtotal	***$$7$$***
TOTAL	***$$8$$***

1-08.11(1).5 Environmental Compliance

General: Adhering to the environmental commitments, relative to all phases of Project development, will prevent environmental degradation, reduce work delays and cost increases, minimize negative publicity, and reduce the number of upset citizens/landowners. The portion of the incentive award allocated to Environmental Compliance is listed in Table 7. The amount is divided among the three environmental compliance criteria.

A) Environmental Awareness

General: This incentive rewards the Design-Builder for taking extra steps prior to the commencement of Work to ensure that Project staff and subcontractors understand the environmental commitments related to their specific activities. In doing so, Project staff and Subcontractors will be able to recognize when a non-compliance event is occurring and shall react accordingly. To be eligible for this incentive, the Design-Builder shall develop an environmental notebook containing environmental commitments and permit conditions as a resource for Project inspectors. This field guide is a tool that, when combined with "Just in Time" training, will raise environmental awareness, and reduce the likelihood of a violation.

Period Incentive Award Earned: The environmental notebook will be evaluated on a monthly basis. In determining the quarterly incentive award earned, the evaluation team will consider the Monthly Evaluation Reports for that quarter.

Evaluation Criteria: The environmental notebook will be reviewed for the following information:

- List of Project staff contact numbers, including emergency contacts.
- WSDOT's Environmental Compliance Assurance Procedure for Construction Projects and Activities.
- Checklists of commitments applicable to specific Work activities, specific locations, and/or specific daily or seasonal work schedules are included prior to the commencement of Work activities.
- Construction schedule and list of dates and conditions for advance notification to WSDOT for construction activity, so WSDOT can contact the appropriate regulatory agencies within the timeframes required in the permits.

- Water quality monitoring data, calibration data, and a site map showing sampling locations.
- Procedures for unanticipated discovery of archaeological and historical objects during construction.
- SPCC Plan and spill response and reporting procedures.
- Erosion and Sediment Control Inspection (DOT Form 220-030) to evaluate the effectiveness of BMPs to evaluate if it is necessary to install, maintain, or repair BMPs to ensure that they function properly.

Failure to include any of the above referenced items in the environmental notebook will result in a reduction in the quarterly incentive amount earned. The Design-Builder will receive a greater portion of this incentive if its environmental protection training program ***includes*** a component to continually teach inspectors and field staff how to use the Project environmental notebook. One example of this would include training staff, prior to construction, to recognize "notification triggers" identified in Section 1-2.2K of the *Construction Manual* (Environmental Compliance Assurance Procedure for Construction Projects and Activities).

Another example could include familiarizing staff, Subconsultants and Subcontractors with the locations of Environmentally Sensitive Areas and identifying Work activities that present the greatest risk for non-compliance. The Design-Builder will receive a greater portion of this incentive if workers are regularly briefed on environmental issues prior to the start of their specific Work activities (e.g., an environmental Section is included in work plans and it contains procedures that are specific to the activity and location where the work is being performed).

B) Environmental Inspections and Compliance Monitoring

General*:* This incentive rewards the Design-Builder for taking extra steps to carry out well-planned and rigorous environmental inspections and compliance monitoring in order to avoid permit violations and negative impacts to the environment.

Period Incentive Award Earned: Environmental Inspections and Compliance Monitoring will be evaluated on a monthly basis. In determining the quarterly incentive award earned, the evaluation team will consider the Monthly Evaluation Reports for that quarter.

Evaluation Criteria: WSDOT's Environmental Compliance Assurance Inspector (ECAI) will perform random, unannounced inspections during the life of the Project. The inspection will be conducted using a checklist containing evaluation criteria based on the following requirements:

- **Inspection of Erosion Control BMPs.** All on-Site erosion and sediment control measures are inspected at least once every 7 Calendar Days, each working day during a runoff-producing rain event and within 24 hours after a runoff producing rain event. A TESC Inspection Report is prepared for each inspection in accordance with the Standard Specifications and NPDES Permit requirements, and is provided to WSDOT within 24 hours of inspection.

- ***BMP Repair and Maintenance.*** Site visit confirms that damaged or inadequate BMPs are repaired or corrected immediately. Recommendations from the TESC inspection report are implemented and the TESC Plan is updated to address deficiencies.
- ***Inspection and Maintenance of Spill Plan BMPs.*** SPCC Plan Periodic Inspection Forms are completed and provided to WSDOT on a regular basis. Spill kits and equipment are on-Site and are well stocked in accordance with the SPCC Plan requirements. Spills are identified and reported to WSDOT in accordance with ECAP requirements. SPCC Plan provisions are followed.
- ***Concrete Wash Stations and Concrete Containment.*** Equipment involved in concrete work is washed out at locations where wash water is contained. Containment methods are employed to control and contain all saw-cut water and concrete slurry dewatered from cofferdams, drilled piles, etc. A billing manifest from an approved facility is provided when high pH water is disposed of off-Site.
- ***Fugitive Dust Control.*** Tire wash stations and stabilized construction entrances are working properly and are maintained to prevent track out. Streets adjacent to construction site entrances are cleaned on a regular basis. Exposed soil is sprayed or covered during periods of dry weather and high wind.
- ***Water Quality Sampling and Reporting.*** Sampling of water quality is carried out in accordance with the frequencies identified within the water quality monitoring plan and permit conditions. Sampling results that are not in compliance are verbally reported to WSDOT immediately and written reports are provided within 24 hours of sampling activities.

The frequency of inspections will vary as the nature of Work changes during the life of the Project. The items listed above are meant to cover all anticipated types of Work activities. Consequently, not all listed items will be applicable at all times during each inspection. WSDOT and the Design-Builder will review a look-ahead schedule at the beginning of each month to discuss which work activities pose the greatest risk to the environment. The ECAI will provide the results of the random inspections to the PET to assist in the preparation of the Monthly Evaluation Reports.

C) Reacting to Non-Compliance Events

General*:* WSDOT wants to encourage and reward the Design-Builder for self-identifying non-compliance events and for quickly reacting to report and correct such problems. This will require effective compliance planning and a commitment to rigorous monitoring, reacting, and reporting.

Period Incentive Award Earned: Unlike the other Periodic Incentives in Section 1-08.11, this incentive will be incrementally awarded based on a schedule developed by WSDOT after review of the Design Builder's Baseline Schedule. The PET will review the criteria for this incentive on a monthly basis and prepare Monthly Evaluation Reports. At the end of the incentive award period, the PET will then use the Monthly Evaluation Reports to prepare a Period Incentive Award Performance Report, which will be handled in the same manner and form as the Quarterly Incentive Award Performance Reports provided elsewhere in Section 1-08.11.

Evaluation Criteria: For each incentive award period, the Design-Builder will be reviewed and classified by the PET under one of the following three performance levels for purposes of determining the range of incentive award, if any, earned for that season.

Performance Level 1: Self-Identified or WSDOT-Identified Non-Compliance Event(s) (eligible to receive 51-100 percent of the incentive)

When evaluating this incentive, a higher percentage will be awarded to the Design-Builder for self-identifying non-compliance events and for having very few non-compliance events brought to their attention by WSDOT. A lower percentage of this incentive will be awarded if there is a high ratio of WSDOT-identified non-compliance events compared to the number of non-compliance events the Design-Builder self-identified. Some examples of award scenarios are listed below:

(Upper Range)
The Design-Builder's staff, through rigorous monitoring and inspections, identified that they were not in compliance with a permit condition(s). WSDOT was immediately notified of non-compliance event(s) in accordance with the Environmental Compliance Assurance Procedures (ECAP) and the Design-Builder coordinated with WSDOT to ensure the appropriate corrective actions were taken to resolve the problem to the satisfaction of WSDOT and the regulatory agencies. WSDOT identified very few non-compliance events that slipped by the Design-Builder's staff.

(Middle Range)
The Design-Builder self-identified non-compliance events and WSDOT's staff, on several occasions, identified that the Design-Builder was not in compliance with a given permit condition, environmental commitment, or regulation. However, the Design-Builder always took immediate corrective action to resolve the non-compliance event(s) to the satisfaction of WSDOT and the regulatory agencies.

(Lower Range)
WSDOT had to tell the Design-Builder on numerous occasions that they were not in compliance with environmental regulations. The Design-Builder did a fair job of self-identifying non-compliance events.

Performance Level 2: External Agency-Identified Non-Compliance Event(s) (eligible to receive 26-50 percent of the incentive)

(Upper Range)
On no more than one occasion, an external source such as a regulatory agency environmental staff member or a Local Agency staff member identified that the Design-Builder was not in compliance with a given permit condition, performance standard, environmental commitment, or regulation. The Design-Builder took immediate corrective action to resolve the non-compliance event to the satisfaction of the external party who identified the problem.

(Lower Range)
On more than one occasion, an external source such as a regulatory agency environmental staff member or a Local Agency staff member identifies that the

Design-Builder was not in compliance with a given permit condition, performance standard, environmental commitment, or regulation. The Design-Builder responded to non-compliance events, but was typically slow to react.

Performance Level 3: Regulatory Agency Issues a Violation and/or Failure to react to Non-Compliance Events (eligible to receive 0-25 percent of the incentive)

Generally, if a regulatory agency issues WSDOT a notice of violation for a permit that was obtained for the Project, the Design-Builder shall not receive any portion of this incentive. However, the Design-Builder may be eligible to receive up to 25 percent of this incentive if the PET and ADO recognize unique circumstances that indicate the Design-Builder acted in the best interest of the environment during the event and/or to remedy a non-compliance event.

No portion of this incentive shall be awarded if the Design-Builder fails to take corrective action to remedy a non-compliance event after being directed by WSDOT.

1-08.11(1).6 Changes to Evaluation Criteria

General. The WSDOT Engineer may unilaterally change the incentive fee evaluation criteria. Changes to the criteria may be made without executing Change Order(s) or any other formal modification of the Contract. The WSDOT Engineer will notify the Design-Builder of any changes in the evaluation criteria at least 14 Calendar Days before implementation. If the WSDOT Engineer does not so notify the Design-Builder, the existing evaluation criteria will continue in effect until the end of the quarter.

1-08.11(2) Appeal Process and Payment Procedures

1-08.11(2).1 Appeal Process

General. The Design-Builder shall have 7 Calendar Days from the receipt of notification of determination of an incentive award earned pursuant to Section 1-08.11(1).1 in which to submit a written appeal to the ADO. Such an appeal shall include a full explanation of the reasons, facts, and circumstances upon which the appeal is based. The Design-Builder may also request, at the time of submitting the written appeal, a meeting with the ADO to discuss the appeal. The ADO shall schedule a requested meeting to take place within 21 Calendar Days of the date of receipt of the appeal. The ADO will consider the appeal and make a Final Incentive Award Determination for the period within 7 Calendar Days of the date the written appeal was received by the ADO or within 7 Calendar Days of the date of any meeting requested by the Design-Builder with the ADO to discuss the appeal, whichever date is later. If no appeal is filed, the ADO's initial determination shall be considered the Final Incentive Award Determination for that period. Failure to file a written appeal within the applicable period shall constitute an unconditional waiver of the Design-Builder's right to contest an incentive award determination by the ADO. The determination of the amount of any periodic incentive award is at the sole discretion of the ADO. A decision by the ADO regarding the amount of a periodic incentive award shall be conclusive subject only to judicial review for abuse of discretion in Thurston County Superior Court. Disputes regarding the amount of a periodic incentive award are not subject to the typical disputes process set forth in Sections 1-04.5, 1-09.11, 1-09.12, and/or 1-09.13.

1-08.11(2).2 Payment

General. Each installment of the incentive award will be approved by WSDOT for payment upon the ADO issuing a Final Incentive Award Determination for that period. No payment of an incentive award will be made prior to the issuance of a Final Incentive Award Determination. All payments, if any, will be made under the item "Incentives/Disincentives".

Quarterly Incentive Award Amounts. No unearned Incentive Award from a previous quarter will be carried over into subsequent quarters.

1-08.11(3) Closure Incentives and Disincentives

The maximum allowable weekend lane closures for the Contract will be the more restrictive of the two options: Proposal commitments identified in the Betterment list or the allowable weekend closures defined in TR Section 2.22, *Maintenance of Traffic*.

1-08.11(3).1 Disincentives

If the Design-Builder requires additional weekend lane closures, WSDOT will deduct disincentives from payments to the Design-Builder as described below.

For each weekend hour ***$$1$$*** is required to be closed in addition to contractually allowable weekend lane closures, WSDOT will deduct disincentive payments from the Design-Builder according to Tables below. For each additional directional full weekend closure, disincentive will not exceed ***$$2$$***.

$$3$$

1-08.11(3).2 Incentives

Reductions to the maximum allowable weekend lane closures (the more restrictive of Proposal commitments identified in the Betterment list or the allowable weekend closures defined in TR Section 2.22 Maintenance of Traffic) will earn an incentive according to the tables below. Maximum possible incentive available for reduction in weekend lane closures is ***$$1$$***. Efforts made to reduce the maximum allowable weekend lane closures shall be consistent with the Project goals. Incentive amounts will be determined solely by the WSDOT Engineer.

- A reduction of one directional full weekend closure, determined to be consistent with the Project goals by the WSDOT Engineer, will earn a maximum of ***$$2$$***.

Hourly reductions determined to be consistent with the Project goals by the WSDOT Engineer, will earn incentives as outlined in the following tables.

$$3$$

1-09 Measurement and Payment

1-09.1 *Measurement of Quantities*

In measuring all acceptably completed Work, WSDOT 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 WSDOT by carrying measurements and computations to the proper significant figure or fraction of units for each item.
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.

"Gage" (in measurement of plates): the U.S. Standard Gage.

"Gage" (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.

"Gage" (in measurement of wire): that specified in AASHTO M 32.

"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, WSDOT will use the method of measurement described. For Work measured on the basis of:

Square Yard or Square Foot - the measurement shall be a calculation from the neat dimensions shown in the Design Documents or as altered pursuant to the Contract. 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 (pipe culverts, guard rail, underdrains, etc.) - measured parallel to the structure's base or foundation, 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. WSDOT may correct for curvature.

Volume (in the hauling vehicle) - measured at the point of delivery. Hauling vehicles may be of any size or type WSDOT approves provided that the body is of such shape that the actual contents may be readily and accurately determined. If WSDOT requires, the Design-Builder shall level loads at the delivery point to facilitate measurement.

For each item listed below, the WSDOT Engineer will use the method of measurement described.

Structures - measured on the neat lines shown in the Design Documents or as altered by the Contract. 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 WSDOT 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 degrees Fahrenheit (or will be corrected to the volume at 60 degrees Fahrenheit in keeping with ASTM D 1250). If shipped by rail, truck, or transport, measurement will be by net certified scale masses or certified volumes (corrected for material lost in 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 Design Documents.
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 Design-Builder'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 Section 1-09.5.
6. Any other Work or material contrary to any Contract provision.

1-09.2 *Weighing Equipment*

1-09.2(1) General Requirements for Weighing Equipment

Unless specified otherwise, Highway or Bridge 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.
5. Be carefully maintained, with bunkers and platforms kept clear of accumulated materials that could cause errors.

Scale Operations

The Design-Builder provided scale operations are defined as operations where a scale is set up by the Design-Builder specifically for the Project and most, if not all, material weighed on the scale is utilized for Contract Work. In this situation, the Design-Builder shall provide a person to operate the Project scale, write 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 Design-Builder may utilize a commercial scale operator provided it is at no additional cost to WSDOT.

In addition, the Design-Builder shall ensure that:

1. WSDOT is allowed to observe the weighing operation and check the daily scale weight record.
2. Scale verification checks are performed at the direction of WSDOT (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.
4. Test results and scale weight records for each day's hauling operations are provided to WSDOT daily. Unless otherwise approved, reporting shall utilize Form 422-027, Scaleman's Daily Report.

Trucks and 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. Each vehicle operator shall obtain a weigh or load ticket from the scale operator. The Design-Builder shall provide item quantity tickets for all scales. All tickets shall contain the following information:

1. Date of haul.
2. Contract number.
3. Work item/activity number and material description.
4. Unit of measure.
5. Identification number of hauling vehicle.
6. Weight delivered.
   (a) Net weight in the case of batch and hopper scales.

(b) Gross weight, tare, 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.

The vehicle operator shall deliver the ticket in legible condition to 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.

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. Any weighing container mounted on a platform scale shall have its center of gravity directly over the platform center line. Batching scales used for Portland cement 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 1-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 either case, the Design-Builder shall provide WSDOT 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.

Any platform scale shall be installed and maintained with the platform level and with rigid bulkheads at either 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, any platform scale 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 either case, the Design-Builder shall provide WSDOT with a copy of the final test results.

1-09.2(4) Specific Requirements for Belt Conveyor Scales

WSDOT 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 Design-Builder shall perform a chain test. The Design-Builder 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 Design-Builder shall verify the accuracy of each batch, hopper or platform scale. The frequency of verification checks will be such that at least one test weekly is performed for each scale used in weighing Contract items of Work.

The Design-Builder shall notify WSDOT at least 24 hours in advance of a scale verification.

Verification checks may not be routinely conducted for weighed material, whose proposal quantity multiplied by the Material Unit Price as shown in Table 5, TR 2.25, has a value less than $20,000.

The verification will consist of one of the following methods and be at the Design-Builder's option:

- Weigh a loaded truck on a separate certified platform scale designated by the Design-Builder, for the purpose of scale verification.
- Weigh a vehicle that weighs at least 10,000 pounds on a separate certified scale and then check the Project scale with it.
- 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, the Design-Builder shall immediately stop weighing and the scale shall be recertified at the Design-Builder's expense.

Belt Scales

To test the accuracy of a belt-conveyor scale, the Design-Builder 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, WSDOT 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.

If scale verification checks show the scale has been overweighing, its operation will cease immediately until adjusted.

Minor Construction Items

If the specifications and plans require weight measurement for minor construction items, the Design-Builder may request permission to convert volume to weight. If WSDOT approves, an agreed factor may be used to make this conversion and volume may be used to calculate the corresponding weight for payment.

1-09.2(6) Payment

Unless specified otherwise WSDOT will pay for no materials received by weight unless they have been weighed as required in this Section or as required by another method WSDOT has approved in writing.

The Design-Builder shall not be compensated for any loss from under weighing that is revealed by scale verification checks.

If scale verification checks reveal that the scale is over weighing, then payment for all material weighed since the last valid scale verification check will be adjusted. WSDOT 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 Design-Builder demonstrates to the satisfaction of WSDOT that the defect in the scale was present for a lesser period of time.

The Contract Price covers all costs related to weighing and proportioning materials for payment. These costs include but are not limited to:

- Furnishing, installing, certifying, and maintaining scales.
- Providing a weigher to operate a Design-Builder provided scale.
- Providing a weigher to operate a commercial scale, if necessary.
- Providing self-printing tickets, if necessary.
- Rerouting a truck for verification weighing.
- Assisting WSDOT with scale verification checks.
- Any other related costs associated with meeting the requirements of this Section.

1-09.3 *Scope of Payment*

The payment provided for in the Contract shall be full payment to the Design-Builder for:

1. Performing all design services, furnishing all materials and performing all construction and other Work under the Contract (including changes in the Work) 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.
3. All expense incurred resulting from a suspension or discontinuance of the Work as specified under the Contract.

Payment hereunder shall not relieve the Design-Builder of the obligation to make good any defective Work or materials.

1-09.3(1) Unit Priced Change Orders

Measurement of unit-priced quantities will be in accordance with Section 1-09.1. Unit prices shall be deemed to include all costs for labor, material, overhead, and profit; and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. Upon final determination of the quantities, WSDOT will issue a modified Change Order setting forth the final adjustment to the Contract Price.

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.
   (b) Other agreed-upon prices.
2. If the parties cannot agree, the price will be determined by WSDOT using:
   (a) Unit Prices.
   (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.
2. To the extent any delay of performance was concurrently caused by WSDOT and the Design-Builder, the Design-Builder shall be entitled to a time extension to the extent of such concurrent delay, provided that the Design-Builder complies with the provisions of Section 1-08.8. The Design-Builder shall not be entitled to an adjustment in the Contract Price for any concurrent delay.
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*

WSDOT may delete portions of the 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.

When any 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 for partially completed lump sum items will be as mutually agreed. If the parties cannot agree, the WSDOT Engineer will determine the amount of the equitable adjustment in accordance with Section 1-09.4.
2. To the extent not paid for by the portion of the Contract Price allocated to completed Work, WSDOT will pay as part of the equitable adjustment those direct costs necessarily and actually incurred by the Design-Builder in anticipation of performing the Work that has been deleted or terminated.
3. The total payment for any one item in the case of a deletion or partial termination shall not exceed the Contract Price as modified by approved Change Orders less the estimated cost (including overhead and profit) to complete the Work and less any amount paid to the Design-Builder for the item.
4. 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 Design-Builder before the effective date of the termination.
5. 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, WSDOT will determine the equitable adjustment for Contract Time.

Acceptable materials ordered by the Design-Builder 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 WSDOT, will either be purchased from the Design-Builder by WSDOT at the actual cost and shall become the property of WSDOT, or WSDOT will reimburse the Design-Builder 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 Design-Builder for all costs associated with the Work, including costs of design, engineering, 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 shown below for Construction forces:

1. **For Labor** - Labor reimbursement calculations shall be based on a “Project Labor List” (List) prepared and submitted by the Design-Builder and by any Subcontractor before that firm commences force account Work. Once a List is approved by WSDOT, it shall be used to calculate force account labor payment until a new List is submitted and approved. WSDOT may compare the List to payrolls and other documents and may, at any time, require the Design-Builder to submit a new List. The Design-Builder 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 WSDOT Engineer will develop a List unilaterally, utilizing the best data available, that will be used until the Design-Builder's List is received and approved. Again, prior calculations, prepared using the WSDOT List, will not be revised as a result of differences with the Design-Builder's List.

In addition to compensation for direct labor costs defined above, WSDOT will pay the Design-Builder 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 and Occupation tax, and any other costs incurred. This amount will include any 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 Proposal.

2. **For Materials** - WSDOT will reimburse invoice cost for Design-Builder-supplied 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 WSDOT Engineer may require the Design-Builder to obtain multiple quotations for the materials to be utilized and select the vendor with prices and terms most advantageous to WSDOT.

WSDOT will provide a list of the types and quantities of Design-Builder-supplied materials witnessed by WSDOT 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 Design-Builder may propose corrections to the list and will supply prices for the materials and other costs and return the list to WSDOT. To support the prices, the Design-Builder shall attach valid copies of vendor invoices. If invoices are not available for materials from the Design-Builder's stocks, the Design-Builder shall certify actual costs (at a reasonable level) by affidavit. WSDOT will review the prices and any Design-Builder-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 the Design-Builder's affidavit, the price appears to be unreasonable, WSDOT will determine the cost for all or part of those materials, utilizing the best data available.

WSDOT reserves the right to provide materials. In this case, the Design-Builder will receive no payment for any costs, overhead, or profit arising from the value of the materials themselves. Additional costs to handle and place the Agency-furnished material shall be compensated as described in this specification.

In addition to compensation for direct materials cost, WSDOT will pay the Design-Builder 21 percent of the sum of the costs calculated for materials reimbursement to cover Project overhead, general company overhead, profit, bonding, insurance required by Section 1-07.10 and 1-07.18, Business and Occupation tax, and any other costs incurred.

3. **For Equipment** - WSDOT will reimburse the Design-Builder for the cost of equipment utilized in the Work. The equipment provided by the Design-Builder 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 Design-Builder or Subcontractor or that the equipment is rented and operated by the Design-Builder or Subcontractor. Equipment that is rented with operator shall not be included here, but shall be considered a service and addressed according to Section 1-09.6 (item 4) below.

The amount of payment for any Design-Builder-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, WSDOT may require the Design-Builder to obtain multiple quotations for the rental of equipment to be utilized and select the vendor with prices and terms most advantageous to WSDOT. In the event that prior quotations are not obtained and the vendor is not a firm independent from the Design-Builder or Subcontractor, then after-the-fact quotations may be obtained by WSDOT 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 Design-Builder-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.

WSDOT 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 and Occupation tax, and any other costs incurred. This markup will be over and above those equipment costs and will not be adjusted for any equipment overhead amounts included in the Blue Book rates.

Current copies of the Rental Rate Blue Book and the AGC/WSDOT Equipment Rental Agreement will be maintained on WSDOT's website at www.wsdot.wa.gov.

4. **For Services** - Compensation under force account for specialized services shall be made on the basis of an invoice from the providing entity. A "specialized service" is a work operation which is not typically done by worker classifications as defined by the Washington State Department of Labor and Industries and by the Davis Bacon Act, and therefore bills by invoice for work in road, bridge and municipal construction. Before Work is started, WSDOT may require the Design-Builder to obtain multiple quotations for the service to be utilized and select the provider with prices and terms most advantageous to WSDOT. In the event that prior quotations are not obtained and the service invoice is submitted by a Subcontractor, then after-the-fact quotations may be obtained by WSDOT from the open market in the vicinity and the lowest such quotation may be used in place of the submitted invoice.

   Except as noted below, WSDOT will pay the Design-Builder an additional 21 percent of the sum of the costs included on invoices for specialized services to cover Project overhead, general company overhead, profit, bonding, insurance required by Section 1-07.10 and 1-07.18, Business & Occupation tax, and any other costs incurred.

   When a supplier of services is compensated through invoice, but acts in the manner of a Subcontractor, as described in item 6 of this Section, then markup for that invoice shall be according to item 6. "For the Design-Builder Markup on Subcontractor's Work."

   The cost of labor for non-construction-related Work (including design, surveying, utility coordination, permits, professional environmental services, and similar aspects of the Work), whether provided by the Design-Builder or a Subcontractor, will equal the sum of (1) actual wages (i.e. the base wage paid to the employee exclusive of fringe benefits), plus (2) a labor surcharge of 150 percent on such amount, which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, workers' compensation, fringe benefits (including health insurance, retirement plans, vacation, sick leave, and bonuses) and all other payments made to, or on behalf of, the workers, in excess of actual wages, as well as for overhead. This amount shall be considered full compensation and no further markups will be allowed.

5. **For Mobilization** - Force account mobilization is defined as the preparatory Work performed by the Design-Builder including procurement; loading and transportation of tools and equipment; and personal travel time (when such travel time is a contractual obligation of the Design-Builder or a customary payment for the Design-Builder 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. WSDOT will pay for mobilization for off-Site preparatory Work for force account items provided that notice has been provided sufficiently in advance to allow WSDOT to witness the activity, if desired.

   Any 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. Note that no additional mobilization expense will be paid for any Equipment presently on-Site.

6. **For The Design-Builder Markup on Subcontractor's Work** - When Work is performed on a force account basis by one or more approved Subcontractors, by lower-tier Subcontractors or suppliers, or through invoice by firm(s) acting in the manner of a Subcontractor, the Design-Builder will be allowed an additional markup, from the table below, applied to the costs computed for Work done by each Subcontractor through items 1, 2, 3, 4, and 5 of this Section, 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 any other costs incurred.

   A firm may be considered to be acting as a Subcontractor when WSDOT observes one or more of the following characteristics:

   (a) The Person in charge of the firm's activities takes an active role in managing the overall Project, including extensive coordination, interpretation of plans, interaction with WSDOT, or management of a complex and interrelated operation.

   (b) Rented equipment is provided fueled, operated, and maintained by the firm. Operators of rented equipment are supervised directly by the firm's representative. There is little interaction between the Design-Builder and the employees of the firm.

   (c) The firm appears to be holding the risk of performance and quality of the Work.

   (d) The firm appears to be responsible for liability arising from the Work.

Markups on Work Performed by Subcontractor(s):

1. On amounts paid for work performed by each Subcontractor on each force account and calculated through items 1 - 5 up to $25,000	12%
2. On amounts greater than $25,000 up to $100,000	10%
3. On amounts greater than $100,000	7%

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 any others incurred on the work being paid through force account.

Nothing in this provision shall preclude the Design-Builder 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 any Work to be paid by force account shall be computed by WSDOT, and the result shall be final as provided in Section 1-05.1.

An item which was included in the original scope of the Work will not be paid as force account unless a change as defined in Section 1-04.4 has occurred and the provisions require a payment adjustment. Force Account Work may, at any time and by agreement of the parties, be converted to agreed unit prices or lump sums applicable to the remaining Work.

1-09.6(1) Daily Reports

The Design-Builder shall furnish daily, on forms approved by WSDOT, reports of Force Account Change Order Work. The reports shall itemize all costs for labor, materials, and equipment rental and give total of costs to date for the Force Account Change Order Work. For workers, the reports shall include hours worked, rates of pay, names and classifications. For equipment, the reports shall include size, type, identification number, rental rate, and hours of operation. All such records and reports shall be made immediately available to WSDOT upon its request. The cost of furnishing such reports shall be included in the Design-Builder's overhead and fee percentages.

1-09.6(2) Reports As Basis for Payment

All Force Account Change Order reports shall be signed by the Design-Builder or its authorized representative. WSDOT will compare its records with the Design-Builder's reports, make the necessary adjustments and compile the costs of Force Account Change Order work. When such reports are agreed upon and signed by both parties, they will become the basis of payment.

1-09.7 *Mobilization*

The mobilization payment is intended to compensate the Design-Builder for certain start-up expenses associated with performance of design and construction Work hereunder. Items which are not to be included in mobilization include, but are not limited to, profit, interest on borrowed money, overhead, or management costs.

The Design-Builder shall identify, in the price loaded Contract Schedule, a dollar amount for mobilization. This amount shall be represented by price loaded schedule activities in the Design-Builder's 90-Day Look-Ahead Schedule and its Baseline Contract Schedule (See Section 1-08.3).

Nothing herein shall be construed to limit or preclude partial payments otherwise provided by the Contract.

1-09.8 *Payment for Material on Hand*

WSDOT may reimburse the Design-Builder for materials purchased before their incorporation into the Project if they:

1. Are identified as separate and distinct activities in the accepted price loaded Baseline Contract Schedule.
2. Have substantiated prices assigned to the schedule activities as set forth in Section 1-08.3(9).
3. Are invoiced as described in Section 1-09.9.
4. Consist of: 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 WSDOT may approve.

WSDOT may reimburse the Design-Builder for traffic signal controllers when the accepted Baseline Contract Schedule contains price-loaded activities as follows:

1. 50 percent when the traffic signal controller and all components are received and assembled into a complete unit at the State Materials Laboratory.
2. 100 percent when the traffic signal controller is approved for shipment to the Project by the State Materials Laboratory.

The Design-Builder shall provide sufficient written evidence of production costs to enable WSDOT to compute the cost of Design-Builder produced materials (such as sand, gravel, surfacing material, or aggregates). For other materials, the Design-Builder shall provide invoices from material suppliers, detailed sufficiently to enable WSDOT to determine the actual costs. Payment for materials on hand shall not exceed the amount allocated thereto in the CPM and Payment Schedule.

If payment is based upon an unpaid invoice, the Design-Builder shall provide WSDOT with a paid invoice within 60 Calendar Days after WSDOT's initial payment for materials on hand. If the paid invoice is not furnished in this time, any payment WSDOT had made will be deducted from the next progress estimate and withheld until the paid invoice is supplied.

WSDOT 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. Any material will be rejected if found to be faulty even if partial payment for it has been made.

1-09.9 *Payments*

1-09.9(1) Invoicing Requirements

The Design-Builder shall submit monthly invoices to the WSDOT on a mutually agreed date consistent with the progress payment cutoff date set by WSDOT.

State Fiscal Year End Closure Requirements (RCW 43.88) – The Design-Builder shall submit an invoice for all un-invoiced work completed through June 30th (end of State fiscal year) by July 15th of the same year.

If the Design-Builder is unable to provide an invoice for such cost by this date, an ESTIMATE of what is owed by WSDOT through June 30th must be submitted by July 15th of the same year for the most probably invoice amount. The estimated invoice must be labeled "ESTIMATE". WSDOT will accrue this estimated invoice amount. To release accrued amounts, a final invoice for the period accrued must be submitted as soon as all final payments are known. This requirement applies to invoices from the Design-Builder and all subs providing services under the contract and includes any direct expense which applies to the final fiscal year invoice.

Failure to comply with these requirements may result in the need for WSDOT to file for an approval of belated claims pursuant to chapter 43.88 RCW, which may significantly delay payment. WSDOT shall not be required to pay to the Design-Builder late payment fees, interest, or incidental cost incurred by the Design-Builder or any other cost related to a delayed payment if the Design-Builder fails to comply with the invoice requirements of this Section.

Partial Payments - No payment item shall be included on an invoice for Work that has been documented as deficient by the QA staff, or Work that is not being performed in accordance with the Contract.

Reimbursement - If requested by WSDOT, the Design-Builder shall provide separate invoices for Work subject to reimbursement by the federal government or third parties. Such invoices shall be organized to meet all applicable reimbursement requirements and to facilitate the reimbursement process.

1-09.9(1).1 Maximum Rate of Payment

In this Section, the word "payment" refers to payments from WSDOT to the Design-Builder, and includes not only progress payments for the Contract Price, but also includes payments by WSDOT to the Design-Builder for all other causes including but not limited to incentives, disincentives, and Change Orders.

Due to the rate at which funding will become available for this Project; payments to the Design-Builder shall not exceed ***$$1$$*** total prior to ***$$2$$*** Consequently, the price-loaded Baseline Contract Schedule and price loaded Monthly Schedule Updates shall not reflect more than ***$$3$$*** of Work before ***$$4$$***. At no time shall the Design-Builder invoice WSDOT for amounts exceeding the aforementioned funding restrictions. WSDOT's inability to pay more than these amounts shall not absolve the Design-Builder of responsibility to make timely payment to Subcontractors.

1-09.9(1).2 Invoicing Documents

No invoice will be processed until WSDOT has received the documents listed in this Contract.

The invoice value will be based on the agreed-upon progress for the Contract Schedule activities as outlined in Section 1-08.3 and on other exception items as expressly detailed in the Payments Section.

Submit the following documents with each invoice:

1. Invoice cover sheet.
2. Progress report including accepted, updated price-loaded schedule.
3. Certification by Design and Construction Quality Assurance Managers.
4. Invoice data sheet(s) and supporting documents based on the price loaded Contract Schedule.
5. Monthly design exception report.

Make all invoices and progress reports consistent with the accepted Baseline Contract Schedule or the applicable accepted Monthly Contract Schedule Update.

Obtain the signatures of the Design-Builder's Project Manager, the Design Quality Assurance Manager and the Construction Quality Assurance Manager on the progress report.

1-09.9(1).3 Invoice Cover Sheet

Indicate the following on the invoice cover sheet:

1. Project number and title.
2. Invoice number (numbered consecutively, starting with "1").
3. Period covered by the invoice (specific beginning and ending Calendar Days).
4. For each Contract compensation item:
   (a) Current approved Contract amount.
   (b) Previous period total to date.
   (c) This period earnings.
   (d) New total to date earnings.
   (e) This period earnings.
5. Subtotal each column above.
6. Add applicable sales tax.
7. Deduct retention, (if any).
8. Total net earned to date for the Project as a whole.
9. Authorized signature, title of signer, and date of signature.
10. Signature of the Design and Construction Quality Assurance Managers.

1-09.9(1).4 Progress Report

The Design-Builder shall submit a Monthly Progress Report to WSDOT along with its Monthly Invoice. This Report will consist of two parts: a narrative report addressing progress of the Work and performance of the parties, and a technical report concerning operation and maintenance of the Project schedule as set forth in Section 1-08.3(7).

The Narrative Report will include the following:

1. An "executive summary" of the Project achievements and difficulties for the period just ended and an overview of the goals for the period just beginning.
2. An analysis of the Project condition with respect to on time and on budget performance:
   (a) Include discussion of Contract milestones and critical path.
   (b) Describe plans to achieve Contract completion dates including any special measures that may be necessary.
3. A more detailed review for design and for construction of each discipline past performance and future goals.
4. Discuss areas of special concern such as quality management, environmental protection, utility coordination, public relations, and cooperation with adjacent contractors.

5. Address status of required submittals, RFIs, design approvals, and other administrative issues that may impact timely performance.
6. Review past period safety performance and issues for forthcoming period.
7. Offer a self-assessment of performance against incentive performance issues.
8. Review pending and potential changes to determine actions required for early resolution.

Attach the Monthly Contract Schedule Update Submittal Package as required in Section 1-08.3(7).

1-09.9(1).5 Certification by Design and Construction QA Managers

Each invoice shall include a certificate signed by the design and construction QA Managers that certifies:

1. All Work (including that of designers, Subcontractors, suppliers, fabricators, and builders) has been tested and/or inspected by the Design-Builder's Design QA staff and Construction QA Staff.
2. All Work, except as specifically noted in the certification, conforms to the requirements of the Contract.
3. The design and construction QMPs and all of the measures and procedures provided therein are functioning properly and are being followed.

1-09.9(1).6 Invoice Data Sheets and Supporting Documents

WSDOT and the Design-Builder agree to the process, requirements, exceptions, and format of invoice data sheets and supporting documents as described in this Section.

General - With the exception of force account or other "exception" items, WSDOT will base payments on an estimate of the percentage of Work completed as mutually agreed with the Design-Builder, and not on measured quantities. For each activity, the Design-Builder shall describe how the percent complete was determined. The Design-Builder shall design a Primavera report to WSDOT's satisfaction that can be submitted in letter size hard copy, text searchable PDF electronic file format and comma-delimited ASCII electronic file format. The report shall contain an individual line entry for each price-loaded activity in the Contract Schedule. For each activity, it will show the total percent complete, the percent completed this period, and the total dollar billing for the activity. The report data will be grouped and subtotaled by Cost Account with activities sorted in start sequence within the groups.

Exception Items - WSDOT will pay the Design-Builder for items not included in the price-loaded schedule. These include, but are not necessarily limited to Force Account Work, Incentives, Disincentives, and Price Adjustments provided in the Contract. For each of these, the Design-Builder will assemble the required supporting documents, tally the value of the various items and include them as a separate sub-total line(s) on its monthly invoice.

Format - The Design-Builder shall present the format of the invoice data sheets for WSDOT approval at least 14 Calendar Days before the submittal of the first invoice.

Once WSDOT has approved the invoice format, the format shall not be changed unless the change is approved in writing by WSDOT.

1-09.9(2) Payment

WSDOT and the Design-Builder agree to the payment process as described in this Section.

General - WSDOT will simultaneously review each invoice and progress report in detail and process the invoice for payment. Partial Payments will be made once each month. If WSDOT questions or disputes any item, it will redline the item and refer the item back to the Design-Builder for resolution before payment. WSDOT will deduct from the payment the value of the items not resolved to its satisfaction before the payment date.

Incorrect Invoices - If problems persist in obtaining correct invoices and the required accompanying documents from the Design-Builder, WSDOT reserves the right to withhold payment until correct and complete invoices and documents have been submitted.

Failure to perform any of the obligations under the Contract by the Design-Builder may be decreed by WSDOT to be adequate reason for withholding any payments until compliance is achieved.

Upon Completion and after Final Inspection (Section 1-05.11), the amount due the Design-Builder under the Contract will be paid based upon the final estimate made by WSDOT and presentation of a Final Contract Voucher Certification signed by the Design-Builder. Such voucher shall be deemed a release of all claims of the Design-Builder unless a claim is filed in accordance with the requirements of Section 1-09.11 and is expressly accepted from the Design-Builder'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 Design-Builder fails, refuses, or is unable to sign and return the Final Contract Voucher Certification or any other documentation required for Completion and Final Acceptance of the Contract, WSDOT 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 Design-Builder has been provided the opportunity, by written request from the WSDOT 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 certified letter from the Secretary to the Design-Builder, which will provide 30 Calendar Days for the Design-Builder to submit the necessary documents. The 30 Calendar Day period will begin on the date the certified letter is received by the Design-Builder. 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 WSDOT 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 WSDOT does not in any way relieve the Design-Builder

of its responsibility to comply with all federal, State, tribal, or local laws, ordinances, and regulations that affect the Work under the Contract.

Payment to the Design-Builder of partial estimates, final estimates, and retained percentages shall be subject to controlling laws.

1-09.9(2).1 Asphalt Cost Price Adjustment

WSDOT will make an asphalt cost price adjustment, either a credit or a payment, for qualifying changes in the reference cost of asphalt binder. The adjustment will be applied to partial payments made according to Section 1-09.9 for the following items of work:

- All classes of HMA used on the Project.

The adjustment is not a guarantee of full compensation for changes in the cost of asphalt binder. WSDOT does not guarantee that asphalt binder will be available at the reference cost.

WSDOT will establish the asphalt binder reference cost twice each month and post the information on the Agency website at: www.wsdot.wa.gov/biz/construction/AsphaltIndex.cfm. The reference cost will be determined using posted prices furnished by Poten & Partners, Inc. If the selected price source ceases to be available for any reason, then WSDOT will select a substitute price source to establish the reference cost.

The base cost established for this contract is the reference cost posted on the WSDOT website for the period immediately preceding the Proposal Due Date.

Adjustments will be based on the most current reference cost for Western Washington or Eastern Washington as posted on the Agency website, depending on where the work is performed. For work completed after the completion times specified in the Contract, the adjustment will be based on the posted reference cost for the month during which contract time was exhausted. The adjustment will be calculated as follows:

No adjustment will be made if the reference cost is within 5 percent of the base cost.

If the reference cost is greater than or equal to 105 percent of the base cost, then

Adjustment = (Current Reference Cost – (1.05 x Base Cost)) x (Q x 0.056).

If the reference cost is less than or equal to 95 percent of the base cost, then

Adjustment = (Current Reference Cost – (0.95 x Base Cost)) x (Q x 0.056).

Where Q = total tons of all classes of HMA paid in the current month's progress payment.

The Design-Builder shall perform all calculations and accounting, and provide all documentation required to support the price adjustment for WSDOT approval. This includes submission of HMA quantity amounts along with supporting documentation such as HMA quantity tickets as part of the Invoicing Documents, for each month that HMA is used on the Project.

1-09.9(3) Retainage

This Section is intentionally omitted.

1-09.10 *Partnering*

WSDOT encourages partnering among WSDOT, the Design-Builder, and its Subcontractors. The partnering process is intended to draw on the strengths of each organization to help identify and achieve reciprocal goals, including achieving completion of the Work on time, within budget, and in accordance with its intended purpose. A primary consideration of partnering is the prompt and equitable resolution of issues affecting the conduct of the Work under the Contract and the rights and responsibilities of the respective parties.

Participation in partnering shall be bilateral and completely voluntary. Any cost associated with this partnering will be agreed to by both parties and will be shared equally between WSDOT and the Design-Builder, except for travel expenses, which will be borne by each party.

Within 30 Calendar Days of the Notice to Proceed, WSDOT and the Design-Builder shall mutually select a third-party facilitator to conduct a team building workshop for the attendees. The initial workshop should be held within 90 Calendar Days of the Notice to Proceed. The workshop is expected to last approximately 1 day. The Design-Builder's and the major Subcontractor's key staff as well as WSDOT's key staff responsible for the management and administration of the Contract should attend the workshop. During the initial workshop, a program for the continuation and maintenance of the partnering initiative will be developed for use through the duration of the Project.

