General Conditions for Construction for City of Eugene

Part 00100 as originally published by ODOT has been modified. This is an updated Table of Contents for the City of Eugene Part 00100:

TABLE OF CONTENTS

PART 00100 - GENERAL CONDITIONS

Section 00110 - Organization, Conventions, Abbreviations, and Definitions

00110.00 Organization of Specifications 1
00110.05 Conventions Used Throughout the Specifications Include 1
00110.10 Abbreviations 2
00110.20 Definitions 5
00120.05 Request for Plans, Special Provisions, and Bid Booklets 13
00120.10 Bid Booklet 13
00120.15 Examination of Work Site and Solicitation Documents; Consideration of Conditions to be Encountered 13
00120.16 Material, Equipment, and Method Substitutions 14
00120.17 Use of Agency-Owned Land for Staging or Storage Areas 14
00120.20 Interpretation of Quantities in Bid Schedule 15
00120.25 Subsurface Investigations 15
00120.30 Changes to Plans, Specifications, or Quantities before Opening of Bids 15
00120.40 Preparation of Bids 16
00120.45 Submittal of Bids 18
00120.50 Submitting Bids for More than One Contract 18
00120.60 Revision or Withdrawal of Bids 18
00120.65 Opening and Comparing Bids 18
00120.70 Rejection of Nonresponsive Bids 18
00120.80 Reciprocal Preference for Oregon Resident Bidders 19
00120.90 Disqualification of Bidders 20
00120.91 Rejection of Bid on Grounds of Nonresponsibility of Bidder 20

Section 00130 - Award and Execution of Contract

00130.00 Consideration of Bids 21
00130.10 Award of Contract 21
00130.15 Right to Protest Award 22
00130.20 Cancellation of Award 22
00130.30 Contract Booklet 22
00130.40 Contract Submittals 23
00130.50 Execution of Contract and Bonds 24
00130.60 Failure to Execute Contract and Bonds 24
00130.70 Release of Bid Guaranties 24
00130.80 Project Site Restrictions 25
00130.90 Notice to Proceed 25

Section 00140 - Scope of Work

00140.00 Purpose of Contract 26
00140.10 Typical Sections 26
00140.20 Thickness 26
00140.30 Agency-Required Changes in the Work 26
00140.40 Differing Site Conditions 27
00140.50 Environmental Pollution Changes 27
00140.60 Extra Work 27

00140.65 Disputed Work ... 27
00140.70 Cost Reduction Proposals ... 27
00140.80 Use of Publicly Owned Equipment ... 29
00140.90 Final Trimming and Cleanup ... 29

Section 00150 - Control of Work

00150.00 Authority of the Engineer ... 31
00150.01 Project Manager's Authority and Duties ... 31
00150.02 Inspector's Authority and Duties ... 31
00150.10 Coordination of Contract Documents ... 32
00150.15 Construction Stakes, Lines, and Grades ... 32
00150.25 Acceptability of Materials and Work ... 34
00150.30 Delivery of Notices ... 34
00150.35 Plans and Working Drawings ... 35
00150.37 Equipment Lists and Other Submittals ... 36
00150.40 Cooperation and Superintendence by the Contractor ... 36
00150.50 Cooperation with Utilities ... 37
00150.55 Cooperation with Other Contractors ... 38
00150.60 Construction Equipment Restrictions ... 39
00150.70 Detrimental Operations ... 40
00150.75 Protection and Maintenance of Work During Construction ... 40
00150.80 Removal of Unacceptable and Unauthorized Work ... 40
00150.90 Final Inspection ... 40
00150.91 Post-Construction Review ... 41
00150.95 Final Acceptance ... 41
00150.96 Maintenance Warranties and Guarantees ... 41
00150.97 Responsibility for Materials and Workmanship ... 41

Section 00160 - Source of Materials

00160.00 Definitions ... 42
00160.01 Notification of Source of Supply and Materials ... 42
00160.05 Qualified Products List (QPL) ... 42
00160.10 Ordering, Producing, and Furnishing Materials ... 42
00160.20 Preferences for Materials ... 43
00160.30 Agency-Furnished Materials ... 44
00160.40 Agency-Furnished Sources ... 44
00160.50 Agency-Controlled Land; Limitations and Requirements ... 45
00160.60 Contractor-Furnished Materials and Sources ... 45
00160.70 Requirements for Plant Operations ... 46
00160.80 Requirements for Sources of Borrow and Aggregate ... 46

Section 00165 - Quality of Materials

00165.00 General ... 47
00165.01 Rejected Materials ... 47
00165.02 Materials Conformance and Quality Compliance Documents ... 47
00165.03 Testing by Agency ... 47
00165.04 Costs of Testing ... 47
00165.10 Materials Acceptance Guides ... 47
00165.20 Materials Specifications and Test Method References ... 48
00165.30 Field-Tested Materials ... 48
00165.35 Nonfield-Tested Materials ... 49
00165.40 Statistical Analysis ... 50
00165.50 Statistical Acceptance Sampling and Testing ... 50
00165.70 Use of Materials without Acceptable Materials Conformance Documents ... 50
00165.75 Storage and Handling of Materials ... 50

00165.80 Measurement ... 50
00165.90 Incidental Basis ... 51
00165.91 Fabrication Inspection Expense ... 51

Section 00170 - Legal Relations and Responsibilities

00170.00 General ... 52
00170.01 Other Agencies Affecting Agency Contracts ... 52
00170.02 Permits, Licenses, and Taxes ... 54
00170.03 Furnishing Right-of-Way and Permits ... 54
00170.04 Patents, Copyrights, and Trademarks ... 55
00170.05 Assignment of Antitrust Rights ... 55
00170.07 Record Requirements ... 56
00170.10 Required Payments by Contractors ... 58
00170.20 Public Works Bond ... 59
00170.32 Protection of Navigable Waters ... 60
00170.60 Safety, Health, and Sanitation Provisions ... 60
00170.61 Industrial Accident Protection ... 60
00170.62 Labor Nondiscrimination ... 60
00170.63 Payment for Medical Care ... 60
00170.65 Minimum Wage and Overtime Rates for Public Works Projects ... 60
00170.70 Insurance ... 63
00170.71 Independent Contractor Status ... 66
00170.72 Indemnity/Hold Harmless ... 66
00170.74 Employee Drug Testing Program ... 67
00170.78 Conflict of Interest ... 67
00170.79 Third Party Beneficiary ... 67
00170.80 Responsibility for Damage to Work ... 67
00170.82 Responsibility for Damage to Property and Facilities ... 69
00170.85 Responsibility for Defective Work ... 70
00170.89 Protection of Utility, Fire-control, and Railroad Property and Services; Repair; Roadway Restoration ... 72
00170.92 Fencing, Protecting Stock, and Safeguarding Excavations ... 72
00170.93 Trespass ... 73
00170.94 Use of Explosives ... 73

Section 00180 - Prosecution and Progress

00180.00 Scope ... 74
00180.05 Assignment/Delegation of Contract ... 74
00180.06 Assignment of Funds Due under the Contract ... 74
00180.10 Responsibility for Contract ... 74
00180.15 Agency's Right to Do Work at Contractor's Expense ... 74
00180.20 Subcontracting Limitations ... 75
00180.21 Subcontracting ... 76
00180.22 Payments to Subcontractors and Agents of the Contractor ... 78
00180.30 Materials, Equipment, and Work Force ... 78
00180.31 Required Materials, Equipment, and Methods ... 79
00180.32 Alternative Materials, Equipment, and Methods ... 80
00180.40 Limitation of Operations ... 80
00180.41 Project Work Schedules ... 80
00180.42 Preconstruction Conference ... 89
00180.43 Commencement and Performance of Work ... 89
00180.50 Contract Time to Complete Work ... 89
00180.60 Notice of Delay ... 91
00180.65 Right-of-Way and Access Delays ... 92
00180.70 Suspension of Work ... 92

00180.80 Adjustment of Contract Time 92
00180.85 Failure to Complete on Time; Liquidated Damages 94
00180.90 Termination of Contract and Substituted Performance 95

Section 00190 - Measurement of Pay Quantities
00190.00 Scope 97
00190.10 Measurement Guidelines 97
00190.20 Contractor to Provide Vehicle Weigh Scales 99
00190.30 Plant Scales 101

Section 00195 - Payment
00195.00 Scope and Limit 102
00195.10 Payment For Changes in Materials Costs 102
00195.12 Steel Material Price Escalation/De-Escalation Clause 102
00195.20 Changes to Plans or Character of Work 105
00195.30 Differing Site Conditions 106
00195.40 Unreasonable Delay by the Agency 106
00195.50 Progress Payments and Retained Amounts 106
00195.70 Payment under Terminated Contract 110
00195.80 Allowance for Materials Left on Hand 110
00195.90 Final Payment 111
00195.95 Error in Final Quantities and Amounts 112

Section 00196 - Payment for Extra Work
00196.00 General 113
00196.10 Negotiated Price 113
00196.20 Force Account 113

Section 00197 - Payment for Force Account Work
00197.00 Scope 114
00197.01 General 114
00197.10 Materials 115
00197.20 Equipment 115
00197.30 Labor 117
00197.40 Invoices for Special Services 118
00197.80 Percentage Allowances 118
00197.90 Billings 118

Section 00199 - Disagreements, Protests and Claims
00199.00 General 119
00199.10 Procedure for Resolving Disagreements 119
00199.20 Protest Procedure 119
00199.30 Claims Procedure 121
00199.40 Claim Decision; Review; Exhaustion of Administrative Remedies 124
00199.50 Mediation 127
00199.60 Review of Determination Regarding Records 127

PART 00100 - GENERAL CONDITIONS FOR CONSTRUCTION FOR CITY OF EUGENE

Delete Part 00100 in its entirety as originally published and replace with the following:

Section 00110 - Organization, Conventions, Abbreviations, and Definitions

Organization

00110.00 Organization of Specifications - The Specifications are comprised of the following:

- The “2015 Oregon Standard Specifications for Construction”, which contain Part 00100 “General Conditions”, which deal with the solicitation process and contractual relationships and Parts 00200 through 03000 which contain the detailed “Technical Specifications” involved in prosecution of the Work, organized by subject matter as revised by City of Eugene Amendments.
- Supplemental Specifications, if any; and
- The Special Provisions.