Follow-up sessions may be held periodically throughout the duration of the Contract, as agreed to by WSDOT and the Design-Builder.

Each party may withdraw from partnering upon written notice to the other. However, no claim or dispute settled or change approved through partnering may be revived. The establishment of partnering and any charter will not change the legal relationship of the parties to the Contract, nor relieve either party from any terms of the Contract. Neither the language of this Section, nor any statements made nor documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

1-09.11 *Disputes and Claims*

When disputes occur during a Contract, the Design-Builder shall pursue resolution through the WSDOT Engineer. The Design-Builder shall follow the procedures outlined in Section 1-04.5.

If the negotiation using the procedures outlined in Section 1-04.5 fails to provide satisfactory resolution, the Design-Builder shall bring the issue to the DRB as outlined in Section 1-09.11(1).

If the Design-Builder has pursued and exhausted all the means provided in Section 1-04.5 and 1-09.11(1) to resolve a dispute the Design-Builder may file a claim as outlined in Section 1-09.11(2).

1-09.11(1) Disputes Review Board

In order to assist in the resolution of disputes arising out of the Work of this Project, the Contract provides for the establishment of a Disputes Review Board, hereinafter called the "Board." The Board is created as part of the disputes resolution process to be utilized when normal WSDOT-Design-Builder dispute resolution is unsuccessful and prior to the filing of a Section 1-09.11(2) claim.

The Board will consider disputes referred to it and furnish recommendations to WSDOT and the Design-Builder to assist in the resolution of the differences between them. 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.

The Board members will be especially knowledgeable in the type of construction involved in the Project. At least one member of the Board shall have expertise in the interpretation of contracts and Applicable Law. The Board members shall discharge their responsibilities impartially and independently considering the facts and conditions related to the matters under consideration and the provisions of the Contract.

1-09.11(1).1 Selection of Disputes Review Board Members

The Board shall consist of one member selected by WSDOT and one member selected by the Design-Builder, with these two members to select the third member. The first two members shall be mutually acceptable to both WSDOT and the Design-Builder. If one or both of the two members selected are not acceptable to WSDOT or the Design-Builder, another selection shall be made.

WSDOT and the Design-Builder shall each select their member and negotiate an agreement, separate and apart from this Contract, with their respective Board member within the first 60 Calendar Days after Notice to Proceed.

The agreements with these two Board members shall contain language imposing the "Scope of Work" and "Suggested Administrative Procedures" attached as an Appendix to the Contract. These negotiated agreements shall also include clauses that require the respective selected members to immediately pursue selection of a third member. The goal is to obtain a third Board member who will complement the first two by furnishing a needed expertise, which will facilitate the Board's operations. WSDOT has entered into "standby" agreements with a number of potential third members. The qualifications of these potential members have been reviewed and deemed acceptable by both WSDOT and the Associated General Contractors of Washington. The names of these potential members will be provided to the first two members for consideration. If a selection can be made from the standby list, then the Board may be immediately seated with the execution of a task order under the corresponding standby agreement. Should the first two members decide to select a third member not on the list of standby candidates, then the selected Person will be accepted to the Board after he or she executes a standby agreement (Third Party Member Disputes Review Board Consultant Agreement). Information about the acceptable format for this agreement and all accompanying exhibits as well as the processing and approval procedure is available from WSDOT. The fee for the third member shall be negotiated with the first two members and shall be

included in a task order, issued by WSDOT after the third member standby agreement is fully executed.

In the event of an impasse in selection of the third member, either WSDOT or the Design-Builder or both may appeal to the Thurston County Superior Court for selection of a third member by the court from a list or lists submitted to the court by WSDOT and/or the Design-Builder. An impasse shall be considered to have been reached if the two members appointed by WSDOT and the Design-Builder to the Board have been unable to appoint the third member in a period of 60 Calendar Days after the approval of the last of such two members.

1-09.11(1).2 Termination of Disputes Review Board Members

In case a member of the Board needs to be replaced, the replacement member will be appointed in the same manner as the replaced member was appointed. The appointment of a replacement Board member will begin promptly upon determination of the need for replacement and shall be completed within 30 Calendar Days.

Service of a Board member may be terminated at any time with not less than 30 Calendar Days' notice as follows:

1. WSDOT may terminate service of WSDOT's appointed member.
2. The Design-Builder may terminate service of the Design-Builder's appointed member.
3. The third member's services may be terminated by agreement of the other two members.
4. By resignation of the member.

Termination of a member will be followed by appointment of a substitute as specified above.

No member shall have a financial interest in the Contract, except for payments for services on the Board. No member shall have been employed by either party or an affiliate of either party within a period of 2 years prior to award of this Contract or during the term of this Contract; except that, service as a member of other Disputes Review Boards on other contracts will not preclude a member from serving on the Board for this Contract.

1-09.11(1).3 Compensation of Disputes Review Board Members

Compensation for the Board members, and the expenses of operation of the Board, shall be shared by WSDOT and the Design-Builder in accordance with the following:

1. WSDOT will compensate directly the wages and travel expense for its selected member.
2. The Design-Builder shall compensate directly the wages and travel expense for its selected member.
3. WSDOT and the Design-Builder shall share equally in the third member's wages and travel expense, and all of the operating expenses of the Board. These equally shared

expenses shall be billed to and paid by WSDOT. The Design-Builder's share will be deducted from monies due or coming due the Design-Builder.

4. WSDOT will provide administrative services, such as conference facilities and secretarial services, to the Board and WSDOT will bear the costs for this service.

WSDOT and Design-Builder 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.

1-09.11(1).4 Disputes Review Board Procedures

The Board, WSDOT, and the Design-Builder shall develop by agreement the Board's rules of operation and procedures to be followed for the Project. The agreement shall include the frequency of the Board's visits to the Project and its interactions with WSDOT and the Design-Builder to keep abreast of the construction development and potential disputes.

In developing the agreement, the parties shall take into consideration their respective duties and responsibilities set forth in the "Scope of Work" Section of their agreements, the form of which is included in the Appendix of the Contract.

The parties may also consider the "Suggested Administrative Procedures" for the Board's operation included in their agreements, the form of which is included in the *DRB Forms and Guidelines* (Appendix F). These Procedures express, in general terms, the policy for the creation and operation of the Board.

Disputes, as used in this Section, will refer only to protests properly submitted in accordance with Section 1-04.5. If WSDOT has determined the protest to be invalid and either the Design-Builder or WSDOT has elected to refer the matter to the Board, then the Board shall consider the issue and provide recommendations concerning:

1. The interpretation of the Contract.
2. Entitlement to additional compensation or time for performance.
3. The amount of additional compensation or time for performance following a recommendation of entitlement by the Board provided that: (1) the parties were not able to reach a resolution as to the amount of the equitable adjustment or time; (2) the WSDOT Engineer has made a unilateral determination of the amount of compensation for time; and (3) the Design-Builder has protested WSDOT's unilateral determination.
4. Other subjects mutually agreed by WSDOT and the Design-Builder to be a Board issue.

1-09.11(1).5 Procedure for Consideration of Disputes

The procedure for consideration of disputes shall be as follows:

1. Once a protest has been denied as described in Section 1-04.5, the Board members will be contacted and advised of the existence of the dispute. A hearing will be

scheduled to be conducted within 90 Calendar Days or at such other time, as agreed to by the parties.

2. The Design-Builder and WSDOT shall each be afforded an opportunity to be heard by the Board and to offer evidence. Either party furnishing any written evidence or documentation to the Board must furnish copies of such information to the other party a minimum of 15 Calendar Days prior to the date the Board sets to convene the hearing for the dispute. Either party shall produce such additional evidence as the Board may deem necessary to an understanding and determination of the dispute and furnish copies to the other party.

3. 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 and 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.

4. Within 30 Calendar Days of receiving the Board recommendations, both WSDOT and the Design-Builder 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.

In the event the Board's recommendations do not lead to resolution of the dispute, all Board records and written recommendations, including any minority reports, will be admissible as evidence in any subsequent arbitration or litigation.

1-09.11(1).6 DRB Process as a Condition Precedent to Arbitration or Litigation

Submittal of a dispute to the Board will be a condition precedent to the filing for arbitration or litigation in a court of law unless WSDOT and the Design-Builder have agreed to default the dispute to Section 1-09.11(2) Claims. If the Board's assistance does not lead to resolution of the dispute, causing the Design-Builder to file a Section 1-09.11(2) Claim, or if the parties default the dispute to that Section, full compliance by the Design-Builder with the provisions of that Section is a contractual condition precedent to the Design-Builder's right to commence arbitration or litigation.

Unless otherwise noted, disputes, claims, counterclaims, and other matters in question between WSDOT and the Design-Builder that are not resolved will be decided in the Superior Court of Thurston County, Washington, which shall have exclusive jurisdiction and venue over all matters in question between WSDOT and the Design-Builder.

The Contract shall be interpreted and construed in accordance with the laws of the State of Washington.

1-09.11(2) Claims

If the Design-Builder claims that additional payment is due and the Design-Builder has pursued and exhausted all the means provided in Section 1-04.5 and 1-09.11(1) to resolve

a dispute, the Design-Builder may file a claim as provided in this Section. The Design-Builder agrees to waive any claim for additional payment if the written notifications provided in Section 1-04.5 are not given, or if WSDOT is not afforded reasonable access by the Design-Builder 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 Design-Builder has provided a proper notification, provided a properly filed claim, or provided WSDOT access to records of actual cost, shall not in any way be construed as proving or substantiating the validity of the claim. If the claim, after consideration by WSDOT, is found to have merit, WSDOT will make an equitable adjustment either in the amount of costs to be paid or in the time required for the Work, or both. If WSDOT finds the claim to be without merit, no adjustment will be made.

All claims filed by the Design-Builder shall be in writing and in sufficient detail to enable WSDOT to ascertain the basis and amount of the claim. All claims shall be submitted to the WSDOT Engineer as provided in Section 1-05.15. At 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 which gave rise to the claim.
3. The name of each WSDOT individual, official, or employee involved in or knowledgeable about the claim.
4. The specific provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim.
5. If the claim relates to a decision of WSDOT which the Contract leaves to WSDOT's discretion or as to which the Contract provides that WSDOT's decision is final, the Design-Builder shall set out in detail all facts supporting its position relating to the decision of WSDOT.
6. The identification of any documents and the substance of any oral communications that support the claim.
7. Copies of any identified documents, other than WSDOT documents and documents previously furnished to WSDOT by the Design-Builder, that support the claim (manuals which are standard to the industry, used by the Design-Builder, 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 Design-Builder believes a time extension should be granted,
   (c) The specific provisions of Section 1-08.8 under which it is sought, and
   (d) The Design-Builder's analysis of its progress schedule to demonstrate entitlement to 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 which 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. WSDOT may audit the Design-Builder'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, etc.).

      (2) The hours of use or standby.

      (3) The specific day and dates of use or standby.

   (d) Job overhead.

   (e) Overhead (general and administrative).

   (f) Subcontractor's claims.

   (g) Other categories as specified by the Design-Builder or WSDOT.

10. A notarized statement shall be submitted to the WSDOT Engineer containing the following language:

    _____, _____
    (name) (title)

    of _____
    (company)

    Under the penalty of law for perjury or falsification, the undersigned 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: _____

It will be the responsibility of the Design-Builder to keep full and complete records of the costs and additional time incurred for any alleged claim. The Design-Builder shall permit

WSDOT to have access to those records and any other records as may be required by WSDOT to determine the facts or contentions involved in the claim. The Design-Builder shall retain those records for a period of not less than 3 years after Final Acceptance.

The Design-Builder shall pursue administrative resolution of any claim with WSDOT or the designee of WSDOT.

Failure to submit with the Final Contract Voucher Certification such information and details as described in this Section for any claim shall operate as a waiver of the claims by the Design-Builder as provided in Section 1-09.9.

Provided that the Design-Builder is in full compliance with all the provisions of this Section and after the formal claim document has been submitted, WSDOT will respond, in writing, to the Design-Builder as follows:

1. Within 45 Calendar Days from the date the claim is received by WSDOT if the claim amount is less than $100,000.
2. Within 90 Calendar Days from the date the claim is received by WSDOT if the claim amount is equal to or greater than $100,000.
3. If the above restraints are unreasonable due to the complexity of the claim under consideration, the Design-Builder will be notified within 15 Calendar Days from the date the claim is received by WSDOT as to the amount of time which will be necessary for WSDOT to prepare its response.

Full compliance by the Design-Builder with the provisions of this Section is a contractual condition precedent to the Design-Builder's right to commence arbitration or litigation proceedings.

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 any claims or causes of action which the Design-Builder has against the State of Washington arising from the Contract shall be brought within 180 Calendar Days from the date of Final Acceptance (Section 1-05.12) by WSDOT; and it is further agreed that any such claims or causes of action shall be brought, unless otherwise noted, only in the Superior Court of Thurston County. The parties understand and agree that the Design-Builder's failure to bring an action in the proper forum within the time period provided, shall be a complete bar to any such claims or causes of action. It is further mutually agreed by the parties that when any claims or causes of action which the Design-Builder asserts against the State of Washington arising from the Contract are filed with the State, initiated in arbitration, or initiated in court, the Design-Builder shall permit the State to have timely access to any records deemed necessary by the State to assist in evaluating the claims or action.

1-09.12 *Audits*

1-09.12(1) General

The Design-Builder's wage, payroll, and cost records on this Contract shall be open to inspection or audit by representatives of WSDOT during the life of the Contract and for a

period of not less than 3 years after the date of Final Acceptance. The Design-Builder shall retain these records for that period. The Design-Builder shall also guarantee that the wage, payroll, and cost records of all Subcontractors and all lower tier 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 WSDOT or by an auditor under contract with WSDOT. The Design-Builder, Subcontractors, or lower tier Subcontractors shall provide adequate facilities, acceptable to the WSDOT Engineer, for the audit during normal business hours. The Design-Builder's Subcontractors or lower tier 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, the Design-Builder 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) Claims

All claims filed against WSDOT shall be subject to audit at any time following the filing of the claim. Failure of the Design-Builder, Subcontractors, or lower tier 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 Design-Builder, Subcontractors, or lower tier Subcontractors shall constitute a waiver of a claim and shall bar any recovery thereunder.

1-09.12(3) Required Documents for Audits

At a minimum, the auditors shall have available to them the following documents in both electronic and paper format:

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 (list of company equipment, rates, etc.).
10. Vendors', rental agencies', Subcontractors', and lower tier Subcontractors' invoices.
11. True and complete copies or originals of all contracts (including leases and purchase orders), between the Design-Builder and each of its Subcontractors and suppliers, and all lower-tier Subcontractor contracts and all supplier contracts.
12. Subcontractors' and lower tier 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, WSDOT may require, if it deems appropriate, additional financial statements for 3 years preceding execution of the Contract and 3 years following Final Acceptance.
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 Design-Builder's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
21. All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim.
22. Worksheets or software used to prepare the claim establishing the cost components for items of the claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.
23. Worksheets, software, and all other documents used by the Design-Builder to prepare its Proposal.

An audit may be performed by employees of WSDOT or a representative of WSDOT. The Design-Builder and its Subcontractors shall provide adequate facilities acceptable to WSDOT for the audit during normal business hours. The Design-Builder and all Subcontractors shall cooperate with WSDOT's auditors.

1-09.13 *Claims Resolution*

1-09.13(1) General

Prior to seeking claim resolution through nonbinding alternative dispute resolution processes, binding arbitration, or litigation, pursuant to this Section, the Design-Builder shall proceed under the administrative procedures in Sections 1-04.5, 1-09.11 and any special provision provided in the Contract for resolution of disputes. The provisions of these Sections must be complied with in full, as a condition precedent, to the Design-Builder's right to seek claim resolution through any nonbinding alternative dispute resolution process, binding arbitration or litigation, as provided in this Section.

1-09.13(2) Nonbinding Alternative Disputes Resolution (ADR)

Nonbinding ADR processes are encouraged and available upon mutual agreement of the Design-Builder and WSDOT for all claims submitted in accordance with Section 1-09.11, provided that:

1. All the administrative remedies provided for in the Contract have been exhausted.
2. WSDOT has been given the time and opportunity to respond to the Design-Builder as provided in Section 1-09.11(2).
3. WSDOT has determined that it has sufficient information concerning the Design-Builder's claims to participate in a nonbinding ADR process.

WSDOT and the Design-Builder mutually agree that the cost of the nonbinding ADR process shall be shared equally by both parties with each party bearing its own preparation costs.

The type of nonbinding ADR process shall be agreed upon by the parties and shall be conducted within the State of Washington at a location mutually acceptable to the parties.

The Design-Builder agrees that the participation in a nonbinding ADR process does not in any way waive the requirement that binding arbitration or litigation proceedings must commence within 180 Calendar Days of Final Acceptance, the same as any other claim or causes of action as provided in Section 1-09.11(3).

1-09.13(3) Claims $250,000 or Less

The Design-Builder and WSDOT mutually agree that those claims which total $250,000 or less, submitted in accordance with Section 1-09.11 and not resolved by nonbinding ADR processes, shall be resolved through mandatory and binding arbitration as described herein.

1-09.13(3).1 Administration of Arbitration

Arbitration shall be as agreed by the parties or, if the parties cannot agree, arbitration shall be administered through the American Arbitration Association (AAA) using the following arbitration methods:

1. The current version of the Northwest Region Expedited Commercial Arbitration Rules shall be used for claims with an amount less than $25,000.
2. The current version of the Expedited Procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than $25,000 and less than $50,000.
3. The current version of the standard procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than $50,000 and not greater than $250,000.

WSDOT and the Design-Builder mutually agree the venue of any arbitration hearing shall be within the State of Washington and any such hearing shall be conducted within the State of Washington.

WSDOT and the Design-Builder 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. 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).2 Procedures to Pursue Arbitration

If the dispute cannot be resolved through administrative procedures provided in Sections 1-04.5, 1-09.11, and any special provision provided in the Contract for resolution of disputes or through a mutually agreed upon nonbinding ADR process, the Design-Builder shall advise WSDOT, in writing, that mandatory and binding arbitration is desired. The parties may agree on an arbitration process, or, if the parties cannot agree a demand for arbitration shall be filed by the Design-Builder, in accordance with the AAA rules, with WSDOT, and with the AAA. Selection of the arbitrator and the administration of the arbitration shall proceed in accordance with AAA rules using arbitrators from the list developed by the AAA, except that: for claims under $25,000 using the Northwest Region Expedited Commercial Arbitration Rules, arbitration selection shall proceed pursuant to Section 55 of the Expedited Procedure of the Construction Industry Arbitration Rules. Arbitration shall proceed utilizing the appropriate rule of the AAA as determined by the dollar amount of the claim as provided in Section 1-09.13(3).1.

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 that:

1. All the administrative remedies provided for in the Contract have been exhausted.
2. The dispute has been pursued to the claim status as provided in Section 1-09.11(2).
3. The Design-Builder certifies in writing that claims for delays or impacts to the Work will not result from the dispute.

Unless WSDOT and the Design-Builder agree otherwise, all other unresolved claims (disputes which have been pursued to the claim status) which arise from the Contract must be brought in a single arbitration hearing and only after Physical Completion has occurred. The total of those unresolved claims cannot be greater than $250,000 to be eligible for arbitration.

In addition, the Design-Builder agrees arbitration proceedings must commence, by filing of the aforementioned demand for arbitration, within 180 Calendar Days of Final Acceptance, the same as any other claim or causes of action as provided in Section 1-09.11(3).

The scope and extent of discovery shall be determined by the arbitrator in accordance with AAA rules. In addition, each party for claims greater than $25,000 shall serve upon the other party a “statement of proof.” The statement of proof shall be served, with a copy to the AAA, no less than 20 Calendar Days prior to the arbitration hearing and shall include:

1. The identity, current business address, and residential address of each witness who will testify at the hearing.

2. The identity of any expert witness to be called, a statement as to the subject matter and the substance of the facts and opinions on which the expert is expected to testify, a summary of the grounds for each opinion, and a resume of the expert's qualifications.

3. A list of each document that the party intends to offer in evidence at the arbitration hearing. Either party may request from the other party a copy of any document listed. If such a request is made, a copy of the document shall be provided within 5 Calendar Days from the date the request is received.

The arbitrator may permit a party to call a witness or offer a document not shown or included in the statement of proof only upon a showing of good cause.

1-09.13(4) Claims in Excess of $250,000

The Design-Builder and WSDOT mutually agree that those claims in excess of $250,000, submitted in accordance with Section 1-09.11 and not resolved by nonbinding ADR processes, shall be resolved through litigation unless the parties mutually agree to resolve the claim through binding arbitration.

Washington State
Department of Transportation

20180102 V4

Request for Qualifications

Washington State
Department of Transportation

$$1$$ Project

Issued: ***$$2$$***

Statements of Qualifications
Due: ***$$3$$***

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Form C, Major Participant Reference Information

Form D, Design-Builder Certification Wage Law Compliance – Responsibility Criteria Washington State Public Works Contracts Form

Appendix B - Abbreviations and Definitions

1. Introduction

1.1 *Request for Qualifications*

The Washington State Department of Transportation (WSDOT) is requesting Statements of Qualifications (SOQ) from entities (Submitters) interested in submitting design-build Proposals for the ***$$1$$*** Project (Project) located in ***$$2$$***, Washington. By submitting an SOQ, Submitters agree to be bound by the requirements of this Request for Qualifications (RFQ). Submitters shall satisfy all requirements specified in this RFQ. Failure of the Submitter to meet these requirements may result in rejection of its SOQ.

This RFQ can be made available in an alternative format by emailing WSDOT Diversity/ADA Compliance Team at wsdotada@wsdot.wa.gov or by calling toll free (855) 362-4ADA (4232). Persons who are deaf or hard of hearing may make a request by calling the Washington State Relay Service at 711.

2. Contact Information

2.1 *Submittal Information Point of Contact*

WSDOT will post addenda and other communications on WSDOT's Contract Ad & Award website: ***$$1$$***.

Submitters may sign up on the interested parties list to receive notifications when new items are posted to the website.

The SOQ shall be submitted to WSDOT's Contract Ad & Award Office in accordance with Section 6.2 of this RFQ.

Submitters should not contact the Contract Ad & Award Office for technical clarification of the RFQ or related Project specifics. The WSDOT Technical Point of Contact designated in Section 2.2 will address project-specific questions and technical clarifications.

2.2 *WSDOT Technical Point of Contact*

Submitters who have questions or need further clarification or information regarding the technical aspects of the RFQ or the Project should contact the following designated WSDOT Technical Point of Contact by letter, phone, or email as follows:

$$1$$

3. Procurement Process

3.1 *Process Overview*

WSDOT will use a two-step procurement process to select a design-build contractor (Design-Builder) to deliver the Project. The issuance of this RFQ is part of the first step to solicit information from potential design-builders in the form of SOQs. WSDOT will evaluate and score submitted SOQs to determine which Submitters are the most highly qualified to deliver the Project. WSDOT will short-list three to five of the most highly qualified Submitters to advance to the second step in the procurement.

In the second step, WSDOT will issue a Request for Proposal (RFP) for the Project to the short-listed Submitters. Only the short-listed Submitters will be eligible to submit

Proposals for the Project. Each short-listed Submitter who submits a Proposal in response to the RFP is referred to herein as a "Proposer." WSDOT may award a Design Build Contract for the Project to the Proposer offering the apparent best value, to be determined as described in the RFP.

WSDOT will pay a stipend of ***$$1$$*** to all Proposers who submit a stipend agreement, stipend invoice, and responsive Proposal.

WSDOT may cancel or re-advertise this procurement at its discretion.

3.2 *Procurement Schedule*

The procurement schedule for this RFQ is shown in Table 3.2 below. This schedule is subject to revision by the RFP and addenda to this RFQ.

Table 3.2
Procurement Schedule

Action	Dates
Step 1 – SOQ Phase	
RFQ Issue Date	***$$1$$***
Voluntary Submitter's Meeting	***$$2$$***
Deadline for submitting RFQ questions	***$$3$$***
Deadline for WSDOT response to RFQ questions	***$$4$$***
SOQ Due Date	***$$5$$***
Notify short-listed Submitters	***$$6$$***
Step 2 – Proposal Phase	
Issue RFP	***$$7$$***
Voluntary Proposer's Meeting	***$$8$$***
ATC Submittal Deadline	***$$9$$***
Deadline for Submitting Proposers' questions	***$$10$$***
Deadline for WSDOT response to Proposers' questions	***$$11$$***
Proposals Due	***$$12$$***
Announce Apparent Best Value Proposer	***$$13$$***
Estimated Notice to Proceed	***$$14$$***

3.3 *Questions, Clarifications, and Addenda*

Questions and requests for clarification regarding this RFQ shall be submitted in writing to WSDOT's Technical Point of Contact. To be considered, all questions and requests must be received by ***$$1$$***, Pacific Time, on the date indicated in Table 3.2.

WSDOT reserves the right to revise this RFQ at any time before the SOQ Due Date indicated in Table 3.2. Such revisions, if any, will be announced by addenda to this RFQ.

WSDOT will use the following guidelines when responding to questions, requests for clarification and issuing addenda:

- Addenda, questions, requests for clarification, and responses will be posted to WSDOT's Contract Ad & Award website ***$$2$$*** as specified in Section 2.1 of this RFQ.
- WSDOT will send an email notification to the interested parties list as soon as each addendum, response, or group of responses is issued. When possible, the notification will include an electronic copy of the addendum or clarification.

The Submitters shall acknowledge receipt of all addenda by completing Form A, Acknowledgment of Receipt of Addenda, which is included in Appendix A of this RFQ.

The completed Form A shall be included in the SOQ submittal package as Appendix C to the SOQ.

3.4 *Ex Parte Communications*

Submitters are expected to conduct themselves with professional integrity and to refrain from lobbying activities. During the procurement process (commencing with issuance of this RFQ and continuing until execution of a Contract for the Project or cancellation of the procurement), no employee, member, agent, advisor, or consultant of any Submitter shall have any ex parte communications, directly or indirectly, regarding this procurement with any representative of WSDOT or the Federal Highway Administration (FHWA), including their staff, advisors, contractors, or consultants (as described in Section 5.2) involved with the procurement, except for communications expressly permitted by this RFQ (or, subsequent to issuance of the RFP, except for communications expressly permitted by the RFP).

Any verified allegation that a Submitter or an employee, agent, advisor, consultant, or subcontractor of a Submitter has engaged in such prohibited communications or attempted to unduly influence the selection process may be cause for WSDOT to disqualify the Submitter from participating, all at the discretion of WSDOT.

3.5 *Voluntary Meeting for Potential Submitters*

WSDOT will hold an informational meeting for potential Submitters regarding this RFQ on the date indicated in Table 3.2. Attendance at this meeting is not a prerequisite to being a Submitter. The meeting will be held from ***$$1$$*** at the following location:

$$2$$

3.6 *WSDOT's Rights*

Throughout the procurement process, WSDOT reserves the right, at its sole discretion, to:

- Appoint evaluation committees to review SOQs and Proposals.
- Investigate the qualifications of any Submitter or Proposer.
- Seek or obtain data from any source related to the SOQs or Proposals.
- Require confirmation of information furnished by a Submitter or Proposer.
- Hold meetings and conduct discussions and correspondence with the Submitters and Proposers to seek an improved understanding and evaluation of the SOQs or Proposals.
- Require additional information from a Submitter or Proposer concerning its SOQ or Proposal.
- Seek and receive clarifications to a SOQ or Proposal.
- Require additional evidence of qualifications to perform the Work.
- Modify the procurement process.
- Waive minor deficiencies and irregularities in a SOQ or Proposal.
- Reject any or all of the SOQs or Proposals.
- Issue a new RFQ or RFP.
- Issue a request for Best and Final Offers.

- Cancel a Contract signed by the selected Design-Builder but not yet executed by WSDOT.
- Not issue a Notice to Proceed after execution of the Contract.

4. Scope of the Project

4.1 *Estimated Cost*

The estimated range for the Contract cost of the Project is approximately ***$$1$$***.

4.2 *Time for Completion*

WSDOT anticipates that the Project will be Substantially Complete by ***$$1$$***.

4.3 *WSDOT's Project Goals*

WSDOT has established the following goals for the Project:

DBE Participation

$$1$$

4.4 *Project Scope and Status*

The following Project scope is provided to Submitters to assist in developing a team with the expertise that is required for the Project. The Design-Builder shall be responsible for management, design, and construction of the Project. The design and construction by the Design-Builder shall be in accordance with WSDOT's guidelines and standards as required by the RFP. WSDOT's intent is to allow flexibility in design and construction to accommodate processes, procedures, and innovative techniques that are preferred by the Design-Builder, as long as they are consistent with site conditions, good engineering practices, context sensitive solutions, environmental documents and permits, other standards, guidelines, and procedures identified in the RFP, and the Project goals. The scope of Work presented in this RFQ for the Project may or may not be the final scope of Work presented in the RFP for the Project.

This design-build Project is being funded by ***$$1$$***.

5. Teaming Parameters

5.1 *Major Participant*

As used herein, the term "Major Participant" means any of the following entities:

A. The Submitter, or if the Submitter is a partnership, joint venture, limited liability company, or other form of association, any general partners, joint venture members, or members of the Submitter.

B. All individuals, persons, proprietorships, partnerships, limited liability partnerships, corporations, professional corporations, limited liability companies, business associations, or any other legal entity however organized holding (directly or indirectly) a 15 percent or greater interest in the Submitter.

C. Each entity providing WSDOT pre-qualification in accordance with Section 7.4 of this RFQ.

D. The lead engineering/design firms.

E. Each engineering/design Subconsultant who is expected to perform 30 percent or more of the design Work.

F. Each subcontractor who is expected to perform 20 percent or more of the construction Work.

G. Each firm or person who will be providing or performing quality assurance as a Key Personnel for the Project.

5.2 *WSDOT Consultant/Technical Support*

WSDOT has retained the consulting firms ***$$1$$*** to provide guidance in preparing this RFQ, the RFP, and advice on related financial, contractual, and technical matters. WSDOT has also contracted with ***$$2$$*** to be the ***$$3$$*** for this Project. These firms are prohibited from joining any Submitter's team or otherwise assisting any Submitter in connection with the procurement process.

5.3 *Organizational Conflicts of Interest*

Organizational conflicts of interest means that because of other activities or relationships with other persons or entities, a person or entity:

A. Is unable or potentially unable to render impartial assistance or advice to WSDOT.

B. Is or might be otherwise impaired in its objectivity in performing the Contract Work.

C. Has an unfair competitive advantage.

The integrated nature of the design-build project delivery method creates the potential for organizational conflicts of interest. Disclosure, evaluation, neutralization, and mitigation of these conflicts and of the appearance of conflicts are in the interest of the public, WSDOT, and the consulting and construction communities.

WSDOT will take steps to ensure that individuals involved in the preparation of the procurement package, evaluation of SOQs and Proposals, and Design-Builder selection are not influenced by organizational conflicts of interest, and that no Submitter is given an unfair competitive advantage over another.

Attention is directed to the requirement for disclosure of organizational conflicts of interest set forth in 23 CFR Section 636.116(a) (2), WSDOT Secretary's Executive Order E 1059.00, and WSDOT Organizational Conflicts of Interest Manual M 3043. Submitters are required to identify any potential organizational conflicts of interest in Appendix C of the SOQ.

Submitters are required to disclose all relevant facts concerning any past, present, or currently planned interests, activities, or relationships which may present an organizational conflicts of interest. Submitters shall state how their interests, activities, or relationships, or those of the chief executives, directors, key project personnel, or any

proposed Consultant, Subconsultant at any tier, contractor, or subcontractor at any tier may result, or could be viewed as, an organizational conflicts of interest prior to or in the SOQ, in accordance with WSDOT Secretary's Executive Order E 1059.00 and WSDOT *Organizational Conflicts of Interest Manual* M 3043. Submitters shall include the *Organizational Conflicts of Interest Certification* and if needed the *Organizational Conflicts of Interest Disclosure and Avoidance/Neutralization/Mitigation Plans* (forms contained in Appendix A) in the SOQ submittal package as Appendix C.

If an Organizational conflicts of interest is determined to exist, WSDOT may, at its sole discretion: offer the Submitter the opportunity to avoid or neutralize the organizational conflicts of interest; disqualify the Submitter from further participation in the procurement; cancel this procurement; or, if award has already occurred, declare the Proposal non-responsive and award the Contract to the next responsive best value Proposer, or cancel the Contract. If the Submitter was aware of an Organizational Conflicts of Interest prior to award of a Contract and did not disclose the conflict to WSDOT, WSDOT may terminate the Contract for default. WSDOT may also disqualify a Submitter if any of its Major Participants, listed in Categories A, B, C, or D in Section 5.1 belong to more than one Submitter organization.

The Submitters shall complete Form B1, Organizational Conflicts of Interest Certification, which is included in Appendix A of this RFQ. If necessary, the Submitters shall also complete Form B2, Organizational Conflicts of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan, which is included in Appendix A of this RFQ. The completed Form B1 (and B2 if necessary) shall be included in the SOQ submittal package as Appendix C to the SOQ.

5.4 *Team Continuity and Changes to Organizational Structure*

Following submittal of the SOQ, Key Personnel or Major Participants identified in the SOQ may not at any time be removed, replaced, or added without the written approval of WSDOT's Technical Point of Contact. WSDOT's Technical Point of Contact may revoke the short-listed status of a Submitter if any Key Personnel or Major Participant identified in the SOQ is removed, replaced, or added without written approval of WSDOT's Technical Point of Contact. Requests for removal, replacements, and additions shall be submitted in writing. To qualify for approval, the written request shall document that the proposed removal, replacement, or addition will be equal to or better qualified than the Key Personnel or Major Participant provided in the SOQ. WSDOT's Technical Point of Contact will use the criteria specified in this RFQ to evaluate all requests.

5.5 *Equal Employment Opportunity*

Discrimination in all phases of contracted employment, consultant activities, contracting activities and training is prohibited by Title VI of the Civil Rights Act of 1964 and other related laws and statutes. These laws (and corresponding regulations) establish the minimum requirements for affirmative action efforts and define the basic nondiscrimination provisions as required by this RFQ. The Proposer will be required to follow State and Federal Equal Employment Opportunity (EEO) laws, as applicable. Further information regarding EEO will be set forth in the RFP.

5.6 *Disadvantaged Business Enterprises Participation*

It is the policy of the Washington State Department of Transportation (WSDOT) that Disadvantaged Business Enterprises (DBEs) and other small businesses, as defined in 49

Code of Federal Regulations (CFR) Part 26, shall have equal opportunity to participate in contracts financed in whole or in part with USDOT funds. A DBE firm that is underutilized based on WSDOT's Disparity Study is a UDBE firm. All UDBEs are DBEs. UDBE firms can be identified using the Diversity Management and Compliance System web page (wsdot.diversitycompliance.com). A UDBE goal in the amount of ***$$1$$*** percent for the design portion and ***$$2$$*** percent for the construction portion of the Contract Price has been established. Design elements include technical reports/memoranda, design survey, geotechnical testing and engineering, utilities investigation and design, pavement design, structures design (bridges and retaining walls), drainage design, stormwater/water quality management plans, landscape architecture and design, civil roadway design, traffic engineering, lighting design, and quality assurance. Unless a modification is requested and approved, all elements of the project not included in the design elements shall be considered part of the construction elements. The successful Proposer will need to meet or provide documentation of good faith effort to meet this goal.

5.7 *Minority, Small, Veteran and Women's Business Enterprises (MSVWBE) Participation*

This Section is intentionally omitted.

6. Submittal Quantities and Logistics

6.1 *SOQ Submittal Quantities*

Each Submitter shall provide the following:

- One original SOQ showing original signatures.
- Two USB flash drives, each containing an electronic copy of the SOQ in PDF format with the Sections and subsections bookmarked.
- ***$$1$$*** hard copies of the SOQ.

The original shall be identified as the original on its front cover in colored ink. Each hard copy shall be identified on its front cover, in the upper right-hand corner, as "Copy X of ***$$2$$*** Copies."

The unbound original, hard copies, and USB flash drives shall be packed together in one sealed package for delivery to WSDOT. The outside of the sealed package shall be clearly identified, labeled, and addressed with the following:

- A return address including the Submitter's name, contact person's name, and mailing address.
- The address of WSDOT's Contract Ad & Award Office, as indicated in Section 6.2.
- ***$$3$$*** Project," "Design-Build Project," and "Statement of Qualifications".
- The date of the submittal.

6.2 *Due Date, Time, and Location*

All sealed SOQs shall be received at one of the following locations prior to 11:00:59 am Pacific Time, on the SOQ Due Date indicated in Table 3.2:

By U.S. mail:
Jenna Fettig
WSDOT Contract Ad & Award Office
P. O. Box 47360
Olympia, WA 98504-7360

By hand (in person or by courier):
WSDOT Contract Ad & Award Office
Transportation Building, Room 2D-20
310 Maple Park Avenue SE
Olympia, WA 98501-2361

SOQs delivered in person will be received only in the WSDOT Contract Ad & Award Office, Room 2D-20.

WSDOT will not accept SOQs by facsimile or electronic transmission. Any SOQ that fails to meet the deadline or delivery requirement will be rejected and returned to the Submitter without having been opened, considered, or evaluated.

6.3 *Withdrawal of SOQ*

After submitting an SOQ to WSDOT, the Submitter may withdraw the SOQ if the following occurs:

- The Submitter submits a written request signed by an authorized representative of the Submitter; and
- WSDOT receives the request before the SOQ due date.

The original SOQ may be revised and resubmitted if WSDOT receives the revised SOQ before the SOQ due date.

7. SOQ Content and Evaluation Criteria

This Section outlines the requirements of each Section of the SOQ and how each Section will be scored.

The information provided in the SOQ will be scored either pass/fail or qualitatively as shown in Table 7.2. If a Submitter receives a passing score on all pass/fail evaluation factors, its SOQ will be further evaluated using the scoring criteria. If a Submitter fails on any single pass/fail requirement, the SOQ shall be rated unacceptable, in which case a qualitative evaluation of the SOQ will not be performed, and the Submitter will not be included on the short-list.

A WSDOT evaluation committee will perform a qualitative assessment of the information provided in Sections 2 and 3 and Form C in Appendix C of the SOQ.

The SOQ shall demonstrate, through project experience, the ability of the Key Personnel and Major Participants to successfully complete the Project and meet the Project goals. WSDOT reserves the right to contact references for individuals and projects other than those identified by the Submitters to evaluate past performance.

7.1 *Qualitative Evaluation Process*

The qualitative evaluation score for Sections 2 and 3 will be determined as follows:

- The WSDOT evaluation committee will review each SOQ identifying significant and minor strengths, and significant and minor weaknesses of the Submittals. The

evaluation committee may also use a "high" or "low" prefix to further differentiate the strengths or weaknesses. When, in the judgment of the evaluation committee, an SOQ element does not equate to a strength or weakness, but is being acknowledged, a "Neutral" will be identified.

Strengths and weaknesses are defined as follows:

- **Strengths** – That part of the SOQ which ultimately represents a benefit to the Project and is expected to increase the Submitter's ability to meet or exceed the Project goals. A minor strength has a slight positive influence on the Submitter's ability to meet or exceed the Project goals, while a significant strength has a considerable positive influence on the Submitter's ability to meet or exceed the Project goals.
- **Weaknesses** – That part of the SOQ which detracts from the Submitter's ability to meet the Project goals or may result in an inefficient or ineffective performance. A minor weakness has a slight negative influence on the Submitter's ability to meet the Project goals, while a significant weakness has a considerable negative influence on the Submitter's ability to meet the Project goals.

Based on the identified strengths and weaknesses, the evaluation team will select an adjectival rating and select a percent of maximum score in the identified range in accordance with Table 7.1.

After selecting a percent of maximum score for Sections 2 and 3, the SOQ score will be calculated by multiplying the percent of maximum score by the points available listed in Table 7.2 and then summing the calculated scores.

Table 7.1
Adjectival Evaluation and Scoring Guide

Adjective	Description	Percent of Max. Score
Excellent (E)	SOQ supports an extremely strong expectation of successful Project performance if ultimately selected as the Design-Builder. SOQ indicates significant strengths and/or a number of minor strengths and no appreciable weaknesses. Submitter provides a consistently outstanding level of quality.	**100 - 90 %**
Very Good (VG)	SOQ indicates significant strengths and/or minor strengths and no significant weaknesses. Minor weaknesses, if any, are offset by strengths. There exists a small possibility that, if ultimately selected as the Design-Builder, the minor weaknesses could slightly adversely affect successful Project performance.	**89 - 75 %**
Good (G)	SOQ indicates significant strengths and/or a number of minor strengths. Minor and significant weaknesses exist that could detract from strengths. While the weaknesses could be improved, minimized, or corrected, it is possible that if ultimately selected as the Design-Builder, the weaknesses could adversely affect successful Project performance. If all elements evaluated for a Section of the SOQ receive "Neutral" designations, then that Sections will be rated at 50 percent.	**74 - 50 %**
Fair (F)	SOQ indicates weaknesses, significant or minor, which are not offset by significant or minor strengths. It is probable that if ultimately selected as the Design-Builder, the weaknesses would adversely affect successful Project performance.	**49 - 25 %**

Table 7.1
Adjectival Evaluation and Scoring Guide

Adjective	Description	Percent of Max. Score
Poor (P)	SOQ indicates existence of significant weaknesses and/or a number of minor weaknesses and no appreciable strengths. SOQ indicates a strong expectation that successful performance could not be achieved if Submitter were selected as the Design-Builder.	**24 - 0 %**

7.2 *SOQ Organization and Scoring*

The Submitter shall organize the SOQ using the following Section headings, order of documents, and maximum number of pages:

Table 7.2
SOQ Organization and Scoring

Section	Section Title and Required Information	Maximum Pages	Points Available
1	Introduction Letter	2	Pass/Fail
2	Key Personnel (***$$1$$***)	***$$2$$***	
	Project Manager (***$$3$$***)		
	DBE Participation		***$$5$$***
	$$4$$		***$$5$$***
	$$4$$		***$$5$$***
	$$4$$		***$$5$$***
	Design Manager (***$$6$$***)		
	DBE Participation		***$$5$$***
	$$4$$		***$$5$$***
	$$4$$		***$$5$$***
	$$4$$		***$$5$$***
	Construction Manager (***$$7$$***)		
	DBE Participation		***$$5$$***
	$$4$$		***$$5$$***
	$$4$$		***$$5$$***
	$$4$$		***$$5$$***
3	Major Participants (***$$8$$***)	***$$9$$***	
	DBE Participation		***$$11$$***
	$$10$$		***$$11$$***
	$$10$$		***$$11$$***
	$$10$$		***$$11$$***
	$$10$$		***$$11$$***
	$$10$$		***$$11$$***
	$$10$$		***$$11$$***
Appendix A	Legal	As required	Pass/Fail
Appendix B	Financial	As required	Pass/Fail
Appendix C	Form A: Acknowledgment of Receipt of Addenda Form	1	Pass/Fail
Appendix C	Form B1: Organizational Conflicts of Interest Certification Form	1	Pass/Fail
Appendix C	Form B2: Organizational Conflicts of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan Form	As required	Pass/Fail

Table 7.2
SOQ Organization and Scoring

Section	Section Title and Required Information	Maximum Pages	Points Available
Appendix C	Form C: Major Participant Reference Information	As required	Pass/Fail
Appendix C	Form D: Design-Builder Certification Wage Law Compliance – Responsibility Criteria Washington State Public Works Contracts	As required	Pass/Fail
	Total		***$$12$$***

7.3 *SOQ Format*

The SOQ shall be formatted as follows:

- **Language** - All information shall be in English.
- **Type Font and Size** - All narrative text shall be single-spaced in a regular style font at a minimum of 12 points. The type style and size of headings and figures are not prescribed.
- **Page Size** - Except for charts, exhibits, and other illustrative and graphical information, all information shall be printed on 8.5-inch by 11-inch paper. Charts, exhibits, and other illustrative and graphical information may be on 11-inch by 17-inch paper. The 11-inch by 17-inch paper, if any, shall be folded to 8.5-inch by 11-inch and will be counted as one sheet.
- **Page Margins** - No text, tables, figures, photos, or other substantive content shall be printed within 0.75 inch of any page edge.
- **Page Limit** - Page limits are described in Table 7.2. The SOQ shall include only information required by this RFQ. No other information will be considered in the evaluation of the SOQ. All pages that exceed the specified page limit will be removed prior to evaluation.
- **Dividers** - Section dividers shall contain the Section number and/or Section title. No other text is permitted on the dividers. The dividers will not be counted toward the allowable page total.
- **Binding** - Each copy of the SOQ shall be bound separately.
- **Front Cover** - The front cover of each SOQ shall be labeled with the name of the Submitter, along with the following:

  $$1$$ Project
  Design-Build Project
  Statement of Qualifications
  [Date of Submittal]

7.4 *Introduction Letter (Section 1) (pass/fail)*

The Introduction Letter shall be addressed to WSDOT's Technical Point of Contact, and it shall include the following information:

- Submitter name, address, business type (e.g., corporation, partnership, joint venture).
- Roles of the Submitter and each Major Participant.