In addition, throughout the Specifications:

- Each Part is divided into Sections and Subsections.
- Reference to a Section includes all applicable requirements of the Section.
- When referring to a Subsection, only the number of the Subsection is used; the word "Subsection" is implied.
- Where Section and Subsection numbers are not consecutive, the interval has been reserved for use in the Special Provisions or future expansion of the Standard Specifications.

Conventions

00110.05 Conventions Used Throughout the Specifications Include:

(a) Grammar – Part 00100 "General Conditions", is written in the indicative mood, in which the subject is expressed. Parts 00200 through 03000, the detailed "Technical Specifications", are generally written in the imperative mood, in which the subject is implied. Therefore, throughout Parts 00200 through 03000, and on the Plans:

- The subject, "the Contractor", is implied.
- "Shall" refers to action required of the Contractor, and is implied.
- "Will" refers to decisions or actions of the Agency and/or the Engineer.
- The following words, or words of equivalent meaning, refer to the actions of the Agency and/or the Engineer, unless otherwise stated: "allowed", "directed", "established", "permitted", "ordered", "designated", "prescribed", "required", "determined".
- The words "approved", "acceptable", "authorized", "satisfactory", "suitable", "considered", and "rejected", "denied", "disapproved", or words of equivalent meaning, mean by or to the Agency and/or the Engineer, subject in each case to Section 00150 of the General Conditions.
- The words "as shown", "shown", "as indicated", or "indicated" mean "as indicated on the Plans".

- Certain Subsections labeled "Payment" contain statements to the effect that "payment will be made at the Contract amounts for the following items" (followed by a list of items). In such cases the Agency shall pay for only those Pay Items listed in the Schedule of Items.

(b) Capitalization of Terms - Capitalized terms, other than titles, abbreviations, and grammatical usage, indicate that they have been given a defined meaning in the Standard Specifications. Refer to Section 00110.20 "Definitions". Defined terms will always be capitalized in Part 00100; in Parts 00200 through 03000, defined terms will generally not be capitalized, with the notable exception of "the Contractor", "the Agency", and "the Engineer".

(c) Punctuation - In this publication the "outside method" of punctuation is employed for placement of the comma and the period with respect to quotation marks. Only punctuation that is part of the quoted matter is placed within quotation marks.

(d) References to Laws, Acts, Regulations, Rules, Ordinances, Statutes, Orders, and Permits - References are made in the text of the Specifications to "laws", "acts", "rules", "statutes", "regulations", "ordinances", etc. (collectively referred to for purposes of this Subsection as "Law"), and to "orders" and "permits" (issued by a governmental authority, whether local, State, or federal, and collectively referred to for purposes of this Subsection as "Permits"). Reference is also made to "applicable laws and regulations". The following conventions apply in interpreting these terms, as used in the Specifications.

- **Statutes and Rules** - Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) referenced in the Specifications are accessible on line, including through the Oregon Legislative Counsel Committee web site and through the Oregon Secretary of State Archives Division web site.

- **Law** - In each case, unless otherwise expressly stated therein, the Law is to be understood to be the current version in effect. This also applies where a specific Law is referenced or cited, regardless of whether the text of the Law has been included in the Specifications or not, and regardless of whether the text of the Law has been summarized or paraphrased. In each case, the current version of the Law is applicable under any Contract. The reader is therefore cautioned to check the actual text of the Law to confirm that the text included in the Specifications has not been modified or superseded.

- **Permits** - Orders and permits issued by a government agency may be modified during the course of performing the Work under a Contract. Therefore, wherever the term "order" or "permit" is used in the Specifications, it is intended to refer to the then-current version. That version may be embodied in a modified, superseding order or permit, or it may consist of all terms and conditions of prior orders or permits that have not been superseded, as well as the additional terms added by amendment or supplement. In certain cases, the orders and/or permits are identified by name in the Specifications; in other cases the terms are used in the generic sense. The reader is cautioned to check the text(s) of each order and permit identified either by name or by generic reference.

- **Applicable Laws and Regulations** - Where the phrase "applicable laws and regulations" appears, it is to be understood as including all applicable laws, acts, regulations, administrative rules, ordinances, statutes, and orders and permits issued by a governmental or regulatory authority.

Abbreviations

00110.10 Abbreviations - Following are meanings of abbreviations used in the Standard Specifications, in the Special Provisions, on the Plans, and in other Contract Documents. Other abbreviations and meanings of abbreviations may be in the individual Sections of the Standard

Specifications to which they apply, in the Special Provisions, and in OAR 731-005 and OAR 731-007.

AAR	-	Association of American Railroads
AASHTO	-	American Association of State Highway and Transportation Officials
ABC	-	Associated Builders and Contractors, Inc.
AC	-	Asphalt Concrete
ACI	-	American Concrete Institute
ACP	-	Asphalt Concrete Pavement
ACWS	-	Asphalt Concrete Wearing Surface
AGC	-	Associated General Contractors of America
AIA	-	American Institute of Architects
AISC	-	American Institute of Steel Construction
AISI	-	American Iron and Steel Institute
AITC	-	American Institute of Timber Construction
ANSI	-	American National Standards Institute
APA	-	Engineered Wood Association
APWA	-	American Public Works Association
AREMA	-	American Railway Engineering and Maintenance of Right-of-Way Association
ASCE	-	American Society of Civil Engineers
ASME	-	American Society of Mechanical Engineers
ASTM	-	American Society for Testing and Materials
ATPB	-	Asphalt Treated Permeable Base
AWG	-	American Wire Gauge
AWPA	-	American Wood Protection Association
AWS	-	American Welding Society
AWWA	-	American Water Works Association
CAgT	-	Certified Aggregate Technician
CAT-I	-	Certified Asphalt Technician I
CAT-II	-	Certified Asphalt Technician II
CBM	-	Certified Ballast Manufacturers
CCO	-	Contract Change Order
CCT	-	Concrete Control Technician
CDT	-	Certified Density Technician
CEBT	-	Certified Embankment and Base Technician
CMDT	-	Certified Mixture Design Technician
CPF	-	Composite Pay Factor
CRSI	-	Concrete Reinforcing Steel Institute
CFR	-	Code of Federal Regulations
CS	-	Commercial Standard, Commodity Standards Division, U.S. Department of Commerce
D1.1	-	Structural Welding Code - Steel, American Welding Society, current edition
D1.5	-	Bridge Welding Code, American Welding Society, current edition
DBE	-	Disadvantaged Business Enterprise
DEQ	-	Department of Environmental Quality, State of Oregon
DOGAMI	-	Department of Geology and Mineral Industries, State of Oregon
DSL	-	Department of State Lands, State of Oregon
EAC	-	Emulsified Asphalt Concrete
EPA	-	U.S. Environmental Protection Agency
ESCP	-	Erosion and Sediment Control Plan
FHWA	-	Federal Highway Administration, U.S. Department of Transportation

FSS	-	Federal Specifications and Standards, General Services Administration
GSA	-	General Services Administration
ICEA	-	Insulated Cable Engineers Association (formerly IPCEA)
IES	-	Illuminating Engineering Society
IMSA	-	International Municipal Signal Association
ISO	-	International Standards Organization
ITE	-	Institute of Transportation Engineers
JMF	-	Job Mix Formula
MFTP	-	Manual of Field Test Procedures (ODOT)
MIL	-	Military Specifications
MSC	-	Minor Structure Concrete
MUTCD	-	Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, U.S. Department of Transportation
NEC	-	National Electrical Code
NEMA	-	National Electrical Manufacturer's Association
NESC	-	National Electrical Safety Code
NIST	-	National Institute of Standards and Technology
NPDES	-	National Pollutant Discharge Elimination System
NPS	-	Nominal Pipe Size (dimensionless)
OAR	-	Oregon Administrative Rules
ODA	-	Oregon Department of Agriculture
ODOT	-	Oregon Department of Transportation
ORS	-	Oregon Revised Statutes
OR-OSHA	-	Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services
OSHA	-	Occupational Safety and Health Administration, U.S. Department of Labor
PCA	-	Portland Cement Association
PCC	-	Portland Cement Concrete
PCI	-	Precast/Prestressed Concrete Institute
PCP	-	Pollution Control Plan
PF	-	Pay Factor of a constituent
PLS	-	Professional Land Surveyor
PMBB	-	Plant Mixed Bituminous Base
PTI	-	Post-Tensioning Institute
PUC	-	Public Utility Commission, State of Oregon
QA	-	Quality Assurance
QC	-	Quality Control
QCT	-	Quality Control Technician
QL	-	Quality Level
QPL	-	Qualified Products List
RAP	-	Reclaimed Asphalt Pavement
REA	-	Rural Electrification Administration, U.S. Department of Agriculture
RMA	-	Radio Manufacturers Association or Rubber Manufacturers Association
SAE	-	Society of Automotive Engineers
SI	-	International System of Units (Système Internationale)
SRCM	-	Soil and Rock Classification Manual (ODOT)
SSPC	-	Society for Protective Coatings
T	-	Tolerances, AASHTO Test Method
TM	-	Test Method (ODOT)
TV	-	Target Value
UBC	-	Uniform Building Code (as adopted by the State of Oregon)

UL	-	Underwriters Laboratory, Inc.
UPC	-	Uniform Plumbing Code (as adopted by the State of Oregon)
USC	-	United States Code
WAQTC	-	Western Alliance for Quality Transportation Construction
WCLIB	-	West Coast Lumber Inspection Bureau
WWPA	-	Western Wood Products Association

Definitions

00110.20 Definitions - Following are definitions of words and phrases used in the Standard Specifications, in the Special Provisions, on the Plans, and in other Contract Documents. Other definitions may be in the individual Sections of the Standard Specifications to which they apply, in the Special Provisions, and in OAR 731-005 and OAR 731-007.

Act of God or Nature - A natural phenomenon of such catastrophic proportions or intensity as would reasonably prevent performance.

Addendum - A written or graphic modification, issued before the opening of Bids, which revises, adds to, or deletes information in the Solicitation Documents or previously issued Addenda.

Additional Work - Increased quantities of any Pay Item, within the scope of the Contract, for which a unit price has been established.

Advertisement - The public announcement (Notice to Contractors) inviting Bids for Work to be performed or Materials to be furnished.

Agency - The City of Eugene, a municipal corporation of the State of Oregon, which has entered into a Contract with the Contractor.

Agency-Controlled Lands - Lands owned by the Agency, or controlled by the Agency under lease or agreement, or under the jurisdiction and control of the Agency for the purposes of the Contract.

Aggregate - Rock of specified quality and gradation.

Attorney in Fact - An Entity appointed by another to act in its place, either for some particular purpose, or for the transaction of business in general.

Award - Written notification to the Bidder that the Bidder has been awarded a Contract.

Base - A Course of specified material of specified thickness placed below the Pavement.

Bid - A competitive offer, binding on the Bidder and submitted in response to an invitation to bid.

Bid Bond - The Surety bond for Bid guarantee.

Bid Booklet - The bound booklet included in the Solicitation Documents, that contains the information identified in 00120.10.

Bid Closing - The date and time after which Bids, Bid modifications, and Bid withdrawals will no longer be accepted.

Bid Documents - See under Solicitation Document.

Bid Opening - The date and time Bids are opened.

Bid Schedule - The list of Pay Items, their units of measurement, and estimated quantities. (When a Contract is awarded, the Bid Schedule becomes the Schedule of Items.)

Bid Section - The portion of the Bid Booklet containing all pages after the Bidder's checklist and before the appendix.

Bidder - An Entity that submits a Bid in response to an invitation to bid.

Bike Lane - A lane in the Traveled Way, designated by striping and Pavement markings for the preferential or exclusive use of bicyclists.

Borrow - Material lying outside of planned or required Roadbed excavation used to complete Project earthwork.

Boulders - Particles of rock that will not pass a 12 inch square opening.

Bridge - A single or multiple span Structure, including supports, that carries motorized and non-motorized vehicles, pedestrians, or utilities on a Roadway, walk, or track over a watercourse, highway, railroad, or other feature.

Buttress - A rock fill placed at the toe of a landslide or potential landslide in order to resist slide movement.

Calendar Day - Any day shown on the calendar, beginning and ending at midnight.

Camber - A slight arch in a surface or Structure to compensate for loading.

Change Order - A written order issued by the Engineer to the Contractor modifying Work required by the Contract, or adding Work within the scope of the Contract, and, if applicable, establishing the basis of payment for the modified Work.

Changed Work - Work included in a Pay Item and within the scope of the Contract that is different from that reflected in the Contract Documents. (see 00140.30)

City Engineer – The City Engineer is the person designated by the City Manager pursuant to Eugene Code 7.005.

Class of Project - A designation based on a Project's funding source, i.e., State or Federal-Aid.

Clay - Soil passing a No. 200 sieve that can be made to exhibit plasticity (putty-like properties) within a range of water contents.

Clear Zone - Roadside border area, starting at the edge of the Traveled Way, that is available for safe use by errant vehicles. Establishing a minimum width Clear Zone implies that rigid objects and certain other hazards within the Clear Zone should be relocated outside the Clear Zone, or shielded, or remodeled to make them break away on impact or be safely traversable.

Close Conformance - Where working tolerances are given on the Plans or in the Specifications, Close Conformance means compliance with those tolerances. Where working tolerances are not given, Close Conformance means compliance, in the Engineer's judgment, with reasonable and customary manufacturing and construction tolerances.

Coarse Aggregate - Crushed Rock or crushed Gravel retained on a 1/4 inch sieve, with allowable undersize.

Cobbles - Particles of Rock, rounded or not, that will pass a 12 inch square opening and be retained on a 3 inch sieve.

Commercial Grade Concrete - Concrete furnished according to Contractor proportioning, placed in minor Structures and finished as specified.

Construction Contracts Unit – City of Eugene Public Works Engineering Division.

Contract - The written agreement between the Agency and the Contractor, including without limitation all Contract Documents, describing the Work to be completed and defining the rights and obligations of the Agency and the Contractor.

Contract Amount - Sum of the Pay Item amounts computed by multiplying the Pay Item quantities by the unit prices in the Schedule of Items.

Contract Day – Days counted for purposes of charging Contract Time.

Contract Documents - Solicitation Documents, Specifications, Standard Drawings, Plans, Public Improvement Contract, Contract booklet, Change Orders, Force Account Work orders, pay documents issued by the Agency, Materials certifications, Project Work schedules, final estimate, written orders and authorizations issued by the Agency, Material source development and reclamation plans, and permits, orders and authorizations obtained by the Contractor or Agency applicable to the Project, as well as all documents incorporated by reference therein.

Contract Time - The amount of time allowed to complete the Work under the Contract.

Contractor - The Entity awarded the Contract according to the solicitation.

Course - A specified Surfacing Material placed in one or more Lifts to a specified thickness.

Coverage - One Pass by a piece of Equipment over an entire designated area.

Cross Section - The exact image formed by a plane cutting through an object, usually at right angles to a central axis, to determine area.

Day - A Calendar Day including weekdays, weekends, and holidays, unless otherwise specified.

Durable Rock - Rock that has a slake durability index of at least 90% based on a two-cycle slake durability test, according to ASTM D 4644. In the absence of test results, the Engineer may evaluate the durability visually.

Emulsified Asphalt - Emulsified asphalt cement.

Emulsified Asphalt Concrete - A mixture of Emulsified Asphalt and graded Aggregate.

Engineer - The Engineer who represents the Agency and who is designated by the Agency to administer the contract.

Entity - A natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

Equipment - All machinery, tools, manufactured products, and fabricated items needed to complete the Contract or specified for incorporation into the Work.

Establishment Period - The time specified to assure satisfactory establishment and growth of planted Materials.

Existing Surfacing - Pavements, slabs, curbs, gutters, walks, driveways, and similar constructions of bricks, blocks, portland cement concrete, bituminous treated materials, and granular surfacing materials on existing Highways.

Extra Work - Work not included in the Contract, but deemed by the Engineer to be necessary to complete the Project.

Final Acceptance - Written confirmation by the Agency that the Project has been accepted by the Agency.

Final Inspection - The inspection conducted by the Engineer to determine that the Project has been completed according to the Contract.

Fine Aggregate - Crushed Rock, crushed Gravel, or Sand that passes a 1/4 inch sieve, with allowable oversize.

First Notification - Written acknowledgment by the Engineer of the date on which workers employed by the Contractor or a Subcontractor have begun performance of the Contract, including Aggregate source development or erection of a plant, but not including installation of covered temporary signs according to Section 00225.

Force Account Work - Items of Extra Work ordered by the Engineer that are to be paid according to Section 00197.

Granular Material - Graded and selected free-draining material composed of particles of Rock, Sand, and Gravel.

Gravel - Particles of Rock, rounded or not, that will pass a 3 inch sieve and be retained on a No. 4 sieve.

Highway - Every road, street, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of the State, open, used or intended for use by vehicular traffic.

Incidental - A term identifying those acts, services, transactions, property, Equipment, labor, Materials, or other items for which the Agency will make no separate or additional payment.

Inspector - The representative of the Engineer authorized to inspect and report on Contract performance.

Leveling - Placing a variable-thickness Course of Materials to restore horizontal and vertical uniformity to existing Pavements, normally continuous throughout the Project.

Lift - The compacted thickness of material placed by Equipment in a single Pass.

Local Public Agency (LPA) or Local Agency - See Agency.

Mandatory Source - A material source provided by the Agency from which the Contractor is required to obtain Materials. (see 00160.00(b) and 00160.40)

Materials - Any natural or manmade substance specified for use in the construction of the Project or for incorporation into the Work.

Median - The portion of a divided Highway separating traffic traveling in opposite directions.

Multiple Course Construction - Two or more Courses, exclusive of Patching or Leveling, placed over the entire Roadway width.

Multi-Use Path - That portion of the Highway Right-of-Way or a separate Right-of-Way, physically separated from motor vehicle traffic and designated for use by pedestrians, bicyclists and other non-motorized users.

Neat Line - Theoretical lines specified or indicated on the Plans for measurement of quantities.