- A statement that the Submitter is pre-qualified with WSDOT with a maximum bidding capacity of ***$$1$$*** or more.
- A statement that the Submitter or at least one Major Participant who is performing construction, is pre-qualified with WSDOT for Work Class ***$$2$$*** in the amount of ***$$3$$*** or more.
- Identification of a single contact person, address, telephone number, and email.
- Certification of the truth and correctness of the SOQ.
- Statement that the Submitter shall comply with applicable laws and regulations.
- Signature of authorized representatives.

7.4.1 Evaluation Criteria

The Introduction Letter will be evaluated on a pass/fail basis. At the discretion of the WSDOT Evaluation Committee, contents of the Introduction Letter may be considered during qualitative assessment of the SOQ.

7.5 *Key Personnel (Section 2) (***$$1$$*** Points)*

The purpose of this Section is to demonstrate the Submitters' understanding of how the experiences and qualifications of the Key Personnel can contribute to the overall success of the Project. The Submitter shall present the Key Personnel (Project Manager, Design Manager, and Construction Manager) and explain how their experiences and past performance make them uniquely qualified to lead the Project.

WSDOT seeks Key Personnel who can demonstrate experience on major roadway projects with a similar level of complexity. The Submitter shall relate relevant experience of the Key Personnel to each of the Project goals. This Section shall include experience of the Key Personnel related to design and construction.

For the duration of the Project activities that involve their areas of responsibility, all Key Personnel shall be required to be readily available to attend task force meetings, over-the shoulder reviews, status meetings, and respond to issues as they arise.

The Key Personnel include the following:

Project Manager

- The Design-Builder's Project Manager shall be responsible for the overall design, construction, schedule, budget, quality management, and Contract administration for the Project. It is the Project Manager's responsibility to ensure the Project is managed and delivered in accordance with the Contract requirements and to ensure that the Design-Builder meets or exceeds the Project goals. The Project Manager shall have a minimum of ***$$2$$*** years of experience in managing the delivery of transportation projects of similar scope and complexity. This person shall be assigned to the Project full-time from Notice to Proceed to Physical Completion and available to assist in issue resolution from Notice to Proceed through Completion.

Design Manager

- The Design Manager shall be responsible for ensuring that the overall Project design is completed, design criteria are met, and the design is managed and delivered to meet or exceed the Project goals. The Design Manager shall have a minimum of ***$$3$$*** years of experience managing the design of

transportation projects of similar scope and complexity. The Design Manager shall be assigned to the Project full-time from Notice to Proceed through substantial completion of the design effort, and shall be available as needed during construction activities.

- The Design Manager shall be a registered Professional Engineer in the State of Washington prior to execution of the Contract. Unless otherwise stated, WSDOT will not require that the Design Manager's professional engineering license be in place as of the Proposal due date, provided the Proposal includes a commitment that the license will be obtained prior to execution of the Contract, and provided further that WSDOT determines that the designated individual is qualified to obtain a license. If, at WSDOT's discretion, the Design Manager fails to meet the minimum qualifications described in this Section, WSDOT may disqualify the Proposer. If a Proposer is selected and the Design Manager's license is not in place at the time of Contract execution, WSDOT shall require the Design-Builder to replace the Design Manager with someone who is a Licensed Professional Engineer and who meets the minimum qualifications described in this Section. The Washington State Department of Licensing makes all determinations whether an applicant is qualified for licensure as a Professional Engineer in the State of Washington.
- The licensure requirements for the Design Manager will be initially evaluated as either "Pass" or "Fail." A "Fail" rating can be considered a basis for rejecting the SOQ.

Construction Manager

- The Construction Manager shall be responsible for all Project construction. It is the Construction Manager's responsibility to ensure the construction is managed and delivered in accordance with the Contract requirements and to ensure that the Work meets or exceeds the Project goals. The Construction Manager shall have a minimum of ***$$4$$*** years of experience managing the construction of transportation projects of similar scope and complexity. The Construction Manager shall have experience with managing a diverse group of subcontractors and coordinating with public project owners to comply with local agency and environmental issues and requirements. This person shall be available for design package review and shall be available to attend Project meetings during construction. This person shall be assigned to the Project full-time during construction activities.
-

*7.5.1 ***$$5$$*** Resumes*

Resumes for Key Personnel shall be provided in this Section.

Resumes shall highlight the following information:

- Relevant education, training, licensing, and registration/certification.
- Years of experience performing similar work.
- Actual work examples relevant to the Project including projects, contracting method used, dates spent on the project, and duties performed.

7.5.2 References

For each Key Personnel, list three references from different projects that are included on the resume. All references shall be the owner representative who is most familiar with the Key Personnel, and who could best answer project-specific questions. Provide the owner representative's name, email address, and phone number. The owner representative may be a consultant who acted on behalf of the owner for the project. The references must not work for the same company of the person they are referencing. It is important to ensure that the references listed have specific knowledge of the person's experience on the project. Include contracting method for each project listed. Two of the three references for each Key Personnel shall be from projects that are at least 75 percent complete.

WSDOT reserves the right to contact references other than those identified by the Submitters to evaluate past performance.

7.5.3 Evaluation Criteria

The Key Personnel will be evaluated individually on demonstrated experience to successfully fulfill management roles and to successfully meet the Project goals while managing projects of similar scope and complexity. For each Key Personnel, the Submitter shall relate relevant project experience and performance for each of the Project goals listed in Section 4.3. Experience and performance during the last 5 years will carry more importance. Demonstrated experience on projects delivered with a design-build contract is preferred. Include past participation with DBE requirements. The Submitter shall submit a list of projects that they have completed in the past 3 years that had a DBE goal. Include the goal percentage, the amount of DBE participation that was ultimately attained, and contact information for each contract owner.

Past performance of Key Personnel may be checked by contacting references and will be considered during evaluations.

Maximum points available are listed in Table 7.2.

7.6 *Major Participants (Section 3) (***$$1$$*** Points)*

WSDOT seeks Submitters who can demonstrate design and construction experience on major transportation projects. This Section shall describe the details and complexity of one or more projects. Major Participants listed in Categories A, C, D, E, F and G in Section 5.1 shall have at least one project identified. References shall be provided for all projects listed.

7.6.1 References

Project reference information shall be provided on Part 1 of Form C and shall be included in Appendix C of the SOQ. References shall be provided for all projects listed. Part 1 of Form C shall not exceed 1 page. Project reference information shall include the following:

- Scheduled completion milestones based on the Proposal and actual or current projected completion dates.
- Contractor or design firms being referenced.
- Contract amount.
- Description of the work or services provided and percentage of the overall project actually performed by each of the Major Participant(s).

- Contracting method (design-build, GCCM, design-bid-build, etc.).
- References (owner representative name, email address, and phone number).

All references shall identify the owner representative who is most familiar with the project and who could best answer project-specific questions. The owner representative may be a consultant who acted on behalf of the owner for the project. The references must not work for the same company of the person they are referencing. At least one reference for each Major Participant shall be from a project that is at least 75 percent complete.

References may be contacted at WSDOT's discretion to verify information provided in the SOQ.

7.6.2 Evaluation Criteria

The Major Participants will be evaluated on demonstrated project experience and performance. For each Major Participant, the Submitter shall relate relevant project experience for each of the applicable criteria or Project Goals:

1. DBE Participation
2. ***$$1$$***

Submitters will be scored on how their experience on previous projects, related to the numbered criteria above, prepares their team for success on this Project. Demonstrated experience on projects of similar scope and complexity is preferred. Submitters shall describe how skills and experience gained on listed projects will be translated to the staff committed to delivering this Project.

WSDOT plans to evaluate Submitters based on their performance on previous projects. Past performance of Major Participants may be checked by contacting references.

For each of the projects referenced by Major Participants listed in Categories A and C in Section 5.1, Submitters shall complete Part 2 of Form C. Part 2 of Form C shall not exceed 1 page. Submitters shall include the following information in the narrative:

- **Issue Resolution** - Provide details and an explanation for any dispute proceedings associated with disputes review board procedures, claims, arbitration or litigation that stemmed from the projects identified in the narrative. This information provided by Submitters will be assessed with in respect to number ***$$2$$*** of this Section.
- **Sanctions** - For each project listed in the narrative, identify any violations, penalties, fines, or Liquidated Damages assessed against a Major Participant resulting from safety violations; DBE Program violations, permit non-compliance; contract lane restriction violations; and delays to Substantial Completion, Physical Completion or interim project milestones identified in the Contract. Describe the reason for the sanction(s) and total value assessed against the Major Participant on the project. This project information provided by Submitters will be scored against number(s) ***$$3$$*** of this Section.

With respect to the information solicited in this Section, failure to provide requested information, incomplete or inaccurate submissions, or non-responsive submissions may, at the sole discretion of WSDOT, result in the SOQ to be deemed as non-responsive.

Maximum points available for each criterion are listed in Table 7.2.

7.7 *Legal (Appendix A) (pass/fail)*

The Submitter shall provide a description of the legal entity proposed as the Design-Builder. If the Submitter's legal entity has already been formed, the Submitter shall provide complete copies of the organizational documents, along with those documents that allow, or would allow by the time of Contract award, the Submitter and its team members to conduct business in the State of Washington. If the Submitter's legal entity has not yet been formed, then the Submitter shall provide a brief description of the proposed legal structure and provide draft/final copies of the underlying agreements. Once the legal entity is finalized, the Submitter shall supplement its SOQ with copies of the final organizational documents. The final organizational documents shall be submitted no later than 15 Calendar Days before the Proposal Due Date as described in the RFP.

If the Submitter is a joint venture, limited liability company, partnership, or other association, the Submitter shall provide an express statement from each of the partners/members as to their joint and several liability on the Project. The Submitter shall use WSDOT Standard Form 410-009 *Individual Project Statement of Joint Venture*. This form is available for download at: www.wsdot.wa.gov/biz/contaa/prequal.

In the instructions to Form 410-009, the requirement for pre-qualification applies to those firms performing construction Work on the Project (e.g., contractors). The pre-qualification requirement does not apply to joint venture members providing design and engineering services only.

Interested Submitters not currently pre-qualified with WSDOT should contact WSDOT's Contract Ad & Award Office.

7.7.1 Evaluation Criteria

Appendix A will be reviewed on a pass/fail basis only, and not as part of the qualitative assessment of the SOQ.

7.8 *Financial (Appendix B) (pass/fail)*

The Submitter shall provide a letter from a surety or insurance company stating whether or not the Submitter is capable of obtaining Proposal and Contract Bonds as indicated in Table 7.8 below.

Table 7.8
Financial Information

Proposal Bond/Security Penal Sum	Performance and Payment Bond Penal Sum
$$1$$	***$$2$$***
The identified amounts are for RFQ purposes only. Actual amounts of bond/security required by the Contract may vary, and shall be in compliance with applicable Washington law.	

A performance and payment bond is a surety bond furnished by the Design-Builder and the Design-Builder's surety that guarantees performance of the Work and payment to laborers, mechanics, subcontractors, and materials suppliers in accordance with Washington law. The Contract Bond is intended to provide protection to WSDOT for the

Design-Builder's obligations with respect to construction and post construction phases of the Project.

The surety letter shall expire no sooner than the Proposal Due Date. Letters indicating "unlimited" bonding capability are not acceptable. The surety or insurance company providing the letter must be authorized to do business in the State of Washington with an A.M. Best Co. "Best's Rating" of A- or better.

7.8.1 Evaluation Criteria

Appendix B will be reviewed on a pass/fail basis only, and not as part of the qualitative assessment of the SOQ.

7.9 *Forms (Appendix C)*

Include Form A, Acknowledgement of Receipt of Addenda, included in Appendix A of this RFQ.

Include Form B1, Organizational Conflicts of Interest Certification, and Form B2 Organizational Conflicts of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan Form (if necessary), included in Appendix A of this RFQ.

Include Form C, Reference Information for Major Participants, included in Appendix A of this RFQ.

Include Form D, Design-Builder Certification Wage Law Compliance – Responsibility Criteria Washington State Public Works Contracts Form, included in Appendix A of this RFQ. If the Submitter is a joint venture, limited liability company, partnership, or other association, the Submitter shall provide a Certification of Wage Law Compliance from each of the partners/members.

7.9.1 Evaluation Criteria

Forms A, B1, B2 and D will be reviewed on a pass/fail basis only, and not as part of the qualitative assessment of the SOQ. Form C will be reviewed on a pass/fail basis and will be used to evaluate references as part of the qualitative assessment of the SOQ.

7.10 *Debriefing*

Within 14 Calendar Days after public announcement of short-listed Submitters, WSDOT will be available for an oral debriefing session upon written request made to WSDOT's Technical Point of Contact by an authorized representative of an unsuccessful Submitter.

7.11 *Protest Procedures*

This Section sets forth the exclusive protest remedies available with respect to this RFQ. By submitting its SOQ, each Submitter acknowledges the limitation on its rights to protest as set forth in this RFQ; waives all other rights and remedies; and agrees that the decision on any protest, as provided in this RFQ, shall be final and conclusive unless wholly arbitrary and capricious. These provisions are included in this RFQ expressly in consideration for such waiver and agreement by the Submitters. Such waiver and agreement by each Submitter are also consideration to each other Submitter for making the same waiver and agreement.

All protests and related materials shall be filed in writing, by hand delivery or courier, to the Protest Official, with a copy to WSDOT's Technical Point of Contact. The Protest Official is identified as:

Jenna Fettig
WSDOT Contract Ad & Award Office
Transportation Building, Room 2D-20
310 Maple Park Avenue SE
Olympia, WA 98501-2361

Protests delivered in person will be received only in the WSDOT Contract Ad & Award Office, Room 2D-20.

7.12 *Protests Regarding the RFQ*

The Submitter may protest the terms of this RFQ prior to the time for submission of SOQs on the grounds that a material provision in this RFQ is ambiguous; any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement; or this RFQ in whole or in part exceeds the authority of WSDOT. Protests regarding this RFQ shall be filed only after the Submitter has informally discussed the nature and basis of the protest with WSDOT's Technical Point of Contact in an effort to remove the grounds for protest.

Protests regarding this RFQ shall completely and succinctly state the grounds for protest and shall include all factual and legal documentation in sufficient detail to establish the merits of it. Evidentiary statements, if any, shall be submitted under penalty of perjury.

Protests regarding this RFQ shall be filed as soon as the basis for protest is known to the Submitter, but in any event it must be actually received no later than 10 Calendar Days before the SOQ due date, provided that protests regarding an addendum to this RFQ shall be filed and actually received by WSDOT no later than 5 Calendar Days after the addendum to this RFQ is issued (or no later than the SOQ due date, if earlier).

WSDOT will distribute copies of the protest to the other Submitters and may request the other Submitters to submit statements or arguments regarding the protest. At its discretion, WSDOT may discuss the protest with the protesting Submitter. If other Submitters are requested to submit statements or arguments, they may file a statement in support of or in opposition to the protest within 7 Calendar Days of the request.

The protesting Submitter shall have the burden of proving its protest by clear and convincing evidence. No hearing will be held on the protest. The Protest Official or its designee will decide the protest on the basis of the written submissions. WSDOT will furnish copies of the decision in writing to each Submitter. The decision shall be final and conclusive. If necessary, to address the issues raised in the protest, WSDOT will make appropriate revisions to this RFQ by issuing addenda. At its discretion and if necessary, WSDOT may extend the SOQ due date to address any protest issues. Each party shall bear its own attorney's fees and legal costs that may result from the protest.

The failure of a Submitter to raise the grounds for a protest regarding this RFQ within the applicable time period shall constitute an unconditional waiver of the right to protest the terms of this RFQ and shall preclude consideration of that ground in any protest of qualification of a Submitter.

7.13 *Protests Regarding Responsiveness and Short-listing*

A Submitter may protest the results of the above-described evaluation and qualification process by filing a notice of protest by hand delivery or courier to the Protest Official and providing a copy of the notice of protest to WSDOT's Technical Point of Contact. WSDOT will distribute a copy of the notice of protest to the other Submitters. The notice of protest shall specifically state the grounds of the protest.

Notice of protest of any decision to accept or disqualify a SOQ on responsiveness grounds must be filed within 7 Calendar Days after the earliest to occur of notification of non-responsiveness; the scheduled date for oral meetings and presentations (if any); or the public announcement of short-listed Submitters. Notice of protest of the decision on short-listed Submitters must be filed and received by the Protest Official within 7 Calendar Days after the public announcement of the short-listed Submitters.

Within 7 Calendar Days of the notice of protest, the protesting Submitter must file with the Protest Official a detailed statement of the grounds, facts, and legal authorities, including all documents and evidentiary statements, in support of the protest. WSDOT will distribute a copy of the detailed statement to all other Submitters. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protesting Submitter shall have the burden of proving its protest by clear and convincing evidence.

Failure to file a notice of protest or a detailed statement within the applicable time period shall constitute an unconditional waiver of the right to protest the evaluation or short-listing process and decisions.

Other Submitters may file a statement with the Protest Official by hand delivery in support of or in opposition to the protest. The statement must be filed within 7 Calendar Days after the protesting Submitter files its detailed statement of protest. WSDOT will promptly forward copies of any statements to the protesting Submitter.

Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided. At the discretion of the Protest Official or its designee, a hearing or argument may be permitted, if necessary, for protection of the public interest or an expressed, legally recognized interest of a Submitter or WSDOT. The Protest Official or its designee shall issue a written decision regarding the protest within 15 Calendar Days after the Protest Official receives the detailed statement of protest. The decision shall be final and conclusive. The Protest Official or its designee shall deliver the written decision to the protesting Submitter and copies to the other Submitters.

If a notice of protest regarding responsiveness is filed prior to the oral meetings and presentation process (if any), WSDOT may proceed with the oral meetings and presentation process and may short-list Submitters before the protest is withdrawn or decided, unless the Protest Official or its designee determines, at their discretion, that it is in the public interest to postpone the short-list announcement prior to a decision. Such a determination shall be in writing and shall state the facts on which it is based.

If the Protest Official or its designee concludes that the Submitter filing the protest has established a basis for protest, the Protest Official or its designee will determine what remedial steps, if any, are necessary or appropriate to address the issue raised in the protest. The steps may include, but are not limited to, submitting the issue to WSDOT's Evaluation Committee to determine whether the list of Submitters selected to submit Proposals should be revised; withdrawing or revising the decisions; issuing a new RFQ; or taking other appropriate actions.

If the protest is denied, the protesting Submitter may seek judicial review of WSDOT's decision in Thurston County Superior Court within 5 Calendar Days of receiving WSDOT's decision denying the protest. Each party shall bear its own attorney fees, expert witness fees, and all other legal costs.

7.14 *Costs and Damages*

WSDOT shall not be liable for damages to the Submitter filing the protest or to any participant in the protest, on any basis, express or implied.

End of Request for Qualifications

Appendix A

FORM A

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

(To be included in Appendix C of the Statement of Qualifications)

Name of Submitter

Name of Submitter

We hereby acknowledge receipt of the ***$$1$$*** Project Request for Qualifications dated Date, and subsequent addenda and responses to questions by the Washington State Department of Transportation as follows:

ADDENDUM No.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Response to Questions No.	**Date Issued**
Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.

Signed	Date
Click or tap here to enter text.	Click or tap here to enter text.
Printed or Typed Name	Title

FORM B1

ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATION
To be signed by authorized signatory of Submitter
(To be included in Appendix C of the Statement of Qualifications)

Name of Submitter

Name of Submitter

My signature below certifies that, prior to submitting this SOQ, I have conducted an internal review of Submitter's current affiliations and have required Submitter's team members to identify potential, real, or perceived Organizational Conflicts of Interest relative to the anticipated procurement, in accordance with the WSDOT Secretary's Executive Order E 1059.00 and WSDOT *Organizational Conflicts of Interest Manual* M 3043.

I further certify that "*Organizational Conflicts of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan*" forms are attached, as listed below, for all real or potential organizational conflicts of interest as defined in WSDOT *Organizational Conflicts of Interest Manual* M 3043 for all Submitter team members.

Signed	Date
Click or tap here to enter text.	Click or tap here to enter text.
Printed or Typed Name	Title

List Attachments by name of person or firm potentially conflicted:

Click or tap here to enter text.

FORM B2

ORGANIZATIONAL CONFLICTS OF INTEREST
DISCLOSURE AND AVOIDANCE/NEUTRALIZATION/MITIGATION PLAN
To be signed by authorized signatory of Submitter
(To be included in Appendix C of the Statement of Qualifications, if needed)

This disclosure statement outlines potential organizational conflicts of interest, either real or apparent, which as a result of activities or relationships with other persons or entities, such person or entity:

1. Is unable or potentially unable to render impartial assistance or advice to WSDOT; or
2. Is or might be otherwise impaired in its objectivity in performing the Contract Work; or
3. Has an unfair competitive advantage.

SECTION I of this disclosure statement describes the potential Organizational Conflicts of Interest, as described in Secretary's Executive Order E 1059 and WSDOT *Organizational Conflicts of Interest Manual* M 3043. SECTION II of this disclosure statement describes the management plan for avoiding, neutralizing, or mitigating the potential Organizational Conflicts of Interest as described in SECTION I of this disclosure statement. I acknowledge that the Washington State Department of Transportation (WSDOT) may require revisions to the management plan described in SECTION II of this disclosure statement prior to approving it, and that WSDOT has the right, in its sole discretion, to limit or prohibit my involvement in the Project as a result of the potential conflicts of interest described in SECTION I of this disclosure statement.

SECTION Ia – Name of Person or Firm Potentially Conflicted

Click or tap here to enter text.

SECTION Ib – Current Project Name and Scope of Work

Click or tap here to enter text.

SECTION Ic – Future Project Name and Description of Potential Conflict of Interest

Click or tap here to enter text.

SECTION II - Plan for Managing Potential Conflicts of Interest

Click or tap here to enter text.

Signed	Date
Click or tap here to enter text.	Click or tap here to enter text.
Printed or Typed Name	Title

FORM C

REFERENCE INFORMATION FOR MAJOR PARTICIPANTS

(To be included in Appendix C of the Statement of Qualifications)

Name of Major Participant: Click or tap here to enter text.
Category of Major Participant (See RFQ Section 5.1)**:** Click or tap here to enter text.

PART 1 (Required for all Projects listed for all Major Participants)

Title of Referenced Project: Click or tap here to enter text.	
Description of the Work/Services Provided: Click or tap here to enter text.	
Percentage of Overall Project Work Performed by Major Participant: Click or tap here to enter	
Reference Owner Name: Click or tap here to enter text. Contact Name: Click or tap here to enter text. Email: Click or tap here to enter text. Phone:	
Contract Amount: Click or tap here to enter	**Other Completion Milestones** Description: Click or tap here to enter text. Proposed: Click or tap here to enter text. Actual/Projected: Click or tap here to enter text. Description: Click or tap here to enter text. Proposed: Click or tap here to enter text. Actual/Projected: Click or tap here to enter text. Description: Proposed: Actual/Projected:
Contracting Method: Click or tap here to enter	
% Complete: Click or tap here to enter text.%	
Substantial Completion Proposed: Click or tap here to enter text. Actual/Projected:	
Physical Completion Proposed: Click or tap here to enter text. Actual/Projected:	
Completion Proposed: Click or tap here to enter text. Actual/Projected:	

1 **PART 2** (Required only for Major Participants listed in Categories A and C in Section 5.1)

Issue Resolution and Sanctions narrative:

Click or tap here to enter text.

End of Section

FORM D

Design-Builder Certification
Wage Law Compliance – Responsibility Criteria
Washington State Public Works Contracts

(To be included in Appendix C of the Statement of Qualifications)

FAILURE TO RETURN THIS CERTIFICATION AS PART OF THE STATEMENT OF QUALIFICATIONS (SOQ) WILL MAKE THIS SUBMITTAL NONRESPONSIVE AND INELIGIBLE TO BE SHORTLISTED

I hereby certify, under penalty of perjury under the laws of the State of Washington, on behalf of the firm identified below that, to the best of my knowledge and belief, this firm has NOT been determined by a final and binding citation and notice of assessment issued by the Washington State Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of RCW chapters 49.46, 49.48 or 49.52 within 3 years prior to the date of this RFQ.

Submitter Name: _____
Name of Submitter – Print full legal entity name of firm

By: _____ _____
Signature of authorized person **Print Name of person making certifications for firm**

Title: _____ **Place:** _____
Title of person signing certification **Print city and state where signed**

Date: _____

General

The following abbreviations and definitions shall apply generally to the Request for Qualifications (RFQ) process and have the meanings set forth herein as they are used in the RFQs document.

Abbreviations

Associations and Miscellaneous

AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans with Disabilities Act of 1990
BMP	Best Management Practice
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
DBIA	Design Build Institute of America
EEO	Equal Employment Opportunity
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards, General Services Administration
HOV	High Occupancy Vehicle
HUD	United States Department of Housing and Urban Development
ITP	Instructions to Proposers
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
NTP	Notice to Proceed
OEO	Office of Equal Opportunity
OMWBE	Office of Minority and Women's Business Enterprises
RCW	Revised Code of Washington (Laws of the State)
RFQ	Request for Qualifications
ROW	Right of Way
SATC	State Apprenticeship Training Council
SEPA	State Environmental Policy Act
SOP	Standard Operating Procedure
SOQ	Statement of Qualifications
SR	State Route
TR	Technical Requirements
UDBE	Underutilized Disadvantaged Business Enterprise
WSDOT	Washington State Department of Transportation

Definitions

Defined Terms

The following capitalized terms shall have the following meanings:

Appendix (Appendices) - Where referred to in the RFQ (without other reference), the term Appendix (Appendices) refers to the documents listed in Appendix A.

Applicable Law - All applicable laws, codes, rules, ordinances, restrictions, and regulations of the federal, State, regional, or any local government (including those resulting from the initiative or referendum process) and judicial or administrative orders which affect the acquisition of real property for, or the design, construction, operation, or maintenance of the Project including, without limitation, those relating to fire, safety, land use, health, labor, environmental protection, seismic design, conservation, traffic control, parking, handicapped access**,** zoning and building laws, codes, ordinances, rules, and regulations.

Broker - A business firm that provides a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for the performance of the Contract; or, persons/companies who arrange or expedite transactions.

Calendar Day - Any day, or portion of a day, on the calendar including Saturdays, Sundays, and legal holidays, beginning and ending at midnight.

Code of Federal Regulations (CFR)- Regulations that implement and carry out the provisions of federal law relating to the administration of federal aid for highway.

Contract - Depending on the context, either (a) the written agreement (Contract Form) between WSDOT and the Design-Builder and/or (b) the Contract Documents.

Contract Bond - The approved form of security furnished by the Design-Builder and the Design-Builder's Surety as required by the Contract that guarantees performance of the Work required by the Contract and payment to anyone who provides supplies or labor for the performance of the Work and performance as required under the warranty requirements of the Contract.

Contract Documents, Contract - The documents identified as such in the Contract Form.

Contract Form (Agreement Form) - The form provided by WSDOT that requires the authorized signatures of the Design-Builder and WSDOT to result in formal execution of the Contract.

Contract Price - The total amount payable by WSDOT to the Design-Builder for performance of the Work under the Contract, as stated in the Contract Form and as adjusted in accordance with the Contract.

Contract Schedule - The price-loaded critical path method schedule setting forth the plan for performance of the Work including the Baseline Contract Schedule and Monthly Contract Schedule Updates.

Contract Time - The period of time in Calendar Days, including adjustment thereto authorized by WSDOT, designated in the Contract Form for Substantial Completion of the Work. Contract Time shall begin on the first Calendar Day after the effective date of Notice to Proceed.

Design-Builder - The firm, partnership, joint venture, or organization that contracts with the Washington State Department of Transportation to perform the Work.

Design Documents - Documents that manifest the design for the Project developed by the Design-Builder or any portion, component, or element thereof.

Disadvantaged Business Enterprise (DBE) - A business firm certified by the Washington State Office of Minority and Women's Business Enterprises, as meeting the criteria outlined

in 49 CFR 26 regarding DBE certification. A Underutilized Disadvantaged Business Enterprise (UDBE) firm is a subset of DBE

Engineer of Record (EOR) - The Design-Builder's engineer(s) who places their professional engineering seal on a document.

Environmental Laws - All Governmental Rules now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases, or threatened releases of hazardous, toxic, or dangerous waste, pollutant, contaminant, substance, or material into the environment including into the air, surface water, or ground water or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, or handling of hazardous, toxic, or dangerous waste, pollutant, contaminant, substance, or material, or otherwise relating to the protection of public health, public welfare, public safety or the environment (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. ("CERCLA"), as amended by the Superfund Amendment and Reauthorization Act of 1986; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. ("RCRA"), as amended by the Solid and Hazardous Waste Amendments of 1984; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the National Environmental Policy Act, 42 U.S.C. §4321 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Hazardous Materials Transportation Uniform Safety Act; the Oil Pollution Act of 1990; the Endangered Species Act, 16 U.S.C. §1531 et seq.; the Federal Water Pollution Control Act, the Clean Water Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Migratory Bird Treaty Act, 16 U.S.C. §703 et seq.; Fish and Game Code §1600 et seq.; the Washington Model Toxics Control Act, Chapter 70.105D RCW; and the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; the Washington Water Pollution Control Act; the Clean Air Washington Act; the Washington Solid Waste Management laws; the Washington Underground Petroleum Storage Tanks Act, the Washington Industrial Safety and Health Act; the Washington Worker and Community Right to Know Act, and the Washington Oil and Hazardous Substance Spill Prevention and Response Act, all as amended and supplemented previously or in the future.

Environmentally Sensitive Areas - Wetlands, wetland buffers, streams, stream buffers, and jurisdictional ditches as depicted in the Conceptual Plans.

Good Faith Efforts - Efforts to achieve the UDBE Goal or other requirements of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Governmental Approvals - Any approval, authorization, certification, consent, exemption, filing, lease, license, permit, registration, or ruling, required by or with any Governmental Body in order to perform the Work or any Relocation work being performed by a Utility Owner, including any modification or supplement to any of the foregoing, but excluding (a) any such approvals relating to the work to be performed by other contractors as specifically described in the Contract Documents and (b) any such approvals required by or with a Governmental Body in its capacity as a Utility Owner.

Governmental Body - Any federal, state, local, or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body, or entity other than WSDOT.

Governmental Rules - All applicable federal, state, and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders, and decrees of any Governmental Body having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any utility work being performed by a Utility Owner. The term "Governmental Rule" does not include Governmental Approvals.

Hazardous Waste - Waste as defined in 40 C.F.R. Part 261.

Instructions to Proposers - The WSDOT-issued document included in the RFP, providing instructions regarding the preparation and submission of the Proposal.

Key Personnel - The personnel described in the RFQ.

Legal Requirements - All applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders, and decrees of any Governmental Body having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any utility work being performed by a Utility Owner. The term "Legal Requirements" does not include Governmental Approvals.

Licensed Professional Engineer- Licensed in the State of Washington under Title 18 RCW.

Local Agency - A Governmental Body that is not a federal or state government.

Major Participants - The entities described in the RFQ.

Minority Business Enterprise (MBE) - A minority owned business meeting the requirements of RCW 39.19 and WAC 326-20 and certified by the Washington State Office of Minority & Women's Business Enterprises.

Notice to Proceed (NTP) - The written authorization issued by WSDOT that permits the Design-Builder to commence performance of the Work.

Person - Any individual, corporation, company, limited liability company, voluntary association, partnership, trust, unincorporated organization, or Governmental Body.

Project - The ***$$5$$*** Project.

Proposal - The proposal submitted by the Design-Builder in response to the Request for Proposal, including the Price Proposal, the Technical Proposal, and all clarifications and supplements thereto.

SOQ Due Date - The date specified for delivery of SOQ in the RFQ.

Utility Owner - A Utility Owner that is a Governmental Body.

Qualification (Personnel) - The characteristics or abilities gained through documented training, documented experience, or both, as measured against established standards, written tests, and/or performance tests that qualify an individual to perform a required function.

Reference Documents - Reference Documents are for information purposes only and the Design-Builder shall rely upon Reference Documents at its own risk.

Reference Projects - Those projects listed by the Submitter in RFQ Forms C.

Regular Dealer (DBE) - A DBE firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a Regular Dealer, the DBE firm shall engage in, as its principal business and

in its own name, the purchase and sale of the products in question. A Regular Dealer in such items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as Regular Dealers within the meaning of this definition.

Related Entity - The Design-Builder, Subcontractors, and their employees, agents and officers and all other Persons for whom the Design-Builder may be legally or contractually responsible.

Request for Proposals (RFP) - The document package issued by WSDOT requesting submittal of proposals for the Project and providing information relevant to the preparation and submittal of proposals, including the Instructions to Proposers, Contract Documents, and Reference Documents.

Request for Qualifications (RFQ) - This document package, together with its appendices, forms, Addenda, if any, issued by WSDOT requesting Statements of Qualifications.

Right of Way - Land, property, or property interest, usually in a strip, acquired for or devoted to transportation purposes. The term specifically excludes any utility easements and any temporary easements or other real property interests outside of the access control line which the Design-Builder deems necessary or advisable in connection with (a) construction of the Project and/or (b) relocations.

Secretary of Transportation - The chief executive officer of WSDOT.

Shortlisted - A Submitter to this RFQ that the WSDOT determines will be invited to participate in the subsequent RFP.

Site of Work/Site - Those areas designated by WSDOT for performance of the Work and such additional areas as may be designated in writing by WSDOT for the Design-Builder's use in performance of the Work.

Small Business – A business meeting the Washington State requirements for a "Small business", "Minibusiness" or "Microbusiness" as defined in RCW 39.26.010 and included on the WSDOT Office of Equal Opportunity list of Small Businesses at www.wsdot.wa.gov/equalopportunity/bddirectory.htm.

Special Provisions - WSDOT developed modifications to the *Standard Specifications*. The Engineer of Record shall incorporate applicable Special Provisions into the Technical Specifications.

Standard Plans - A manual of specific plans or drawings adopted by WSDOT such as the *Standard Plans for Road, Bridge, and Municipal Construction* M 21-01, which show frequently recurring components of work that have been standardized for use.

Standard Specifications - Divisions 2 through 9 of the *Standard Specifications for Road, Bridge and Municipal Construction* M 41-10: published by WSDOT, subject to the modifications and any modifications contained in the Special Provisions. Division 1 of said publication is superseded in its entirety by the General Provisions.

State - The State of Washington acting through its elected officials and their authorized representatives, including, but not limited to, WSDOT, or the State of Washington in the geographic sense, depending on the context.

Statement of Qualifications (or SOQ) – A formal qualifications package submitted by a Submitter in response to this RFQ.

Subcontract - An agreement between the Design-Builder and one or more third parties providing for such third party to perform any part of the Work or any such agreement between a Subcontractor and its lower tier Subcontractor, at any tier.

Subcontractor- An individual, partnership, firm, corporation, or joint venture who is sublet part of the Contract by the Design-Builder. Suppliers and materialmen are excluded from the term.

Submitter - An individual, partnership, firm, corporation, or joint venture who submits a SOQ in response to this RFQ.

Surety - The company(ies) bound with the Design-Builder 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.

Technical Requirements (TR) - Chapter 2 of the Request for Proposal document package.

Underutilized Disadvantaged Business Enterprise (UDBE) – A DBE Firm that is underutilized based on WSDOT's Disparity Study. All UDBEs are DBEs.

UDBE Commitment - The dollar amount that the Design-Builder indicates they will be subcontracting to certified UDBEs as shown in the DBE Performance Plan submitted with the Design-Builder's Proposal, and for subsequent work opportunities arising from this project. This UDBE Commitment amount will be incorporated into the Contract and shall be considered a Contract requirement. Any changes to the UDBE Commitment shall require WSDOT's approval.**UDBE Goal -** An assigned numerical percentage the design portion and construction portion of the Proposal Price. This is the minimum amount that the Proposer shall commit to by submission of the DBE Performance Plan including Good Faith Efforts. The UDBE Goal will also be applied to Change Orders associated with this Contract.

Utility Owner - A Utility Owner that is a Governmental Body.

Veteran Business – A veteran owned business meeting the requirements of RCW 43.60A.010 and included on the WSDOT Office of Equal Opportunity list of Veteran Businesses at www.wsdot.wa.gov/equalopportunity/bddirectory.htm

Washington State Department of Transportation (WSDOT) - The State Agency authorized by law to administer transportation-related work.

Women Business Enterprise (WBE) – A women owned business meeting the requirements of RCW 39.19 and WAC 326 and certified by the Washington State Office of Minority & Women's Business Enterprises.

Work - All of the administrative, design, engineering, real property acquisition support services, utility support services, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, inspection, labor, materials, equipment, maintenance, documentation, and other duties and services to be furnished and provided by the Design-Builder as required by the Contract Documents, including all efforts necessary or appropriate to achieve final acceptance, except those efforts which the Contract Documents specify will be performed by WSDOT or other persons. In certain cases, the term may also be used to mean the products of the Work.

WSDOT Engineer - The WSDOT representative responsible for making decisions on behalf of WSDOT as outlined in the Contract.

INSTRUCTIONS TO PROPOSERS
Washington State Department of Transportation

$$1$$ Project

ISSUED:
$$2$$

PROPOSALS DUE:
$$3$$

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1.0 General Information

1.1 *Introduction*

The Washington State Department of Transportation (WSDOT) will use a two-phase process to select a design-build contractor ("Design-Builder") to deliver the ***$$1$$*** (the "Project") described in the Contract. During the first phase of the procurement, WSDOT determined the short list of Proposers for the Project based on Statements of Qualifications (SOQ) it received in response to its Request for Qualifications (RFQ), dated ***$$2$$***. This Request for Proposal (RFP) is issued as part of the second phase of the procurement.

The RFP documents consist of these Instructions to Proposers (ITP); the Contract Form, which will be conformed to include information based on the successful Proposer's Proposal, and signed by WSDOT and the Design-Builder; and certain other documents identified in Appendix A of the RFP.

WSDOT invites the SOQ submitters who have been advised that they are on the short list (Proposers) to submit competitive sealed proposals (Proposals) for design and construction of the Project, as more specifically described in this RFP. WSDOT will award the Contract for the Project (if at all) to the responsive and responsible Proposer offering a Proposal that meets the standards established by WSDOT, and that is determined by WSDOT to provide the best value to WSDOT. The process for determining the best value includes a review of the pass/fail requirements; an assessment of the quality of the Proposer's Technical Proposal; and the Proposer's Price Proposal. WSDOT will accept Proposals only from short-listed Proposers.

1.1.1 Title VI Assurances

The Washington State Department of Transportation (WSDOT), 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 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.

1.2 *Definitions*

Capitalized terms used in the ITP and not otherwise defined herein, shall have the meanings set forth in the General Provisions.

1.3 *Scope of Work*

The Project description is provided in Section 2.1 General Information of the Technical Requirements. The Work includes all services, labor, material, and equipment necessary to design and build the Project in accordance with the Contract.

Proposers are advised that this RFP was developed to organize and consolidate the specifications and design and construction criteria for all Project components. However, the Technical Requirements do not specifically describe every detail of the Work required. It is each Proposer's responsibility to review all pertinent Project requirements

and criteria, as contained in the entire RFP, and the Proposer selected as the Design-Builder must perform its obligations in accordance with the requirements of the entire RFP. The Design-Builder shall not rely on the physical description contained in the Contract to identify all of the Project components. The Design-Builder shall determine the full scope of the Project through a thorough examination of the RFP, the Project site, and any reasonable inferences to be gathered from each.

1.3.1 Basic Configuration

The Basic Configuration is defined in Section 1-01 of the General Provisions. The Proposal must be consistent with the Basic Configuration and the Contract, subject only to such changes as may have been approved by WSDOT in accordance with the Alternative Technical Concepts (ATC) process described herein.

1.3.2 Conceptual Plans and Reference Documents

The Reference Documents contained in the RFP (including those portions of the Conceptual Design that do not establish the Basic Configuration elements) are provided for informational purposes to assist the Proposers in preparing their Proposals, but the Reference Documents do not represent requirements binding on the Design-Builder. WSDOT makes no representation or warranty as to the accuracy, adequacy, applicability, or completeness of the Reference Documents. Except to the extent set forth to the contrary in the Contract, reliance upon the Reference Documents shall be at the Proposer's risk, and WSDOT shall have no liability or obligation as a result of the inaccuracy, inadequacy, inapplicability, or incompleteness of the Reference Documents, regardless of the contents thereof.