Nondurable Rock - Rock that has a slake durability index of less than 90% based on a two-cycle slake durability test, as tested by ASTM D 4644, or Rock that is observed to readily degrade by air, water, and mechanical influence.

Notice to Contractors - The public announcement inviting Bids for Work to be performed or Materials to be provided.

Notice to Proceed - Written notice authorizing the Contractor to begin performance of the Work.

On-Site Work - Any Work taking place on the Project Site, including designated staging areas adjacent to the Project Site, except for installation of covered temporary signs according to Section 00225.

Organic Soil - A Soil with sufficient organic content to influence the Soil properties.

Panel - The width of specified Material being placed by Equipment in a single Pass.

Pass - One movement of a piece of Equipment over a particular location.

Patching - Placing a variable-thickness Course of Materials to correct sags, dips, and/or bumps to the existing grade and Cross Section, normally intermittent throughout the Project.

Pavement - Asphalt concrete or portland cement concrete placed for the use of motor vehicles, bicycles, or pedestrians on Roadways, Shoulders, Multi-Use Paths and parking areas.

Pay Item (Contract Item) - A specific unit of Work for which a price is provided in the Contract.

Payment Bond - The approved security furnished by the Contractor's Surety as a guaranty of the Contractor's performance of its obligation to pay promptly in full all sums due for Materials, Equipment, and labor furnished to complete the Work.

Peat - A Soil composed primarily of vegetative matter in various stages of decomposition, usually with an organic odor, dark brown to black color, and a spongy consistency.

Performance Bond - The approved security furnished by the Contractor's Surety as a guaranty of the Contractor's performance of the Contract.

Plans - Standard and Supplemental Drawings, and approved unstamped and reviewed stamped Working Drawings. (see 00150.10 and 00150.35)

Project - The sum of all Work to be performed under the Contract.

Project Manager - The Engineer's representative who directly supervises the engineering and administration of a Contract.

Project Site - The geographical dimensions of the real property on which the Work is to be performed, including designated contiguous staging areas.

Prospective Source - A Material source provided by the Agency, from which the Contractor has the option of obtaining Materials. (see 00160.00(a) and 00160.40)

Publicly-Owned Equipment - Equipment acquired by a state, county, municipality or political subdivision primarily for use in its own operations.

Public Traffic - Vehicular or pedestrian movement, not associated with the Contract Work, on a public way.

Railroad - Publicly or privately owned rail carriers, including passenger, freight, and commuter rail carriers, their tenants, and licensees. Also, Utilities that jointly own or use such facilities.

Right-of-Way - Land, property, or property interest, usually in a strip, acquired for or devoted to transportation or other public works purposes.

Roadbed - Completed excavations and embankments for the Subgrade, including ditches, side slopes, and slope rounding, if any.

Roadside - The area between the outside edges of the Shoulders and the Right-of-Way boundaries. Unpaved median areas between inside Shoulders of divided Highways and infield areas of interchanges are included.

Roadway - That portion of a Highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or Shoulder. If a Highway includes two or more separate Roadways, the term "Roadway" refers to any such Roadway separately, but not to all such Roadways collectively. (see Traveled Way)

Rock - Natural deposit of solid material composed of one or more minerals occurring in large masses or fragments.

Sand - Particles of Rock that will pass a No. 4 sieve and be retained on a No. 200 sieve.

Schedule of Items - The list of Pay Items, their units of measurement, estimated quantities, and prices.

Schedule of Values - The breakdown of the values of the component elements comprising a lump sum Pay Item.

Second Notification - Written acknowledgment by the Engineer of the end of Contract Time according to 00180.50(g).

Shared Use Path – See Multi-Use Path.

Shoulder - The part of a Roadbed contiguous to the Traveled Way or Roadway, whether paved or unpaved, for accommodating stopped vehicles, for emergency use and for lateral support of Base and surface Courses.

Silt - Soil passing a No. 200 sieve that is nonplastic or exhibits very low plasticity.

Single Course Construction - A wearing Course only, not including patching or leveling Courses or partial width Base Course.

Slope - Vertical distance to horizontal distance, unless otherwise specified.

Soil - Accumulations of particles produced by the disintegration of Rock, which sometimes contains organic matter. Particles may vary in size from Clay to Boulders.

Solicitation Document - Documents which define the procurement of a public improvement Project, including, but not limited to, the Bid Booklet, Agency-provided Plans, Standard Specifications, Special Provisions, Addenda, and which includes all documents incorporated by reference. May also be called Bid Documents.

Special Provisions - The special directions, provisions, and requirements specific to a Project that supplement or modify the Standard Specifications. Permits and orders governing the Project that are issued directly to the Agency by a governmental or regulatory authority are considered to be part of the Special Provisions, to the extent and under the conditions stipulated in the Special Provisions. This includes any amended or supplemental permits or orders issued during the course of performing the Work under a Contract.

Special Services - Work services that the Contractor and Engineer agree cannot be satisfactorily performed by the Contractor's and Subcontractors' forces, including, but not limited to, temporary traffic control, owner operated trucking, sawcutting, core drilling, vacuum excavation, arborist services, fabrication and machining work that is most effectively performed away from the Project Site, or rental of operated Equipment as defined in 00180.20(c).

Specifications - The Standard Specifications, Supplemental Specifications, and Special Provisions, together with all provisions of other documents incorporated therein by reference.

Standard Drawings - The Agency-prepared detailed drawings for Work or methods of construction that normally do not change from project to project.

Standard Specifications – The "2015 Oregon Standard Specifications for Construction", published by the Oregon Department of Transportation as amended by the Agency. It provides directions, provisions, and requirements necessary for performing public improvement projects.

State - The State of Oregon.

Structures - Bridges, retaining walls, endwalls, cribbing, buildings, culverts, manholes, catch basins, drop inlets, sewers, service pipes, underdrains, foundation drains, and other similar features which may be encountered in the Work.

Subbase - A Course of specified material of specified thickness between the Subgrade and a Base.

Subcontractor - An Entity having a direct contract with the Contractor or another Subcontractor, to perform a portion of the Work.

Subgrade - The top surface of completed earthwork on which Subbase, Base, Surfacing, Pavement, or a Course of other Material is to be placed.

Substructure - Those parts of a Structure which support the Superstructure, including bents, piers, abutments, and integrally built wingwalls, up to the surfaces on which bearing devices rest. Substructure also includes portions above bearing surfaces when those portions are built integrally with a Substructure unit (e.g., backwalls of abutments). When Substructure and Superstructure elements are built integrally, the division between Substructure and Superstructure is considered to be at the bottom soffit of the longitudinal or transverse beam, whichever is lower. Culverts and rigid frames are considered to be entirely Substructure.

Superstructure - Those parts of a Structure above the Substructure, including bearing devices.

Supplemental Drawings - The Agency-prepared detailed drawings for Work or methods of construction that are Project specific, and are denoted by title in the Project title block.

Supplemental Specifications - Supplemental Specifications are amendments to the Standard Specifications, and supplement and modify the Standard Specifications with regard to the Work to be done under the Contract.

Supplier - The Entity that furnishes goods to be incorporated into the Work.

Surety - The Entity that issues the bond.

Surfacing - The Course or Courses of material on the Traveled Way, auxiliary lanes, Shoulders, or parking areas for vehicle use.

Third Notification - Written acknowledgment by the Engineer, that as of the date of the notification the Contractor has completed the Project according to the Contract, including without limitation completion of all minor corrective work, Equipment and plant removal, site clean-up, and submittal of all certifications, bills, forms and documents required under the Contract.

Ton - One short ton of 2,000 pounds (Ton, ton, Tn, or T).

Topsoil - Soil ready for use in a planting bed.

Traffic Lane - That part of the Traveled Way marked for moving a single line of vehicles.

Traveled Way - That part of the Highway for moving vehicles, exclusive of berms and Shoulders.

Typical Section - That Cross Section established by the Plans which represents in general the lines to which the Contractor shall work in the performance of the Contract.

Unsuitable Material - Frozen material, or material that contains organic matter, muck, humus, peat, sticks, debris, chemicals, toxic matter, or other deleterious materials not normally suitable for use in earthwork.

Utility - A line, facility, or system for producing, transmitting, or distributing communications, power, electricity, heat, gas, oil, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity which directly or indirectly serves the public. The term may also mean the utility company, district, or cooperative owning and operating such facilities, including any wholly-owned or controlled subsidiary.

Warranty Bond - The approved security furnished by the Contractor's, Subcontractor's, or Supplier's Surety as a guaranty of the Contractor's performance of its warranty obligations.

Work - The furnishing of all Materials, Equipment, labor, and Incidentals necessary to successfully complete any individual Pay Item or the entire Contract, and the discharge of duties and obligations imposed by the Contract.

Work Day - Every Calendar day excluding Saturdays, Sundays and legal holidays as listed in ORS187.010.

Worker - Any person performing work under the contract, including employees of the Contractor or subcontractor, and persons having full or partial ownership of the Contractor or subcontractor. (This definition is not intended to nor does it alter the definition or meaning of the term “worker” as used in any applicable laws or regulations, including but not limited to for purposes of paying prevailing wage rates.)

Working Drawings - Supplemental Plans, not furnished by the Agency, that the Contractor is required to submit to the Engineer. (see 00150.35)

Section 00120 - Bidding Requirements and Procedures

00120.05 Request for Plans, Special Provisions, and Bid Booklets:

(a) Informational Plans and Special Provisions – Informational Plans and Special Provisions are available for review, free of charge, at the office location and/or on the Agency website identified in the Call for Bids. Informational Plans and Special Provisions may also be available at select plan centers. Note that Informational Plans and Special Provisions may not contain all required forms and affidavits required to submit a complete bid.