Each Proposer is responsible for reviewing the Conceptual Plans in advance of submitting its Proposal, for purposes of assessing their adequacy for meeting the Contract requirements, and determining whether any changes are necessary or advisable. The Design-Builder shall be solely responsible for Project design and construction in accordance with the Contract.

1.3.3 Utility Relocations

Section 1-07.17 of the General Provisions and Section 2.10 Utilities, of the Technical Requirements (together with any documents referenced therein) set forth the rights and obligations of WSDOT, the Design-Builder, and any Utility Owner with respect to Relocation and Relocation Costs. Price Proposals shall be consistent with the requirements of Section 1-07.17 of the General Provisions. WSDOT funds are not available for Relocation Costs arising out of the Relocation of a Utility for which the Utility Owner has Cost Responsibility. Proposers are required to certify that they have not included in their Price Proposal any such Relocation Costs (see Form L). Proposers are reminded that the circumstances under which the Design-Builder may obtain additional compensation for Relocation Costs under the Contract are extremely limited.

1.3.4 Project Goals

WSDOT has established the following Project goals:

- DBE Participation
- ***$$1$$***

1.3.5 Validity Period; Notice to Proceed

Proposals shall remain valid for 90 Calendar Days after the Proposal Due Date. WSDOT anticipates that Notice to Proceed will be issued shortly after Contract execution, but WSDOT may defer issuance of Notice to Proceed for up to 30 Calendar Days after Contract execution.

1.3.6 Procurement Schedule

Action	Date
Issue RFP	***$$1$$***
Voluntary Proposer Meeting	***$$2$$***
$$3$$	***$$4$$***
$$5$$	***$$6$$***
$$7$$	***$$8$$***
Supplemental Boring Deadline	***$$9$$***
ATC Submittal Deadline	***$$10$$***
Deadline for Submitting Proposer's Questions	***$$11$$***
Deadline for WSDOT Response to Proposer's Questions	***$$12$$***
Proposals Due	***$$13$$***
Announce Apparent Best Value Proposer	***$$14$$***
Estimated Notice to Proceed	***$$15$$***

1.3.7 Project Cost

The estimated Proposal Price is approximately $***$$1$$***.

1.3.8 Minority, Small, Veterans, and Women's Business Enterprise (MSVWBE) Participation

This Section is intentionally omitted.

1.3.9 Disadvantaged Business Enterprise Participation Requirements

The DBE requirements of 49 CFR Part 26 apply to this Project. To be eligible for award of this Contract, each Proposer shall submit a UDBE Performance Plan in Appendix A as part of a responsive Proposal.

The UDBE Performance Plan will be considered in the technical evaluation scoring.

1.3.9.1 *UDBE Goals*

WSDOT has established UDBE Goals in the amount of ***$$1$$*** percent of the design portion and ***$$2$$*** percent of the construction portion this project. Design elements include technical reports/memoranda, design survey, geotechnical testing and engineering, utilities investigation and design, pavement design, structures design (bridges and retaining walls), drainage design, stormwater/water quality management plans, landscape architecture and design, civil roadway design, traffic engineering, lighting design, and quality assurance. Unless a modification is requested and approved,

all elements of the project not included in the design elements shall be considered part of the construction elements.

2.0 Procurement Process

2.1 *Confidentiality and Conflicts of Interest*

2.1.1 Organizational Conflicts of Interest

Organizational conflicts of interest means that because of other activities or relationships with other persons or entities, a person or entity:

Is unable or potentially unable to render impartial assistance or advice to WSDOT.

Is or might be otherwise impaired in its objectivity in performing the Contract Work.

Has an unfair competitive advantage.

The integrated nature of the design-build project delivery method creates the potential for Organizational Conflicts of Interest. Disclosure, evaluation, neutralization, and management of these conflicts and of the appearance of conflicts, is in the interests of the public, WSDOT, and the consulting and construction communities.

WSDOT will take steps to ensure that individuals involved in the preparation of the procurement package, evaluation of SOQs and Proposals, and Design-Builder selection are not influenced by organizational conflicts of interest, and that no Proposer is given an unfair competitive advantage over another.

Attention is directed to the requirement for disclosure of organizational conflicts of interest set forth in 23 CFR Section 636.116(a)(2), WSDOT Secretary's Executive Order E-1059.00, and *WSDOT Organizational Conflicts of Interest Manual* M3043.

As stated in the *WSDOT Organizational Conflicts of Interest Manual*, it is the Proposer's responsibility to avoid or neutralize potential conflicts of interest. Proposers are required to disclose all relevant facts concerning any past, present, or currently planned interests, activities, or relationships which may present an organizational conflicts of interest. Proposers shall state how their interests, activities, or relationships, or those of the chief executives, directors, key Project personnel, or any proposed Consultant, Sub-Consultant at any tier, Contractor, or Subcontractor at any tier may result, or could be viewed as, an organizational conflicts of interest prior to or in the Proposal, in accordance with Secretary's Executive Order E 1059 and WSDOT *Organizational Conflicts of Interest Manual* M 3043. Submit the Organizational Conflicts of Interest Certification and Organizational Conflicts of Interest Disclosure and Avoidance/Neutralization Plans (Forms R and S of this ITP).

If an Organizational Conflicts of Interest is determined to exist, WSDOT may, at its sole discretion, offer the Proposer the opportunity to avoid or neutralize the Organizational Conflicts of Interest; disqualify the Proposer from further participation in the procurement; cancel this procurement; or, if award has already occurred, declare the Proposal non-responsive and award the contract to the next responsive best value Proposer, or cancel the Contract. If the Proposer was aware of an Organizational Conflicts of Interest prior to award of a Contract and did not disclose the conflict to WSDOT, WSDOT may terminate the Contract for default.

$$1$$

2.1.2 Confidentiality During Evaluation and Selection Process

Subject to applicable law, WSDOT will use reasonable efforts to maintain confidentiality during the Proposal process. The foregoing shall not preclude WSDOT from using, in its sole discretion, ideas contained in the Proposals of any unsuccessful Proposer, subject to WSDOT's payment of the Stipend in accordance with Section 7 of this ITP.

2.2 *Examination of RFP*

Each Proposer shall be solely responsible for reviewing and examining, with appropriate care, all documents included in the RFP, including any supplements, addenda, and clarification notices issued by WSDOT; requesting an explanation or interpretation of any discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that the Proposer fails to understand; and investigating and informing itself of any and all Project conditions and circumstances that may in any way affect the contents of the Proposal or the performance of the Work after Contract award. The Proposer bears the risk of all consequences of any failure to thoroughly investigate all relevant Project and Project site conditions and circumstances as described herein.

2.3 *Communications*

WSDOT's Representative for receiving Proposer questions, ATC submittals, and all other communications about the Project and the RFP (other than physical submission of the Proposals) is as follows:

$$1$$

Except for communications expressly permitted by the RFP, the Proposer shall not discuss the RFP with other WSDOT staff members or WSDOT consultants involved with the Project before Contract execution or cancellation of the RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of WSDOT.

Proposals shall be submitted to Jenna Fettig in accordance with Section 3 of this ITP.

2.4 *Submission of Proposer Questions*

Any Proposer questions regarding a perceived discrepancy, deficiency, ambiguity, error, or omission contained in the RFP documents, or of any provision that the Proposer otherwise fails to understand regarding the RFP documents or the Project, must be submitted by email to WSDOT's Representative by the deadline for questions set forth in Section 1 of this ITP. Requests for clarification or interpretation must specifically reference the Sections and the page numbers of the RFP documents, unless such request is of a general application. Telephone requests will be accepted provided that the requests are followed by an email to WSDOT's Representative at the address specified above. WSDOT will provide responses to questions as described below.

2.5 *RFP Addenda and Responses to Questions*

WSDOT may issue Addenda to the RFP. WSDOT will provide responses to all questions received in accordance with this Section. All Addenda and responses will be posted on WSDOT's Contract Ad and Award website at: ***$$1$$***

WSDOT will send an email notification to the interested parties list as soon as each addendum, response or group of responses is issued. Notwithstanding the foregoing, WSDOT will communicate with each Proposer on a one-on-one basis with regard to questions regarding ATCs that WSDOT determines are appropriate for confidential communications.

A final set of questions and answers will be compiled and distributed prior to the Proposal Due Date. Responses to questions are not considered part of the Contract, and shall not be relevant in interpreting the Contract, except as they may clarify provisions otherwise considered ambiguous.

If WSDOT determines, in its sole discretion, that any interpretation or clarification resulting from the question and answer process requires a change in the RFP documents, WSDOT will issue an Addendum making such change. WSDOT will not be bound by, and the Proposer shall not rely on, any oral communication or representation regarding the RFP documents, or any written communication except to the extent that it is an Addendum to this RFP and is not superseded by a later Addendum to this RFP, and except to the extent provided above regarding responses to questions.

2.6 *Right of Way Access*

Prior to award of the Contract, if the Proposer determines that field investigations are necessary to properly bid the Work, the Proposer shall request Right of Way access from WSDOT prior to performing any field investigations. The Proposer shall obtain an Application for General Permit and/or ***$$1$$*** from WSDOT. Applicable forms shall be submitted to WSDOT for approval 7 Calendar Days in advance of the requested field investigation date.

The Proposer shall coordinate with WSDOT to determine if traffic control is necessary. Proposed Maintenance of Traffic Plans shall be submitted for approval a minimum of 7 Calendar Days in advance, and include the hours and days personnel will be in WSDOT's Right of Way. As guidance, Section 2.22, *Maintenance of Traffic*, of the Technical Requirements provides the allowable Contract Work hours and lane closure times.

The Proposer shall coordinate with WSDOT to access the property owned by WSDOT available for use as a Project construction office.

2.7 *Geotechnical Information*

2.7.1 Geotechnical Baseline Report

WSDOT has prepared a Geotechnical Baseline Report (GBR), in Appendix G of the RFP. Each Proposer is solely responsible for reviewing the GBR and incorporating the baselines into their proposal. The GBR shall not be used for design.

2.7.2 Geotechnical Data Report

WSDOT has prepared a Geotechnical Data Report (GDR), in Appendix G of the RFP. Each Proposer is solely responsible for reviewing, analyzing, and forming their own conclusions about the Project subsurface and geotechnical conditions using the data presented in the GDR. Each proposer is solely responsible to draw conclusions from the GDR about how the geotechnical materials will impact the Work.

Post-award, the data in the GDR may not be sufficient for design. Each proposer is responsible to augment the data in the GDR, as necessary, to meet the requirements of the Request for Proposal and Mandatory Standards to complete the Work.

To the extent not consumed by testing, soil samples and rock cores obtained to develop the GDR are available for viewing at the WSDOT State Materials Laboratory Geotechnical Office, 1655 South Second Avenue, Tumwater, Washington, 98512. Soil samples and rock core from the GDR will be turned over to the Design-Builder after the Contract is awarded and upon the request of the Design-Builder. The Design-Builder has 90 Calendar Days to request the samples. After 90 Calendar Days, WSDOT will dispose of the samples.

2.7.3 Supplemental Boring Program and Supplemental Geotechnical Data Report

Each Proposer may be entitled to obtain certain additional geotechnical information by means of a Supplemental Boring Program that WSDOT will conduct at WSDOT's own expense. Under the Supplemental Boring Program, each Proposer may request WSDOT to perform up to ***$$1$$*** additional test borings and to provide an analysis of the resultant samples.

A request under the Supplemental Boring Program shall be submitted no later than the Request for Supplemental Boring Deadline set forth in Section 1.3.6 of this ITP. Each request shall set forth the location (by station and offset) and highest bottom elevation of the requested borings. Each request shall also include specific requests regarding the frequency and depth of field vane tests; the locations of split-spoon samples and Standard Penetration Tests; the length and diameter of rock cores; the depth of disturbed samples, undisturbed samples, and rock cores sought by the Proposer; and the tests the Proposer desires WSDOT to conduct in relation to the sample gathered.

WSDOT will make reasonable efforts to comply with Proposers' requests under the Supplemental Boring Program, but is not obligated to conduct borings at the precise locations requested. To the extent boring locations requested by one or more Proposers are within 20 feet of each other, the locations will be averaged and only one test boring will be conducted. If a Proposer's boring is averaged with another Proposer's boring, neither Proposer will be allowed an additional boring. Survey personnel provided by WSDOT will establish the boring locations and elevations. WSDOT staff or its representatives will perform and inspect the borings. At the option of the Proposers, each Proposer may dispatch a maximum of one person to observe the drilling, sampling, testing, and coring, and shall coordinate transportation of the chosen observer to the drilling site with WSDOT. The Proposers' on-site observers shall not interfere with the operation of the surveyor, driller, or inspector.

The WSDOT drill crew or drilling contractor will conduct the following sampling and testing:

- Split-spoon samples and Standard Penetration Tests at 5-foot intervals and every change in stratum.
- Minimum NQ-size rock cores.
- Minimum 10-foot rock cores with RQD.
- Field vane shear tests in soft clays.
- Electronic cone penetrometer testing
- Conventional laboratory classification testing on disturbed soil samples.
- Conventional laboratory tests on rock samples.

- Such other tests requested by a Proposer and agreed to by WSDOT at WSDOT's sole discretion.

WSDOT will perform the test borings in whatever manner or sequence it deems appropriate at WSDOT's sole discretion.

At the completion of the Supplemental Boring Program, WSDOT will prepare a Supplemental Geotechnical Data Report (SGDR) that includes the final boring logs and laboratory test results. The SGDR will be provided to all Proposers in accordance with Section 1 of this ITP and will be included in Appendix G of the RFP. Soil and rock samples that are not consumed by testing will be stored for inspection by the Proposers at the WSDOT State Materials Laboratory in Tumwater, Washington. To the extent not consumed by testing, the soil samples and rock core resulting from the Supplemental Boring Program will be turned over to the Design-Builder after the Contract is awarded and upon the request of the Design-Builder. The Design-Builder has 90 Calendar Days to request the samples. After 90 Calendar Days, WSDOT will dispose of the samples.

WSDOT makes no representation as to whether the Supplemental Boring Program will be sufficient for the Proposer to prepare its Proposal. Each Proposer shall make this determination independently based upon its own independent judgment and experience. Failure by a Proposer to submit a request for test borings under the Supplemental Boring Program constitutes a conclusive presumption that the Proposer has determined that it does not require any additional geotechnical data to properly design, construct, and price the Work, or that it will obtain any necessary geotechnical data through other means. If permits are required for supplemental borings (in addition to those permits already required for the Project), WSDOT may not be able to permit the borings within the deadline.

2.7.4 Additional Geotechnical Investigation and Analysis

Prior to award of the Contract, if the Proposer determines that additional geotechnical or subsurface investigations are necessary to properly bid the Work, it is the responsibility of the Proposer to perform such investigation and analysis at its sole expense. Prior to performing any field investigations, the Proposer shall obtain Right of Way access approval as detailed in Section 2.6 Geotechnical of this ITP from WSDOT. Such requests for investigations may take place at any time before or after submission of the Proposal. All subsurface investigations, including sampling and laboratory testing, shall be performed in accordance with the *Geotechnical* Design *Manual* (Appendix D), the 1988 AASHTO *Manual on Subsurface Investigations*, AASHTO standards, and ASTM standards. No such investigations shall be performed without the prior written consent of WSDOT, which consent may be granted or denied at WSDOT sole discretion.

2.8 *Alternative Technical Concepts (ATC)*

To promote innovation by Proposers and to maintain flexibility in the procurement process, WSDOT will allow Proposers to submit to WSDOT for consideration ATCs that modify the Basic Configuration or other Contract requirements. In order to be approved, an ATC must be deemed, in WSDOT's sole discretion, to provide a Project that is "equal or better" on an overall basis than the Project would be without the proposed ATC. Concepts that simply delete scope, lower performance requirements, lower standards, or reduce contract requirements are not acceptable as ATC's.

Proposers are reminded that the Contract contains restrictions on the Design-Builder's ability to obtain an adjustment in the Contract Price or Contract Time relating to differing site conditions and/or unknown Utilities in relation to ATC's.

2.8.1 Pre-Proposal Submittal of ATC's

To be considered, a proposed ATC must be submitted to WSDOT no later than ***$$1$$*** Pacific Time on the date set forth in Section 1.3.6 of this ITP. This deadline also applies to revised submissions in response to WSDOT's comments. Each ATC submittal package shall be submitted via email in a single PDF file, shall include line numbers on all narrative pages, and shall address all of the following elements:

- Brief Description: A few words identifying the ATC, for future reference.
- Detailed description: A detailed description and schematic drawings of the configuration of the ATC or other appropriate descriptive information including, if appropriate, product details, and specifications.
- Usage: A description of where and how the ATC would be used on the Project.
- Subsurface Investigation: Present a geotechnical investigation related to the ATC including all supporting documentation. Said investigation shall include the Proposer's geotechnical basis of design.
- Proposed RFP modifications: References to all requirements of the RFP that are modified by the proposed ATC with an explanation of the nature of the modification from said requirements and a request for approval of such modifications. Use addendum or tracked changes format.
- Design Analyses: If the ATC requires "Design Analysis" as defined in Section 300 of the *Design Manual (Appendix D)*, the submittal package shall include documentation for the design analysis which conforms to the *Design Manual (Appendix D)*. No design analysis shall be incorporated into an ATC without receiving WSDOT approval, and FHWA approval as applicable.
- Analysis: An analysis justifying use of the ATC and demonstrating how the Project with the ATC is "equal or better" than the Project without the ATC. The "equal or better" analysis shall address the following:
  a) Functionality, which when appropriate shall require a traffic operational analysis.
  b) Structural adequacy.
  c) Safety.
  d) Comparison of life cycle costs including repair and maintenance.
  e) Aesthetics.
  f) Impacts on construction traffic.
  g) Effect on or changes to environmental commitments identified in the RFP.
  h) Impacts to surrounding and adjacent communities.
  i) Changes needed in the location, length, height, or number of noise walls.
  j) Impact on utilities and rail.
  k) Discussion of additional Right of Way or easements required.

Do not submit any data indicating the effect that approval of the ATC will have on the Proposal Price.

If a Proposer wishes to make any announcement or disclosure to third parties (such as other governmental agencies that may have an interest in the ATC) concerning any ATC, it must first notify WSDOT of its intent to take such action, including details as to date and participants, and obtain WSDOT's prior approval to do so.

2.8.2 Pre-Proposal Review of ATC's

Incomplete ATC submittal packages may be returned by WSDOT without review or comment. WSDOT may, at its discretion, request additional information regarding a proposed ATC, conduct one-on-one meetings with Proposers to discuss ATCs, and/or establish such protocols or procedures as it deems appropriate for conducting one-on-one meetings. Subject to the Washington Public Records Act, and to WSDOT's right to use proposed concepts following award of the Contract based on payment of the Stipend, all discussions with Proposers regarding ATCs will remain confidential.

Although WSDOT reserves the right in its sole discretion to reject any ATC, ATC's specifically not eligible for approval, include the following:

ATCs that are, in WSDOT's sole discretion, deemed not to provide a Project that is "equal or better" on an overall basis than the Project would be without the ATC.

Any ATC that would require excessive time or cost for WSDOT review, evaluation, or investigation.

In order to be approved, an ATC must be deemed, in WSDOT's sole discretion, to provide a Project that is "equal or better" on an overall basis than the Project would be without the proposed ATC. Potential changes to the Proposal Price will not be considered by WSDOT in the "equal or better" determination.

2.8.3 WSDOT Response

WSDOT will respond to all ATCs within 14 Calendar Days of ATC receipt, provided that WSDOT has received all requested information regarding the ATC. The format for response should include the ATC number, brief description, and shall be limited to one of the following:

1. The ATC is approved.
2. The ATC is not approved.
3. The ATC is not approved in its present form, but may be reconsidered for approval upon satisfaction, in WSDOT's sole discretion, of certain identified conditions that must be met or certain clarifications or modifications that must be made as described hereunder. The Proposer shall not have the right to incorporate this ATC into the Proposal unless and until the ATC has been resubmitted within the time limits in the ITP, with the conditions stated below satisfied, and WSDOT has unconditionally approved the revised ATC.
4. The submittal does not qualify as an ATC but appears eligible to be included in the Proposal without an ATC (i.e., the concept appears to conform to the Basic Configuration and to be consistent with other Contract requirements).

WSDOT approval of an ATC extends solely to the information contained in the ATC submittal.

2.8.4 Incorporation into Proposal

The Proposer may include any or all approved ATC's in its Proposal. The Proposal Price shall reflect any incorporated ATC's. Except for incorporating approved ATC's, the Proposal shall not otherwise contain exceptions to or variations from the requirements of the RFP. If WSDOT responded to an ATC by stating that certain conditions must be met prior to granting approval, the Proposer shall not have the right to incorporate the ATC into the Proposal unless and until the ATC has been timely resubmitted with the conditions satisfied and WSDOT has approved the ATC in writing. Once an ATC has been approved, only the entire ATC is eligible for inclusion into the Proposal. The inclusion of partial ATCs into a Proposal is not allowed.

WSDOT's geotechnical investigation and subsurface utilities investigation conducted for this Project and included in the RFP was based on the Conceptual Design and Basic Configuration. Therefore, the geotechnical information and subsurface utilities information provided in the RFP does not purport to represent site conditions for an ATC.

Consequently, with respect to geotechnical investigations, the Proposer is responsible for conducting its own geotechnical investigation prior to the Proposal due date, for changes to the Conceptual Design or Basic Configuration, if any, that are approved as part of an ATC. When conducting the geotechnical investigation, Design-Builder may take into consideration the geotechnical information provided in the RFP to supplement its own analysis as applied to the Design-Builder's design addressed in the ATC. The Proposer's geotechnical investigation included in the ATC submittal, once accepted by WSDOT, will form the basis upon which differing site conditions will be addressed under the Contract for Work implemented as part of an ATC.

With respect subsurface utilities, WSDOT has performed preliminary investigations of existing Utilities located within the Project's Right of Way as designated in the RFP absent modification by an ATC. The Proposer will be responsible for conducting its own investigation relating to all utilities located outside of said Right of Way.

The Design-Builder shall conduct all Work necessary to update the Basis of Design and the Alternative Comparison Table for the Project should any revisions be necessary due to an ATC.

2.9 *Change in Proposer's Organization*

If a Proposer wishes to change its form of organization from that described in its SOQ, or if it wishes to add or remove any Major Participant or Key Personnel (as such terms are defined in the RFQ) from those identified in the SOQ, the Proposer shall obtain written approval of the change from WSDOT's Representative as specified in this Section prior to submitting its Proposal. To qualify for WSDOT's approval, the written request must demonstrate that the proposed change will be equal to or better than the Major Participant or Key Personnel identified in the SOQ. The written request shall include a resume (limit to 2 pages per person) for each Major Participant or Key Personnel and a side-by-side comparison of the original Major Participant or Key Personnel (as identified in the SOQ) and the proposed Major Participant or Key Personnel. For Major Participants, this side-by-side comparison shall relate relevant experience to each of the evaluation criteria identified in Section 7.6.2 of the RFQ.

For Key Personnel, this side-by-side comparison shall relate relevant experience to each of the Project Goals. Side-by-side comparisons shall demonstrate that the proposed change is equal or better. WSDOT is under no obligation to approve such requests and may approve or disapprove a portion of the request or the entire request at its sole discretion.

2.9.1 Liquidated damages for Key Personnel

Key Personnel Damages – If awarded the Contract, the Proposer shall make all Key Personnel, including Design Professionals, identified in the SOQ available at all times and places required under the terms of the Contract, and shall ensure that such Key Personnel devote all efforts necessary for all periods of time necessary or required under the terms of the Contract, to timely fulfill all Contract obligations.

If an individual filling one or more Key Personnel roles is not available for the Work, or does not maintain active involvement in the prosecution and performance of the Work, the Proposer acknowledges that WSDOT, the Work, and the Project will suffer significant and substantial damages and that it is impracticable and extremely difficult to determine the actual damages that would accrue in such an event. Therefore, if for any reason a substitution of Key Personnel identified in the SOQ is either requested by the Proposer or replacement is required by WSDOT, the Proposer agrees to pay liquidated damages in the amount identified below, per substitution, in addition to obtaining the required approval of the substituted Key Personnel from WSDOT. The Proposer understands and agrees that any damages payable in accordance with this Subsection are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances.

Key Personnel	Liquidated Damage Amount
Project Manager	***$$1$$***
Design Manager	***$$2$$***
Construction Manager	***$$3$$***

2.10 *Withdrawal of Proposal*

After submitting a Proposal to WSDOT, the Proposer may withdraw it if:

- The Proposer submits a written request signed by an authorized representative of the Proposer.

The original Proposal may be revised and resubmitted as the official Proposal if WSDOT receives the revised Proposal before the Proposal Due Date.

Any attempt by a Proposer to withdraw its Proposal after the time due on the Proposal Due Date, regardless of whether WSDOT requests a Best and Final Offer (BAFO), will result in a draw by WSDOT upon the Proposal Bond.

2.11 *WSDOT's Rights*

WSDOT reserves the right, at its sole discretion, to:

- Appoint evaluation committees to review Proposals.
- Investigate the qualifications of any Proposer.
- Seek or obtain data from any source related to the Proposals.

- Require confirmation of information furnished by a Proposer.
- Hold meetings and conduct discussions and correspondence with the Proposers to seek an improved understanding and evaluation of the responses to this RFP.
- Require additional information from a Proposer concerning its Proposal.
- Seek and receive clarifications to a Proposal.
- Require additional evidence of qualifications to perform the Work.
- Modify the RFP process.
- Waive minor deficiencies and irregularities in a Proposal.
- Reject any or all of the Proposals.
- Cancel, modify, or withdraw the RFP.
- Issue a new RFP.
- Issue a request for BAFOs.
- Cancel a Contract signed by the Apparent Best Value Proposer but not yet executed by WSDOT.
- Not issue Notice to Proceed after execution of the Contract.

The RFP does not commit WSDOT to enter into a Contract or proceed with the procurement described herein. Other than the right to receive a Stipend as described in Section 7 of this ITP, no unsuccessful Proposer shall be entitled to reimbursement of its costs in connection with the RFP.

2.12 *Announce Apparent Best Value*

The public opening of the sealed Price Proposal and announcement of apparent best value is scheduled for 11:00:59 a.m. Pacific Time on the date set forth in Section 1.3.6 of this ITP in Room SA-17, Service Level, Transportation Building, 310 Maple Park Avenue, Olympia, WA 98501.

2.13 *Award of Contract*

Typically, Contract Award or Proposal rejection will occur within 60 Calendar Days after the Proposal Due Date. If the Apparent Best Value Proposer and WSDOT agree, this deadline may be extended. If they cannot agree on an extension by the deadline, WSDOT reserves the right to award the Contract to the next Apparent Best Value Proposer or reject all Proposals. WSDOT will notify the successful Proposer of the Contract award in writing.

2.14 *Bonds*

2.14.1 Proposal Bond

Each Proposer shall submit a Proposal Bond with its Proposal in the amount of 5 percent of the Proposal Price, issued by a Surety meeting the requirements stated below. Alternatively, Proposers may submit cash, or a certified check or cashier's check payable to WSDOT in this amount. Proposal Bonds shall be issued in the form of Form F, and shall be signed by the Surety. A Proposal Bond shall not be conditioned in any way to modify the minimum 5 percent required. Proposals that fail to include a Proposal Bond or cash deposit in compliance with this Section shall be deemed non-responsive, and will be rejected by WSDOT.

2.14.2 Contract Bond

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

1. Be on the form provided in Appendix F.
2. Be signed by an approved Surety (or Sureties) that:
   a. Is registered with the Washington State Insurance Commissioner.
   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 Design-Builder within the prescribed time.
4. Be conditioned upon the payment of taxes, increases, and penalties incurred on the Project under titles 50, 51, and 82 RCW.
5. Guarantee that the Surety shall indemnify, defend, and protect WSDOT against any claim of direct or indirect loss resulting from the failure:
   a. Of the Design-Builder (or any of the employees, Subcontractors, or lower tier Subcontractors of the Design-Builder) to faithfully perform the Contract.
   b. Of the Design-Builder (or the Subcontractors or lower tier Subcontractors of the Design-Builder) to pay all laborers, mechanics, Subcontractors, lower tier Subcontractors, material person, or any other person who provides supplies or provisions for carrying out the Work.

WSDOT may require Sureties or Surety companies on the Contract Bond to appear and qualify themselves. Whenever WSDOT deems the Surety or Sureties to be inadequate, it may, upon written demand, require the Design-Builder to furnish additional Surety to cover any remaining Work. Until the added Surety is furnished, payments on the Contract will stop.

The Contract Bond is intended to provide protection to WSDOT for the Design-Builder's obligations with respect to the construction and post-construction phases of the Project, and to meet the requirements of RCW 39.08, et al.

2.14.3 Surety Qualifications

Bonds must be issued by a Surety with a Best's rating of at least "A-" or better and Financial Size Category of VIII or better by A.M. Best Co. The Surety shall be registered with the Washington State Insurance Commissioner, and shall appear on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner.

2.15 *Execution of Contract*

Within 20 Calendar Days after award of the Contract, the successful Proposer shall return the signed Contract prepared by WSDOT, together with the insurance certification, Contract Bond, and any other pre-award information required by the Contract and shall be registered as a contractor in the state of Washington.

Until WSDOT executes a Contract, no Proposal shall bind WSDOT. No Work shall begin within the Project limits or within sites furnished by WSDOT until issuance of Notice to

Proceed. The Design-Builder shall bear all risks for any Work begun outside such areas and for any materials ordered before the Contract is executed by WSDOT and Notice to Proceed has been issued.

If the Proposer experiences circumstances beyond its control that prevents execution of the Contract within 20 Calendar Days after receipt of documents, WSDOT may, at its discretion, grant up to a maximum of 20 additional Calendar Days for return of the executed Contract, provided WSDOT deems the circumstances warrant it.

2.16 *Failure to Execute Contract*

Failure to return the insurance certification, Contract Bond, or other pre-award information required by the Contract with the signed Contract, or failure or refusal to sign the Contract or failure to register as a contractor in the state of Washington, shall result in a call upon the Proposal Bond or forfeiture of the deposit in lieu of a Proposal Bond. If this should occur, WSDOT may then award the Contract to the second Best Value Proposer or reject all remaining Proposals. If the second Best Value Proposer fails to return the required documents as stated above within the time provided after award of the Contract, the Contract may then be awarded successively in a like manner to the remaining Best Value Proposers until the above requirements are met or the remaining Proposals are rejected.

2.17 *Return of Proposal 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 Proposal Bonds, except those subject to forfeiture, will be returned.

3.1 *Submittal Requirements*

3.1.1 Due Date, Time, and Location

Sealed Proposals must be submitted at one of the following locations prior to 11:00:59a.m Pacific Time, on the Proposal Due Date set forth in Section 1 of this ITP:

By U.S. mail:
Jenna Fettig
WSDOT Contract Ad & Award Office
P.O. Box 47360
Olympia, WA 98504-7360

By hand (in person or by courier):
WSDOT Contract Ad & Award Office
Transportation Building, Room 2D-20
310 Maple Park Avenue SE
Olympia, WA 98501-2361

Proposals delivered in person will be received only in the WSDOT Contract Ad & Award Office, Room 2D-20.

WSDOT will not accept Proposals by facsimile or electronic transmission. Any Proposal that fails to meet the deadline or delivery requirement will be rejected and returned to the Proposer without having been opened, considered, or evaluated.

3.1.2 Contents of the Proposal

The Proposal shall contain the Sections listed below, and shall respond fully to all applicable requirements of the RFP:

Table 3.1.2 CONTENTS OF THE PROPOSAL

PROPOSAL SECTIONS 1-***$$1$$*** AND APPENDICES	Page Limit
Section 1 – Executive Summary	2
Section 2 – DBE Participation	***$$2$$***
Section 3 – ***$$3$$***	***$$2$$***
Section 4 – ***$$4$$***	***$$2$$***
Section 5 – ***$$5$$***	***$$2$$***
Appendix A – Proposer Information and Certifications	None
Form A (Design-Build Proposal Form and Signature Page)	
Form D (Contract Time/Milestone Completion Deadlines)	
UDBE Performance Plan (per 3.3.3)	
Form E (Identification of Proposer, Guarantors, Major Participants, Earthwork Subcontractors, Structures Subcontractors, and Each Subconsultant and Subcontractor Performing 20 Percent or More of the design-build Work)	
Description of Legal Structure	
Joint and Several Liability Letter, (if applicable)	
Form G (Non-Collusion Declaration)	
Form H (Certification for Federal-Aid Contracts)	
Form K (Form of Guaranty)	
Form L (Utility Certification)	
Evidence of Authorization - Powers of Attorney	
Information and Work Site Certification	
Certification Regarding Changes to Key Personnel and Major Participants	
Certification Regarding Right of Way	
Form M (Stipend Agreement)	
Form N (Stipend Invoice)	
Form O (WSDOT Form 271-015 Subcontractor List)	
Form Q (Option for Use of WSDOT-Owned Property)	
Form R (Organizational Conflicts of Interest Certification)	

PROPOSAL SECTIONS 1-***$$1$$*** AND APPENDICES	Page Limit
Form S (Organizational Conflicts of Interest – Disclosure and Avoidance/Neutralization/Mitigation Plan)	
Appendix B – Resumes	2 Pages per Person
Appendix C – Details of Technical Approach and Innovations	None
Appendix D - UDBE Performance Plan	

*The page limits listed here are specific to the narratives and organizational charts. There is no page limit for the Preliminary Baseline Contract Schedule, plans, or other technical data provided in each Section.

PROPOSAL SECTION -***$$1$$***	Page Limit
Section -***$$6$$*** – Price Proposal	None
Part I – Price Proposal	
Form B (Price Proposal)	
Form F (Proposal Bond)	
Part II – Upset Amount Determination	
Form C (Upset Amount Determination)	

3.1.3 Format

All information in the Proposal shall be submitted on 8.5-inch by 11-inch paper, except charts, exhibits, and other illustrative and graphical information, which may be submitted on 11-inch by 17-inch paper. Folding of the paper to 8.5-inch by 11-inch size, with the title block showing, is acceptable but not mandatory. Each of these 11-inch by 17-inch pages will count as one page in the narrative Proposal unless otherwise noted in this ITP. Any plan sheets in the Proposal will not count toward the page limit. Covers, divider pages, and appendices are not included in the page limitations. Pages may be printed double-sided and are counted as two pages for the page limitations presented in this Section. Text for the Proposal narrative technical Sections shall use Times New Roman font, 12-point type. No text, charts, tables, graphical information, or other substantive content shall be printed within 0.75 inch of any page edge. Any other materials shall be presented with a readable format. The organization chart must be readable and all dimensional information provided in the Proposal shall be in English units. All pages that exceed the specified page limit will be removed prior to evaluation.

3.1.3.1 *Appendices*

Resumes, if provided for Project personnel other than Key Personnel, shall be included in Appendix B. Resumes shall be limited to two pages per person.

A complete copy of each ATC, if provided, shall be included in Appendix C of the Proposal.

A UDBE Performance Plan in Appendix D in accordance with Section 3.3.3 of this ITP.

Additional appendices may be used for clarification and/or illustrative purposes. Appendices would typically consist of plan sheets or other illustrative information and should not include narrative text except as specifically required by this ITP. The need or use of additional appendices is at the discretion of the Proposer and may, or may not, be used by WSDOT in the evaluation of the Proposal.

3.1.4 Page Limits, Copies, and Submission Instructions

The page limits for each Section of the Proposal are identified in Table 3.1.2 of this ITP. The Proposal shall be packaged in sealed packages clearly displaying the Proposer's name, contact person, and address on the outside of each Proposal package and labeled as follows:

- Proposal for ***$$1$$***.
- Submittal deadline - date and time.
- Proposer's name, contact person, and address.
- Box X of the total number of boxes.

The Proposal shall consist of the following two divisions:

1) Technical Proposal Sections *$$2$$***:**

Each Proposer must provide the following:

- One original Proposal bearing original signatures.
- Two USB flash drives, each containing an electronic copy of the Proposal in PDF format (compatible with Adobe Acrobat, Version 10) with Sections and subsections bookmarked, and all electronic files used to create the Proposal including CADD files, field survey, and site investigation files.
- ***$$3$$*** copies of the Proposal.

The original shall be identified as "ORIGINAL" on its front cover in colored ink. Each copy must be bound and identified on its front cover, in the upper right-hand corner, as "Copy X of ***$$4$$*** Copies."

2) Price Proposal Section *$$5$$***:**

Each Proposer must provide the following:

- One original Price Proposal bearing original signatures.

The Price Proposal shall be organized into two parts as described in Table 3.1.2 of this ITP. The Proposer shall use tabbed dividers to separate the contents of Part I of the Price Proposal.

The Price Proposal and the Upset Amount Determination shall be placed into two separate, sealed envelopes marked "Part I: Price Proposal" and "Part II: Upset Amount Determination", respectively. These two envelopes shall then be placed into a third sealed envelope clearly marked on the front as follows:

- Price Proposal Section ***$$6$$***.
- ***$$7$$***.
- Submittal deadline - date and time.
- Proposer name, contact person, and address.

(See Section 3.1.1 of this ITP for Proposal Delivery).

3.2 *Disqualification*

Failure to use sealed packages and envelopes or to properly identify and label any Proposal package may result in an inadvertent opening prior to the appointed time and place, and it may result in disqualification of the Proposal. The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal that result from such inadvertent opening, if WSDOT determines that the Proposer did not follow the instructions in this ITP. It is Proposer's sole responsibility to ensure that its Proposal is received as required. Proposals received after the Proposal Due Date will be rejected without consideration or evaluation. Proposers shall provide responses to all information requested in the RFP. Failure to respond or to provide requested information may result in a determination by WSDOT, in its sole discretion, that a Proposal is non-responsive.

3.3 *Technical Proposal*

3.3.1 General

The Technical Proposal shall include concise narrative descriptions and graphic illustrations, drawings, charts, technical reports, and calculations that will enable WSDOT to clearly understand and evaluate both the capabilities of the Proposer and the characteristics and benefits of the proposed Work. No price information of any kind may be included in the Technical Proposal. A complete copy of all approved ATCs incorporated into the Proposal, including WSDOT's approval letters issued pursuant to Section 2.8 of this ITP, shall be included in Appendix C of the Proposal.

Plans or drawings submitted as a part of the Technical Proposal shall be submitted in accordance with the requirements of the RFP. The Technical Proposal must be organized to correspond to the items listed in this Section and address the evaluation factors set forth in this Section and in Section 4.2 of this ITP. The Proposer shall use tabbed dividers to separate the contents of the Technical Proposal.

3.3.2 Executive Summary (Section 1)

Submit an Executive Summary, written in a Plain Language that contains sufficient information to familiarize reviewers with the Proposer's Project approach and ability to satisfy the Project goals; and the financial, legal, and technical requirements of the Project. The Executive Summary shall summarize each of the Sections required in this ITP. The intent is to familiarize reviewers who will not be reading each individual Section of the Proposal.

3.3.3 DBE Participation (Section 2)

WSDOT seeks a Proposer that will meet or exceed the assigned UDBE Goal in both the design and construction portions of the project. WSDOT sees value in a Proposer who utilizes a proactive and collaborative approach on a regular basis to solicit interest and bids from UDBE Subcontractors/Subconsultants on work opportunities arising from this project.

Submit: A UDBE Performance Plan

The UDBE Performance Plan shall reflect UDBE commitments/methods to be used by the Proposer to obtain DBE participation, in order to achieve the design and construction UDBE Goal(s.).

The UDBE Performance Plan must contain, at a minimum, the following elements:

1) Identification of a DBE Program Administrator, whose responsibilities shall include, at a minimum, implementing the UDBE Performance Plan on a day-to-day basis, providing technical assistance to DBEs, disseminating information to DBEs on available business opportunities, and more.

2) Resume of DBE Program Administrator relative to experience with implementing DBE program requirements on Federal-aid contracts.

3) A policy statement signed by Proposer's authorized representative, expressing the Proposer's commitment to utilize DBEs, outlines the various levels of responsibility and describes the objectives of the UDBE Performance Plan. The Proposer shall obtain the written commitment of all Design-Builder related entities to comply with and advance the intent of the policy statement.

4) A description of proposed actions/strategies that will be used (on a regular basis) by the Proposer to solicit interest and bids from DBE Subcontractors/Subconsultants on work opportunities arising from this project. The Proposer should including the use of services minority/women community organizations; minority/women contractors' groups; local, State, Federal minority/women business assistance offices and other organizations.

5) A list of projected DBE bid opportunities (scopes of work, including a projected schedule) and any UDBE commitments to date.

6) A description of proposed efforts to identify contract work items normally completed by the Proposer into economically feasible units (e.g. smaller tasks or quantities) with flexible timeframes for performance and delivery to facilitate DBE participation

7) A description of efforts by the Proposer to provide DBEs with adequate information about the plans, specifications, and requirements.

8) A description of efforts by the Proposer to help remove barriers to DBE Participation, such as waiving bonding requirements, PLA requirements, et al.

9) A description of efforts by the Proposer to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

10) A description of proposed procedures identifying how and why an UDBE is deemed unqualified.

11) Commitment by the Proposer to submit monthly reports on DBE participation to date.

12) Identify all UDBE Commitments for the design portion of the project, including work description.

13) The Proposer needs to describe how they will negotiate in good faith with interested DBEs. It is the proposer's responsibility to make portions of the work available to DBEs and to select those portions of the work and/or material needs to be consistent with the DBE availability.

Evaluation Criteria: The approach to DBE Participation will be evaluated on its ability to achieve the WSDOT Project Goal:

DBE Participation - Meets and/or exceeds UDBE requirements throughout the life of the project with an integrative approach to maximize UDBE participation.

In order to receive an adjectival rating of "Excellent"," the UDBE Performance Plan shall contain all the minimum elements and specific approaches and/or commitments that are considered to exceed the RFP requirements/objectives such as:

1. Defining DBE commitments to date (including work descriptions), commitments to remove barriers to DBE participation through waiver of certain contract matters such as bonding requirements and PLA requirements (as evidenced by examples of actual DBE Sub-contractor/Sub-consultant contract language to be used on this project)

2. Proposed strategies used to solicit interest and bids from DBEs that will result in the DBE percentage goals being attained

3. The Proposer cites recent examples of successful DBE participation on past projects and/or a high percentage of race neutral participation

4. References confirm a consistent commitment to exceeding the DBE goals

To receive a rating of "Very Good", the submitted plan shall contain all the minimum elements and thorough details on how it meets all of the elements identified above.

To receive a rating of "Good", the submitted plan shall contain all of the minimum elements but may lack some details as to how all of the elements identified above will be met.

Any submitted UDBE Performance Plan that does not include all of the above elements shall receive an adjectival rating of "Fair".