(b) Bidding Plans, Special Provisions, and Bid Booklets – Bidders choosing to submit bids shall purchase Plans, Special Provisions, and Bid Booklets as described in the Call for Bids. By purchasing Plans, Special Provisions, and Bid Booklets from the Agency, the Bidder will be recorded on the Agency's list of "Holders of Bidding Plans." Bids will only be accepted from Bidders recorded as "Holders of Bidding Plans."

00120.10 Bid Booklet - The Bid Booklet may include, but is not limited to:

- Bidder's checklist
- Bid Section
- Appendix, which includes required time-sensitive forms, DBE information, sample forms, and other informational pages

The Bid Section includes all pages after the Bidder's checklist and before the appendix. The Bid Section may include, but is not limited to:

- Description and location of the proposed Project
- Time, date, and location for opening Bids
- Project completion time
- Class of Project (i.e., Federal-Aid or State)
- Class of Work
- Identification of applicable Special Provisions
- Bid statement
- Certificate of non-collusion
- Certificate of noninvolvement in any debarment or suspension (for Federal-Aid Projects)
- Certificate regarding lobbying activities (for Federal-Aid Projects)
- Certificate of residency (for State Projects)
- Certificate of compliance with Oregon tax laws
- Bid Schedule
- Identification of Bidder(s) and Sureties
- Limiting statements (see 00120.50)
- Bid signature page
- Bid Bond form
- First-tier Subcontractor disclosure form

Depending on the Class of Project, other certificates or statements may be bound within the Bid Section. Plans, Specifications, and other documents referred to in the Bid Section will be considered part of the Bid.

00120.15 Examination of Work Site and Solicitation Documents; Consideration of Conditions to be Encountered - Before submitting a Bid, Bidders shall make a careful visual examination of the site of the proposed Work, the Bid Booklet, Plans, and Specifications. Bidders shall also contact Utility owners to verify all Utilities' anticipated involvement on the Project Site. Bidders shall also review any subsurface investigation material referenced in 00120.25 that may be available and conduct additional investigation of any unusual condition apparent during the visual site examination. As soon as reasonably practicable after noting any such unusual condition, Bidder shall notify Agency, in writing, of any such unusual condition and the additional investigation undertaken by Bidder. Submission of a Bid will constitute confirmation that the Bidder has examined the Project Site and finds the Plans and Specifications to be sufficiently detailed and accurate to enable Bidder to properly perform the Work, and understands the conditions to be encountered in performing the Work and all requirements of the Contract.

The Bidder is responsible for loss or unanticipated costs suffered by the Bidder because of the Bidder's failure to fully examine the site and become fully informed about all conditions of the Work, or failure to request clarification of Plans and Specifications Bidder believes to be erroneous or incomplete.

Any clarification of Plans and Specifications needed by the Bidder shall be requested in writing through the Engineer. Unless the procurement period is shorter than one week, requests for changes or clarification shall be submitted at least five days prior to the date of Bid Closing. The Agency will respond to each request at least 72 hours prior to the date of Bid Closing. If the Procurement period is less than seven days, requests shall be submitted within one day after the Procurement is issued and the Agency will issue its response to each such request at least 24 hours prior to Bid Closing. Failure to timely request clarification or changes shall be deemed acceptance of all of the terms and conditions of the Procurement. Oral explanations or interpretations given before receiving Bids for a Project will not be binding. To be binding, interpretation of the Plans and Specifications by the Agency must be made by written Addendum furnished to all Holders of Bidding Plans according to 00120.30. Notification of erroneous or incomplete Plans or Specifications shall also be submitted to the Engineer. Such notification shall also be made in sufficient time for the Agency to make any necessary modifications and issue Addenda to Bidders prior to Bid Closing.

00120.16 Material, Equipment, and Method Substitutions - When the Contract specifies certain Materials, Equipment, and/or methods, the Bidder shall include those Materials, Equipment, and/or methods in the Bid unless the Engineer has issued an Addendum granting approval to substitute. The procedure for requesting approval is as follows:

(a) Written Request - If a Bidder proposes to use Materials, Equipment and/or methods other than those specified, the Bidder shall send a written request to the Engineer, at least 7 Calendar Days prior to Bid Opening, including complete descriptive and technical information on the proposed Materials, Equipment and/or methods.

(b) Functional Similarity - Materials and Equipment proposed for substitution shall be similar in design, and equal or better in quality and function to those specified.

(c) Manufacturer's Information - If manufacturers' brochures or information is needed, the Bidder shall submit three copies of each with all pertinent information clearly marked.

(d) Differences - The Bidder shall specifically note all differences between the specified Materials, Equipment and/or methods and the proposed substitutes.

(e) Cost - Where a substitute will result in alteration of the design or space requirements, or any other modifications to the Plans, the Bidder shall include in the substitution request all items of cost for the revised design and construction.

(f) Notification of Holders of Bidding Plans - If the Engineer approves any proposed substitution, such approval, and any modifications necessitated to the design and construction by the substitution, will be acknowledged by Addenda.

Unless the Engineer has approved substitutions of Materials, Equipment, and/or methods prior to opening of Bids, the Bidder shall furnish the items specified in the Contract. Substitution after Award is specified in 00180.31(b), 00180.31(c), and 00180.31(d).

00120.17 Use of Agency-Owned Land for Staging or Storage Areas - The Contractor may use Agency-owned property for staging or storage areas, subject to the following limitations:

(a) Within Normal Right-of-Way Limits - If approved by the Engineer, the Contractor may use available property within the normal Right-of-Way limits for the purpose of constructing

improvements under the Contract. Where the Agency owns, or has rights to, other adjacent properties in the Project area, "normal Right-of-Way" is limited to a line drawn across that property connecting the normal Right-of-Way limits on either side of the property.

(b) Outside Normal Right-of-Way Limits - The Contractor may not use Agency-owned property outside of normal Right-of-Way limits for the Project without the approval of the Engineer.

If a Bidder obtains approval before submitting a Bid, use of the property will be at no cost to the Contractor, or at a cost stated by the Engineer upon granting approval, as confirmed by Addendum.

If approval is not obtained before submitting a Bid, and the Contractor proposes to use Agency-owned property outside the normal Right-of-Way limits, then use of the property may be approved by the Engineer, but the Contractor will be assessed fair market value, as determined by the Engineer, for use of the property.

(c) Restrictions on Use - Contractors shall comply with all applicable laws, ordinances, and regulations pertaining to use of Agency-owned property, and shall:

- Not cause unreasonable impacts on traffic and other facility users.
- Clean up all hazardous materials deposited by, or resulting from, Contractor operations.
- Be responsible for all costs associated with use of the property.

00120.20 Interpretation of Quantities in Bid Schedule - Quantities appearing in the Bid Schedule are approximate and are provided only for comparison of Bids. The Agency does not warrant that the actual individual items, amount of Work, or quantities will correspond to those shown in the Bid Schedule. Payment to the Contractor will be made only for actual quantities of Work performed and accepted or Materials furnished and accepted, as required by the Contract. Quantities of Work to be performed and Materials to be furnished may each be increased, decreased, or omitted as provided in 00120.30 and 00140.30.

00120.25 Subsurface Investigations - If the Agency or its consultant has conducted subsurface or geologic investigations of the proposed Project Site, the results of the investigations may be included in written reports. If reports have been prepared, copies will be available at the Engineer's office. If the Agency has retained subsurface samples, they will also be available for inspection. Bidders and the Contractor may make arrangements for viewing the samples through the Engineer's office.

The availability of subsurface information from the Agency is solely for the convenience of the Bidder and shall not relieve the Bidder or the Contractor of any risk, duty to make examinations and investigations as required by 00120.15, or other responsibility under the Contract Documents. It is mutually agreed to by all parties that:

- The written report(s) are reference documents and not part of the Contract Documents.
- The subsurface investigations made by the Agency are for the purpose of obtaining data for planning and design of the Project.
- The data for individual test boring logs apply only to that particular boring and is not intended to be conclusive as to the character of any material between or around test borings.
- If Bidders use this information in preparing a Bid, it is used at their own risk, and Bidders are responsible for all conclusions, deductions, and inferences drawn from this information.

00120.30 Changes to Plans, Specifications, or Quantities before Opening of Bids - The Agency reserves the right to issue Addenda making changes or corrections to the Plans,

Specifications, or quantities. The Agency will provide Addenda only by publishing them on the Agency's web site. See the Agency web site page included with the Special Provisions for the web site address where the Addenda are available.

Addenda may be downloaded from the web site. Bidders shall be responsible for checking the Agency web site for Addenda. Bidders should check the web site weekly until the week of Bid Closing and daily the week of Bid Closing.

The Agency will not be responsible for failure of Bidders to check for and download Addenda. Bids shall incorporate all Addenda. Bids may be rejected if opened and found by the Agency to not be based on all Addenda issued before Bid Closing.

00120.40 Preparation of Bids:

(a) General:

(1) Paper Bids - For Bids submitted by paper, the Bidders shall not alter, in any manner, the paper documents within the Bid Section. Bidders shall complete the certifications and statements included in the Bid Section of the Bid Booklet according to the instructions. Signature of the Bidder's authorized representative thereon constitutes the Bidder's confirmation of and agreement to all certifications and statements contained in the paper Bid Booklet. Entries on the paper documents in the Bid Section shall be in ink or typed. Signatures and initials shall be in ink, except for changes submitted by facsimile (FAX) transmission as provided by 00120.60 (in which case FAX signatures shall be considered originals).