3.3.4 ***$$1$$*** (Section 3)

$$2$$

Submit: ***$$3$$***

Evaluation Criteria: The ***$$4$$*** will be evaluated based on its ability to achieve the following WSDOT's Project goal:

$$5$$

3.3.5 ***$$1$$*** (Section 4)

$$2$$

Submit: ***$$3$$***

Evaluation Criteria: The ***$$4$$*** will be evaluated based on its ability to achieve the following WSDOT's Project goal:

$$5$$

3.3.6 ***$$1$$*** (Section 5)

$$2$$

Submit: ***$$3$$***

Evaluation Criteria: The ***$$4$$*** will be evaluated based on its ability to achieve the following WSDOT's Project goal:

$$5$$

3.3.7 Appendix A - Proposer Information and Certifications

The Proposer shall provide the following forms and other information in Appendix A of the Proposal:

1. Form A (Design-Build Proposal Form and Signature Page). If the Proposer is a joint venture, Form A must be executed by all joint venture members.

2. Form D (Contract Time/Milestone Completion Deadlines). Form D includes a blank entitled "Contract Time Bid" to be filled in by the Proposer for the purpose of establishing the deadline for Substantial Completion of the Project. The number of Calendar Days entered for "Contract Time Bid" on Form D will be used in Section 4.2 of the Contract Form to establish the Contract Time. The Proposer shall determine the number of Calendar Days to be included for "Contract Time Bid" on Form D pursuant to its plan for performance of the Work, taking into account the liquidated damages provided in the Contract.

   The number of days to be shown shall start on the first Calendar Day after Notice to Proceed and shall end on the scheduled date of Substantial Completion. All requirements of the Contract shall be considered in determining the number of Calendar Days shown for Contract Time Bid on Form D. In making such determination, the Proposer shall adjust the resources and rates of production so that Substantial Completion is accomplished no later than ***$$1$$***.

   If the Proposer fails to complete and submit Form D or fails to submit a bid for the Contract Time Bid item, WSDOT will consider the bid non-responsive.

   The Milestone Completion Deadlines provided on Form D will be considered as commitments by the Proposer in the execution of the Contract. The milestones provided and the proposed duration from Notice to Proceed will be considered in the evaluation as described in Section 3.3.4 of this ITP.

3. DBE Performance Plan in accordance with Section ***$$2$$***of this ITP.

4. Form E (Identification of Proposer, Guarantors, Major Participants, Earthwork Subcontractors, Structures Subcontractors, and Each Subconsultant and Subcontractor performing 20 Percent or more of the design-build Work). Design Builder shall verify that all Subcontractors listed, should be confirmed (not suspended of debarred), in accordance with 48 CFR § 9.4, DOT Order 4200.5E, and Construction Manual 1-116.

5. Description of Legal Structure - A detailed description of the legal structure of the entity making the Proposal. If the Proposer is a partnership or joint venture, the Proposer shall attach the full names and addresses of all partners or joint ventures, identify the equity ownership interest of each entity, and provide formation and organization information for each general partner or joint venture. If the Proposer is a limited liability entity, the

Proposer shall attach full names and addresses of all equity holders in the limited liability entity and identify any entities that are financially responsible in any way for the limited liability entity. If the Proposer has not previously submitted final legal structure organizational documents, the Proposer shall attach said documents to the Proposal in this Section. Failure to submit final legal structure organizational documents to WSDOT either prior to or with the Proposal shall render the Proposal non-responsive.

6. Form G (Non-Collusion Declaration).
7. Form H (Certification for Federal-Aid Contracts).
8. Joint and Several Liability Letter - If the Proposer is a joint venture, the Proposer shall attach a letter signed by an authorized representative of each joint venture stating that the joint venture agrees to be held jointly and severally liable for any and all of the duties and obligations of the Proposer under the Proposal, and if awarded, under the Contract. The Proposer shall attach evidence to each letter that the person signing the letter has authority to do so.
9. Form K (Form of Guaranty). If the Proposer is a limited liability entity, the Proposer shall include a commitment letter from each of the equity holders of the Proposer, agreeing to provide a guaranty of the Proposer's obligations on Form K.
10. Form L (Utility Certification). The Proposer shall complete Form L.
11. Evidence of Authorization. Evidence of authorization to execute and deliver the Proposal and the Contract. If such authorization arises out of one or more powers of attorney, copies of the powers of attorney shall be attached as well as certified copies of the appropriate resolutions from the applicable entities' governing bodies authorizing said powers of attorney. If the Proposer is a partnership or a joint venture, such evidence shall be provided for the Proposer and for each of its general partners/joint venture members, at all tiers, and in all cases certified by an appropriate officer.
12. Information and Work Site Certification - A certified statement that the Proposer has, prior to submitting its Proposal, in accordance with generally accepted engineering and construction practices, reviewed the Reference Documents and other information provided by WSDOT; inspected and examined the site and surrounding locations; and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions that are discernible from the surface and affect the Project, to the extent the Proposer deemed necessary or advisable for submittal of a Proposal. The certified statement should specifically indicate that as a result of such review, inspection, examination, and other activities, the Proposer is familiar with and accepts the site and the physical requirements of the Work.
13. Certification Regarding Changes to Key Personnel and Major Participants - A signed statement that the Key Personnel and Major Participants identified on the Proposer's SOQ have not changed. Alternatively, the Proposer may attach a WSDOT approval letter regarding any such changes to Key Personnel or Major Participants.
14. Certification Regarding Right of Way - A signed statement that the Proposer will construct the Work within the Right of Way identified in the RFP. Alternatively, the Proposer may attach a WSDOT approval letter regarding any ATC that contemplates construction of the Work outside of the Right of Way identified in the RFP.
15. Form M (Stipend Agreement). The Proposer shall complete Form M.

16. Form N (Stipend Invoice). The Proposer shall complete Form N.
17. Form O (WSDOT Form 271-015 Subcontractor List) prepared in compliance with RCW 39.30.060 as amended. The Proposal shall include a list of: (1) subcontractors who will perform the Work of heating, ventilation, air conditioning, plumbing as described in Chapter 18.106 RCW, and electrical as described in Chapter 19.28 RCW; (2) the Work those subcontractors will perform on the Contract; and (3) no more than one subcontractor for each category of Work identified, except when subcontractors vary with bid alternates, the bidder shall identify which subcontractor will be used for which alternate.
18. Form Q (Option for Use of WSDOT-Owned Property). The Proposer shall complete Form Q indicating its election to use the available WSDOT-Owned property at ***$$3$$***; or to decline the exercise of such option. If the Proposer indicates "yes" on Form Q submitted with its Proposal, the Proposer shall utilize the property in accordance with the Contract. If the Proposer indicates "no" on Form Q submitted with its Proposal, the Proposer is declining to use the WSDOT-owned property. In the event the Proposer fails to mark "yes" or "no" on Form Q, or if the Proposer fails to submit Form Q with the Proposal, it shall be deemed that the Proposer has elected to decline the option to use the WSDOT-owned property.
19. Form R (Organizational Conflicts of Interest - Disclosure and Avoidance/Neutralization Plan). The Proposer shall complete Form R.
20. Form S (Organizational Conflicts of Interest Certification.) The Proposer shall complete Form S.

3.3.8 Appendix B - Resumes

3.3.9 Appendix C - Details of Technical Approach and Innovations

3.3.10 Price Proposal (Section ***$$1$$***)

The Price Proposal shall include the information and documentation identified in this Section, Section 3.1.4, and Table 3.1.2 of this ITP.

Part I: Price Proposal

A. Form B (Price Proposal). The Proposer shall submit its Proposal Price divided into the categories identified on Form B. The total of these items on Form B will be the Contract Price.

B. Form F (Proposal Bond). The Proposal shall include a Proposal Bond in the form of Form F or alternative security as provided in Section 2.14.1 of this ITP.

Part II: Upset Amount Determination

D. Form C (Upset Amount Determination). The Proposer shall indicate on Form C if the total Proposal Price is less than or equal to the upset amount.

4.0 Proposal Evaluation Process

4.1 *General*

WSDOT will award the Contract (if at all) to the responsive Proposer who has complied with all of the requirements of the RFP, is technically qualified, and has the Best Value Proposal, as

determined in accordance with this Section. WSDOT will notify the successful Proposer and the unsuccessful Proposers.

4.2 *Technical Evaluation Scoring Summary*

The technical evaluation factors are tabulated in Table 4.2 below. Proposers may be disqualified for receiving a fail for any evaluation factor that is scored pass/fail. The technical evaluation score will be calculated by summing the Proposer's Technical Credits earned out of the Max Technical Credits shown in Table 4.2. The Sections will be evaluated against the evaluation criteria. During the evaluation process, information in any Section listed in Table 4.2 below can be used when scoring other Sections.

Table 4.2 TECHNICAL EVALUATION SCORING SUMMARY

TECHNICAL EVALUATION SCORE SHEET	MAX TECHNICAL CREDITS
TECHNICAL PROPOSAL - SECTIONS ***$$1$$***:	
Section 1 - Executive Summary	P/F
Section 2 –Goal #1 DBE Participation	***$$2$$***
Section 3 – Goal #2 ***$$3$$***	***$$4$$***
Section 4 – Goal #3 ***$$5$$***	***$$6$$***
Section 5 – Goal #4 ***$$7$$***	***$$8$$***
Appendix A – Proposer Information and Certifications	
Form A (Design-Build Proposal Form and Signature Page)	P/F
Form D (Contract Time/Milestone Completion Deadlines)	P/F
Form E (Identification of Proposer, Guarantors, Major Participants, Earthwork Subcontractors, Structures Subcontractors, and Each Subconsultant and Subcontractor Performing 20 Percent or More of the design-build Work)	P/F
Description of Legal Structure	P/F
Joint and Several Liability Letter (as applicable)	P/F
Form G (Non-Collusion Declaration)	P/F
Form H (Certification for Federal-Aid Contracts)	P/F
Form K (Form of Guaranty)	P/F
Form L (Utility Certification)	P/F
Evidence of Authorization	P/F
Information and Work Site Certification	P/F
Certification Regarding Changes to Key Personnel and Major Participants	P/F
Certification Regarding Right of Way	P/F
Form M (Stipend Agreement)	N/A
Form N (Stipend Invoice)	N/A
Form O (WSDOT Form 271-015 Subcontractor List)	P/F
Form Q (Option for Use of WSDOT-Owned Property)	N/A

TECHNICAL EVALUATION SCORE SHEET	MAX TECHNICAL CREDITS
TECHNICAL PROPOSAL - SECTIONS ***$$1$$***:	
Form R (Organizational Conflicts of Interest Certification)	P/F
Form S (Organizational Conflicts of Interest – Disclosure and Avoidance/Neutralization/Mitigation Plan)	P/F
Appendix B - Resumes	
Appendix C - Details of Technical Approach and Innovations	
Appendix D - UDBE Performance Plan	
PRICE PROPOSAL - SECTION *$$9$$***	
Part I - Price Proposal	
Form B (Price Proposal)	P/F
Form F (Proposal Bond)	P/F
Part II - Upset Amount Determination	
Form C (Upset Amount Determination)	P/F
GRAND TOTAL	***$$10$$***

4.3 *Responsiveness and Pass/Fail Review*

4.3.1 Initial Responsiveness Evaluation

WSDOT will conduct an initial review of the Proposals for responsiveness to the requirements set forth in the RFP, including compliance with the pass/fail criteria set forth in Section 4.2 of this ITP. Any Proposal not responsive to the RFP shall be excluded from further consideration and the Proposer that submitted such Proposal will be so advised. WSDOT may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation.

4.3.2 Upset Amount

As part of the responsiveness evaluation, WSDOT will review Form C provided in each Price Proposal package to determine if the respective Proposal Prices are less than, equal to, or greater than the Upset Amount. The Upset Amount is defined as ***$$1$$***. Failure to include Form C may result in the Proposal being declared non-responsive and the Proposer being disqualified.

If one or more of the Proposal Prices are less than or equal to the Upset Amount, WSDOT will evaluate all Proposals and may proceed to award the Contract based on the best value determination (as described in Section 4.5 of this ITP) to any Proposer whose Proposal Price is less than or equal to the Upset Amount. WSDOT may also elect to proceed with discussions with the Proposers followed by a request for BAFOs from all Proposers or cancel the RFP. If no Proposal has a Proposal Price less than or equal to the Upset Amount, WSDOT will either proceed directly with discussions with the Proposers followed by a request for BAFOs or cancel the RFP. In such event, WSDOT may review the Proposals for responsiveness and also with reference to possible discussions with the Proposers.

This Upset Amount evaluation will be performed by the WSDOT Contract Ad and Award Manager in strict confidence upon receipt of all Proposals. After completion of said review, each Form C will be resealed in its designated envelope and placed back with its respective

Price Proposals. The WSDOT Contract Ad and Award Manager will hold all information regarding the identity of all Proposers as related to the Upset Amount Determination strictly confidential. No information regarding the Upset Amount Determination shall be given to any individuals involved in the technical evaluation process. If a Proposal is deemed unacceptable based solely on price magnitude being greater than the Upset Amount, the Proposal will still be eligible for the Stipend provided all other criteria relative to the Stipend are met.

4.3.3 Pass/Fail Criteria Evaluation

Proposals will be evaluated based on the following pass/fail criteria:

- Business form of Proposers and team members shall meet Project requirements.
- The Major Participants and Key Personnel listed in the Proposal shall not have changed since submission of its SOQ, or the Proposer shall have previously advised WSDOT of a change and received WSDOT's written approval for the change.
- Proposal Bond (or alternative security) shall have been provided as required by Section 2.14 of this ITP.
- Proposer information, certifications, and documents as listed in Section 3.1.2 of this ITP are included in the Proposal and are complete, accurate, and responsive, and they do not identify any material adverse changes from the information provided in the SOQ information.
- The Proposer has provided all other forms and documentation required by this ITP.

A Proposal must receive an initial "pass" on all pass/fail criteria listed in the RFP for the Proposal to be further evaluated. WSDOT may, at its sole discretion, request a Proposer to provide clarifications for purposes of determining whether the pass/fail criteria are met. Failure to achieve a "pass" rating on a pass/fail factor shall result in the Proposal being declared non-responsive and the Proposer being disqualified. Failure to submit information in the manner, format, and detail specified may result in the Proposal receiving a "fail" rating and being declared non-responsive. Even though a Proposal receives an initial "pass" allowing technical evaluation to proceed, the Proposal may later be determined to have failed.

The Executive Summary will be evaluated pass/fail, but information can be used during evaluation of other Sections.

4.4 *Evaluation of the Technical Proposal*

WSDOT will evaluate each of the technical requirements described in Section 3 of this ITP against the evaluation criteria to determine the Proposal technical score. The technical evaluation scoring summary in Section 4.2 of this ITP identifies the max technical credits for each technical requirement.

The WSDOT evaluation committee will review each Proposal identifying significant and minor strengths, and significant and minor weaknesses. The evaluation committee may also use a "high" or "low" prefix to further differentiate the strengths or weaknesses. When, in the judgment of the evaluation committee, a Proposal element does not equate to a strength or weakness, but is being acknowledged, a "Neutral" will be identified.

Strengths and weaknesses are defined as follows:

- Strengths – That part of the Proposal which ultimately represents a benefit to the Project and is expected to increase the Proposer's ability to meet or exceed the Project goals. A minor strength has a slight positive influence on the Proposer's

ability to meet or exceed the Project goals, while a significant strength has a considerable positive influence on the Proposer's ability to meet or exceed the Project goals.

- Weaknesses – That part of the Proposal which detracts from the Proposer's ability to meet the Project goals or may result in an inefficient or ineffective performance. A minor weakness has a slight negative influence on the Proposer's ability to meet the Project goals, while a significant weakness has a considerable negative influence on the Proposer's ability to meet the Project goals.

Based on the identified strengths and weaknesses, the evaluation team will select an adjectival rating and select a percent of maximum score in the identified range in accordance with this Section.

After selecting a percent of maximum score for each Section, the Proposal score will be calculated by multiplying the percent of maximum score by the points available listed in Section 4.2 and then summing the calculated scores.

The following adjectival rating system will be used in determining the max technical credits for Sections of this ITP that are evaluated adjectively:

- Excellent (75-100 percent): The Section of the Proposal demonstrates an approach that is considered to significantly exceed the RFP requirements/objectives in a beneficial way (providing advantages, benefits, or added value to the Project), and provides a consistently outstanding level of quality. In order for the Section of the Proposal to meet the minimum criteria to be considered Excellent, it must be determined to have significant strengths and/or a number of minor strengths and no appreciable weaknesses. The greater the significance of the strengths and/or the number of strengths will result in a higher percentage. There is virtually no risk that the Proposer would be unsuccessful in delivering the Project to WSDOT's satisfaction, and would most likely exceed all Project goals.
- Very Good (50-74 percent): The Section of the Proposal demonstrates an approach that is considered to exceed the RFP requirements/objectives in a beneficial way (providing advantages, benefits, or added value to the Project) and offers a generally better than acceptable level of quality. In order for the Section of the Proposal to meet the minimum criteria to be considered to be Very Good, it must be determined to have strengths and no significant weaknesses. Minor weaknesses are offset by strengths. The greater the significance of the strengths and/or the number of strengths, and the fewer the minor weakness will result in a higher percentage. There is little risk that the Proposer would be unsuccessful in delivering the Project to WSDOT's satisfaction, and would most likely meet and/or exceed all Project goals.
- Good (25-49 percent): The Section of the Proposal demonstrates an approach that is considered to generally meet the RFP requirements/objectives and offers an acceptable level of quality. In order for the Section of the Proposal to meet the minimum criteria to be considered to be Good, it must be determined to have strengths, even though minor and/or significant weaknesses exist. If a Section of the Proposal meets RFP requirements it will receive a "Neutral" designation. The greater the significance of the strengths and/or the number of strengths, and the fewer the minor or significant weakness will result in a higher percentage. It is

expected that the Proposer would be able to deliver the Project to WSDOT's satisfaction and meet all Project goals.

- Fair (0-24 percent): The Section of the Proposal demonstrates an approach that contains minor and/or significant weaknesses and no appreciable strengths. The Section of the Proposal is considered may not meet the RFP requirements and may be determined to be non-responsive.

For Section ***$$1$$*** of this ITP, technical credits will determined by calculation.

WSDOT, at its sole discretion, may reject any Proposal deemed not responsive to the RFP.

4.5 *Best Value Determination*

4.5.1 Proposal Rating

Each responsive Proposal will be rated using the following equation:

Score = $P - $T

Where:

Score	=	The Proposal Rating
$P	=	The Proposal Price
$T	=	The sum of all Technical Credits earned.

The Apparent Best Value Proposal will be that responsive Proposal with the lowest Score from the equation above.

4.6 *Best and Final Offers (BAFO)*

If all Proposal Prices are less than or equal to the Upset Amount (see Section 4.3.2 of this ITP), WSDOT does not currently intend to request BAFOs, but reserves the right to do so. If all Proposal Prices exceed the Upset Amount, it is likely that WSDOT will request BAFOs. There may be other circumstances in which BAFOs may be requested (See Section 4.3.2 of this ITP).

5.0 Contract Award and Execution

Following selection of a Proposer by WSDOT and verification that the Proposer has complied with the requirements of the RFP, WSDOT will deliver five sets of execution copies of the Contract to the selected Proposer. To be awarded the Contract, the selected Proposer must satisfy WSDOT's Contract award requirements by executing and delivering the Contract together with all other required documents described below, within 20 Calendar Days of receipt of the execution copies of the Contract from WSDOT. WSDOT will return one copy of the Contract executed by WSDOT within 10 business days of receipt of all required documents from the Proposer:

- Executed Contract.
- Evidence of authorization to execute the Contract, in the form of a certified resolution of the governing body of Proposer expressly stating such body's authorization to execute the Contract and, if the Proposer is a partnership, joint venture, unincorporated association, or limited liability company, of the governing bodies of the entity's partners or members.
- Contract Bond issued by the Surety listed in the Proposal, or an equivalent Surety meeting the requirements set forth in Section 2.14 of this ITP.

- The insurance policies, endorsements, and/or certificates required under Section 1-07.18 of the General Provisions.
- Evidence that the Proposer, its Major Participants, and other identified Subcontractors hold all licenses as of award necessary to perform the Work.
- If applicable, the guaranties in the form attached as Form K, together with appropriate evidence of authorization thereof.
- WSDOT Form 421-013 with the Design-Builder's costs for transit, bicycle and pedestrian Work

5.1 *Debriefing*

Within 60 Calendar Days after execution and delivery of the Contract, WSDOT will be available for an oral debriefing session upon written request made to WSDOT's Representative by an authorized representative of an unsuccessful Proposer.

6.0 Practical Design Workshop

Within 7 Calendar Days of Contract execution, and prior to issuing Notice to Proceed, the parties will discuss and potentially initiate a Practical Design Workshop (PDW). During the PDW, the Design-Builder and WSDOT will bring together key project management and technical staff to collaboratively identify practical design opportunities that may reduce project cost, shorten duration, or reduce risk while satisfying the Project's purpose and need.

7.0 Proposer Stipends

WSDOT will pay a Stipend of ***$$1$$*** to all Proposers who submit a Form M (Stipend Agreement), Form N (Stipend Invoice) and responsive Proposal.

The Stipend will be paid within 45 Calendar Days after award of the Contract or the decision not to award a Contract.

No Proposer shall be entitled to reimbursement of any of its costs in connection with the RFP except as specified in this Section. A Proposer that has submitted a non-responsive Proposal will not earn a Stipend.

In consideration for paying the Stipend, WSDOT reserves the right to use any ideas or information contained in the unsuccessful Proposals in connection with any Contract awarded for the Project or with any subsequent procurement, without any obligation to pay any additional compensation to the Proposer. Each Proposer acknowledges that WSDOT will have the right to inform the successful Proposer, after award, regarding the contents of all Proposals for which stipends have been (or will be) paid, for the purpose of allowing concepts to be reviewed by the selected Design-Builder and incorporated into the Contract as deemed advisable. WSDOT will provide the successful Proposer with all the ATCs as soon as practicable. The Proposer may elect to incorporate these ATC's into the Contract in accordance with Section 1-04.4. Furthermore, upon the Proposers' receipt of payment, the right to use such work product will extend to other projects undertaken by WSDOT, as WSDOT deems appropriate. However, WSDOT acknowledges that the use of any of the work product by WSDOT or the Design-Builder is at the sole risk and discretion of WSDOT and the Design-Builder, and it will in no way be deemed to confer liability on the unsuccessful Proposer.

7.1 *Proprietary or Confidential Information*

If Proposer selects not to accept a Stipend, they may clearly designated any information contained in the Proposal that is proprietary or confidential. Marking of the entire Proposal or entire Sections of the Proposal as proprietary or confidential will not be accepted nor honored.

To the extent consistent with chapter 42.56 RCW, the Public Records Act, WSDOT shall maintain the confidentiality of Proposer's information marked confidential or proprietary. If a request is made to view Proposer's Proposal, WSDOT will notify Proposer of the request and of the date that the records will be released to the requester unless Proposer obtains a court order enjoining that disclosure. If Proposer fails to obtain the court order enjoining disclosure, WSDOT will release the requested information on the date specified.

The State's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Proposer of any request(s) for disclosure for so long as WSDOT retains Proposer's information in WSDOT records. Failure to so label such materials or failure to timely respond after notice of request for public record has been given shall be deemed a waiver by Proposer of any claim that such materials are exempt from disclosure.

8.0 Protests

8.1 *Protest Procedures*

This Section sets forth the exclusive protest remedies available with respect to the RFP. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision on any protest, as provided herein, shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. These protest procedures are included in the RFP expressly in consideration for such waiver and agreement by the Proposers. Such waiver and agreement by each Proposer are also consideration to each other Proposer for making the same waiver and agreement.

All protests and related materials shall be filed in writing by hand delivery or courier to the Protest Official, with a copy to WSDOT's Technical Point of Contact. The Protest Official is identified as:

Jenna Fettig
WSDOT Contract Ad & Award Office
Transportation Building, Room 2D-20
310 Maple Park Avenue SE
Olympia, WA 98501-2361

Protests delivered in person will be received only in the WSDOT Contract Ad & Award Office, Room 2D-20.

If a Proposer disregards, disputes, or does not follow the exclusive protest remedies set forth in the RFP, it shall indemnify, defend, protect, and hold harmless WSDOT, its officers, officials, employees, agents, representatives, and consultants from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result. The submission of a Proposal by a Proposer shall be deemed the Proposer's irrevocable and unconditional agreement with such indemnification obligation.

8.1.1 Protests Regarding RFP Documents

The Proposer may protest the terms of the RFP prior to the time for submission of Proposals on the grounds that (a) a material provision in the RFP is ambiguous; (b) any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement; or (c) the RFP in whole or in part exceeds the authority of WSDOT. Protests regarding the RFP shall be filed only after the Proposer has submitted a written request for clarification prior to the Proposal Due Date set forth in Section 1 of this ITP in an effort to remove the grounds for protest.

Protests regarding the RFP shall completely and succinctly state the grounds for protest and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury.

Protests regarding the RFP shall be filed as soon as the basis for protest is known to the Proposer, but in any event it must be actually received no later than 10 Calendar Days before the Proposal Due Date, provided that protests regarding an addendum to the RFP shall be filed and actually received no later than 5 Calendar Days after the addendum to the RFP is issued (or no later than the Proposal Due Date, if earlier).

WSDOT will distribute copies of the protest to the other Proposers and may, but need not, request other Proposers to submit statements or arguments regarding the protest and may, at its sole discretion, discuss the protest with the protesting Proposer. If other Proposers are requested to submit statements or arguments, they may file a statement in support of or in opposition to the protest within 7 Calendar Days of the request.

The protesting Proposer shall have the burden of proving its protest by clear and convincing evidence. No hearing will be held on the protest unless the Protest Official or his designee agrees to a hearing. The Protest Official or his designee will decide the protest on the basis of the written submissions within 15 Calendar Days after the Protest Official receives the protest. The Protest Official will furnish copies of the decision in writing to WSDOT's Representative and each Proposer. The decision shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. If necessary to address the issues raised in the protest, WSDOT will make appropriate revisions to the RFP by issuing addenda. WSDOT may, in its sole discretion, extend the Proposal Due Date.

Notwithstanding the existence of a protest, WSDOT may, in its sole discretion, continue the procurement process or any portion thereof.

The failure of a Proposer to raise a ground for a protest regarding the RFP within the applicable period shall constitute an unconditional waiver of the right to protest the terms of the RFP and shall preclude consideration of that ground in any protest unless such ground was not and could not have been known to the Proposer in time to protest prior to the final date for such protests.

8.1.2 Protests Regarding Responsiveness Determination or Award

A Proposer may protest any determination by WSDOT regarding lack of responsiveness or any award made by WSDOT by filing a written notice of protest by hand delivery or courier to the Protest Official with a copy to WSDOT's Representative. WSDOT will distribute

copies of the protest to the other Proposers. The notice of protest shall specifically state the grounds of the protest.

Notice of protest of any non-responsiveness determination must be filed within 5 business days after the notification of non-responsiveness. Notice of protest of any award by WSDOT must be filed within 9 business days after WSDOT's opening of the Price Proposals.

Within 7 business days of the notice of protest, the protesting Proposer must file with the Protest Official, with a copy to WSDOT's Representative and the other Proposers, a detailed statement of the grounds, legal authorities, and facts, including all documents and evidentiary statements, in support of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protesting Proposer shall have the burden of proving its protest by clear and convincing evidence.

Failure to file a notice of protest or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to protest the evaluation or qualification process and decisions thereunder, other than any protest based on facts not reasonably ascertainable as of such date.

WSDOT's Representative and the other Proposers may file by hand delivery or courier to the Protest Official, with a copy to the protesting Proposer, a statement in support of or in opposition to the protest. Other Proposers shall also deliver a copy of their statement to WSDOT's Representative. Such statements must be filed within 7 business days after the protesting Proposer files its detailed statement of protest.

Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except, in the sole discretion of the Protest Official or his designee, a hearing or argument may be permitted if necessary for protection of the public interest or an expressed, legally recognized interest of a Proposer or WSDOT. The Protest Official or his designee will issue a written decision regarding the protest within 15 business days after the Protest Official receives the detailed statement of protest. Such decision shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. The Protest Official or his designee will deliver the written decision to WSDOT's Representative and each Proposer.

If the Protest Official or his designee concludes that the Proposer filing the protest has established a basis for protest, the Protest Official or his designee will determine what remedial steps, if any, are necessary or appropriate to address the issues raised in the protest. Such steps may include, without limitation, withdrawing or revising the decisions, issuing a new request for proposals, or taking other appropriate actions.

8.2 *Judicial Review*

Any decision made by WSDOT regarding the award and execution of the Contract or Proposal rejection shall be conclusive subject to the scope of judicial review permitted under Washington Law. Documents requesting such review, if any, shall be timely filed in the Superior Court of Thurston County, Washington.

PROPOSAL FORMS

Form A Design-Build Proposal Form and Signature Page

Form B Price Proposal

Form C	Upset Amount Determination
Form D	Contract Time/Milestone Completion Deadlines
Form E	Identification of Proposer, Guarantors, Major Participants, Earthwork Subcontractors, Structures Subcontractors and Each Subconsultant and Subcontractor Performing 20 Percent or More of the design-build Work
Form F	Proposal Bond
Form G	Non-Collusion Declaration
Form H	Certification for Federal-Aid Contracts
Form K	Form of Guaranty
Form L	Utility Certification
Form M	Stipend Agreement
Form N	Stipend Invoice
Form O	WSDOT Form 271-015 Subcontractor List
Form Q	Option for Use of WSDOT-Owned Property
Form R	Organizational Conflicts of Interest Certification
Form S	Organizational Conflicts of Interest – Disclosure and Avoidance/Neutralization Plan

FORM A

DESIGN-BUILD PROPOSAL FORM AND SIGNATURE PAGE
Washington State Department of Transportation
Design-Build Request for Proposals
$$1$$

PROPOSER: _____

Proposal Date: _____

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Jenna Fettig
WSDOT Contract Ad & Award Office
Transportation Building, Room 2D-20
310 Maple Park Avenue SE
Olympia, WA 98501-7360

The undersigned ("Proposer") submits this proposal (the "Proposal") in accordance with the Instructions to Proposers (the "ITP") contained in the Request for Proposals (the "RFP") issued by Washington State Department of Transportation ("WSDOT"), dated _____, for the ***$$2$$*** **Project** (the "Project"). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the ITP. If the Proposer is a joint venture, or LLC, the agreements, acknowledgments, certifications and representations contained herein shall be deemed made jointly and severally by each joint venture or LLC member.

1) In consideration for WSDOT supplying us, at our request, with the RFP documents and agreeing to examine and consider this Proposal, the undersigned agrees:

   to keep this Proposal open for acceptance for 90 Calendar Days after the Proposal Due Date without any member or partner withdrawing or any other change being made in the Proposer's organization, unless WSDOT has agreed in its sole discretion and in writing to such change or withdrawal; and;

   if this Proposal is accepted, to provide the Contract Bond securing the due performance of the Design-Build Contract (the "Contract") as stipulated in the Contract and the RFP.

2) If selected by WSDOT, Proposer agrees to (a) execute the Contract to design and construct the Project in accordance with the Contract Documents and (b) to provide all documents and satisfy all other requirements set forth in Section 5 of the ITP.

3) Enclosed herewith, and by this reference incorporated herein and made a part of this Proposal, are the following:

   Section 1 Executive Summary

   Section 2 DBE Participation

   Section 3 ***$$3$$***

   Section 4 ***$$4$$***

   Section 5 ***$$5$$***

4) Proposer acknowledges receipt, understanding, and full consideration of all RFP documents, other documents identified on the Project website (www.wsdot.wa.gov) and the following Addenda and set of questions and answers to the RFP:

[List Addenda, if applicable, and sets of questions and answers]

1) Proposer certifies that it has carefully examined and is fully familiar with the RFP documents and is satisfied that such provisions provide sufficient detail regarding the Work and the other obligations of the Design-Builder under the Contract and do not contain internal inconsistencies; that it has carefully checked all the words, figures and statements in its Proposal; that it has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Proposal, including a thorough review of all of the RFP documents; and that it has notified WSDOT of any deficiencies in or omissions from any RFP documents or other documents provided by WSDOT and of any unusual site conditions observed prior to the date hereof.

2) Proposer agrees that its Statement of Qualifications, as modified by this Proposal, is incorporated into this Proposal as if fully set forth herein. Proposer certifies that each, every, and all of the representations made by Proposer in this Proposal are true and correct.

3) Proposer understands that WSDOT is not bound to accept the lowest priced Proposal or any proposal.

4) Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except to the extent that the Proposer receives the Stipend as provided for in the RFP.

5) Proposer agrees that WSDOT will not be responsible for any errors, omissions, inaccuracies, or incomplete statements in this Proposal.

6) This Proposal shall be governed by and construed in all respects according to the laws of the State of Washington.

The undersigned affirms that the information provided herein is true and accurate and that any misrepresentations are made under penalty of perjury.

Dated _____, _____
Proposer _____

[Insert name of the Proposer, identify the type of organization and state or country of organization, and if the Proposer is a joint venture provide signature blocks for each joint venture member.]

[Insert appropriate signature block from below.]

1) Sample signature block for corporation or limited liability company:

   [Insert the Proposer's name]

   By: _____

   Print Name: _____

   Title: _____

2) Sample signature block for partnership or joint venture:

   [Insert the Proposer's name]

   By: [Insert general partner's or member's name]

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate. If Proposer is a joint venture, all joint venture members must individually execute this document.]

3) Sample signature block for attorney in fact:

[Insert the Proposer's name]

By: _____

Print Name: _____

Attorney in Fact: _____

FORM B

PRICE PROPOSAL
Washington State Department of Transportation
Design-Build Request for Proposals
$$1$$

PRICE LINE NO.	ITEM DESCRIPTION	UNIT	ITEM TOTAL
1	Total for Design-Build Work (Under Revenue Rule 170)	Lump Sum	_____
2	Total for Design-Build Work (Under Revenue Rule 171)	Lump Sum	_____ ***$$2$$***
3	Incentive/Disincentive	Calculated	-$***$$3$$***
4	Asphalt Cost Price Adjustment	Calculated	-$***$$3$$***
5	HMA Compliance Price Adjustment	Calculated	-$***$$3$$***
6	HMA Compaction Price Adjustment	Calculated	-$***$$3$$***
7	Material Compliance Price Adjustment	Calculated	-$***$$3$$***
8	Cyclic Density Price Adjustment	Calculated	-$***$$3$$***
9	Minor Change	Calculated	-$***$$3$$***
10	WSDOT Share DRB / Partnering	Estimated	-$***$$3$$***
11	Reimbursement for Third-Party Damage	Estimated	-$***$$3$$***

Total Proposal Price = Sum of all Price Line Item Totals = _____

Note: *For the purpose of providing a common Proposal Price for all Proposers, WSDOT has entered an amount for Items* 3 *through ***$$4$$*** in the Proposal to become a part of the Total Proposal Price by the Design-Builder. Adjustments, if any, to any Line Item shall be made as specified in the Contract Documents.*

[DESIGN-BUILDER SIGNATURE]

By: _____

Name: _____

Title: _____

Washington Contractor License Number: _____

Federal ID Number: _____

FORM C

UPSET AMOUNT DETERMINATION

Proposer Name: _____

Is the Total Proposal Price less than or equal to the Upset Amount ***$$1$$***?

Check One: ☐ Yes ☐ No

Signed _____ Date _____

Printed Name _____ Title _____

FORM D

CONTRACT TIME/MILESTONE COMPLETION DEADLINES

Washington State Department of Transportation
Design-Build Request for Proposals
*****$$1$$*****

Name of Proposer: _____

Contract Time Bid: _____ (Notice to Proceed To Substantial Completion)

Milestones	Milestone Completion Deadlines
	Proposed Duration (Calendar Days from Notice to Proceed)
A. Final Configuration Open to Traffic[1]	A. _____ Calendar Days
$$2$$	B. _____ Calendar Days
B. Other milestones (if proposed)	C. _____ Calendar Days

Notes:

1) Final Configuration Open to Traffic is achieved when all lanes and ramps are in their final configuration, open to traffic and only final striping and other incidental work remain for Substantial Completion.

FORM E

IDENTIFICATION OF PROPOSER, GUARANTORS, MAJOR PARTICIPANTS, EARTHWORK SUBCONTRACTORS, STRUCTURES SUBCONTRACTORS AND EACH SUBCONSULTANT AND SUBCONTRACTOR PERFORMING 20 PERCENT OR MORE OF THE DESIGN-BUILD WORK

Washington State Department of Transportation
Design-Build Request for Proposals
*****$$1$$*****

NAME OF ENTITY AND CONTACT INFORMATION (address, representative, phone, fax, email)	ROLE IN ORGANIZATION (e.g., Design-Builder, Equity Owner in Proposer, Guarantor, Other Major Participant or Subcontractor	State of Washington Contractor License and License Limit (attach copies)	Description of Work/Services
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

Design Builder shall verify that all Subcontractors listed, should be confirmed (not suspended of debarred), in accordance with 48 CFR § 9.4, DOT Order 4200.5E and Construction Manual 1-116.

The undersigned hereby certifies that the above information is true and correct and that the Proposer has not entered into any substantive negotiations with any entity that falls within the definition of "Major Participant" resulting in an agreement to enter into any Subcontracts with respect to the Project, except for those listed above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing declaration is true and correct.

STATE OF _____)
) SS:
COUNTY OF _____)

The undersigned, being first duly sworn, deposes and says that _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the Proposer identified in the foregoing Proposal, and that the answers to the foregoing questions and all other statements therein are true and correct.

Signature: _____

Printed Name: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public in and for said County and State

[Seal]

My commission expires: _____

Washington State Department of Transportation

FORM F

Proposal Bond

KNOW ALL MEN BY THESE PRESENTS, That we, of _____ as principal, and the

a corporation duly organized under the laws of the State of Washington, and authorized to do business in the State of Washington, as surety, are held and firmly bound unto the State of Washington in the full and penal sum of 5% of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following highway construction, to wit:

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, if the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by the Department of Transportation within a period of 20 Calendar Days from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, The principal and surety have caused these presents to be signed

and sealed this _____ day of _____, _____.

(Principal)

(Surety)

(Attorney-in-fact)

DOT Form 272-001 Revised 12/97

FORM G

Failure to return this Declaration as part of the bid proposal package will make the bid nonresponsive and ineligible for award.

NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. **That by signing the signature page of this proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.**

NOTICE TO ALL BIDDERS

To report rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free hotline Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the hotline to report such activities.

The hotline is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

FORM H

Certification for Federal-Aid Contracts

The prospective participant certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) 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 any 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is material representation of the fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

FORM K

FORM OF GUARANTY
Washington State Department of Transportation
Design-Build Request for Proposals
$$1$$

THIS GUARANTY (this "**Guaranty**") is made as of _____, _____ by _____, a _____ ("**Guarantor**"), in favor of the **WASHINGTON DEPARTMENT OF TRANSPORTATION ("WSDOT").**

R E C I T A L S

1. _____ ("Design-Builder"), and WSDOT are parties to that certain Design-Build Contract dated _____ (the "Contract") pursuant to which the Design-Builder has agreed to design and construct the Project. Initially capitalized terms used herein without definition will have the meaning given such terms in the Contract.

2. To induce WSDOT to (i) enter into the Contract; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

3. Design-Builder is a _____ [describe relationship with Guarantor]. The execution of the Contract by WSDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, WSDOT would not have entered into the Contract with Design-Builder. Therefore, in consideration of WSDOT's execution of the Contract and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. **Guaranty**. Guarantor guarantees to WSDOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of the Design-Builder arising out of, in connection with, under or related to (a) the Contract as amended or supplemented (and the documents executed or to be executed in connection therewith), and (b) each and every other document and agreement executed by the Design-Builder in connection with the consummation of the transactions contemplated by the Contract (the documents described in clauses (a)-(b) shall collectively be referred to herein as the "Project Documents"). The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. **Unconditional Obligations**. This Guaranty is a guaranty of payment and performance and not of collection and is an absolute, unconditional, and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, whether or not recovery may be, or hereafter may become, barred by any statute of limitations or otherwise, and whether or not enforceable against the Design-Builder. If any payment made by the Design-Builder or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential, or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in

full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged, or otherwise affected by (a) any change in the Project Documents or the obligations thereunder, or any insolvency, bankruptcy, or similar proceeding affecting the Design-Builder, Guarantor, or their respective assets, and (b) the existence of any claim or set-off which the Design-Builder has or Guarantor may have against WSDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity, or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefore or any other circumstances relating to the Guaranteed Obligations which might otherwise constitute a defense to the Guaranteed Obligations of this Guaranty.

3. **Independent Obligations**. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of the Design-Builder and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not the Design-Builder is joined therein. WSDOT may maintain successive actions for other defaults of Guarantor. WSDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

   a. Guarantor agrees that WSDOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against the Design-Builder. Guarantor hereby waives the right to require WSDOT to proceed against the Design-Builder, to exercise any right or remedy under any of the Project Documents or to pursue any other remedy or to enforce any other right.

   b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement, or stipulation between the Design-Builder and WSDOT or their respective successors and assigns, with respect to any of the Project Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants, or conditions contained in any of the Project Documents or any modification thereof; (iii) any release of the Design-Builder from any liability with respect to any of the Project Documents; or (iv) any release or subordination of any collateral then held by WSDOT as security for the performance by the Design-Builder of the Guaranteed Obligations.

   c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity, or enforceability of any of the Project Documents or the pursuit by WSDOT of any remedies which WSDOT either now has or may hereafter have with respect thereto under any of the Project Documents.

4. **Liability of Guarantor**

a. WSDOT may enforce this Guaranty upon the occurrence of a breach by the Design-Builder of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between WSDOT and the Design-Builder with respect to the existence of such a breach.

Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify, or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

WSDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge, or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of the Design-Builder, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner, or terms of payment of such financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto; (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate, or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations; (v) enforce and apply any security hereafter held by or for the benefit of WSDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that WSDOT may have against any such security, as WSDOT in its discretion may determine; and (vi) exercise any other rights available to it under the Project Documents.

This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge, or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power, or remedy (whether arising under the Project Documents, at law, in equity, or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment, or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Project Documents or any agreement or instrument executed pursuant thereto; (iii) WSDOT's consent to the change, reorganization, or termination of the corporate structure or existence of the Design-Builder; (iv) any defenses, set-offs, or counterclaims that the Design-Builder may allege or assert against WSDOT in respect of the Guaranteed Obligations, including but not limited to failure of consideration, breach of warranty, payment, statute of frauds, accord and satisfaction, and usury; and (v) any other act or thing or omission, or delay to do any other act or thing, which may or might

in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the Guaranteed Obligations.

5. **Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require WSDOT to proceed against the Design-Builder or any other Person or to proceed against or exhaust any security held by WSDOT at any time or to pursue any right or remedy under any of the Project Documents or any other remedy in WSDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of WSDOT, death or disability of, or revocation hereof by Guarantor, the Design-Builder, or any other Person or the failure of WSDOT to file or enforce a claim against the estate (either in administration, bankruptcy, or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by WSDOT even though the election of remedies, such as non-judicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against the Design-Builder by the operation of law or otherwise; (e) all notices to Guarantor, to the Design-Builder, or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of the Design-Builder under any of the Project Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto, or notice of any other matters relating thereto; (f) any requirements of diligence or promptness on the part of WSDOT; (g) any defense arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Design-Builder or any other Person from any cause other than indefeasible performance in full of the Guaranteed Obligations; (h) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (i) any defense based upon any act or omission of WSDOT which directly or indirectly results in or aids the discharge or release of the Design-Builder, Guarantor, or any security given or held by WSDOT in connection with the Guaranteed Obligations; and (j) any and all suretyship defenses under applicable law.

6. **Waiver of Subrogation and Rights of Reimbursement; Subordination.** Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right, or remedy which it may now have or may hereafter acquire against the Design-Builder that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right, or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right, or remedy of WSDOT against the Design-Builder, or any other security or collateral that WSDOT now has or hereafter acquires, whether or not such claim, right, or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Design-Builder or any shareholders, partners, members, or joint venturers of Design-Builder to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the Design-Builder shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Design-Builder or any shareholders, partners, members, or

joint venturers of Design-Builder to Guarantor without the prior written consent of WSDOT. Any payment by Design-Builder or any shareholders, partners, members, or joint venturers of Design-Builder to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for WSDOT.

7. **Cumulative Rights.** All rights, powers, and remedies of WSDOT hereunder will be in addition to and not in lieu of all other rights, powers, and remedies given to WSDOT, whether at law, in equity or otherwise.

8. **Representations and Warranties**. Guarantor represents and warrants that:

   a. it is a _____ duly [organized][formed], validly existing, and in good standing under the laws of the State of _____;

   b. it has all requisite [corporate][partnership][limited liability company] power and WSDOT to execute, deliver and perform this Guaranty;

   c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor;

   d. this Guaranty has been duly executed and delivered and constitutes the legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

   e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under (1) [the certificate of incorporation or by-laws][certificate of limited partnership or partnership agreement][certificate of formation or limited liability company agreement] of Guarantor; (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound; or (3) any federal, state, or local law, statute, ordinance, rule, or regulation applicable to Guarantor;

   f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Project Documents or referred to therein, the financial status of the Design-Builder and the ability of the Design-Builder to pay and perform the Guaranteed Obligations;

   g. it has reviewed and approved copies of the Project Documents and is fully informed of the remedies WSDOT may pursue, with or without notice to the Design-Builder or any other Person, in the event of default of any of the Guaranteed Obligations;

   h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of the Design-Builder and will keep itself fully informed as to all aspects of the financial condition of the Design-Builder, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of WSDOT to disclose any matter, fact, or thing relating to the business, operations, or conditions of the Design-Builder now known or hereafter known by WSDOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental WSDOT or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Person which challenges the validity or enforceability of this Guaranty.

9. **Governing Law.** The validity, interpretation, and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Washington applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are pre-empted by Federal law or are governed by the law of the jurisdiction of organization of the respective parties.

10. **Entire Document.** This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersedes all negotiations, representations, warranties, commitments, offers, contracts, and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification, or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by WSDOT referring specifically to this Guaranty, and then only to the specific purpose, extent, and interest so provided.

11. **Severability.** If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties, and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

12. **Notices.** Any communication, notice, or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram, or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to WSDOT: _____

_____

_____

Attn: _____
Telephone: _____
Facsimile: _____

If to Guarantor: _____

_____

_____

Attn: _____
Telephone: _____
Facsimile: _____

Either Guarantor or WSDOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 12 are effective upon delivery, if delivered personally or by overnight mail, and, are effective 5 Calendar Days following deposit in the United States mail, postage prepaid if delivered by mail.

13. **Captions.** The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge, or restrict any of the provisions of this Guaranty.

14. **Construction of Guaranty.** Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

15. **No Waiver.** Any forbearance or failure to exercise, and any delay by WSDOT in exercising, any right, power, or remedy hereunder will not impair any such right, power, or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power, or remedy.

16. **Bankruptcy. Reinstatement of Guaranty.** The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended, or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of the Design-Builder or by any defense which the Design-Builder may have by reason of the order, decree, or decision of any court or administrative body resulting from any such proceeding. WSDOT is not obligated to file any claim relating to the Guaranteed Obligations if the Design-Builder becomes subject to a bankruptcy, reorganization, or similar proceeding and the failure of WSDOT to so file will not affect Guarantor's obligations under this Guaranty.

17. **Attorneys' Fees.** Guarantor agrees to pay to WSDOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration, and bankruptcy, and including appeals) incurred by WSDOT in enforcing, collecting, or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

18. **Consent to Jurisdiction.** Guarantor and WSDOT agree that any action or proceeding to resolve a dispute between Guarantor and WSDOT concerning the interpretation, application or enforcement of the terms of this Guaranty may only be brought in the Superior Court of Thurston County, Washington pursuant to Washington Law. Guarantor and the WSDOT accepts for itself and in connection with ITS properties, generally and unconditionally, the jurisdiction of the aforesaid Court and waives any defense of forum non convenience. If not a resident of the State of Washington, Guarantor must appoint and maintain an agent for service of process in the State of Washington.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

_____

at _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Form L

UTILITY CERTIFICATION

(To be signed by authorized signatory(ies) of Proposer)

The undersigned certifies by signing and submitting this Proposal, to the best of his or her knowledge and belief, that the Proposal Price does not contain any monies, funds, costs and/or amounts of any kind or nature for the payment of relocation of public or private utilities that are located in WSDOT Right of Way pursuant to franchise or permit. This certification does not apply in the case of a franchise or permit which contains a specifically designated right of reimbursement to the Utility Owner for utility relocation. In addition, this certification does not apply in the case of a utility relocation that is specifically identified as a line bid item in RFP Form B, Price Proposal.

Proposal documents that serve as a basis for the Proposal Price shall be subject to the Audit requirements of Section 1-09.12 of the Contract General Provisions.

A Proposal that does not include this certificate will be considered non-responsive.

The undersigned shall require that the language of this certificate be in all lower tier contracts including but not limited to contracts with Subcontractors, vendors, and suppliers.

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed _____ Date _____

Printed Name _____ Title _____

FORM M

STIPEND AGREEMENT
$$1$$

Design-Build Request for Proposals
Washington State Department of Transportation Project

THIS STIPEND AGREEMENT (this "Agreement") is made and entered into as of this _____, _____, by and between the Washington State Department of Transportation ("Department"), _____, a _____, ("Proposer"), with reference to the following facts:

Proposer is one of the entities pre-qualified to submit Proposals for the ***$$2$$*** (the "Project"), and wishes to submit a Proposal in response to the Request for Proposals for the Project (the "RFP") issued by the Department.

1) The RFP requires each Proposer to include an executed Stipend Agreement in the Proposal, as a condition to the Department's obligation to pay a stipend to the Proposer.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Services and Performance**. Department hereby retains Proposer to prepare a responsive Proposal in response to the RFP. A "responsive" Proposal means a Proposal submitted by a qualified Proposer, which conforms in all material respects to the requirements of the RFP, as determined by Department, and is timely received by Department.

   Subject to the provisions of the RFP documents regarding ownership of EPDs, all work performed by Proposer and its team members pursuant to this Agreement shall be considered work for hire, and the products of such work shall become the property of Department without restriction or limitation on their use. Neither Proposer nor any of its team members shall copyright any of the material developed under this Agreement.

   Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the RFP.

2. **Term.** Unless otherwise provided herein, the provisions of this Agreement shall remain in full force and effect until execution of the Contract or until 1 year from the date of the execution of this Agreement, whichever occurs first. Services are authorized to commence effective upon the execution date of this Agreement and Proposal, and they are due by the dates set forth in the RFP.

3. **Compensation and Payment**

   a. Compensation payable to Proposer for the services described herein shall be in the amount of ***$$3$$***.

   b. Payment will be owing hereunder only after receipt and approval of goods and services, and will be made within 45 Calendar Days after award of the Contract or the decision not to award a contract. The Proposer has completed and included an invoice

using Form N provided in the ITP. Department will advise Proposer when said Contract is executed.

c. This Agreement involves the submission of a Proposal by Proposer that must be received by the due date set forth in the RFP and determined responsive by Department as a condition of payment.

4. **Indemnities**

a. Subject to the limitations contained in Section 6 of the ITP, the Proposer shall indemnify, protect and hold harmless Department and its directors, officers, employees and contractors from, and Proposer shall defend at its own expense, all claims, costs, expenses, liabilities, demands, or suits at law or equity of, by or in favor of or awarded to any third party arising in whole or in part from the negligence or willful misconduct of Proposer or any of its agents, officers, employees, representatives or subcontractors or breach of any of Proposer's obligations under this Agreement.

b. Furthermore, if any claim or suit is caused by or results from the concurrent negligence of Proposer or its agents, officers, employees or representatives, this indemnity provision shall be enforceable only to the extent of Proposer's negligence or the negligence of Proposer's agents, officers, employees, representatives or subcontractors.

5. **Compliance with Laws**

a. Proposer acknowledges that all written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to Department during this procurement process, excluding only the EPDs, are, upon their receipt by Department, the property of Department and are subject to the Washington Public Records Act.

b. Proposer shall comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to the work, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.

c. Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules, and regulations as they relate to work performed under this Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.

6. **Early Termination**

This Agreement may be terminated by Department in whole or in part at any time termination is in the interest of Department. No payment will be owing by Department in the event of any such termination, except as provided in paragraph 3(a) above.

7. **Assignment**

Proposer shall not assign this Agreement without Department's prior written consent. Any assignment of this Agreement without such consent shall be null and void.

8. **Miscellaneous**

a. Proposer and Department agree that Proposer, its team members, and their respective employees are not agents of Department as a result of this Agreement.

b. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend and include the singular. All words used in any gender shall extend to and include all genders.

c. This Agreement, together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto.

d. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Washington, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provisions to be invalid.

e. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

[insert Proposer's name]

By: _____

Name: _____

Title: _____

FORM N

STIPEND INVOICE

Company: Click or tap here to enter text.

Address: Click or tap here to enter text.

Phone: Click or tap here to enter text.

Fax: Click or tap here to enter text.

Contact: Click or tap here to enter text.

Email: Click or tap here to enter text.

Invoice Date: ***$$1$$***

Payment Terms: Due within 45 Calendar Days after award of the Contract or after the decision not to award the Contract.

Invoice #: Click or tap here to enter text.

Job Reference: Click or tap here to enter text.

Bill To: ***$$2$$***

Description	***Price***
Stipend payment as per Form M of the Design-Build Proposal for the ***$$3$$*** Project	***$$4$$***
Subtotal	***$$5$$***
Sales Tax	N/A
Total	***$$6$$***

Make all checks payable to:

Click or tap here to enter text.

FORM O

WSDOT FORM 271-015
SUBCONTRACTOR LIST

Prepared in compliance with RCW 39.30.060
TO BE SUBMITTED WITH THE BID PROPOSAL

Project Name: Click or tap here to enter text.

Failure to list subcontractors who are proposed to perform the work of heating, ventilation and air conditioning, plumbing, as described in chapter 18.106 RCW, and electrical as described in chapter 19.28 RCW will result in your bid being non-responsive and therefore void.

Subcontractor(s) that are proposed to perform the work of heating, ventilation and air conditioning, plumbing, as described in chapter 18.106 RCW, and electrical as described in chapter 19.28 RCW must be listed below. The work to be performed is to be listed below the subcontractor(s) name.

Design Builder shall verify that all Subcontractors listed, should be confirmed (not suspended of debarred), in accordance with 48 CFR § 9.4, DOT Order 4200.5E and Construction Manual 1-116.

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

Subcontractor Name: Click or tap here to enter text.
Work to be performed: Click or tap here to enter text.

Subcontractor Name: Click or tap here to enter text.
Work to be performed: Click or tap here to enter text.

Subcontractor Name: Click or tap here to enter text.
Work to be performed: Click or tap here to enter text.

Subcontractor Name: Click or tap here to enter text.
Work to be performed: Click or tap here to enter text.

*Bidders are notified that is the opinion of the enforcement agency that PVC or metal conduit, junction boxes, etc, are considered electrical equipment and must be installed by a licensed electrical contractor, even if the installation is for future use and no wiring of current is connected during the Project.

A licensed electrical contractor must be listed to perform the work.

Sublist revision 6/99DOT
Form 271-015

FORM Q

OPTION FOR USE OF WSDOT-OWNED PROPERTY
Washington State Department of Transportation
Design-Build Request for Proposals

Proposer Name: Click or tap here to enter text.

Is the Proposer exercising the option to use the WSDOT-Owned property at ***$$1$$***, agreeing to the WSDOT-Owned Property Terms and Conditions set forth in ***$$2$$*** of the Request for Proposal?

Check One: ☐ Yes ☐ No

Signed _____ Date _____

Printed Name _____ Title _____

FORM R

Organizational Conflicts of Interest
Disclosure and Avoidance/Neutralization/Mitigation Plan

This disclosure statement outlines potential organizational conflicts of interest, either real or apparent, which as a result of activities or relationships with other persons or entities, such person or entity:

1. Is unable or potentially unable to render impartial assistance or advice to WSDOT.
2. Is or might be otherwise impaired in its objectivity in performing the contract work
3. Has an unfair competitive advantage.

SECTION I of this disclosure statement describes the potential Organizational Conflicts of Interest, as described in Secretary's Executive Order E 1059 and *Organizational Conflicts of Interest Manual* M 3043. SECTION II of this disclosure statement describes the management plan for avoiding, or neutralizing the potential Organizational Conflicts of Interest as described in SECTION I of this disclosure statement. I acknowledge that the Washington State Department of Transportation (WSDOT) may require revisions to the management plan described in SECTION II of this disclosure statement prior to approving it, and that WSDOT has the right, in its sole discretion, to limit or prohibit my involvement in the Project as a result of the potential conflicts of interest described in SECTION I of this disclosure statement.

SECTION Ia – Name of Person or Firm Potentially Conflicted
Click or tap here to enter text.

SECTION Ib – Current Project Name and Scope of Work
Click or tap here to enter text.

SECTION Ic – Future Project Name and Description of Potential Conflict of Interest
Click or tap here to enter text.

SECTION II - Plan for Managing Potential Conflicts of Interest
Click or tap here to enter text.

Signed _____ Date _____

Printed Name _____ Title _____

FORM S

Organizational Conflicts of Interest Certification

To be signed by authorized Proposer representative

Name of Proposer: Click or tap here to enter text.

My signature below certifies that, prior to submitting this Proposal, I have conducted an internal review of Proposer's current affiliations and have required Proposer's team members to identify potential, real, or perceived Organizational Conflicts of Interest relative to the anticipated procurement, in accordance with the Secretary's Executive Order E 1059 and *Organizational Conflicts of Interest Manual* M 3043.

I further certify that "Organizational Conflicts of Interest Disclosure and Avoidance/Neutralization Plan" forms are attached, as listed below, for all real or potential organizational conflicts of interest as defined in *Organizational Conflicts of Interest Manual* M 3043 for all Proposer team members.

Signed _____ Date _____

Printed Name _____ Title _____

List Attachments by name of person or firm potentially conflicted:

Click or tap here to enter text.

Guidance to RCW 39.10.300

WSDOT has legislative authority (Per RCW 39.10.300) to utilize alternate contracting methods such as design-build and general contractor/construction manager (GC/CM) contracting.

RCW 39.10.300, provides for hiring a team to both design and construct a project as compared to the standard and proven practice of keeping the design process separate from construction contracting, i.e., design-bid-build. Design-build selection is based on several factors, including qualifications, innovation, schedule, and price. In standard design-bid-build contracting, selection of a design firm is based on qualifications, and selection of a construction firm is based strictly on low bid. With the ideal design-build project, initial design takes place, designers obtain feedback from their building partner, design proceeds further, construction begins, feedback continues, design is completed , and then construction is completed.

In a construction manager/general contractor project delivery method WSDOT engages a construction manager during the design process to provide constructability input. The construction manager is generally selected on the basis of qualifications, past experience or a best-value basis. During the design phase, the construction manager provides input regrading scheduling, pricing, phasing and other input that helps the owner design a more constructible project. At approximately an average of 60 percent to 90 percent design completion, WSDOT and the construction manager will negotiate a guaranteed maximum price for the construction of the project based on defined scopes and schedule.

a. Procedures

WSDOT will set a contract goal for the project prior to award. Responsiveness to the DBE goal will not be determined prior to award.

The design-builder shall submit with their proposal a DBE Performance Plan, outlining how the firm intends to meet the DBE goal. The project DBE Performance Plan shall be reviewed and approved by OEO. After execution of the contract, the design-builder shall provide the additional information:

As described in the Instructions to Proposers (ITP), each proposer for this contract was required to submit a DBE Performance Plan as part of a responsive proposal. Following execution of the contract and during both the design and construction portions of the project, the design-builder shall submit monthly progress reports described in the section below entitled “Reporting,” to show efforts being made by the design-builder towards achieving the DBE mandatory goal for the project. Evidence of good faith efforts, as described in 49 CFR Part 26 Section 26.53, will be monitored by WSDOT throughout the duration of the contract.

If trucking is listed on the DBE Performance Plan, the following is required for each trucking firm:

A completed copy of the DBE Trucking Commitment Agreement form.

A completed copy of the DBE Truck Unit Log form.

Any rental/lease agreement that the DBE trucking subcontractor has for trucks being used on that project.

Reporting

The design-builder/consultant and all subcontractors/subconsultants/suppliers/service providers that utilize DBEs to perform work on the project, shall maintain appropriate records that will enable WSDOT to verify DBE participation throughout the life of the project.

The design-builder, as part of implementing its DBE Performance Plan, shall provide monthly DBE progress reports to WSDOT, due on the 10th of each month following award of the contract. The DBE progress report shall contain a summary of all DBE subcontracts/agreements entered into to date, along with the name of each firm/company (and their respective contact person), their address, telephone number, dollar amount of the subcontract/agreement, a description of work to be performed under the subcontract/agreement, and the duration of the subcontract/agreement.

The progress report shall also include information on any changes to a DBEs subcontract/agreement, a running tally comparing commitments to payments, and a forecast of upcoming opportunities for additional DBE participation. If DBE participation is determined to be lagging, WSDOT will require the design-builder to provide documentation of good faith efforts (GFE).

In addition, the design-builder shall provide a list of firms (DBE and non-DBE) who submit a bid or quote in an attempt to participate in this project, whether they were successful or not. The list must include the firm's name, federal tax identification number and mailing address. WSDOT will use this information to obtain additional information such as age of firm and average gross receipts over the past three years.

Before execution of a DBE subcontract, the design-builder, subcontractor, or lower-tier subcontractor shall submit the following information to the WSDOT Engineer (using the DBE Utilization Certification Form, DOT Form 272-056):

Correct business name, federal employee identification number (if available), and mailing address;

Description of the work sublet to the DBE firm. The description must reflect the distinct element(s) of work that the DBE will perform. The dollar value of the DBEs work items must also be included; and

Written confirmation from each DBE firm that it is participating in the contract in the kind and amount of work provided in the design-builder's commitment.

The design-builder is required to report payments made to all subcontractors/subconsultants/suppliers/service providers who have performed work on the project. This report shall be submitted monthly to the WSDOT engineer between execution of the contract and physical completion of the contract. For WSDOT projects, the design-builder must use the application available at: https://remoteapps.wsdot.wa.gov/mapsdata/tools/dbeparticipation/.

The monthly report is due 20 calendar days following the end of the month. A monthly report shall be submitted for every month regardless of whether payments were made or work occurred.

After execution of the contract, the design-builder shall send an e-mail to DBEPAdmin@wsdot.wa.gov containing the following information: the first and last name, email

address, title, and phone number of the person that will be submitting the above documents for their company. The email shall include the WSDOT contract number they will be reporting on.

After receipt of this information by WSDOT, the design-builder will receive an email containing their username and password for the application and a link to the application. Reporting instructions are available in the application. In the event that payments were made to a DBE by a lower-tier subcontractor or supplier, the design-builder shall obtain the certification from the paying entity and submit these payments to WSDOT with their monthly reports using the application available at: https://remoteapps.wsdot.wa.gov/mapsdata/tools/dbeparticipation.

The design-builder shall submit an updated monthly DBE Performance Plan detailing the status of the prime contractor in obtaining the DBE goal, any changes that have occurred in how it will be obtaining the DBE goal, and any additional efforts the firm will be utilizing to ensure it will meet the DBE goal.

The Project DBE Performance Plan monthly update shall be reviewed and approved by OEO.

b. DBE Contract Compliance

WSDOT will notify the successful proposer of the award of the contract in writing.

Only DBEs that perform a CUF in the work of a contract will be counted toward the DBE goal.

WSDOT and the design-builder recognize that the actual quantities of work may vary substantially from what is anticipated because the design has not been completed. It is the design-builder's duty to assure that the goal will be met if the design-builder has committed to meeting the goal.

In the event work committed to a DBE does not materialize as anticipated, the proposer will increase the work to awarded DBEs or add additional DBEs, as needed, or demonstrate adequate good faith effort documentation to meet the contract goal.

WSDOT reserves the right to inspect all records of the design-builder and all records of the DBEs, concerning the contract.

c. DBE Participation as a Design-Builder

A DBE may participate as a prime design-builder, subcontractor, joint venture with either a prime design-builder or a subcontractor, or as a vendor of materials or supplies.

A DBE joint venture shall be responsible for a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control.

The design-builder shall, as a minimum, seek DBEs in the same geographic area in which it generally seeks subcontractors for a given project. If the design-builder cannot meet the goals using DBEs from this geographic area, the design-builder, as part of its effort to meet the goals, shall expand its search to a reasonably wider geographic area.

d. Non-performance by a DBE with a Design-Builder

In the event that a DBE is unable or unwilling to fulfill its agreement with the design-builder, the design-builder shall notify the assigned WSDOT – OEO Liaison Officer within five business days of the fact surrounding the issue.

The design-builder will follow the appropriate procedures for termination/substitution of a DBE as outlined in 49 CFR 26.53.

Such failure on the part of a DBE will not relieve the design-builder of responsibility for meeting reasonable good faith efforts to obtain another certified DBE to perform an equal or greater dollar value of work.

Request for Regular Dealer Project Status

Please note, the request for Regular Dealer status **must** be received five (5) calendar days prior to bid opening.

Firm Name: _____

Project Title: _____

Contract No.: _____

Federal Aid No (If there is no Federal-Aid No., this form is not required): _____

_____

Project Bid Date: _____

Project specific approved items to be supplied:

_____

_____

_____

_____

_____

_____

Requesting approval on this project for:

☒ Regular Dealer

Please submit this completed form to CRP@wsdot.wa.gov or via fax to (360) 705-6801.

Washington State Department of Transportation

Disadvantaged Business Enterprise (DBE) Truck Unit Listing Log

Project Name				
Federal Aid #		Contractor		
Unit #	**Year/Make**	**VIN #**	**Plate #**	**Rental/Lease**

I hereby certify that the information presented above is correct.

DBE Company

Signature _____ Date

This Truck Unit Listing Log is required for all DBE trucking firms including all Condition Of Award firms and Race-Neutral firms.

The DBE Truck Unit Listing Log shall be submitted with the Request to Sublet, including any Rental/Lease agreements (if applicable). The DBE Truck Unit Listing Log shall be updated prior to utilizing new truck to the project.

The Washington State Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. This document is subject to 42.56 of the Revised Code of Washington State (RCW).

Washington State Department of Transportation

Underutilized Disadvantaged Business Enterprise (UDBE)Trucking Credit Form

PART A: TO BE COMPLETED BY THE CONTRACTOR

This form is in support of the trucking commitment identified on the UDBE Utilization Certification Form submitted with the proposal. Please note that UDBE's must be certified prior to time of submittal.

Federal Aid #	County	Contract #

If listing items by hours, or by lump sum amounts, please provide calculations to substantiate the quantities listed.

Bid Item	Item Description	Unit of Measure	Unit Price	Quantity	Total Per Item
			$		$
			$		$
			$		$
			$		$

Amount to be Applied Towards UDBE Goal: $

Amount to be Subcontracted to UDBE*: $

*Optional Field

PART B: TO BE COMPLETED BY THE UDBE TRUCKING FIRM

Note: DBE/UDBE trucking firm participation may only be credited as DBE/UDBE participation for the value of the hauling services, not for the materials being hauled unless the trucking firm is also recognized as a supplier and approved as a regular dealer.

1. Type of Material expected to be hauled? _____

2. Number of fully operational trucks expected to be used on this project? Tractor/trailers: _____ Dump trucks: _____

3. Number of trucks and trailers owned by the UDBE that will be used on this project? Tractor/trailers: _____ Dump trucks: _____

Prime Contractor		Name/Title (please print)
Address		Signature
Phone	Fax	
Email		Date
UDBE		Name/Title (please print)
Vendor No.		
Address		Signature
Phone	Fax	
Email		Date

Instruction to Bidder: The Bidder shall complete and submit the Underutilized Disadvantaged Business Enterprise (UDBE) Trucking Credit Form in accordance with Section 1-02.9 of the Contract.

APPENDIX 20

USDOT Q&As – 49 CFR Part 26

https://www.transportation.gov/sites/dot.gov/files/docs/mission/civil-rights/disadvantaged-business-enterprise/55851/official-questions-and-answers-disadvantaged-business-enterprise-program-regulation-49-cfr-26-4-25.pdf

Washington State Department of Transportation

DBE On-Site Review for Construction Subcontractors/Regular Dealers/Manufacturers

This document provides guidelines for reviewing Construction Subcontractors Disadvantaged Business Enterprise (DBE) firms to verify compliance with the Commercially Useful Function (CUF) requirements of 49 CFR 26.55 which states in part:

> "A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying-out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation...:

WSDOT/Local Agency will perform DBE Onsite Reviews on DBE construction subcontractors. Project owner staff is required to perform a minimum of one review for each DBE firm for each project, for each construction season, and for each primary scope of work.

Note: If the DBE firm is a Regular Dealer/Manufacturer and is not located on the project site or is out of state, then this review needs to be accomplished by telephone.

1. Prime Contractor:	2. Federal Aid Number:
3. DBE Subcontractor/Regular Dealer/Manufacturer:	4. Contract Number:
5. Project Engineer:	6. Region/Local Agency:
7. Project Title:	

SECTION #1 - SUBCONTRACTORS

8. Bid Item Number	9. Bid Item Approximate % Complete	10. Actual Work Being Performed (Note partial items)	11. Force Account	12. DBE Dollar Amount
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

13. Have you checked the Office of Minority & Women's Business Enterprises Website (www.omwbe.wa.gov) to ensure firm is certified in the above work? If no, please explain:	☐ Yes ☐ No

14. DBE Subcontractor's Start Date	15. Contract Percent Complete	16. DBE Anticipated Completion Date

DBE INTERVIEWEE QUESTIONS

17a. First Name	17b. Last Name	17c. Phone Number

18. Who does the DBE's Site Supervisor report to within his/her organization?

Name: Title:

19. Is the DBE Interviewee exclusively employed by the DBE? If no, please explain	☐ Yes ☐ No

20. Is the DBE Interviewee shown on the DBE Payroll? (Review Payroll)	☐ Yes ☐ No

21. List names and crafts of the DBE's crew as observed (Use additional sheets, if needed)

Name	Craft

22. Are any DBE crew members on the prime or any other project subcontractor's payroll(s)? If yes, please explain:	☐ Yes ☐ No

23. List the DBE's Major Equipment (self-propelled). Use additional sheets if necessary

Make/Model/Year	Owned/Leased	Condition	Logo Markings
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No

24. If the equipment is leased, is there a formal agreement identifying the terms and parties? If no, please explain:	☐ Yes ☐ No

PERFORMANCE

25. Does the DBE effectively manage the job site (their work) without interference from the prime contractor or other subcontractors? If no, please explain:	☐ Yes ☐ No
26. Does the DBE have the personnel, equipment, and resources to perform the work on this project? If no, please explain:	☐ Yes ☐ No
27. Do DBE personnel have the knowledge and skills for the work they are performing? If no, please explain:	☐ Yes ☐ No
28. Has another contractor performed, work for the DBE? If yes, please explain?	☐ Yes ☐ No
29. Has the DBE Owner been present on the Job Site? If yes how often?	☐ Yes ☐ No
30. Are the personnel and equipment under direct supervision of the DBE Site Supervisor?	☐ Yes ☐ No

SECTION #2 - REGULAR DEALERS/MANUFACTURERS NOTE:31 THROUGH 35 ONLY APPLY TO REGULAR DEALER/MANUFACTURER

31. Per the DBE sub-contract, indicate the project specific materials/equipment being provided.

Material Name	Material Quantity	Material Costs

32. For Regular Dealers, have you checked with the WSDOT Office of Equal Opportunity Regular Dealer List to ensure the firm is listed as an approved Regular Dealer specifically to this project?	☐ Yes ☐ No
33. If the material being supplied is a bulk item (i.e., aggregates, petroleum, etc.), does the DBE have its own distribution equipment? If no, please explain:	☐ Yes ☐ No
34. Has the project office validated that only 60% of the total material cost is being counted as participation? If no, please explain:	☐ Yes ☐ No
35. Has a copy of the material invoice been provided to the project office? If no, please explain	☐ Yes ☐ No

TRUCKING COMPANIES ONLY

36. How many DBE truck(s) are on the Job Site, including other DBE firms working under subject firm scope?

37. Do all DBE truck(s) have company markings?	☐ Yes ☐ No

38. How many DBE truck(s) are subcontracted, leased, owner operators, or another company? (Trucks not owned by subject firm)

39. Who is supervising the subject firm DBE truck operators?

Name: Firm:

40. Additional comments/observations

Note: Attach any documents important to the review, i.e., Invoices, Photos, Daily Reports, Correspondence, etc.

41. Review Conducted By (Print Name)	42. Title (Print)
43. Signature	44. Date of This Review

45. Date Project Engineer approved Request to Sublet:

This form must be completed in its entirety and submitted to WSDOT Office of Equal Opportunity within two (2) weeks of its completion. If the form is submitted with missing/incomplete information, it will be returned to the PE Office for completion.

INSTRUCTION GUIDE

(for Subcontractors/Regular Dealers/Manufacturer DBE On-Site Review Form)

Block #1: Enter the business name of the prime contractor/contractor for this project.
Example: Doobi Brothers Consulting

Block #2: Enter the federal aid number for this project.
Example: NH-0002(180)

Block #3: Enter the business name of the DBE firm being reviewed.
Example: Chavez Excavating Inc.

Block #4: Enter the contract or agreement number.
Example: 8066 or TA-XXXX or #Y11101 AA or 10-019-WDOT

Block #5: Enter the name of the WSDOT/Local Agency Project Engineer or other Manager who is responsible for this project.
Example: Joe Smith

Block #6: Enter the WSDOT region name or the municipality (local agency) responsible for this project.
Example: Eastern Region, or Spokane County (as appropriate)

Block #7: Enter the name of this project.
Example: SR 520 Floating Bridge & Landings

Block #8: Enter the WSDOT Bid Item # relative to the scope the DBE has been contracted to perform.

Block #9: Enter the approximate percentage of work completed by the DBE for each line item scope of work.
Example: 80% completed

Block #10: Specifically describe the actual work being performed by this DBE on the day you are conducting this onsite interview.
Example: Operating belly dump trucks over the project site to haul bituminous pavement material to the dump site; installing guardrail posts, etc.

Block #11: Is the line item Force Account work?
Example: Enter Yes or No.

Block #12: Enter the contracted dollar amount the DBE will receive for performing this work. (This amount should be obtained from the DBE Utilization Certification form; or DBE Bid Item Breakout; or the Request to Sublet form.)
Example: $185,000.00

Block #13: Check mark the appropriate block to acknowledge that you have verified through the OMWBE web site that this DBE is “currently” certified as a DBE and that they are performing work as contained in the “Description of Work” block on the firm’s profile page in the OMWBE DBE Directory. (Note: It is important to do this as early on as possible; day one if possible.)
Example: “Yes” or “No” (as appropriate).

Block #14: Enter the date the DBE started working on its contracted scope of work.
Example: 12/20/2014

Block #15: Enter the percent completed for the overall contracted work completed up to the date of this onsite review. (On large design-build projects this may not be exact so use best estimation in that case.)
Example: 70%

Block #16: Enter the anticipated completion date for this DBE’s scopes of work.
Example: 6/30/2015

Block #17(a) : Enter the first name of the designated DBE project manager or supervisor, as appropriate.
Example: John

Block #17(b): Enter the last name of the designated DBE project manager or supervisor, as appropriate.
Example: Smith

Block #17(c): Enter the phone number of the designated DBE project manager or supervisor, as appropriate.
Example: 360-705-7090

INSTRUCTION GUIDE

(for Subcontractors/Regular Dealers/Manufacturer DBE On-Site Review Form)

Block #18: Enter the full name and position title of the person the interviewee reports to.
Example: Tim Timmer, President

Block #19: Select Yes or No; if no, please list the name of any other company employing this individual.

Block #20: Check mark the appropriate "yes" or 'no" block to acknowledge whether or not the DBE Project Manager/Site Supervisor is listed on the weekly certified payrolls. (Note: If this is a Consultant Services contract there may not be certified payroll. In this situation, FHWA has indicated we need to obtain a copy of the firm's internal payroll documents)
Example: Select Yes or No; if no, please explain why.

Block #21: List the names and the type of work each DBE crew member is performing.
Example: Jimmie Hoffa – Spreading concrete

Block #22: Select Yes or No; if yes, please explain.
Example: Sky Thunder also works for Lightning Industries, a non-DBE subcontractor on this project

Block #23: List the type of equipment the DBE firm is using. Verify if the equipment is owned or leased. Note the condition of the equipment and whether or not the equipment has a company logo on it.
Example: Medium Excavator – Rented – Good – Yes

Block #24: Indicate if the DBE equipment is rented or leased by checking yes or no.

Block #25: This is a judgment call. Is the DBE firm managing their work on the project? If no please explain.
Example: The DBE firm is providing traffic control and their work is good but they are being supervised by the prime contractor's TCS.

Block #26: Has the DBE firm provided all of their own resources and personnel or have they been using the resources of other contractors, i.e. personnel, tools, equipment. If no, please explain.
Example: The DBE firm had to borrow hand tools from another firm in order to do their work today.

Block #27: Are DBE personnel completing their work to industry standards? If no, please explain.
Example: The DBE firm removed the forms before the concrete had finished setting. The forms had to be recast.

Block #28: Has anyone else done any of the work the DBE firm is subcontracted to perform? If yes, please explain.
Example: The DBE used the prime contractor's crane and operator to lift I-beams.

Block #29: Has the DBE firm owner been on site?

Block #30: Is the DBE firm's equipment and personnel under direct supervision by the DBE firm? If no, please explain.
Example: DBE Firm A has been working on the project for two weeks and they have not had a supervisor on the project the whole time. The prime contractor Site Superintendent continuously voices frustration over having to spend time instructing the DBE firm employees in their work.

Block #31: List any materials provided by the DBE firm to the project.
Example: The DBE firm is subcontracted to furnish and install epoxy coated steel to the project. (In this case, they would not have to be a Regular Dealer.)
Example: The DBE firm has a service contract to provide epoxy coated rebar. (In this case, they should be a Regular Dealer.)

Block #32: Did you check WSDOT's Regular Dealer list to ensure the DBE firm was approved as a Regular Dealer for this specific project? If no, please explain.

Here is the Regular Dealer list link:

http://www.wsdot.wa.gov/NR/rdonlyres/F69400AD-0D2F-46EC-8C08-3B966CE98467/0/WSDOTApprovedRegularDealersList.pdf

Block #33: You are checking to determine if the DBE firm is using their own distribution equipment. If no, please explain
Example: The DBE firm is providing bulk petroleum to the project. The delivery of the fuel is done by tanker trucks owned by the DBE firm. Yes, the DBE firm is using their own distribution equipment.
Example: The DBE firm is providing rip-rap to the project and the trucks delivering the materials are from another company and you ask who loaded the rip-rap and you are told it was equipment (not owned by the DBE) at the gravel pit. No the firm is not using their own equipment.

INSTRUCTION GUIDE

(for Subcontractors/Regular Dealers/Manufacturer DBE On-Site Review Form)

Block #34: Only 60% of the total amount paid for materials to an approved Regular Dealer is countable for participation. Check to see if the amount the Regular Dealer is being paid is 100%. If no, please explain.
Example: DBE FIRM X, an approved Regular Dealer is listed on the DBE Utilization Certification form as a Regular Dealer supplying electrical transformers with a compensation of $60,000. The Request to Sublet, DBE Bid Item Breakout, and subcontract should show DBE Firm X receiving $100,000 in total compensation.

Block #35: Verify material invoices to ensure the DBE firm has paid for material they provide to the project. If the DBE firm has not paid for the materials they are providing to the project, either through furnish and install or as a Regular Dealer, they may not be performing CUF. If you mark no, please explain why the materials invoice has not been checked.

Note: The Tucking Companies Only section is to be completed only when there is a DBE on the project that is performing trucking operations i.e. Vac Truck, Dump Trucks, Sweeper trucks etc.

Block #36: Provide the total number of DBE firm trucks working on the project on the day of the interview, working under the subject firm's scope (include lower-tier DBE trucks in count).

Block #37: Do all DBE firm trucks have company markings/logos? If no please explain.

Block #38: Verify with the DBE firm whether or not they are renting/leasing trucks and operators that are not owned or employed by the DBE firm.

Block #39: Who is the DBE firm's site supervisor or truck boss?

Block #40: This section is for continuation from other sections and for additional comments

Block #41: Print the name of the individual conducting this onsite review.

Block #42: Print the Title of the individual conducting the onsite review.

Block #43: Signature of individual conducting the onsite review.

Block #44: Date the review is conducted.

Block #45: Date the Project Engineer approved the Request to Sublet form.

Washington State Department of Transportation

Project Office DBE On-Site Review for Architect & Engineering/Professional Services Firms

This document provides guidelines for reviewing Architect & Engineering (A & E)/Professional Services Disadvantage Business Enterprise (DBE) firms to verify compliance with the Commercially Useful Function (CUF) requirements of 49 CFR 26.55 which states in part:

"A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying-out its responsibilities by actually performing, managing, and supervising the work involved…A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation…."

WSDOT/Local Agency will perform onsite reviews on DBE A & E Consultants, and Professional Services firms. Project owner staff are required to perform a minimum of one review for each DBE for each project, for each construction season (Calendar Year) and for each primary scope of work.

NOTE: If the DBE firm is not located on the project site or is out of state, then this review needs to be accomplished by telephone.

1. Prime Contractor/Consultant:	2. Federal Aid Number:
3. DBE Firm:	4. Contract Agreement Number:
5. WSDOT Project Engineer:	6. WSDOT Region/Local Agency:
7. Project Title:	

INDICATE THE DBE WORK OBSERVED THIS DATE

8. Scope of Work	9. Approximate % Complete	10. Actual work being performed. *If more lines are needed use a continuation sheet*	11. DBE Dollar Amount

12. Have you checked the Office of Minority & Women's Business Enterprises Website (www.omwbe.wa.gov) to ensure firm is certified in the above work? If no, please explain:	☐ Yes ☐ No

13. DBE Firms' Start Date:	14. WSDOT Contract Percent Complete:	15. DBE Anticipated Completion Date:

DBE PROJECT MANAGER/SUPERVISOR

16. First Name:	17. Last Name:	18. Phone Number:

19. Is the DBE Project Manager/Site Supervisor exclusively employed by the DBE? If no, please explain:	☐ Yes ☐ No
20. Is the DBE Project Manager/Site Supervisor shown on the monthly invoice or Certified Payroll:	☐ Yes ☐ No
21. Is the DBE Project Manger/Site Supervisor shown on any other firms' invoice? If yes, please explain:	☐ Yes ☐ No

22. Who does the DBE's Project Manager/Site Supervisor report to within his/her organization?

Name: Title:

23. Does the work described in block #10 match the type of work listed on the executed contract/agreement?	☐ Yes ☐ No
24. Who is paying this DBE firm?	
24(a). What are the negotiated rates?	
25. Are any of the DBE firm's employees assigned to this project working for any other firm's on this project? If yes, please explain:	☐ Yes ☐ No
26. Has another firm performed work in place of the DBE for the scope of work identified exclusively for the DBE? Is yes, please explain:	☐ Yes ☐ No
27. Is the DBE owner personally involved in the day to day operations of the company?	☐ Yes ☐ No
28. Does the DBE firm appear to have control over their contracted scope of work?	☐ Yes ☐ No
29. Review Conducted By (Print Name):	30. Title (Print):
31. Signature	32. Date of this Review:

This form must be completed in its entirety and submitted to WSDOT Office of Equal Opportunity within two (2) weeks of its completion. If the form is submitted with missing/incomplete information, it will be returned to the PE Office for completion.

INSTRUCTION GUIDE

(for A&E/Professional Services DBE On-Site Review Form)

Block #1: Enter the business name of the prime contractor/contractor for this project.
Example: Doobi Brothers Consulting

Block #2: Enter the federal aid number for this project.
Example: NH-0002(180)

Block #3: Enter the business name of the DBE firm being reviewed.
Example: Chavez Engineering Inc.

Block #4: Enter the contract or agreement number.
Example: 8066 or TA-XXXX or #Y11101 AA or 10-019-WDOT

Block #5: Enter the name of the WSDOT/Local Agency Project Engineer (or other Manager, as appropriate) who is responsible for this project.
Example: Joe Smith

Block #6: Enter the WSDOT region name or the municipality (local agency) responsible for this project.
Example: Eastern Region, or Spokane County (as appropriate)

Block #7: Enter the name of this project.
Example: SR 520 Floating Bridge & Landings

Block #8: Enter the type of work the DBE has been contracted to perform. (In general, this form is for A&E contracts which will have a scope of work. If it is a personal services contract to a contractor, use the scope of work from the DBE Utilization Certification documents or the DBE line item breakdown.
Example: Trucking; rebar; drafting; hydraulic design, etc.

Block #9: Enter the approximate percentage of work completed by the DBE for each line item scope of work.
Example: 80% completed

Block #10: Specifically describe the actual work being performed by this DBE on the day you are conducting this onsite interview.
Example: Operating belly dump trucks over the project site to haul bituminous pavement material to the dump site; drafting plan sheets for Bridge A1; running hydraulic models for storm sewer system Z, etc.

Block #11: Enter the contracted dollar amount the DBE will receive for performing this work. (This amount should be obtained from the DBE Utilization Certification form; or DBE Bid Item Breakout; or the Request to Sublet form.)
Example: $185,000.00

Block #12: Check mark the appropriate block to acknowledge that you have verified through the OMWBE web site that this DBE is “currently” certified as a DBE and that they are performing work as contained in the “Description of Work” block on the firm’s profile page in the OMWBE DBE Directory. (Note: It is important to do this as early on as possible; day one if possible.)
Example: “Yes” or “No” (as appropriate). If “no,” provide an explanation as to why you did not check the OMWBE website.