The Bidder shall properly complete and bind all the paper documents in the Bid Section, as specified in 00120.10, between the front and back covers of the Bid Booklet, except that the Bid Bond is not required if another permissible type of Bid guaranty is provided. (see 00120.40(e))

(b) Bidding Considerations - Bidders may refer to the following Subsections for requirements that may affect bidding considerations:

- 00120.80, Preference for Oregon Resident Bidders
- 00130.80, Restrictions on Commencement of Work
- 00150.55, Coordination of Work
- 00150.75, Protection and Maintenance of Work
- 00160.20(a), Buy America
- 00160.20(b), Buy Oregon
- 00170.07, Record Requirements
- 00180.20, Subcontracting Limitations
- 00180.21, Subcontracting
- 00195.50(a-1), Incidentals
- 00195.00(a), Cost of Insurance and Bonds
- 00199.30, Claims Procedure

(c) Bid Schedule Entries:

(1) Paper Bid Schedule Entries - Using figures, Bidders shall fill in all blank spaces in the paper Bid Schedule. For each item in the paper Bid Schedule, Bidders shall enter the unit price and the product of the unit price multiplied by the quantity given. The unit price shall be greater than zero, shall contain no more than two decimal places to the right of the decimal point, and shall be expressed in U.S. dollars and cents (for example, $150.25 or $0.37). Unit prices submitted which contain more than two decimal places, will be truncated by the Agency at the second decimal place to determine the product of the unit price and quantity. No rounding will be considered or paid. Bidders Bid shall also enter the total amount of the Bid obtained by adding amounts for all items in the paper Bid Schedule. Corrections or changes of item entries shall be in ink, with incorrect entry lined out and correct entry entered and initialed.

(d) Bidder's Address and Signature Pages - Bidders shall include in the Bid the address to which all communications concerning the Bid and Contract should be sent. The Bid must be signed by a duly authorized representative of the Bidder.

(e) Bid Guaranty - All Bids shall be accompanied by a Bid guaranty in the amount of 10% of the total amount of the Bid.

(1) Bid Guaranty with Paper Bids - For Bids submitted by paper, the Bid guaranty shall be either a Surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or security in the form of a cashier's check or certified check made payable to the Agency. (see ORS 279C.365(4))

If a Surety bond is submitted, Bidders shall use the Agency's standard Bid Bond form included with the paper Bid Booklet. Bidders shall submit the bond with original signatures and the Surety's seal affixed. The Bid guaranty shall be submitted by mail, delivery service, or hand delivered to the offices and addresses, and at the times given in the paper Bid Booklet

- Acceptable Surety companies are limited to those authorized to do business in the State of Oregon.
- Forfeiture of Bid guaranties is covered by 00130.60, and return of guaranties is covered by 00130.70.

(f) Disclosure of First-Tier Subcontractors - ~~Bidders shall complete and submit the First-Tier Subcontractor Disclosure Statement form bound in the bid documents per the directions and instructions on the form prior to the date and time the Bids are due to be submitted.~~ Without regard to the amount of a Bidder's Bid, if the Agency's cost range for a public improvement Project in the "Notice to Contractors", or in other advertisement or solicitation documents, exceeds $100,000, the Bidder shall, within 2 working hours of the time Bids are due to be submitted, submit to the Agency, on a form provided by the Agency, a disclosure identifying any first-tier Subcontractors that will furnish labor or labor and Materials, and whose contract value is equal to or greater than:

- 5% of the total Project Bid, but at least $15,000; or
- $350,000, regardless of the percentage of the total Project Bid.

For each Subcontractor listed, Bidders shall state:

- The name of the Subcontractor;
- The dollar amount of the subcontract; and
- The category of Work that the Subcontractor would be performing.

If no subcontracts subject to the above disclosure requirements are anticipated, a Bidder shall so indicate by entering "NONE" or by filling in the appropriate check box. For each Subcontractor listed, Bidders shall provide all requested information. An incomplete form will be cause for rejection of the Bid.

The Subcontractor Disclosure Form may be submitted either:

- By filling out the Subcontractor Disclosure Form printed from the Bid Booklet and submitting it together with the Bid at the time and place designated for receipt of Bids; or
- By removing it from the paper Bid Booklet, filling it out and submitting it separately to the Agency at the address given in the Bid Booklet or to the FAX number (541)682-8410.

Subcontractor Disclosure Forms submitted by any method will be considered late if not received by the Agency within 2 working hours of the time designated for receiving Bids.

The Agency is not responsible for partial, failed, illegible or partially legible facsimile (FAX) transmissions or submittals, and such forms may be rejected as incomplete.

In the event that multiple Subcontractor Disclosure Forms are submitted, the last version received prior to the deadline will be considered to be the intended version.

Bids will be deemed non-responsive if the Subcontractor Disclosure Forms are not in compliance with the requirements of this Subsection or are submitted late.

~~THE DISCLOSURE FORM MUST BE SUBMITTED **PRIOR TO BID CLOSING**.~~
~~Bidders are responsible for investigating the status and capacity of their Subcontractors to work on Agency contracts. Bidders shall not use Subcontractors who have been debarred from participating in Agency contracts or declared or determined by the Commissioner of the Bureau of Labor and Industries or the Construction Contractors Board to be ineligible or not qualified to hold or participate in a public contract. A Bid that is accompanied by a First-Tier Disclosure Statement that includes the name of an entity that has been debarred or declared ineligible or unqualified to work on an Agency contract may be rejected as non-responsive.~~
~~Bids not in compliance with the requirements of this Subsection will be considered non-responsive.~~

00120.45 Submittal of Bids:

(a) Paper Bids - Paper bids may be submitted by mail, parcel delivery service, or hand delivery to the Agency, and at the times given in the Bid Booklet. Submit paper Bids in a sealed envelope. If a delivery or courier service is used, the Bidder shall place the sealed envelope containing the paper Bid inside the delivery or courier service's envelope.

Paper Bids submitted after the time set for receiving paper Bids will not be opened or considered. The Agency assumes no responsibility for the receipt and return of late paper Bids.

Preparation and submission of Bids is at the sole risk and expense of the Bidder and is not a cost of contract performance.

00120.60 Revision or Withdrawal of Bids:

(a) Paper Bids - Information entered into the paper Bid Booklet by the Bidder may be changed after the paper Bid has been delivered to the Agency, provided that:

- Changes are prepared according to the instructions identified in the Bid Booklet; and
- Changes are received at the same offices, addresses, and times identified in the paper Bid Booklet for submitting Bids; and
- The changes are submitted in writing or by electronic facsimile (FAX) transmission to the FAX number(s) given in the paper Bid booklet, signed by an individual authorized to sign the Bid. FAX submittals received by the Agency shall constitute an original document.

A Bidder may withdraw its paper Bid after it has been delivered to the Agency, provided that:

- The written withdrawal request is submitted on the Bidder's letterhead, either in person or by FAX: and
- The request is signed by an individual who is authorized to sign the Bid, and proof of authorization to sign the Bid accompanies the withdrawal request; and
- The request is received at the same offices, addresses, and times identified in the paper Bid Booklet for submitting Bids.

00120.65 Opening and Comparing Bids - Bids will be opened and the total price for each Bid will be read publicly at the time and place indicated in the Bid Advertisement. Bidders and other interested parties are invited to be present.

Bids for each Project will be compared on the basis of the total amount of each Bid. The total amount of the Bid will be the total sum computed from quantities listed in the Bid Schedule and unit prices entered by the Bidder.

In case of conflict between the unit price and the corresponding extended amount, the unit price shall govern, and the Agency may make arithmetic corrections on extension amounts.

00120.70 Rejection of Nonresponsive Bids - A Bid will be considered irregular and will be rejected if the irregularity is deemed by the Agency to render the Bid non-responsive. Examples of irregularities include without limitation:

- The Bid Section documents provided are not properly used or contain unauthorized alterations.
- The Bid is incomplete or incorrectly completed.

- The Bid contains improper additions, deletions, alternate Bids, or conditions.
- The Bid is submitted on documents not obtained directly from the Agency, or is submitted by a Bidder who has not been identified by the Agency as a Holder of Bidding Plans, as required by 00120.05.
- The Bid or Bid modifications are not signed by a person authorized to submit Bids or modify Bids~~, as required by 00120.01~~.
- A member of a joint venture and the joint venture submit Bids for the same Project. Both Bids may be rejected.
- The Bid has entries not typed or in ink, or has signatures or initials not in ink (save for changes received by FAX as provided by 00120.60).
- Each change or correction is not individually initialed.
- White-out tape or white-out liquid is used to correct item entries.
- The price per unit cannot be determined.
- The Bid guaranty is insufficient or improper.
- The original Bid Bond form is not used or is altered.
- The Oregon Construction Contractors Board registration number and expiration date are not shown on the Bid if required in the Solicitation Document. This requirement applies to Agency and State-funded Projects, with the exception of Aggregate production and landscape Projects. (not required on Federal-Aid Projects)
- A disclosure of qualified first-tier Subcontractors, if required under 00120.40(f), is not received within 2 working hours of ~~by~~ the time Bids are due to be submitted, or the disclosure form is not complete.
- The Bidder has not complied with the DBE requirements of the solicitation.
- The Bid does not acknowledge all issued Addenda.
- The Bid contains entries that are not greater than zero.
- The Bid entries are not expressed in U.S. dollars and cents.
- The Agency determines that any Pay Item is significantly unbalanced to the potential detriment of the Agency.