Block #13: Enter the date the DBE started working on its contracted scope of work.
Example: 12/20/2014

Block #14: Enter the percent completed for the overall contracted work completed up to the date of this onsite review. (On large design-build projects this may not be exact so use best estimation in that case.)
Example: 70%

Block #15: Enter the expected completion date for this DBE’s scopes of work.
Example: 6/30/2015

Block #16: Enter the first name of the designated DBE project manager or supervisor, as appropriate.
Example: John

INSTRUCTION GUIDE

(for A&E/Professional Services DBE On-Site Review Form)

Block #17: Enter the last name of the designated DBE project manager or supervisor, as appropriate. This may or may not be the person interviewed.
Example: Smith

Block #18: Enter the phone number of the designated DBE project manager or supervisor, as appropriate.
Example: 360-705-7090

Block #19: Check mark the appropriate "yes" or 'no" block to acknowledge whether or not you believe the DBE Project Manager/Site Supervisor is exclusively employed by this DBE (not working for another contractor on this project).
Example: "Yes" or "No" (as appropriate). If "no," provide an explanation as to why not.

Block #20: Check mark the appropriate "yes" or 'no" block to acknowledge whether or not the DBE Project Manager/Site Supervisor is listed on the monthly invoice or certified payrolls (If certified payrolls are applicable). (Note: If this is a Consultant Services contract there may not be certified payroll. In this situation, FHWA has indicated we need to obtain a copy of the firm's internal payroll documents)
Example: "Yes" or "No" (as appropriate). If "no," provide an explanation as to why not.

Block #21: Check mark the appropriate "yes" or 'no" block to acknowledge whether or not the DBE Project Manager / Site Supervisor is listed on any other contractor's monthly invoice/certified payroll.
Example: "Yes" or "No" (as appropriate). If "yes," provide an explanation as to why not.

Block #22: Enter the name and job title of the person who this DBE Project Manager reports to within this DBE organization.
Example: John Smith, DBE Business Owner

Block #23: Check mark the appropriate "yes" or 'no" block to acknowledge whether or not the work described in Block #10 matches the type of work listed on the executed consultant agreement and approved DBE plan; or DBE subcontract.
Example: "Yes" or "No" (as appropriate). If "no," provide an explanation as to why not.

Block #24: Enter the name of the company which is paying this DBE firm for the contracted work (Hiring Contractor).
Example: Doobi Brothers Consulting

Block 24(a): Enter the rates as defined in the task order or subcontract.

Block #25: Check mark the appropriate "yes" or 'no" block to acknowledge whether or not any of this DBE firm's employees are working for another contractor/consultant on this project.
Example: "Yes" or "No" (as appropriate). If "yes," provide an explanation

Block #26: Check mark the appropriate "yes" or 'no" block to acknowledge whether or not another consultant has performed work exclusively contracted to this DBE.
Example: "Yes" or "No" (as appropriate). If "yes," provide an explanation.

Block #27: Check mark the appropriate "yes" or 'no" block to acknowledge whether or not this DBE owner appears to be personally involved in the firm's day-to-day operations for this project.
Example: "Yes" or "No" (as appropriate)

Block #28: Check mark the appropriate "yes" or 'no" block to acknowledge whether or not this DBE firm has control over its contracted scope of work.
Example: "Yes" or "No" (as appropriate)

Block #29: Enter the name of WSDOT individual who conducted this review.
Example: Pleasant Paul Love

Block #30: Enter the job title of the WSDOT individual who conducted this review.
Example: WSDOT On-Site Inspector

Block #31: Sign this document as the reviewer.
Example: Pleasant Paul Love

Block #32: Enter the date of this review.
Example: December 25, 2014

Washington State Department of Transportation

DBE Joint Check Request Form

Name of DBE

Contract Number

Name of Prime Contractor

Item Number(s)

Name of Material Supplier

Who Requested Joint Check Utilization

☐ DBE ☐ Prime Contractor ☐ Material Supplier

WSDOT will closely monitor the use of joint checks. To receive DBE credit for performing a commercially useful function with respect to obtaining materials and supplies, a DBE must "be responsible for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself." Only when a DBE meets all of these requirements should credit be counted for the procurement of the items by the DBE. Please refer to the attached Procedures for Using Joint Checks under the Disadvantaged Business Program for qualifying conditions. If proper procedures are not followed or WSDOT determines that the arrangement results in lack of independence for the DBE involved, no credit for the DBE's participation as it relates to the material cost will be counted toward the contract goal requirement.

I have read and understand the above information and have attached a copy of the Joint Check Agreement relating to this request. I hereby acknowledge that the information provided on this form is true and accurate.

Authorized DBE Representative		
Signature	Title	Date

Authorized Material Supplier Representative		
Signature	Title	Date

Authorized Prime Contractor Representative		
Signature	Title	Date

WSDOT USE ONLY	
Date Received:	WSDOT Representative:
☐ Approved ☐ Denied	*Note: Do not process this request without a signed copy (all parties) of the Joint Check Agreement, statement of history, and any related policies.*
Comments:	

Procedures for using Joint Checks under the Disadvantaged Business Enterprise (DBE) Program

A joint check is a “two party” check payable to two parties. Typically, a joint check is issued by a prime contractor to a subcontractor and to a material supplier to be incorporated into a project.

WSDOT understands that prime contractors, subcontractors and suppliers may wish to use joint check arrangements for a variety of legitimate reasons, such as assuring that timely payment will be for the supplier’s items. However, WSDOT also understands that the use of joint checks can raise questions about whether it is proper to count DBE credit for the items purchased using the joint check.

When joint checks are utilized, DBE credit toward the contract goal will only be allowed when the DBE is performing a “commercially useful function” in accordance with 49 CFR 26.55(c)(1):

“A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to the materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable), and paying for the material itself.”

The following conditions will apply to payments to DBE subcontractors and material vendors using joint checks. WSDOT will closely monitor the use of joint checks to ensure that such a practice does not erode the independence of the DBE nor inhibit the DBE’s ability to perform a commercially useful function. Joint checks will not be allowed simply for the convenience of the prime contractor. Failure to follow these conditions may disqualify DBE participation or adversely impact a contractor’s bidding status.

1. Any implementation of a Joint Check Agreement must first be approved by WSDOT and requested by the DBE involved using the DBE Joint Check Request Form provided by WSDOT;

2. A formalized Joint Check Agreement between the parties involved (including the conditions of the arrangement and expected use of the joint checks) must accompany the DBE Joint Check Request Form;

3. Joint checks should be focused on accomplishing the procurement of materials needed for a particular purpose at a particular time (i.e., contract specific).

4. The DBE will remain responsible for the other elements of 26.55(c)(1);

5. No requirement by the prime contractor that the DBE is to use a specific supplier nor the prime contractors “negotiated” price;

6. DBE must release the joint check to the material supplier (upon determining that the material supplier has fulfilled its responsibilities under the contract);

7. DBEs must be more than an extra participant in releasing the check to the material supplier;

8. Prime contractors must make joint checks available to all contract participants, and may not be restrictive to any one participant; and

9. All parties involved in a formalized joint check agreement must provide WSDOT (upon request) with any documentation deemed necessary to substantiate compliance.

WSDOT #___GCB 2670_____

INTERAGENCY AGREEMENT
Between
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
And
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
For The
Disadvantaged Business Enterprise Certification Program

1. Purpose and Authority

This Interagency Agreement (Agreement) exists between the Washington State Department of Transportation, hereinafter called "WSDOT", and the Office of Minority and Women's Business Enterprises, hereinafter called "OMWBE", collectively the "PARTIES" and individually the "PARTY".

The purpose of this Agreement is to document the terms and conditions under which WSDOT and OMWBE are to implement the Certification portion of the USDOT Disadvantaged Business Enterprise (DBE) Program and WSDOT's Small Business Enterprise (SBE) Program Participation Plan.

This Agreement is effective for the period of September 1, 2017 through June 30, 2019 unless terminated in accordance with the Cancellation/Termination provision of this document.

Under this Agreement, and the State of Washington Unified Certification Program (UCP), OMWBE is designated as the exclusive certification authority for purposes of Title 49 of the Code of Federal Regulations (49 CFR) Parts 23 and 26.

2. WSDOT Responsibilities

a. WSDOT shall conduct a review of OMWBE's certification process every other year for DBE and SBE firms to ensure compliance with various federal regulations, including 49 CFR Part 26 and official guidance. The review shall be conducted on a date in 2019 mutually agreed upon between WSDOT and OMWBE.

b. WSDOT and OMWBE shall reconvene no more than one calendar year after each bi-annual review to discuss progress made on any recommendations made in the final review summary.

c. WSDOT shall review and investigate complaints filed against OMWBE regarding OMWBE's actions related to the DBE or SBE Program. The investigations will begin within 30 calendar days of receipt. Once a conclusion is reached, WSDOT will render a decision and notify OMWBE of its findings.

d. WSDOT and OMWBE agree to cooperate in the investigation of third party complaints relating to DBE or SBE certification requirements.

e. WSDOT agrees to provide OMWBE copies of any Commercially Useful Function (CUF) Review Report that resulted in findings within ten (10) calendar days of completion of the CUF review, and agrees to notify OMWBE in writing, within ten (10) working days, of the date of suspension or disbarments for cause or other sanctions imposed on any DBE firm.

f. WSDOT will appoint the Director of the Office of Equal Opportunity, or the Director's designee, to act as its OMWBE liaison.

3. OMWBE Responsibilities

a. OMWBE shall administer the designated Unified Certification Program (UCP) for the implementation and maintenance of the DBE and SBE certification programs in compliance with 49 CFR parts 23 and 26 . OMWBE's duties include performing DBE and SBE certification reviews, annual updates, complaint investigations, North American Industrial Classification System (NAICS) Codes reviews, miscellaneous changes, removal of firms wishing to participate or continue to participate as a DBE or SBE, and corresponding proceedings in USDOT-related programs consistent with 49 CFR Parts 23 and 26 and WSDOT's DBE Participation Plan.

b. Once a completed application is received, OMWBE shall make a determination on an application for certification within ninety (90) calendar days. If OMWBE is unable to make a certification decision within ninety (90) days, it shall notify the firm, and WSDOT, in writing immediately upon determination that the ninety-day allotted time period is not feasible. The written notification will clearly state the reasons for the delay, and include an approximate date that the process will be completed. OMWBE shall only extend the processing time for a firm's application once, for an additional sixty (60) calendar days, unless otherwise approved by USDOT. OMWBE shall only request extensions as provided by the criteria and documentation outlined in 49 CFR Parts 23 and 26. A complete application means all questions on the Uniform Certification Application form have been answered, all required documents from the form's checklist have been submitted, and the affidavit and personal net worth form are signed and notarized.

c. For certification appeals, OMWBE shall follow the procedures set forth in 49 CFR §26.89.

d. OMWBE shall participate in monthly meetings with WSDOT Office of Equal Opportunity staff and representatives from Federal Highway Administration to discuss issues related to the DBE program, such as certification and decertification of firms, changes in federal regulations, questions about NAICS codes, and to develop and implement consistent interpretations, processes and procedures.

e. OMWBE shall utilize the most current version of the NAICS Codes to determine size limitations for certification eligibility purposes and to determine the scopes of work that firms are certified to perform. OMWBE shall include the NAICS codes with applicable index entries in the directory of DBE firms. NAICS codes shall be reviewed and updated as necessary. OMWBE shall consult with WSDOT to ensure that the work description(s) and NAICS code(s) of each certified DBE firm in the directory is accurate in order to minimize bid complications for WSDOT.

f. In accordance with 49 CFR 26, OMWBE shall issue NAICS Codes to DBE firms down to the index entries per the CFR.

g. In regard to onsite reviews, OMWBE shall:
    i. Take photographs to include in the firm's file during the onsite visits;
    ii. Conduct onsite reviews prior to issuing NAICS codes that differ from the scope of work the firm is presently certified to perform;
    iii. Conduct a follow-up onsite review of any Washington based DBE or SBE firm whose onsite review is outdated by four (4) or more years; OMWBE may consult with WSDOT and WSDOT may agree that a follow-up onsite review of a DBE or SBE firm whose onsite review is outdated by four (4) or more years need not take place until there is a substantial change in the firm's circumstances;
    iv. Exercise its best efforts to conduct onsite reviews within one hundred eighty (180) calendar days after the expiration of the four (4) year period. In cases where there are multiple DBEs whose onsite reviews are outdated by four (4) or more years, an extension of an additional one hundred eighty (180) days will be granted by WSDOT to complete those reviews. OMWBE shall prioritize reviews starting with the most outdated and working forward.
    v. If it is known and indicated to OMWBE by WSDOT that a firm is actively bidding on a WSDOT highway related construction or consulting project, OMWBE will attempt to schedule onsite reviews for those firms first.

vi. OMWBE agrees to use its best efforts to work with UCPs of the home states of out-of-state DBEs to secure onsite reviews that are outdated by more than four (4) years.

h. OMWBE shall follow the Interstate Certification standards set forth in 49 CFR Part 26.85 for firms applying for certification from another state.

i. OMWBE shall maintain the OMWBE Directory of all Certified Firms in accordance with 49 CFR §26.81(g). The directory shall be available on its website (www.omwbe.wa.gov) and shall be updated daily. Newly certified firms shall be searchable within the online directory within twenty-four (24) hours of certification.

j. OMWBE shall accept only verified copies (i.e. signed by accountant, firm owner, or accompanied by e-verification proof of filing) of tax documents for making certification eligibility determinations.

k. OMWBE will initiate an investigation into all complaints within thirty (30) calendar days of receipt of the complaint. Complaints regarding OMWBE's implementation of the DBE and SBE certification program shall be handled by WSDOT pursuant to paragraph 2(c) above.

l. OMWBE has designated the Office of Administrative Hearings (OAH) to make the final decision regarding removal of eligibility. An Administrative Law Judge knowledgeable in the DBE and SBE programs will be assigned to hear the matter.

m. OMWBE shall transmit to WSDOT within twenty-four (24) hours of receipt of notice from USDOT the names of DBE or SBE firms remanded back from USDOT .

n. OMWBE shall be responsible for maintaining necessary federal reporting documentation as required by 49 CFR Parts 23 and 26.

o. OMWBE shall continue to provide WSDOT with appropriate information and reports upon request within fifteen (15) calendar days of the request.

p. OMWBE shall continue to provide WSDOT with DBE and SBE Certification Activity Reports within five (5) calendar days after the end of each quarter.

q. OMWBE shall maintain records of all complaints in compliance with Paragraph 6(a). The complaint log should contain the following:

1. Date of complaint
2. Complainant

3. Detailed nature of the complaint, including all allegations against the DBE or SBE firm
4. Status of the complaint
5. Anticipated review completion date

4. Payment

WSDOT, in consideration of the performance by OMWBE of its responsibilities set forth in this Agreement, agrees to pay OMWBE One Million, Seven Hundred and Ninety Thousand dollars ($1,790,000) per state biennium under the terms of this Agreement. No payments in advance or in anticipation of goods or services to be provided under this Agreement shall be made by WSDOT.

The above maximum amount will be paid in four (4) quarterly payments annually for the activities provided under this Agreement. The quarterly payments will be Two Hundred Twenty Three Thousand Seven Hundred Fifty dollars ($223,750).

The Office of Financial Management will bill WSDOT quarterly. Upon receipt of these billings, WSDOT shall review the DBE Activity Reports and make the quarterly payments to OMWBE within thirty (30) calendar days of WSDOT's receipt of the billing from OFM.

OMWBE shall refund to WSDOT the full amount of any erroneous payment or overpayment under this Agreement within thirty (30) calendar days of receiving written notice of such erroneous payment.

5. Period of Performance

This Agreement shall be effective September 1, 2017, and terminates on June 30, 2019, unless one of the following occurs:

a. USDOT approval of certification responsibility delegated by WSDOT to OMWBE is withdrawn. In which case, this AGREEMENT is effectively terminated on the date of notification.

b. The AGREEMENT is amended or terminated in writing by WSDOT or OMWBE as provided in Paragraph 13.

c. The Washington State Legislature designates another state agency as the UCP for Washington State.

6. Maintenance and Inspection of Records

a. OMWBE shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. OMWBE shall retain such records in compliance with the Office of the Secretary of State (SOS) Records Retention Schedules as documented on the SOS website: http://www.sos.wa.gov/archives/RecordsManagement/RecordsRetentionSchedulesforStateGovernmentAgencies.aspx and for a period of no less than six (6) years following the date of final payment.

b. These records, including materials generated under the Agreement, shall be subject to inspection, review or audit by WSDOT and/or USDOT, personnel duly authorized by WSDOT, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

c. OMWBE shall make its staff available to provide such technical assistance as WSDOT and/or USDOT staff may reasonably require for purposes of inspecting and copying OMWBE files and records.

d. If any litigation, claim or audit begins before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

7. Confidential Information

a. To the extent allowed by law, personal, business or other confidential information collected, used, or acquired in connection with this Agreement shall be protected against unauthorized use, disclosure, modification or loss. OMWBE shall ensure its employees or agents use personal information solely for the purposes of accomplishing the services set forth herein.

b. OMWBE shall follow state and federal laws regarding public disclosure regarding the release of confidential information if a public records request is received. In performing work under this Agreement, the PARTIES will be compiling, maintaining and exchanging confidential information. Each PARTY will utilize reasonable security procedures and protections to assure that records and documents are not erroneously disclosed to third parties. However, the PARTIES acknowledge that State Agencies are subject to chapter 42.56 RCW, the Public Records Act.

c. The PARTIES also acknowledge that information contained within certification files is sensitive and confidential. Therefore, both Parties agree that information is restricted to employees who need the information to perform their assigned duties. In addition, Parties will maintain an employee policy that is consistent with the paragraph above.

8. Indemnification

Each of the PARTIES to this Agreement shall protect, defend, indemnify, and hold harmless the other PARTY, as well as its officers, officials, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, each of the PARTY's negligent acts or omissions in the course of performing the PARTY's duties under this Agreement.

No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the PARTY's own negligence.

Each of the PARTIES agrees that its obligations hereunder extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

This indemnification and waiver shall survive the termination of this Agreement.

9. Independent Contractor

Each PARTY shall be deemed an independent contractor for all purposes, and the employees of each PARTY or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other PARTY.

10. Order of Precedence

1. Applicable Federal and Washington State Statutes and Regulations;
2. Terms and Conditions contained in this Interagency Agreement;
3. Exhibit A – Memorandum of Understanding; and
4. Any other provisions incorporated by reference or otherwise into the Agreement.

11. Disputes

This Agreement shall be governed in all respects by the law and statutes of the state of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the State of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and OMWBE shall first attempt to resolve the matter by informal negotiations. If this does not bring about resolutions, each PARTY shall appoint a member to a disputes board, and these two members shall select a third board member not affiliated with either PARTY. The PARTIES shall equally share in the cost of the third disputes board member; however, each PARTY shall be responsible for its own costs and fees. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. The disputes board shall render its final decision in writing, which shall be binding on the PARTIES.

12. Termination

Each PARTY may terminate this Agreement, with or without cause, upon thirty (30) calendar days' prior written notification to the other PARTY. If this Agreement is so terminated by WSDOT, WSDOT shall reimburse OMWBE for actual direct and related indirect costs incurred in the course of performance of this Agreement, as well as non-cancelable obligations as of the effective date of termination. If OMWBE terminates the Agreement, then WSDOT shall reimburse OMWBE for actual direct costs incurred as of the effective date of termination. Upon the effective date of termination, OMWBE shall immediately turn over copies of all records, files and documentation, in whatever form or format, to WSDOT.

13. Amendments to Agreement

Changes to the terms of this Agreement must be in the form of an amendment. Such amendments shall not be binding unless put in writing and signed by persons authorized to bind each of the PARTIES.

14. Authorized Representatives

WSDOT and OMWBE agree that the signatory PARTIES shown below are duly authorized officials of their respective agencies with full authority to bind each agency to the obligations set forth herein.

15. Working Days

Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year last written below

Earl Key
Director, Office of Equal Opportunity
Washington State Department of Transportation

Date: 8/31/17

Teresa Berntsen
Director
Washington State Office of Minority & Women's Business Enterprises

Date: 8-30-17

APPROVED AS TO FORM ONLY:

Name: ALBERT WANG
Date: 8/31/17
Assistant Attorney General
(WSDOT)

Name: Stacia Hollar
Date: 9/1/17
Assistant Attorney General
(OMWBE)

Exhibit A

Memorandum of Understanding

for

State of Washington Unified Certification Program

MEMORANDUM OF UNDERSTANDING
FOR
STATE OF WASHINGTON UNIFIED CERTIFICATION PROGRAM

The Undersigned hereby enter into this Memorandum of Understanding for State of Washington Unified Certification Program ("UCP Memorandum") effective as of the date of the last signatory hereto:

W I T N E S S E T H:

WHEREAS, the Undersigned constitute all of the recipients of funding and assistance programs administered by the U.S. Department of Transportation ("USDOT"), including its modals, Federal Highway Administration, Federal Aviation Administration and Federal Transit Authority in the state of Washington, that perform certification according to 49 Code of Federal Regulations (CFR) Part 26 and/or 49 Code of Federal Regulations (CFR) Part 23, Subpart F;

WHEREAS, 49 CFR 26.81 requires all USDOT recipients in each state to participate in a Unified Certification Program ("UCP") and to submit an agreement establishing the UCP for approval by the Secretary of USDOT on or before March 4, 2002;

WHEREAS, chapter 39.19.120 Revised Code of Washington (RCW) designates the State of Washington Office of Minority & Women's Business Enterprises ("OMWBE") as the exclusive authority for certification of minority, women, and socially and economically disadvantaged business enterprises for all programs administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington; and

WHEREAS, the operational procedures and guidelines for receipt and administration of federal funding pursuant to 49 CFR Part 26, as variously adopted by the Undersigned (see *Washington State Department of Transportation Disadvantaged Business Enterprise Program: Participation Plan, Local Agency Guidelines Chapter 26.2.b,* and *WSDOT-OMWBE Interagency Agreement;* and Federal Aviation Administration *Certification Statement for Washington Airports*), specifically state that OMWBE has since 1988 been and shall continue to be the exclusive certifying authority for all minority, women, and socially and economically disadvantaged business enterprise programs administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington for purposes of complying with 49 CFR 26.81; now, therefore,

In Consideration of the foregoing recitals, the Undersigned agree as follows:

1. Formation of Unified Certification Program

The Undersigned hereby agree to participate in a Unified Certification Program ("UCP"), the primary purpose of which shall be to designate an exclusive certification authority as required by 49 CFR Part 26.

2. Designation of Exclusive Certifying Authority; Binding Effect

The Undersigned hereby agree as follows:

2.1 The Washington State Office of Minority & Women's Business Enterprises ("OMWBE") is and shall continue to be the sole and exclusive certification authority for participation in the USDOT Disadvantaged Business Enterprise ("DBE") program in the state of Washington in accordance with 49 CFR Part 26 and chapter 39.19 RCW (**Exhibit A**). See also *WSDOT-OMWBE Interagency Agreement* (**Exhibit B**); *Washington State Department of Transportation Disadvantaged Business Enterprise Program: Participation Plan* and *Local Agency Guidelines, Chapter 26.2.b* (**Exhibit C**); and *Certification Statement for Washington Airports* (**Exhibit D**).

2.2 The final certification determinations made by OMWBE shall be binding and have the full force and effect of law as may be provided by 49 CFR Part 26.

2.3 Only final certification determinations issued by OMWBE prior to the due date for bids or offers on a contract which a firm seeks to participate as a DBE, shall be recognized for purposes of award.

3. Duties and Responsibilities of WSDOT

WSDOT shall have the following duties and responsibilities:

3.1 Negotiate and administer the *WSDOT-OMWBE Interagency Agreement* (**Exhibit B**) with OMWBE, the certification authority designated by this UCP. This *Interagency Agreement*, together with the WSDOT *Disadvantaged Business Enterprise Program: Participation Plan* (**Exhibit C**) shall set forth the specific terms and conditions by which OMWBE shall certify socially and economically disadvantaged business enterprises (DBEs) in the State of Washington according to 49 CFR Part 26 and this UCP Memorandum.

3.2 Ensure that OMWBE has sufficient financial and other resources to enable the certification authority to perform its duties and responsibilities according to this UCP Memorandum. Specific funding levels, staffing and other resources for OMWBE is, and shall continue to be established annually and monitored quarterly as provided in the *Interagency Agreement*.

3.3 Notify the Undersigned and OMWBE of all regulatory changes, interpretations and other communications affecting the operation of the UCP and/or WSDOT's duties and responsibilities, including without limitation, providing OMWBE with a copy

of the WSDOT *Disadvantaged Business Enterprise Program: Participation Plan* as may be in effect from time to time.

3.4 Coordinate and administer any audits, certification performance reviews and/or other requests for information as may be directed to the UCP by USDOT and/or its modals.

4. Duties and Responsibilities of OMWBE

In its capacity as the sole and exclusive certification authority in the state of Washington, OMWBE shall perform the following duties and responsibilities:

4.1.1 Comply with and follow all certification standards and nondiscrimination requirements of 49 CFR Part 26 on the same basis as the Undersigned as set forth in the *WSDOT-OMWBE Interagency Agreement* and *WSDOT Disadvantaged Business Enterprise Program: Participation Plan* as may be approved from time to time, including without limitation, implementation of all USDOT directives and guidance concerning certification matters.

4.2 Only process an application for certification from a firm whose principal place of business is outside the state of Washington if the firm has received a certification determination from the designated UCP of the state in which the firm maintains its principal place of business.

4.3 Issue administratively final determinations to certify, recertify or remove a firm based upon applications submitted to it for certification and recertification, appeals, third party challenges, ineligibility complaints, recipient-initiated proceedings, and USDOT directives.

4.4 Share its information and documents concerning firms certified in the state of Washington with other state UCPs that are considering the firm's application of certification.

4.5 Maintain a unified *DBE Directory* of firms certified by OMWBE pursuant to this UCP that shall contain all of the information required by 49 CFR 26.31 and be available to the public electronically, on the internet, and in print.

4.6 Cooperate fully with all oversight, review and monitoring activities of USDOT and the Undersigned, as relates to the implementation and ongoing activities of the UCP.

5. Implementation of UCP

The UCP shall be implemented immediately upon signing of this UCP Memorandum.

6. Authority To Bind

WSDOT represents that it has the authority to bind itself as well as all of the other political subdivisions, entities and organizations that have adopted WSDOT's *Disadvantaged Business Enterprise Program: Participation Plan* as may be approved and in effect from time to time.

7. Counterparts

This UCP Memorandum may be executed in counterparts which when taken together, shall constitute this entire UCP Memorandum.

IN WITNESS WHEREOF, the Undersigned have executed this Memorandum effective as of the last date of all the signatories appearing herebelow and/or on the counterpart(s) made a part hereof.

STATE OF WASHINGTON
Department of Transportation

By _____ Dated: _____
Douglas B. MacDonald
Secretary

Aviation Division

By _____ Dated: 2/27/02
John Sibold, Director

Washington State Ferries

By _____ Dated: 2/27/02
Michael Thorne, Director

Highways and Local Programs Division

By _____ Dated: 2/27/02
Kathleen Davis, Acting Director

Public Transportation and Rail Division

By _____ Dated: 3-1-02
Jim Slakey, Director

ACCEPTED:

STATE OF WASHINGTON
Office of Minority & Women's Business Enterprises

By Juan Hucy-Ray
Juan Hucy-Ray
Acting Director

Dated: 3/01/02

THE UNDERSIGNED representative of the following modal of the U.S. Department of Transportation in the State of Washington* has reviewed the foregoing Memorandum and hereby concurs:

U.S. DEPARTMENT OF TRANSPORTATION

Federal Highway Administration
Washington Division

By Daniel M. Mathis
Daniel Mathis, Division Administrator

Dated: 03/06/02

* Representatives of the Federal Transit Authority and Federal Aviation Administration in the State of Washington are unable to review and comment.

EXHIBIT A

RCW 39.19.120
Certification of business enterprises.

The office shall be the sole authority to perform certification of minority business enterprises, socially and economically disadvantaged business enterprises, and women's business enterprises throughout the state of Washington. Certification by the state office will allow these firms to participate in programs for these enterprises administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington.

This state-wide certification process will prevent duplication of effort, achieve efficiency, and permit local jurisdictions to further develop, implement, and/or enhance comprehensive systems of monitoring and compliance for contracts issued by their agencies.

[1987 c 328 § 7.]

EXHIBIT B

Interagency Agreement

Between

Washington State Department of Transportation

And

Office of Minority and Women's Business Enterprises

This Interagency Agreement is entered into this 1st day of July, 2001, between the Washington State Department of Transportation (hereinafter called "WSDOT") and the Office of Minority and Women's Business Enterprises (hereinafter called "OMWBE") to provide mutually advantageous terms for cooperation between the WSDOT and OMWBE to implement the United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) program.

WHEREAS, WSDOT is required to comply with 49 Code of Federal Regulations (CFR) Part 26 through its assurances and obligations entered into with USDOT; and

WHEREAS, WSDOT and USDOT require and will continue to require that contractors on their federal contracts meet the various applicable DBE requirements by utilizing businesses certified by OMWBE as bona fide DBEs; and

WHEREAS, WSDOT and OMWBE find it mutually advantageous to make the most efficient use of their resources; and

WHEREAS, WSDOT is mandated by the USDOT to conduct an annual review of the DBE certification process to ensure OMWBE's compliance with federal certification requirements.

NOW THEREFORE, WSDOT and OMWBE agree that their respective responsibilities shall be defined as follows:

I. WSDOT Responsibilities

1. WSDOT shall conduct an annual process review of OMWBE's certification of DBE firms to ensure compliance with the various federal regulations. It is agreed between WSDOT and OMWBE that the review shall be conducted during the month of November on a mutually agreed upon date.

2. WSDOT shall be responsible for monitoring DBE firms to ensure the performance of a Commercially Useful Function on WSDOT's federally funded contracts.

3. WSDOT agrees to timely notify OMWBE of any federal law or regulation changes, which may affect the certification process.

4. WSDOT agrees to notify OMWBE of any third party complaints questioning a DBE firm's certification; and, in turn, OMWBE agrees to notify WSDOT of any third party challenge to a DBE proposed certification.

5. WSDOT and OMWBE mutually agree to assist one another in the investigation of third party complaints relating to federal certification requirements.

6. WSDOT agrees to notify OMWBE of determinations of noncompliance pertaining to a firm's failure to perform a Commercially Useful Function and to notify OMWBE of any suspensions or disbarments for cause of any DBE firm.

7. WSDOT agrees to apprise OMWBE of any WSDOT or USDOT training relevant to certification and compliance functions and agrees that OMWBE may use funds from this agreement to pay per diem and travel cost to those staff persons it designates to attend and/or provide these training functions, within the maximum amount specified in Section III below.

II. OMWBE Responsibilities

1. OMWBE shall be responsible for the certification, recertification, and removal of firms wishing to participate or continue to participate in USDOT related programs as DBEs.

2. OMWBE shall be responsible for maintaining necessary federal reporting documentation as required by 49 CFR part 26, including statistical data as required in this regulation and by reference made part of this agreement.

3. OMWBE shall maintain a directory of DBE firms in both electronic and hard copy formats. The directory shall be available on its website (www.omwbe.wa.gov) and shall be updated weekly. The hard copy shall be updated quarterly. The firm listing in the directory shall include its business description and primary NAICS code.

4. OMWBE agrees to cooperate on behalf of WSDOT and USDOT in any reviews of the OMWBE, any firm certified, or being proposed for certification, including firms denied, administratively closed, or removed pursuant to the normal administrative process or resulting from any third party challenge or complaint.

5. OMWBE agrees to conduct on-site reviews prior to the issuance of DBE certification for all firms applying for DBE status. This applies to firms whose primary activities are related to highway construction, transit, aviation or are in support thereof, in determining eligibility for participation in Federal-Aid Transportation programs. In determining what constitutes "activities related to Transportation or activities in support thereof," OMWBE will use as guidance Appendix #1. (The parties agree that the intent of this paragraph is to ensure that those applicant firms who are most likely to engage in transportation related work receive on-site validation.)

6. OMWBE agrees to conduct annual updates and recertifications as required by 49 CFR part 26 of all firms on a priority basis, beginning with:
    a. Firms who have participated in federally funded highway and ferry projects over the past two years
    b. Firms who have participated in other federally funded transportation related projects over the past two years
    c. Firms most likely to participate in federally funded transportation projects
    d. Firms who potentially could participate in transportation work
    e. Firms unlikely to participate in transportation related work.

7. OMWBE agrees that in situations where there is disagreement about any interpretation concerning DBE certification requirements, WSDOT will be guided by federal regulation and will be the ultimate authority on the WSDOT/USDOT related DBE program.

8. OMWBE shall designate four (4) FTEs, three of which shall work exclusively on USDOT transportation related DBE requirements.

9. OMWBE will be responsible for the adequate training of its DBE assigned specialists as it relates to 49 CFR Part 26 certification requirements.

10. To facilitate the timely performance of WSDOT's responsibilities under section I above, and upon prior request of WSDOT, OMWBE agrees to make its files and records available to WSDOT and/or USDOT staff for inspection and copying without prior review for possible exceptions from public disclosure. Additionally, and absent any previously scheduled commitments, OMWBE shall make its DBE assigned specialists available to provide such technical assistance as WSDOT and/or USDOT staff may reasonably require for purposes of inspection and copying OMWBE files and records.

11. OMWBE shall provide WSDOT with monthly reports of DBE certification activities. This report will include, but not be limited to, lists of DBE firms certified, recertified, graduated and/or removed, on-site reviews conducted (include names of firms), appeals, court and/or legal reviews, complaints and determinations.

12. OMWBE shall (with the assistance of WSDOT) provide WSDOT with updated DBE "priority"* certification lists.

III. Payment

WSDOT, in consideration of the faithful performance by OMWBE of its function set forth in section II above, agrees to pay OMWBE the lump sum amount of $262,500.00. This amount shall be payable in four equal payments of $65,625.00. Partial payments shall be made by WSDOT to OMWBE once per quarter. It is agreed that payment will not constitute approval of the expenditure of these funds and that, if a state audit should reveal discrepancies, all required adjustments will be made by OMWBE.

Estimate of cost:

Salaries for four FTEs	$183,750.00
Benefits	52,500.00
Travel	21,000.00
Space, Supplies, Misc. exp.	5,250.00
Total Budget amount	$262,500.00

IV. Terms of Agreement

This agreement shall be effective from July 1, 2001 to June 30, 2002, unless one of the following occurs:

1. Federal approval of the certification responsibility delegated by WSDOT is withdrawn; in which case, this agreement is effectively terminated on the date of notification, or this agreement is terminated.

2. The agreement is amended or terminated by written amendment or termination** signed by WSDOT and OMWBE.

* (Those firms found under Part II, Section 6, Subsections a. & b.)

** (Either party may terminate the agreement upon thirty (30) days written notice.)

V. Inspection of Cost Records

OMWBE shall keep available for inspection by representatives of the WSDOT and the USDOT, for a period of three years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving records is completed.

Copies of these records shall be furnished when requested by a representative of WSDOT or the United States Department of Transportation.

In witness, whereof, the parties hereto have executed this AGREEMENT as of the day and year first written above.

Douglas B. MacDonald Date
Secretary,
Washington State Department
Of Transportation

Juan Huey-Ray 9/17/01 Date
(Acting) Director,
Washington State Office of Minority
and Women's Business Enterprises

APPROVED AS TO FORM ONLY:

Assistant Attorney General Date
(WSDOT)

Assistant Attorney General 9/13/01 Date
(OMWBE)

APPENDIX # 1

In accordance with Section II OMWBE Responsibilities: in the FY2001 Interagency Agreement, the following Classification Codes are recommended to assist OMWBE in prioritizing new applicant request for DBE certification. These Classification Codes have work specialties that highway and ferry construction, transit, and aviation firms would most likely be classified under. This selection is to be used as a guide and is not intended to substitute the judgment of the classifier or circumvent the provisions set forth in 49 CFR Part 26.

NAICS CODES

115116, 54169, 54132, 56173, 212321, 23332, 23331, 23411, 23412, 23491, 23492, 23493, 23499, 23511, 23521, 23531, 23541, 23542, 23543, 23551, 23552, 23561, 23542, 23571, 23581, 23591, 23592, 23593, 23594, 23595, 23592, 56291, 23599, 332312, 332323, 337215, 33636, 332117, 332439, 33251, 332919, 332999, 335129, 33422, 33429, 48839, 336611, 334511, 562111, 562112, 562119, 48411, 48422, 484121, 484122, 48421, 48423, 49211, 49221, 532411, 48831, 48833, 48839, 488111, 488119, 56172, 48819, 488999, 561599, 541614, 48851, 51331, 51333, 51334, 56292, 562211, 562212, 562213, 562219, 488119, 56291, 562998, 42131, 44419, 42132, 44419, 42139, 42143, 44312, 42144, 42151, 44419, 42161, 44419, 42172, 42173, 42174, 42181, 42182, 44421, 42183, 42183, 42184, 42185, 44612, 42186, 42269, 42272, *42292, 42293, 44422, 54189, 42299, 445292, 31133, 31134, 44521, 446191, 445299, 72211, 722211, 722212, 722213, 72231, 72232, 44611, 451211, 45112, 45322, 45311, 451212, 44612, 45391, 45392, 443112, 453998,* **52421, 524291, 524292, 524298,** *81143, 81299, 81293, 812199,* **54181, 54143, 56179, 56172, 23499, 532412, 53221, 53231, 532299, 532412, 532411, 562991, 53242, 53249, 541511, 51121, 334611, 541512, 51421, 541519, 541199, 54137, 54141, 54142, 54143, 54189, 54193, 54135, 54199, 56192, 561499, 56199, 561990, 811118, 811122, 811191, 48841, 811198, 54133, 54131, 54136, 54137, 541211, 541214, 541219, 54171, 54172, 54191, 54138, 56111, 23, 541611, 541612, 541613, 541614, 54182, 56121, 61171, 54169, 54132, 54133, 541618.**

Italicized, non-bold numbers are FAA only.

EXHIBIT C

26.1 General Discussion

Under Public Law 105-178 (TEA-21), a 10 percent National goal was established for the participation of Disadvantaged Business Enterprises (DBEs) in transportation contracting, in an effort to ensure equal opportunity in transportation contracting and address the effects of past and current discrimination. Requirements of the DBE Program, as prescribed in 49 CFR Part 26, apply to all recipients (and subrecipients) of highway, transit, and airport funds.

A local agency, when participating in programs funded in whole or in part with funds made available by the Washington State Department of Transportation (WSDOT), must either adopt WSDOT's DBE Plan, or develop an equivalent plan. The local agency equivalent plan must have the approval of WSDOT's Office of Equal Opportunity and the Federal Highway Administration (FHWA).

While WSDOT's Office of Equal Opportunity (OEO) has the overall responsibility for administration and implementation of WSDOT's DBE Program, local agencies (as subrecipients) also have an important role to ensure that their Federally-assisted contracts are administered in accordance with the State's approved DBE Program Plan, which is available on WSDOT's website.

WSDOT's OEO, in coordination with the Operations Engineer for Highways and Local Programs, will conduct compliance reviews of the local agency's administration of the DBE Plan. A local agency that is found to be in noncompliance may be subject to formal enforcement action (suspense or loss of Federal funds and/or CA status). A finding of noncompliance will result for failure to comply with the requirements of WSDOT's DBE Plan.

Each Federally-assisted contract subcontract must include the following assurance:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

26.2 Procedures

a. **Local Agency DBE Liaison Officer.** The local agency is responsible for ensuring program compliance and monitoring its contractor's DBE activities. To accomplish this, a DBE liaison officer must be appointed by the local agency. This liaison officer must be an administrator responsible to the chief executive of the agency. This administrator should have the authority to delegate the responsibility to the people who perform the contractor compliance function. The liaison officer's duties are to ensure compliance with the DBE Plan by the local agency and by their contractors.

b. **DBE Firm(s) Certification.** The Washington State Office of Minority and Women's Business Enterprise (OMWBE) is the sole authority in the State of Washington to perform certification of all minority business enterprises, women business enterprises, and socially and disadvantaged business enterprises for programs administered by any State, local, or Federal agency. This statutory authorization extends to and binds all USDOT DBE Program recipients in the State of Washington. Only DBE firms that are currently certified by OMWBE may be used by prospective bidders on Federally funded projects. A directory of certified DBE firms is maintained and published by OMWBE. A copy of the directory is available via WSDOT's web page or directly from OMWBE. Their address is:

Office of Minority and Women Business Enterprise
406 South Water
Olympia, WA 98504
Telephone: (360) 753-9693

c. **Establishment of Project DBE Goals.** The Highways and Local Programs Operations Engineer will review each project to determine if it involves work elements that are conducive to DBE participation. To initiate this review, the local agency must submit an engineer's estimate with their suggested DBE goal to the Regional Local Programs Engineer when the contract work is determined. The estimate must show the item quantities and costs of the project.

If a local agency has any other projects tied to a federally funded project which utilizes one set of bid documents, the total project is considered a federal aid project for DBE goal setting purposes.

The goals for federal aid projects will be set under one of the following categories based on the projected participation level during the year to achieve the overall goal:

- Voluntary Goal
- Mandatory Goal
- Zero Goal

The Highways and Local Programs Operations Engineer will then establish a voluntary or mandatory DBE goal for the project. The methodology employed by WSDOT and its Highways and Local Programs Service Center in determining state and local agency project contract goals is as follows:

EXHIBIT D

Certification Statement for Washington Airports

Certification (26.61 - 26.91)

The ***name of recipient*** is bound by the Revised Code of Washington (RCW) 39.19.120, effective 1988 (see Attachment A) to use the Office of Minority and Women's Business Enterprises (OMWBE) as the sole certification authority for all DBEs in the state. Therefore, OMWBE is the Unified Certification Program used in Washington State. OMWBE uses the certification standards of Subpart D of part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in DOT assisted contracts. To be certified as a DBE, a firm must meet all certification and eligibility standards. OMWBE makes certification decisions based on the facts as a whole.

Process

OMWBE certification procedures including the application form, documentation requirements, recertifications, appeal procedures, notices of change requirements, and personal net worth are found in the Washington State DOT (WSDOT) DBE Program Participation Plan, Chapter XXVIII "DBE Eligibility Certification Procedures" (Attachment B).

For information about the certification process or to apply for certification, firms should contact OMWBE at (360) 753-9693 or visit their website at http://www.omwbe.wa.gov.

Certification Appeals

Any firm or complainant may appeal OMWBE's decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th St. SW, Room 2104
Washington, DC 20590

OMWBE will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that denial of its application was erroneous).

OMWBE has a system for administrative appeals of certification decisions as described in Attachment B. Use of the OMWBE appeals process is not a remedy that a firm needs to exhaust prior to making a certification appeal to DOT under 26.89.

determine the matter so presented and to enter such order or orders as may be required to carry into effect this section, and may impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions. [1987 c 328 § 13.]

RCW 39.19.120 Certification of business enterprises. The office shall be the sole authority to perform certification of minority business enterprises, socially and economically disadvantaged business enterprises, and women's business enterprises throughout the state of Washington. Certification by the state office will allow these firms to participate in programs for these enterprises administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington.

This state-wide certification process will prevent duplication of effort, achieve efficiency, and permit local jurisdictions to further develop, implement, and/or enhance comprehensive systems of monitoring and compliance for contracts issued by their agencies. [1987 c 328 § 7.]

RCW 39.19.140 Implementation of state-wide certification. Implementation of state-wide certification shall be effective January 1, 1988, following consultation by the office with appropriate state and local officials who currently administer similar certification programs. Any business having been certified under any of the programs identified pursuant to *RCW 39.19.130 as a minority and women's business enterprise shall be deemed certified by the office as of January 1, 1988. [1987 c 328 § 9.]

*Reviser's note: RCW 39.19.130 expired June 30, 1991.

RCW 39.19.150 Local government may petition for reconsideration of business certification. (1) Any city, county, town, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation having reason to believe that a particular minority and women's business enterprise should not have been certified under RCW 39.19.140 may petition the office for reconsideration. The basis for the petition may be one or more of the following:

(a) The office's rules or regulations were improperly applied; or

(b) Material facts relating to the minority and women's business enterprise's certification application to the office are untrue.

(2) The petitioner shall carry the burden of persuasion. The affected minority or women's business enterprise shall receive notice of the petition and an opportunity to respond.

(3) After reviewing the information presented in support of and in opposition to the petition, the office shall issue a written decision, granting or denying the petition. If the office grants the petition, it may revoke, suspend, or refuse to renew the certification or impose sanctions under this chapter as appropriate.

(4) The office's decision on a petition is administratively final and the rights of appeal set out in the office regulations shall apply. A certification shall remain in effect while a petition is pending. [1987 c 328 § 10.]

RCW 39.19.160 Local government responsible for monitoring compliance. Any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington utilizing the certification by the office retains the responsibility for monitoring compliance with the programs under its jurisdiction. The office shall not be responsible for enforcement of local ordinances, rules, or regulations, however titled. [1987 c 328 § 11.]

RCW 39.19.170 Prequalification of minority and women-owned businesses—Waiver of performance bond. (1) State agencies shall not require a performance bond for any public works project that does not exceed twenty-five thousand dollars awarded to a prequalified and certified minority or woman-owned business that has been prequalified as provided under subsection (2) of this section.

(2) A limited prequalification questionnaire shall be required assuring:

(a) That the bidder has adequate financial resources or the ability to secure such resources;

(b) That the bidder can meet the performance schedule;

(c) That the bidder is experienced in the type of work to be performed; and

(d) That all equipment to be used is adequate and functioning and that all equipment operators are qualified to operate such equipment. [1993 c 512 § 10.]

Short title—Part headings and section captions—Severability—Effective date—1993 c 512: See RCW 43.172.900 through 43.172.903.

RCW 39.19.200 Minority and women's business enterprises account—Created. The minority and women's business enterprises account is created in the custody of the state treasurer. All receipts from RCW 39.19.210, 39.19.220, and 39.19.230 shall be deposited in the account. Expenditures from the account may be used only for the purposes defraying all or part of the costs of the office in administering this chapter. Only the director or the director's designee may authorize expenditures from the account. Moneys in the account may be spent only after appropriation. [1993 c 195 § 1.]

Effective date of 1993 c 195—1993 sp.s. c 24: "Chapter 195, Laws of 1993 is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 sp.s. c 24 § 930.]

RCW 39.19.210 Businesses using the office—Fees. The office may charge a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, to a business using the services of the office. [1993 c 195 § 2.]

Effective date of 1993 c 195—1993 sp.s. c 24: See note following RCW 39.19.200.

RCW 39.19.220 Political subdivisions—Fees. The office may charge to a political subdivision in this state a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, prorated on the relative benefit to the political subdivision, for the certification under this chapter of a business. [1993 c 195 § 3.]

WASHINGTON STATE UNIFIED CERTIFICATION PROGRAM
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
210 11TH Avenue SW, Suite 401
PO Box 41160
Olympia, Washington 98504-1160
Phone (360) 664-9750
Toll Free (866) 208-1064
Fax (360) 586-7079

ON-SITE INTERVIEW

File Number: Click here to enter text.

Date of On-site: Click here to enter a date.

Onsite Prepared by:

Firm Name:

Firm Address:

Onsite Address:

Phone:

Owner Name(s):

Type of building: Choose an item. Firm sign on door/front: Choose an item.

Firm Structure: Choose an item.

Firm Type: Choose an item.

Interview Reason: Choose an item.

GENERAL INFORMATION

1.	Person #1 interviewed	
	Position/Title with firm	
2.	Person #2 interviewed	
	Position/Title with firm	
3.	Location of on-site *(e.g., job site, office, warehouse, etc.)*	
	Does the firm have any other locations? If yes, where?	
	Do you own or lease the property where the firm is located? *If a lease, do we have a copy of the lease? If not, please provide a copy.*	Choose an item. Additional notes/Other:

4.	What is the firm's primary line of business?	
5.	What is the firm's secondary line of business?	
6.	Including owners, how many employees take an active part in the business?	Full-time: Part-time:

OWNERSHIP

7.	Who are the firm's owners?	Name: Title: Ownership: Percentage: % Name: Title: Ownership: Percentage: % Name: Title: Ownership: Percentage: %
8.	Which of the owners are actively involved in the business and what is their principal involvement?	
9.	How did the minority/women owner(s) acquire ownership in the firm? ***(Ask for copies if not in the file)***	Choose an item. If Other/Explain:
	If you **purchased** the business, who did you purchase it from?	
	If you received the business as a **gift**, from whom and explain what your relationship is and why you received the gift?	

	If started using **wages/salary**: What is the name of the firm you earned the salary from? Are you **currently working** for the firm? Do you have a **W2** to provide as proof ?	
	If you started the business using **savings**, from what source?	
	If you used a **loan**, can you provide the loan documents?	
	If anyone contributed expertise, equipment, vehicles and /or any other assets, please explain the nature of the contribution *(who & what)*	
10.	How much was originally invested? ***(Ask for copies if not in the file)***	☐Money $ ☐Expertise ☐ Equipment ☐Vehicles
11.	How much would you estimate the firm is worth at this time?	
12.	Do any of the *owners* owe any money to the firm? If yes, how much, why and what was the source of those funds?	Choose an item.
13.	Does the *firm* owe any money to any of the owners? If yes, how much, why and what was the source of those funds?	Choose an item.

GENERAL ADMINISTRATION

14.	What are your (the eligible owner's) daily duties?	

15.	What hours/days of the week does the firm operate?	Choose an item.
16.	How many hours per day do you (the minority/woman owner) spend doing work related to the operation of this firm?	
17.	Do you (the minority/woman owner) spend time on any other businesses or employment?	Choose an item. *(If no, skip to 18)*
	If yes, for what company and explain what the primary function of the other business is?	
	Explain what your involvement/position is with this other business?	
	What are the hours/days of operation of the other business? What are the hours/days you spend at the other business?	Hours/Days of Operation for other business: Choose an item. Hours/Days spent at other business: Choose an item.
	Is the other business OMWBE certified DBE/WBE/MBE/ MWBE?	Choose an item.
18.	How are the owners compensated for their work and ownership interest? *("Not compensated" is not an acceptable answer.)*	Choose an item. Other/Additional Notes:
	Did you reinvest profits into the firm this past year? If yes, how much was reinvested?	Choose an item. If yes, amount reinvested:
19.	Other than the owners, who are the key employees and what are their duties? *Key employees can be defined as those who assist the owners in the management and operations of the firm.*	Choose an item. Name: Title: Duties:

	Name: Title: Duties:	Name: Title: Duties:
	Name: Title: Duties:	Name: Title: Duties:
20.	Does your firm visit job sites? If yes, who visits the job sites?	Choose an item. Name: Title:
	If yes, what do each of you do while at job sites?	
	If **no**, why not?	
21.	Describe the day-to-day functions of the company.	
22.	Is the firm engaged in any Joint Ventures or Mentor Protégé programs?	Choose an item. If yes, explain in detail:
23.	Does your firm share any of the following with any other company?	☐ None ☐ Bonding/Insurance ☐ Directors ☐ Employees ☐ Equipment ☐ Office Space ☐ Officers ☐ Owners ☐ Shop/Yard Space ☐ Warehouse Other/Explain:
24.	How are major decisions made?	
	Who makes them?	
25.	Who approves the hiring and firing of employees?	

26.	Do you have a written policy and procedure manual? *(For construction & Trucking)* Do you have a written safety manual?	Choose an item. Choose an item.
27.	Who wrote your policy and procedure or safety manual?	
28.	How many signatures are required for payroll and other checks? ***(Ask for a copy of the bank signature card if not in file)***	Choose an item.
	Who signs the checks?	
	Are there any restrictions such as more than one signature required?	
29.	Has the firm taken out any loans? (If yes, request copies)	Choose an item. If yes, from whom?
	If yes, who arranged for and signed the loan agreement?	
	If any loans are currently outstanding, what is the current balance owed?	
30.	Does the Board of Directors/ Managers/Members, etc. meet at least annually?	Choose an item.
	If **no**, the board does not meet, explain why.	
	How many members do you have on the board?	Number of board members:
	Identify who the board members are.	Name: Title: Attends all meetings? Choose an item. Name: Title: Attends all meetings? Choose an item. Name: Title: Attends all meetings? Choose an item.

31.	What type of equipment / tools do you use to perform the firm's work? ***(Take pictures & ask for copies of equipment/tools list if not in the file)***	
32.	How did the firm obtain these tools / equipment?	
33.	If the firm needs equipment that it does not own, how will it obtain that equipment?	
34.	Do you currently have equipment leases?	Choose an item. Name: Name: Notes:
35.	Have you ever owned a firm that has been denied certification with any office including OMWBE? If yes, what was the reason?	Choose an item. If yes, reason for denial:
	Have you ever withdrawn a certification application from any office including OMWBE? If yes, what was the reason?	Choose an item. If yes, reason for withdrawal:

PROFESSIONAL/BUSINESS SERVICES

36.	What is the service you provide to customers?	
37.	Do you have a written business and/or marketing plan?	Choose an item.
	If not, please explain how you plan to market your business?	
38.	Who are your major competitors?	
39.	Have you ever been asked to obtain bonding? ***(If yes, ask for a copy of the bond if not in the file)***	Choose an item. If yes, amount of bond: $

40.	What type of business insurance do you have? ***(Ask for a copy of the insurance if not in file)***	
41.	Do you have errors and omissions insurance: *(professionals – attorneys, engineers, doctors).* Who is covered? Identify each person and their title:	Choose an item. Name: Title: Name: Title:
42.	Do you subcontract any of your work? *(If no, skip to Question #43)*	Choose an item.
	If yes, to whom and what is the percentage for each? What is the nature or scope of the subcontracted work for each?	Name: Percentage: % Scope: Name: Percentage: % Scope: Name: Percentage: % Scope: Name: Percentage: % Scope:
	Is the firm capable of performing the subcontracted work?	Choose an item.
	If yes, why does the firm subcontract this work out?	
	If no, why does the firm bid on work it cannot perform?	
43.	What specialty supplies and equipment do you use in your business? ***(Take pictures & notes)***	

CONSTRUCTION FIRMS

44.	Describe the firm's bidding and estimating process ***(Ask for sample copies).***	
45.	Who does the firm's take-offs? *Take-off is a part of the cost estimating process in the construction industry. Estimators use construction blueprints, either manually or electronically, and start "taking off" quantities of items they will need from those blueprints in order to prepare part of the estimate.*	
46.	Do you inspect job sites before bidding on a project?	Choose an item. If yes, explain:
47.	Do you attend pre-submission conferences?	Choose an item. If yes, explain:
48.	How are construction materials purchased for projects?	
	Who approves purchases of construction materials?	
	Who approves purchases of construction equipment and similar assets?	
49.	How does the firm monitor job costs?	
50.	What is the firm's performance bond limitation?	Aggregate limit $ Project limit $
	What/whose assets are used to secure the performance bond?	
51.	Who is the firm's insurance agent/company?	
52.	Explain why a contractor should be bonded?	

53.	Who handled the firm's insurance registration?	
54.	How does the firm resolve field construction disputes or problems?	
55.	Who negotiates disputed billings with prime contractors or customers?	
56.	Do you subcontract any of your work? ***(If no, skip to next section.)***	Choose an item.
	If yes, to whom and what is the percentage for each? What is the nature or scope of the subcontracted work for each?	Name: Percentage: % Scope: Name: Percentage: % Scope:
	Is the firm capable of performing the subcontracted work?	Choose an item.
	If yes, why does the firm subcontract this work out?	
	If no, why does the firm bid on work it cannot perform?	
57.	How does the firm select subcontractors?	

VENDORS/SUPPLIERS

58.	Is the firm a…	Choose an item. If Other:
	If the firm is a manufacturer, do you have a manufacturing plant? Where is it located? ***(Obtain copy of lease agreement or deed)***	Choose an item.

	If someone else owns the manufacturing plant your firm uses, do you have an agreement with the owner? *If yes, please provide a copy of the agreement.*	Choose an item.
	If a distributor/dealership, do you have a distributorship/ dealership agreement? *If yes, please provide a copy.*	Choose an item.
	If the firm is a franchise? *If yes, please provide a copy of the Franchise agreement.*	Choose an item.
59.	When do you take ownership title to the goods you sell? ***(Ask for copies of invoices, receipts, order forms, shipping receipts, etc.)***	
60.	How long does the firm retain ownership of or title to the goods for sale? ***(Ask for copies of inventory lists, etc.)***	
61.	Does your firm obtain supplies on its own credit? *If yes, please request copies.*	Choose an item.
	If yes, what is the credit arrangement?	
	If no, how does the firm obtain supplies?	
62.	Who made the firm's initial credit arrangements?	
63.	Which manufacturers, wholesalers, distributors, or other suppliers extend credit to the firm? *(Please provide copies of these agreements.)*	
64.	Does the firm keep an inventory of the items it supplies? If yes, request copies.	Choose an item.
	If yes, where are those supplies stored? ***(Take pictures & notes)***	

	On average, how much inventory does the firm maintain?	
	If no, how does the firm provide the items supplied?	
65.	Approximately what percentage of the firm's sales will be filled directly from the firm's current inventory?	
66.	How will the product be delivered to your customer? ***(Ask for sample copies if not in the file)***	☐ Firm delivers product; How? ☐ Firm arranges for product delivery ☐ Drop shipped from manufacturer ☐ Customer arranges for product delivery ☐ F.O.B. storage facility/warehouse
67.	Does the firm provide additional insurance of the product until delivery for: ***(Ask for sample copies if not in file)***	☐ Theft ☐ Fire ☐ Other damage ☐ No additional coverage
68.	What type of insurance does the firm carry? ***(Ask for copies if not in the file)***	
69.	Does the firm provide any additional warranty for the product? ***(Ask for sample copies if not in the file)***	☐ Untimely delivery ☐ Replacement ☐ Return policy ☐ Damage/defective product ☐ Firm fails to perform ☐ Other: ☐ No additional warranty coverage
	If no, who provides warranty coverage for the product?	
70.	Can the customer purchase the same goods from the same source as the firm?	Choose an item.
	If yes, what advantage do customers get from buying from you?	☐ Additional warranty ☐ Additional services ☐ Other:
71.	Who signs sales contracts on behalf of the firm? ***(Ask for copies if not in the file)***	
72.	Who are your major suppliers? ***(Ask for copies of agreements if not in the file)***	

73.	What are the terms of your distributorship agreements (if any) and amount paid for distributorship rights? ***(Ask for copies of agreements if not in file)***	
74.	Do you subcontract any of your work? *(If yes, request copies if not in file)*	Choose an item.
	If yes, to whom and what is the percentage for each? What is the nature or scope of the subcontracted work for each?	Name: Percentage: % Scope: Name: Percentage: % Scope:

TRUCKING FIRMS

75.	What equipment does your firm own and operate? ***(Ask for copies if not in the file)***	
76.	Identify how many and each truck the firm *owns* and operates?	Type: Number: Type: Number: Type: Number:
	Who operates the trucks?	Name: Title: Name: Title: Name: Title:
	Who does the maintenance on the truck(s)?	Name: Title:
	Who serves as truck boss?	Name: Title:
	Who handles dispatch?	Name: Title:

77.	Who did you purchase each truck from?	
	Explain & provide documentation ***(copies)*** of where the funds came from to buy each truck?	
78.	Do you *lease* any trucks?	Choose an item.
	If yes, how many trucks does your firm *lease*?	Type: Number: Type: Number: Type: Number:
	If yes, explain and provide documentation ***(copies)*** of who you lease the trucks from.	
79.	Where are the trucks stored? ***(Take pictures & notes)***	
80.	Please demonstrate how you track trips and provide copies ***(Review trip tickets or truck logs & request sample copies).***	Verified: Choose an item. Additional notes:
81.	How do you determine what type of equipment is required for a given job?	
82.	How do you determine how much time a run might take? ***(Ask for sample copies)***	
83.	What are some common road restrictions that affect how you perform your work?	
84.	What permit requirements affect your firm?	
85.	Are your permits and licensing current? *(request copies if not in file)*	Choose an item.
	Do you have a CDL? (A B or C). What is required?	
	Do any of the other owners have a CDL? (A B or C).	

	Are you hauling in the State of Washington? *If yes, please provide a current copy of the firm's Utilities Transportation Commission Common Carrier Permit (as required by Chapter 480-14 WAC).*	Choose an item.
86.	How do you determine whether Davis-Bacon applies to a job? *The 1931 Davis-Bacon Act requires the payment of prevailing wage rates to all labors and mechanics on Federal or Federally assisted construction contracts.*	
87.	How do you determine what impact Davis-Bacon might have on your bid price?	
88.	How do you decide whether to bid by the hour or by the ton?	
89.	How does workers' compensation and unemployment regulations apply to your firm?	
90.	What sort of impact does signing a subcontract have on how you perform a job?	
91.	Do you subcontract any of your work?	Choose an item.
	If yes, to whom and what is the percentage for each? What is the nature or scope of the subcontracted work for each?	Name: Percentage: % Scope: Name: Percentage: % Scope: Name: Percentage: % Scope:
Complete this question only if you have not filled out any of the additional sections (Professional/Business Services, Construction, Trucking)		
92.	Do you subcontract any of your work?	Choose an item.

	If yes, to whom and what is the percentage for each? What is the nature or scope of the subcontracted work for each?	Name: Percentage: % Scope: Name: Percentage: % Scope:
OTHER/ADDITIONAL QUESTIONS IF APPLICABLE		
93.	What was the firm's gross income for the last four years? ***(Request copies for any missing tax returns from the file)***	Choose an item. $ Choose an item. $ Choose an item. $ Choose an item. $
94.	Is any money currently owed to silent investors? *(If yes, request copies)*	Choose an item.
	If yes, current amount owed and identity of creditor/owner.	$ Name of Creditor:
95.	Number of Employees (including active owners) you have? How many are minorities? How many are women?	Number of Employees: Minority employees: Female employees:
96.		
97.		
98.		

ADDITIONAL COMMENTS/RECOMMENDATIONS/OBSERVATIONS

_____ Click here to enter a date.
Onsite prepared by

_____ Click here to enter a date.
Approved by Manager

This is the verbiage that will be displayed in Certification Approval Emails/Letters. These notifications are user generated and optional. They're used to notify the Applying vendor of their removal status. You may choose to edit the text below or draft a unique message for your Organization. (i.e. copy and paste the verbiage you currently use for Certification Removal.

Instructions

1. Review the sample text and modify as needed to fit your program requirements.
2. Fill in the template information below for your letter/email.
3. If you have multiple versions of the Certification Approval template, include all versions in this one document and label each version accordingly.
4. To save this word document, please simply click on the 'save icon' above in word. This is an embedded document with the excel spreadsheet and will be saved within the excel spreadsheet.

***NOTE:** The supported token variables will vary with each unique letter.

Please review the Certification Notification Token Variables PDF and reference the 'Approval Letter' and 'General' for the token variables that can be inserted into this letter, if relevant.

Version 1: Please fill out the template information below and then begin to edit the text and customize your template notification.

Template Information
Title of Template: New Federal Certification

Who will sign off on this Template:
☐Contact Person
OR
☐Manager Name: _____

Template Type:
☐Letter Only
☐Text Email Only: Email Subject: _____
☐Letter and Text Email: Email Subject: Subject: WA State OMWBE - Certification

---

Edit Template Text Below:

[lblDate]

[lblBusinessName]
[lblAddress]

Dear [lblFirstName] [lblLastName],

Congratulations! Your firm has been certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) as a/an [lblCertificationType]. Information about your business is published in the OMWBE Directory located at http://wsdot.wa.gov/Partners/OMWBE/DBEDirectory.

Certification Number: [lblCertificationNumber]
Anniversary Date: [lblExpirationDateFinal]

Please review each of the following:

- Each year before your anniversary date, you must submit an "Affidavit of Continued Eligibility." This form confirms there have been no changes that would affect your firm's ability to remain certified, such as changes in ownership, control, size, management responsibility, scope of work, or personal net worth. OMWBE will send you the affidavit 75 days before your anniversary date.
- You must inform the OMWBE in writing within 30 days of the any of the changes listed above using the appropriate form found at http://omwbe.wa.gov/certification. Failure to notify our office of these changes may affect your firm's eligibility for the program.
- This certification shall remain valid unless and until it has been removed in accordance with the procedures set forth in 49 CFR § 26.87.

We are pleased to certify your firm and wish you much success. If you have any questions or need assistance, please contact us at (360) 664-9750.

Sincerely,

[lblContactPersonName]
Certification Analyst

This should be on page 2:

Your firm is certified in the following areas:

Business Description:
[lblBusinessCapability]

North American Industry Classification System (NAICS) Codes:
[lblCommodityCodes]

You are encouraged to become an active participant on federally assisted projects. This certification permits your company to compete in federal-aid contract work as a DBE-owned and operated company. However, it does not guarantee that you will receive work.

Sign up in the Washington's Electronic Business Solutions (WEBS) if you wish to receive solicitation notices from state agencies, local and tribal governments and non-profit organizations throughout

Washington State. If you have any questions about WEBS, please contact the Department of Enterprise Services at 360-902-7400 or webscustomerservice@des.wa.gov.

Learn more about doing business with the state: http://bit.ly/DoBizWithWA.

Email:

[lblBusinessName]
File Number: [lblFileNumber]

Dear [lblFirstName] [lblLastName],

The Office of Minority and Women's Business Enterprise completed a certification application for your business. Please see the attached certification letter for more information.

Please feel free to contact us at (360) 664-9750.

Sincerely,

[lblContactPersonName]
Certification Analyst

Washington State Office of MINORITY & WOMEN'S Business Enterprises

Affidavit of Continued Eligibility (Federal)

Use this form if you are currently certified as a Disadvantaged Business Enterprise (DBE), Airport Concessionaire Disadvantaged Business Enterprise (ACDBE), or Small Business Enterprise (SBE) to verify there have been no changes affecting your businesses' ability to meet the size, disadvantaged status, ownership, or control requirements.

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

I_____(printed name) hereby swear or affirm the following:

- There have been no changes in_____'s (name of business) circumstances affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 23 (ACDBE), 49 CFR Part 26, and 13 CFR Part 121.
- There have been no material changes in the information provided in the application for certification, except for any changes I have already provided written notice of to OMWBE per 49 CFR § 26.83(i).
- I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified in 49 CFR § 26.5, without regarding to my individual qualities. (Applies to DBE and ACDBE only)
- My personal net worth does not exceed $1.32 million, and I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business that are not socially and economically disadvantaged.
- The business continues to meet the Small Business Administration size criteria and gross receipts cap of 49 CFR Part 23 (ACDBE), 49 CFR Part 26 and 13 CFR Part 121.
- The businesses' average gross receipts and average employee count over the last three (3) years was:

  Gross receipts_____ Employee count _____
- I have attached the businesses' most current Internal Revenue Service (IRS) business tax filing to support this affidavit.

I declare under penalty of perjury that the foregoing is true and correct. [1]

_____ _____

Owner's printed name Owner's signature

NOTARY CERTIFICATE

State of_____County of _____

Subscribed and sworn to before me this_____day of_____, 20 ____

by _____

_____ _____

Signature of Notary Public Date appointment expires

R 3/17

[1] Knowing and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment or both.

STATE OF WASHINGTON

OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

1110 Capitol Way South, Suite 150 · PO Box 41160 · Olympia, WA 98501

(360) 664-9750 · Toll free 1-866-208-1064 · Fax (360) 586-7079

[Date]

[business name]
[mailing address]
[city, state zip]

File Number: [File Number]

NOTIFICATION OF 60 DAY CERTIFICATION EXTENSION

Dear [contact name],

The Office of Minority and Women's Business Enterprises is unable to complete the certification process within the regulatory deadline of 90 days. 49 CFR 26.83(k) allows for a one time extension of 60 days. This 60 day extension is being applied to your application to allow for a thorough review of the application and supporting documents. We will complete our review in 60 days or less.

I apologize for any inconvenience the delay may cause and thank you for your continued patience during the application process. I will remain in contact with you throughout the remainder of the application process. If you have any questions regarding your application, the certification process or this extension notification, please feel free to contact me.

Best Regards,

[Analyst Name]
Certification Analyst

cc: Washington State Department of Transportation

Email for Annual and Renewal
Email subject: Certification Update

[lblDate]

[lblBusinessName]
[lblAddress]

File Number: [lblFileNumber]

Dear [lblFirstName] [lblLastName],

Your firm is certified with the Office of Minority and Women's Business Enterprises (OMWBE).

- Businesses that have state certification with OMWBE must update their certification every three years.
- Businesses that have federal certification with OMWBE must update their certification each year.

Annual updates and state renewals are now submitted online. Please follow the steps below to complete your online application within 30 days.

1. Log into our system at https://omwbe.diversitycompliance.com.

2. Enter Username and Password. If this is your first time logging in and you do not know your password, click "Forgot Password" to receive an email with instructions for resetting. Your username is the email at which you received this notification.

3. Go to your homepage by clicking "Home" on the left side menu.

4. Click "Renew/Apply for Certification" under Key Actions.

5. Follow the drill down option "Your firm is currently certified with OMWBE" to start your application.

Please note:
- If you are seeking to update both federal and state certifications, please submit both Annual Update and State Renewal applications.

- If you have experienced changes in ownership or business structure, or would like to update your business description or NAICS codes, please also submit the Ownership/Business/Expansion form by selecting "Your firm is seeking to update your business information" on the drill down option.

- For more online application resources, please click "Help & Support" on the left side menu. You can contact technical support, watch tutorials, and sign up for trainings.

If you have any questions, please call us at 360-664-9750 or 1-866-208-1064 or email us at TechnicalAssistance@omwbe.wa.gov.

We are open Monday through Friday from 8:00 a.m. to 5:00 p.m.

Sincerely,

Office of Minority and Women's Business Enterprises

State of Washington

This is the verbiage that will be displayed in Recertification Emails/Letters. These notifications are user generated and optional. They're used to notify the Applying vendor of their removal status. You may choose to edit the text below or draft a unique message for your Organization. (i.e. copy and paste the verbiage you currently use for Certification Removal.

Instructions

1. Review the sample text and modify as needed to fit your program requirements.
2. Fill in the template information below for your letter/email.
3. If you have multiple versions of the Recertification template, include all versions in this one document and label each version accordingly.
4. To save this word document, please simply click on the 'save icon' above in word. This is an embedded document with the excel spreadsheet and will be saved within the excel spreadsheet.

***NOTE:** The supported token variables will vary with each unique letter.

Please review the Certification Notification Token Variables PDF and reference the 'Recertification' and 'General' for the token variables that can be inserted into this letter, if relevant.

Version 1: Please fill out the template information below and then begin to edit the text and customize your template notification.

Template Information
Title of Template: Annual Update

Who will sign off on this Template:
☐Contact Person
OR
☐Manager Name: _____

Template Type:
☐Letter Only
☐Text Email Only: Email Subject: _____
☐Letter and Text Email: Email Subject: WA State OMWBE – Annual Update

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Edit Template Text Below:

[lblDate]

[lblBusinessName]
[lblAddress]

Dear [lblFirstName] [lblLastName],

Congratulations! Your firm's annual review has been completed and you will remain certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) as a/an [lblCertificationType]. Information about your business is published in the OMWBE Directory located at http://wsdot.wa.gov/Partners/OMWBE/DBEDirectory.

Certification Number: **[lblCertificationNumber]**
Anniversary Date: [lblExpirationDateFinal]

Please review each of the following:

- Each year before your anniversary date, you must submit an "Affidavit of Continued Eligibility." This form confirms there have been no changes that would affect your firm's ability to remain certified, such as changes in ownership, control, size, management responsibility, scope of work, or personal net worth. OMWBE will send you the affidavit 75 days before your anniversary date.
- You must inform the OMWBE in writing within 30 days of the any of the changes listed above using the appropriate form found at http://omwbe.wa.gov/certification. Failure to notify our office of these changes may affect your firm's eligibility for the program.
- This certification shall remain valid unless and until it has been removed in accordance with the procedures set forth in 49 C.F.R. § 26.87.

We are pleased to certify your firm and wish you much success. If you have any questions or need assistance, please contact us at (360) 664-9750.

Sincerely,

[lblContactPersonName]
Certification Analyst

This should be on page 2:

Your firm is certified in the following areas:

Business Description:
[lblBusinessCapability]

North American Industry Classification System (NAICS) Codes:
[lblCommodityCodes]

You are encouraged to become an active participant on federally assisted projects. This certification permits your company to compete in federal-aid contract work as a DBE-owned and operated company. However, it does not guarantee that you will receive work.

Sign up in the Washington's Electronic Business Solutions (WEBS) if you wish to receive solicitation notices from state agencies, local and tribal governments and non-profit organizations throughout Washington State. If you have any questions about WEBS, please contact the Department of Enterprise Services at 360-902-7400 or webscustomerservice@des.wa.gov.

Learn more about doing business with the state: http://bit.ly/DoBizWithWA.

Email:

[lblBusinessName]
File Number: [lblFileNumber]

Dear [lblFirstName] [lblLastName],

The Office of Minority and Women's Business Enterprise completed an annual update for your business. Please see the attached letter for more information.

Please feel free to contact us at (360) 664-9750.

Sincerely,

[lblContactPersonName]
Certification Analyst

This is the verbiage that will be displayed in Proposed Removal Emails/Letters. These notifications are user generated and optional. They're used to notify the Applying vendor of their removal status. You may choose to edit the text below or draft a unique message for your Organization. (i.e. copy and paste the verbiage you currently use for Certification Removal.

Instructions

1. Review the sample text and modify as needed to fit your program requirements.
2. Fill in the template information below for your letter/email.
3. If you have multiple versions of the Proposed Removal template, include all versions in this one document and label each version accordingly.
4. To save this word document, please simply click on the 'save icon' above in word. This is an embedded document with the excel spreadsheet and will be saved within the excel spreadsheet.

***NOTE:** The supported token variables will vary with each unique letter.

Please review the Certification Notification Token Variables PDF and reference the 'Proposed Removal' and 'General' for the token variables that can be inserted into this letter, if relevant.

Version 1: Please fill out the template information below and then begin to edit the text and customize your template notification.

Template Information

Title of Template: Federal Intent to Decertify for Failure to Return Affidavit of Continued Eligibility

Who will sign off on this Template:

☐Contact Person

OR

☐Manager Name: Sarah Erdmann_____

Template Type:

☐Letter Only

☐Text Email Only: Email Subject: _____

☐Letter and Text Email: Email Subject: WA State OMWBE – Notice of Proposed Removal of Eligibility

---

Edit Template Text Below:

[lblDate]

[lblFirstName] [lblLastName]
[lblBusinessName]
[lblAddress]

Dear [lblFirstName] [lblLastName],

The Office of Minority and Women's Business Enterprises' (OMWBE) is proposing to remove [lblBusinessName]'s eligibility as a [lblCertificationType]. This decision is based on the following reason(s):

- Failure to provide the Affidavit of Continued Eligibility.

Facts

1. The OMWBE provided [lblBusinessName] with the Affidavit of Continued Eligibility on (date) and requested it be returned within 30 calendar days.
2. Thirty days have passed and the affidavit has not been received.

Relevant federal rules

> 49 CFR § 26.83(j) of Subpart D If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the film's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR § 26 or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of 49 CFR § 26.83. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of 49 CFR § 26, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under 49 CFR § 26.109(c).
>
> 49 CFR § 26.109 (c) of Subpart F All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

Appeal process

You may appeal this decision within 20 calendar days of the receipt of this letter. You may:

- request an informal hearing; or
- submit your appeal in writing. Your appeal must include information and reasons why the OMWBE's decision should be reversed.

See 49 CFR § 26.87 for more information.

Please send your request for an informal hearing or your written appeal to:

Director
Office of Minority and Women's Business Enterprises
P.O. Box 41160
Olympia, Washington 98504-1160

If you do not make a timely request for an informal hearing, this decertification decision will become final.

Please contact me at (360) 664-9750 with any questions.

Sincerely,

Sarah Erdmann
Assistant Director of Certification and Compliance

Email

[lblBusinessName]
File Number: [lblFileNumber]

Dear [lblFirstName] [lblLastName],

The Office of Minority and Women's Business Enterprises' (OMWBE) is proposing to remove [lblBusinessName]'s eligibility as a [lblCertificationType]. Please see the attached letter for more information.

Please feel free to contact OMWBE at (360) 664-9750.

Sincerely,

Sarah Erdmann
Assistant Director of Certification and Compliance

This is the verbiage that will be displayed in Certification Removal Emails/Letters. These notifications are user generated and optional. They're used to notify the Applying vendor of their removal status. You may choose to edit the text below or draft a unique message for your Organization. (i.e. copy and paste the verbiage you currently use for Certification Removal.

Instructions

1. Review the sample text and modify as needed to fit your program requirements.
2. Fill in the template information below for your letter/email.
3. If you have multiple versions of the Certification Removal template, include all versions in this one document and label each version accordingly.
4. To save this word document, please simply click on the 'save icon' above in word. This is an embedded document with the excel spreadsheet and will be saved within the excel spreadsheet.

***NOTE:** The supported token variables will vary with each unique letter.

Please review the Certification Notification Token Variables PDF and reference the 'Removal Letter' and 'General' for the token variables that can be inserted into this letter, if relevant.

Version 1: Please fill out the template information below and then begin to edit the text and customize your template notification.

Template Information

Title of Template: DBE/ACDBE Final Decertification

Who will sign off on this Template:

☐Contact Person

OR

☐Manager Name: Sarah Erdmann

Template Type:

☐Letter Only

☐Text Email Only: Email Subject: _____

☐Letter and Text Email: Email Subject: WA State OMWBE - Decertification Letter

---

Edit Template Text Below:

[lblDate]

[lblFirstName] [lblLastName]
[lblBusinessName]
[lblAddress]

Dear [lblFirstName] [lblLastName],

The Office of Minority and Women's Business Enterprises (OMWBE) has removed [lblBusinessName]'s eligibility as a [lblCertificationType]. This decision is based on the following reason(s):

- Failure to appeal the proposal to remove eligibility as a [lblCertificationType].

Facts

1. The OMWBE notified [lblBusinessName] on (date) of the agency's proposal to remove its eligibility as a (DBE/ACDBE).
2. The OMWBE did not receive an appeal of the decision to remove [lblBusinessName] eligibility as a (DBE/ACDBE).

Appeal process

You may appeal this decision to the U.S. Department of Transportation within 90 calendar days of the date of this letter. Your appeal must explain why the OMWBE's decision is in error, significant facts the agency failed to consider, or what provisions of federal rule the OMWBE did not properly apply. See 49 CFR § 26.89 for more information.

Please send your appeal to:

U.S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Avenue SE
Washington, DC 20590-0001

If you do not submit an appeal, you will have no further appeal rights.

Please contact me at (360) 664-9750 with any questions.

Sincerely,

Sarah Erdmann
Assistant Director of Certification and Compliance

Email

lblBusinessName]
File Number: [lblFileNumber]

Dear [lblFirstName] [lblLastName],

We regret to inform you that [lblBusinessName] has been decertified. Please see the attached letter for more information.

Please feel free to contact OMWBE at (360) 664-9750.

Sincerely,

Sarah Erdmann
Assistant Director of Certification and Compliance

Date

Firm owner
Firm name
Street Address
City, State Zip Code

File Number:

Dear Firm Owner:

The Office of Minority and Women's Business Enterprises' (OMWBE) is summarily suspending [lblBusinessName] as a [lblCertificationType]. This decision is based on the following reason(s):

State Reason

Facts

1.

2.

Relevant federal rules

> 49 CFR § 26.88 (a) A recipient shall immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.
> (b)(1) A recipient may immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by §26.83(i) of this part or fails to timely file an affidavit of no change under §26.83(j).
> (2) In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this section, the recipient shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.
> (c) The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.
> (d) When a firm is suspended pursuant to paragraph (a) or (b) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt

requested, to the last known address of the owner(s) of the DBE.
(e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.
(f) While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.
(g) Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under §26.87 of this part. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.
(h) The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. Department of Transportation under §26.89 of this part, as a constructive decertification

Appeal process

You may appeal this decision within 20 calendar days of the receipt of this letter. You may:

- request an informal hearing; or
- submit your appeal in writing. Your appeal must include information and reasons why the OMWBE's decision should be reversed.

The hearing will be expedited. See 49 CFR § 26.87 for more information.

Please send your request for an informal hearing or your written appeal to:

Director
Office of Minority and Women's Business Enterprises
P.O. Box 41160
Olympia, Washington 98504-1160

Please contact me at (360) 664-9750 with any questions.

Sincerely,

Certification Application: View Application

CLOSE WINDOW

Certification Application Information

Application Type	**Change in Ownership, Business Structure, Business Descriptions, or NAICS codes**
Certifying Agency	**Washington State Office of Minority & Women's Business Enterprises**
Business Name	**Sandustrial LLC DBA Sandustrial LLC**
Current Status	**Received & In Process**
Application Number	**4494528**
Contact Person	**Reginald Gaines**

Section 1: General Information

1.A. Name of Business

Sandustrial LLC

1.B. DBA Name

Sandustrial LLC

1.C. Contact Person

Reginald Gaines, Manager

1.D. Telephone Number

360-920-2711

1.E. Secondary Telephone Number

1.F. Fax Number

1.G. Email Address

sandustrial@gmail.com

1.H. Mailing Address

114 W Magnolia Street Suite #505
Bellingham, WA 98225

1.I. Web Address

www.sandustrial.com

Section 2: Expansion

2.A. Are you requesting an update in NAICS codes and/or business description?

Yes

2.B. Requested Business Description

Industrial, commercial, and marine sandblasting, painting, and coating. Tank and mechanical cleaning. Contract Staffing & Personnel.

2.C. Select all NAICS codes you would like to add.

NAICS 56132: Temporary Help Services
NAICS 561320: Contract staffing services
NAICS 561320: Temporary employment services
NAICS 561320: Temporary staffing services

2.D. Select all NAICS codes you would like to remove.

Section 3: Change of Business Structure

3.A. Has there been a change in business structure?

No

3.B. Changes in business structure

Limited Liability Company

Section 4: Change of Ownership

4.A. Are you seeking to update your firm's ownership interest?

No

4.B. Are there any persons who no longer have an ownership interest in your business that you haven't previously reported to OMWBE?

No

4.C. Provide details of all current owners, new owners and spouses.

Question not answered.

4.D. New owner's professional and specialty licenses

Not applicable or no licenses/permits held

4.E. How did the new owner acquire ownership interest in this business?

4.F.1. For each new owner identify the initial contributions.

Question not answered.

4.F.2. What were the funds used for?

4.G. Do any owners, officer, shareholders, key persons or spouses own or work for any other business(es) that has a relationship with this business?

No

4.H. Do the new owner or their spouse or registered domestic partner have an ownership interest in any other business?

No

4.I. List current licenses/permits held by any owner and/or employee of your firm (e.g. contractor, engineer, architect, etc.)

Not applicable or no licenses/permits held

Required Documents

Document	Status
Expansion - Resume(s) of key personnel who will be performing the requested service(s), including updated resume(s) of the disadvantaged owner(s)	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
Expansion - List of equipment used to perform the requested service(s), including specialized software	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
Expansion - Specialties license pertaining to the requested services	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
EXPANSION – Contracts, purchase orders, bids, proposals, or invoices verifying the performance of the new service(s). If none, provide written documentation of the owner(s) ability and the company's resources to perform the requested services. Sandusrial NAICS (TXT, 653 bytes) Updating NAICS Code	**Attached** by Reginald Gaines on 1/24/2018
EXPANSION (RETAIL) – Current list or inventory.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
EXPANSION (RETAIL) – Vendor agreements or invoices from vendors for products being retailed.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
EXPANSION (WHOLESALER) – Wholesaler/Distributor agreements.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
EXPANSION (WHOLESALER) – Invoices from vendors for products being wholesaled	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
EXPANSION (TRUCKING) – Insurance Agreements for each truck owned or operated by your firm.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
EXPANSION (TRUCKING) – Title(s) and registration certificate(s) for each truck owned or operated by your firm.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
OWNERSHIP & BUSINESS STRUCTURE – New or revised Articles of Organization.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
OWNERSHIP & BUSINESS STRUCTURE – New or revised LLC Operating Agreement.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
OWNERSHIP – Documented proof of any transfers of assets to/from your firm and/or to/from any of new owners over the past 2 years.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
OWNERSHIP – Documented proof of contributions used to acquire ownership for each new owner (e.g., both sides of cancelled checks).	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
OWNERSHIP – Personal tax returns. Last three years of filed and signed IRS tax returns, including all pages, statements and schedules.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
OWNERSHIP – Personal Net Worth Statement for each new socially and economically disadvantaged owners comprising 51% or more of the ownership percentage of the applicant firm.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
OWNERSHIP – Proof of citizenship or legal presence for new owners.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
OWNERSHIP – Resumes (that include places of employment with corresponding dates) for new owners.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
OWNERSHIP – Trust agreements held by any new owner claiming disadvantaged status.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018
OWNERSHIP – Relinquishment of Business Interest.	**Not Applicable**, noted by Reginald Gaines on 1/24/2018

Electronic Signature

Signature	**Reginald Gaines**
Title	**Manager Member**
Organization	**Sandustrial LLC**
Date	**1/24/2018**

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