In addition, the Agency may reject all Bids for good cause upon its finding that it is in the public interest to do so. The Agency may also waive minor informalities or irregularities.

00120.80 Reciprocal Preference for Oregon Resident Bidders - This Subsection applies only to Contracts for Projects financed without federal funds.

Bidders shall complete the certificate of residency provided by the Agency in the Bid Booklet. Failure to properly complete the form will be cause to reject the Bid.

As used in the certificate of residency and this Subsection, "Resident Bidder" means a Bidder who has:

- Paid unemployment taxes or income taxes in the State of Oregon during any of the 12 calendar months immediately preceding submission of the Bid;
- A business address in the State of Oregon; and
- Certified in the Bid that the Bidder qualifies as a Resident Bidder.

"Nonresident Bidder" means a Bidder who is not a Resident Bidder as defined above.

In determining the lowest Bid, the Agency will, for the purpose of awarding the Contract, add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the

preference given to that Bidder in the state in which the Bidder resides (ORS 279A.120). The percentage preference applied in each state will be published on or before January 1 of each year by the Oregon Department of Administrative Services. The Agency may rely on these percentages without incurring liability to any Bidder (ORS 279A.120).

This increase will only be applied to determine the lowest Bid, and will not cause an increase in payment to the Contractor after Award of the Contract.

00120.90 Disqualification of Bidders - The Bid(s) of a disqualified Bidder will be rejected. Any of the following reasons is sufficient to disqualify a Bidder:

- More than one Bid is submitted for the same Work by an Entity under the same or different name(s).
- Evidence of collusion among Bidders. Participants in collusion will be found not responsible, and may be subject to criminal prosecution.
- Any of the grounds for disqualification cited in ORS 279C.440.

A Bidder will be disqualified if the Bidder has:

- Not been prequalified as required by 00120.00;
- Been declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860;
- Not been registered (licensed) by the Oregon Construction Contractors Board (CCB) or been licensed by the State Landscape Contractors Board before submitting a Bid (ORS 279C.365(1)(k), ORS 701.021, ORS 701.026, and ORS 671.530). The Bidder's registration number and expiration date shall be shown in the Bid form, if requested. Failure to furnish the registration number, if requested, will render the Bid non-responsive and subject to rejection. (not required on Federal-Aid projects); or
- Been determined by the CCB under ORS 701.227 not to be qualified to hold or participate in a public contract for a public improvement.

00120.91 Rejection of Bid on Grounds of Nonresponsibility of Bidder - The Bid of a Bidder who is found to be nonresponsible according to the criteria listed in 00130.10 or ORS 279C.375(3) will be rejected.

Section 00130 - Award and Execution of Contract

00130.00 Consideration of Bids - After opening and reading Bids, the Agency will check them for correct extensions of unit prices and totals. (see 00120.65) The total of extensions, corrected where necessary, will be used by the Agency for Award purposes.

The Agency reserves the right to waive minor informalities and irregularities, and to reject any or all Bids for irregularities under 00120.70 or for good cause after finding that it is in the public interest to do so (ORS 279C.395). An example of good cause for rejection in the public interest is the Agency's determination that any of the unit Bid prices are significantly unbalanced to the Agency's potential detriment. The Agency may correct obvious errors, when the correct information can be determined from the face of the document, if it finds that the best interest of the Agency and the public will be served thereby.

Bids will be considered and a Contract awarded, if at all, within 30 Calendar Days from the date of Bid Opening, unless an extension beyond that time is agreed to by both parties and acknowledged in writing by the Bidder.

00130.10 Award of Contract - After the Bids are opened and a determination is made that a Contract is to be awarded, the Contract will be awarded to the lowest responsible Bidder. For the purposes of this Section, "lowest responsible Bidder" means the responsible Bidder that submitted the lowest responsive Bid who is not on the list created by the Construction Contractors Board according to ORS 701, and who has:

- Substantially complied with all prescribed public bidding procedures and requirements.
- Available the appropriate financial, Materials, Equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the prospective Bidder to meet all contractual responsibilities.
- A satisfactory record of performance. In evaluating a Bidder's record of performance, the Agency may consider, among other things, whether the Bidder completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of evaluating a Bidder's performance on previous contracts of a similar nature, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the Bidder's control, the Bidder stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. Satisfactory performance of the Contract also includes compliance with the requirements for records in 00170.07 for Contracts with the Agency.
- A satisfactory record of integrity. In evaluating a Bidder's record of integrity, the Agency may consider, among other things, whether the Bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Bidder's performance of a contract or subcontract.
- Qualified legally to contract with the Agency.
- Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Bidder fails to promptly supply information requested by the Agency concerning responsibility, the Agency shall base the determination of responsibility upon any available information, or may find the prospective Bidder not to be responsible.
- Not been disqualified by the public contracting agency under ORS 279C.440.

If the Bidder is found not to have a satisfactory record of performance or integrity, the Agency will document the record and the reasons for the unsatisfactory finding.

The Agency will mail the Notice of Intent to Award to the Bidders, and may provide Notice of Intent to Award on the Agency's web site.

The Award will not be final until the later of the following:

- Seven Calendar days after the Notice of Intent to Award has been mailed to the bidders; or
- The Agency has provided a written response to each timely protest, denying the protest and affirming the Award.

If the Agency accepts a Bid and awards a Contract, the Agency will send the successful Bidder written notice of acceptance and Award.

Notice of Award and Contract booklets ready for execution will be sent within 60 Calendar Days of the opening of Bids or within the number of Calendar Days specified in the Special Provisions or a written mutual agreement.

00130.15 Right to Protest Award - Adversely affected or aggrieved Bidders, limited to the three apparent lowest Bidders and any other Bidder directly in line for Contract Award, may submit to the Agency a written protest of the Agency's intent to Award within seven Calendar days following the date of the Notice of Intent to Award. The protest shall specify the grounds upon which it is based.

An aggrieved Bidder may protest an award only if the bidder alleges, in its written protest, that it should have received the award because:

(a) All lower Bids are non-responsive;

(b) The Agency failed to conduct the Bid process as described in the Bid Document;

(c) The Agency has abused its discretion in rejecting the protestor's Bid as non-responsive or non-responsible; or

(d) The Agency's evaluation of Bids or subsequent determination of award is otherwise in violation of ORS Chapters 279A AND 279C or the Agency's public contracting rules.

The written protest must describe the facts that support the protest. The Agency may not consider late protests or protests that do not describe facts that would support a finding that the Bidder is aggrieved for one of the reasons in clauses (a) through (d) above.

00130.20 Cancellation of Award - Without liability to the Agency, the Agency may for good cause cancel Award at any time before the Contract is executed by all parties to the Contract, as provided by ORS 279C.395 for rejection of Bids, upon finding it is in the public interest to do so.

00130.30 Contract Booklet - The Contract booklet may include but is not limited to:

- Supplemental Specifications, if any
- Special Provisions
- Addenda
- Schedule of Items
- Public Improvement Contract
- Performance Bond
- Payment Bond
- Certification of workers' compensation coverage

00130.40 Contract Submittals - Before the Agency will execute the Contract, the successful Bidder shall furnish the following:

(a) Performance and Payment Bonds - When Awarded the Contract, the successful Bidder shall furnish a Performance Bond and a Payment Bond of a Surety authorized to do business in the State of Oregon.

The successful Bidder shall submit the standard bond forms, which are bound in the Contract booklet. Faxed or photocopied bond forms will not be accepted. The amount of each bond shall be equal to the Contract Amount. The Performance Bond and the Payment Bond must be signed by the Surety's authorized Attorney-in-Fact, and the Surety's seal must be affixed to each bond. A power of attorney for the Attorney-in-Fact shall be attached to the bonds in the Contract booklet, which must include bond numbers, and the Surety's original seal must be affixed to the power of attorney. Bonds shall not be canceled without the Agency's consent, nor will the Agency normally release them, prior to Contract completion.

When a coating system warranty is required by 00594.75, the Contractor shall also furnish a supplemental warranty performance bond as and when described in 00594.75.

(b) Certificates of Insurance - The successful Bidder shall furnish the Agency certificates of insurance applicable to the Project, according to 00170.70. The insurance coverages shall remain in force throughout the performance of the Contract and shall not be allowed to lapse without prior written approval of the Agency. Bidders may refer to 00170.70 for minimum coverage limits and other requirements.

For specified Contracts, certified copies, and in some instances the original, of insurance policies may be required by the Special Provisions.

(c) Workers' Compensation - To certify compliance with the workers' compensation insurance coverage required by 00170.61(a) and 00170.70(d), the successful Bidder shall complete and sign the "Certification of Workers' Compensation Coverage" form bound in the Contract booklet.

(d) Registration Requirements:

(1) ORS 701.021, ORS 701.026, and ORS 671.530 require that Bidders be registered with the Oregon Construction Contractors Board or licensed by the State Landscape Contractors Board prior to submission of a Bid on a Project not involving federal funds. Registration with the Construction Contractors Board or licensing by the State Landscape Contractors Board is not a prerequisite to bidding on Federal-Aid Projects; however, the Agency will not execute a Contract until the Contractor is so registered or licensed.

(2) Bidders must be registered with the Corporation Division, Oregon Secretary of State, if bidding as a corporation, limited liability company, joint venture, or limited liability partnership, or if operating under an assumed business name and the legal name of each person carrying on the business is not included in the business name.

(3) A Contractor registered under ORS 701 may bid on a landscaping Project or perform a construction project that includes landscape contracting as a portion of the project if the landscape contracting is subcontracted to a licensed landscaping business as defined in ORS 671.520.

(4) A landscaping business may bid on a Project or perform a Contract that includes the phase of landscape contracting for which it is not licensed if it employs a landscape contractor, or subcontracts with another licensed landscaping business, licensed for that phase.

(e) Tax Identification Number - The successful Bidder shall furnish the Agency the Bidder's Federal Tax Identification Number.

00130.50 Execution of Contract and Bonds:

(a) By the Bidder - The successful Bidder shall deliver the required number of Contract booklets with the properly executed Contract, Performance Bond, Payment Bond, certification of workers' compensation coverage, and the required certificates of insurance, to the Agency within 5 Work Days after the date on which the Contract booklets are sent or otherwise conveyed to the Bidder under 00130.10. The Bidder shall return the originals of all documents received from the Agency and named in this Subsection, with original signatures. Certificates of insurance shall also be originals. Certificates of insurance for coverages that are permitted by the Agency under 00170.70(a) to be obtained by appropriate subcontractors shall be delivered by the Contractor to the Agency together with the Contractor's request under 00180.21 for approval of the subcontract with that subcontractor. No copies of these documents will be accepted by the Agency.

Proper execution requires that:

- If the Contractor is a partnership, limited liability partnership, joint venture, or limited liability company, an authorized representative of each Entity comprising it shall sign the Contract, Performance Bond, and Payment Bond, and an authorization to sign shall be attached.
- If the Contractor is a corporation, the President and the Secretary of that corporation shall sign the Contract, Performance Bond, and Payment Bond. However, if other corporate officers are authorized to execute contracts and bonds, the successful Bidder shall furnish with those documents a certified, true and correct copy of the corporate bylaws or minutes stating that authority. If only one officer is signing, then the bylaws or minutes must include the authority to sign without the signature of others. The successful Bidder shall also include the title(s) or corporate office(s) held by the signer(s).

(b) By the Agency - Within 10 Working Days after the Agency has received and verified the properly executed documents specified in 00130.50(a), and received legal sufficiency approval from the Agency's attorney (if required), the Agency will execute the Contract. The Agency will then send a fully-executed original Contract booklet to the successful Bidder, who then officially becomes the Contractor.

00130.60 Failure to Execute Contract and Bonds - Failure of the successful Bidder to execute the Contract and provide the required certificates, certifications, and bonds may be cause for cancellation of the Award, and may be cause for forfeiture of the Bid guaranty under ORS 279C.385.

Award may then be made to the next lowest responsible Bidder, the Project may be re-advertised, or the Work may be performed otherwise as the Agency decides.

The forfeited Bid guaranty will become the Agency's property, not as a penalty but as liquidation of damages resulting from the Bidder's failure to execute the Contract and provide the certificates, certifications, and bonds as required by these Specifications.

00130.70 Release of Bid Guaranties - Bid guaranties will be released and checks returned 7 Calendar Days after Bids are opened, except for those of the three apparent lowest Bidders on each Project. The guaranties of the three apparent lowest Bidders will be released and checks returned to unsuccessful Bidders within 7 days of the Agency's execution of the Contract.

00130.80 Project Site Restriction - Until the Agency sends the Contractor written Notice to Proceed with the Work, and the Contractor has filed the public works bonds required in 00170.20,the Contractor shall not go onto the Project Site on which the Work is to be done, nor move Materials, Equipment, or workers onto that Project Site.

The Contractor will not automatically be entitled to extra compensation because the commencement of Work is delayed by failure of the Agency to send the Contract for execution. However, if more than 60 Calendar Days elapse between the date the Bid is opened and the date the Agency sends the Contract to be executed, the Agency will consider granting an adjustment of time for completion of the Work to offset any actual delay to Contract completion resulting directly from delay in commencement.

00130.90 Notice to Proceed - Notice to Proceed will be issued within 5 Calendar Days after the Contract is executed by the Agency.

Should the Agency fail to issue the Notice to Proceed within 5 Calendar Days of Contract execution, the Contractor may apply for an adjustment of Contract Time according to 00180.80(c).

The Engineer will issue a First Notification recording the date the performance of the Contract has begun.

Section 00140 - Scope of Work

00140.00 Purpose of Contract - The purpose of the Contract is to set forth the rights and obligations of the parties and the terms and conditions governing completion of the Work. The Contractor's obligations shall include without limitation the following:

- The Contractor shall furnish all Materials, Equipment, labor, transportation, and Incidentals required to complete the Work according to Plans, Specifications, and terms of the Contract.
- The Contractor shall perform the Work according to the lines, grades, Typical Sections, dimensions, and other details shown on the Plans, as modified by written order, or as directed by the Engineer.
- The Contractor shall perform all Work determined by the Engineer to be necessary to complete the Project.
- The Contractor shall contact the Engineer for any necessary clarification or interpretation of the Contract.

00140.10 Typical Sections - The Typical Sections are intended to apply in general. At other locations where the Typical Section is not appropriate, the Contractor shall perform construction to the identified alignment as directed by the Engineer.

00140.20 Thickness - The thickness of Courses of Materials shown on the Plans, given in the Specifications, or established by the Engineer is considered to be the compacted thickness. Minor variations are acceptable when within tolerances specified in the Specifications or Plans, or when approved by the Engineer.

00140.30 Agency-Required Changes in the Work - Changes to the Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of Project construction.

Without impairing the Contract, the Agency reserves the right to require changes it deems necessary or desirable within the scope, which in the Specifications means general scope, of the Project. These changes may modify, without limitation:

- Specifications and design
- Grade and alignment
- Cross Sections and thicknesses of Courses of Materials
- Method or manner of performance of Work
- Project Limits

or may result in:

- Increases and decreases in quantities
- Additional Work
- Elimination of any Contract item of Work
- Acceleration or delay in performance of Work

Upon receipt of a Change Order, the Contractor shall perform the Work as modified by the Change Order. If the Change Order increases the Contract Amount, the Contractor shall notify its Surety of the increase and direct the Surety to increase the amount of the performance and payment bonds to equal the new Contract Amount. The Contractor shall provide the Agency with a copy of the modified bond documents within 15 calendar days of receipt of the Change Order. The Contractor's

performance of Work according to Change Orders shall neither invalidate the Contract nor release the Surety. Payment for changes in the Work will be made according to 00195.20. Contract Time adjustments, if any, will be made according to 00180.80.

00140.40 Differing Site Conditions - The following constitute differing Project Site conditions provided such conditions are discovered at the Project Site after commencement of the Work:

For projects that include FHWA funding:

- **Type 1 -** Subsurface or latent physical conditions that differ materially from those indicated in the Contract Documents; or
- **Type 2** - Unknown physical conditions of unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract.

For projects that do not include FHWA funding:

- **Type 1 -** Subsurface or latent physical conditions that could not have been discovered by careful examination of the Project Site, utilities and available records as described in 00120.15 and differ materially from those indicated in the Contract Documents; or
- **Type 2 -** Unknown physical conditions of unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract.

The party discovering such a condition shall promptly notify the other party, in writing, of the specific differing conditions before they are disturbed and before the affected Work is performed. The Contractor shall not continue Work in the affected area until the Engineer has inspected such condition according to 00195.30 to determine whether an adjustment to Contract Amount or Contract Time is required.

Payment adjustments due to differing Project Site conditions, if any, will be made according to 00195.30. Contract Time adjustments, if any, will be made according to 00180.80.

00140.50 Environmental Pollution Changes - ORS 279C.525 will apply to any increases in the scope of the Work required as a result of environmental or natural resources laws enacted or amended after the submission of Bids for the Contract. The Contractor shall comply with the applicable notice and other requirements of ORS 279C.525. The applicable rights and remedies of that statute will also apply.

In addition to ORS 279C.525, the Agency has compiled a list at 00170.01 of those federal, State, and local agencies, of which the Agency has knowledge, that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of Agency contracts.

00140.60 Extra Work - If directed by the Engineer's written order, the Contractor shall perform work not included in the Contract. The Contractor shall perform this work according to:

- Standard Specifications
- Standard Drawings
- Other Plans and Specifications issued by the Engineer

Payment for Extra Work will be made according to Section 00196. Contract Time adjustments, if any, will be made according to 00180.80.

00140.65 Disputed Work - The Contractor may dispute any part of a Change Order, written order, or an oral order from the Engineer by the procedures specified in Section 00199.

00140.70 Cost Reduction Proposals - The Contractor may submit written proposals to the Engineer that modify Plans, Specifications, or other Contract Documents for the sole purpose of reducing the total cost of construction. Unless otherwise agreed to in writing by the Agency, a proposal that is solely or primarily a proposal to reduce estimated quantities or delete Work, as determined by the Engineer, is not eligible for consideration as a cost reduction proposal and will instead be addressed under 00140.30, whether proposed or suggested by the Agency or the Contractor.

(a) Proposal Requirements - The Agency will not adopt a cost reduction proposal that impairs essential functions or characteristics of the Project including but not limited to service life, economy of operation, ease of maintenance, designed appearance, or design and safety standards.

To conserve time and funds, the Contractor may first submit a written request for a feasibility review by the Engineer. The request should contain a description of the proposal together with a rough estimate of anticipated dollar and time savings. The Engineer will, within a reasonable time, advise the Contractor in writing whether or not the proposal would be considered by the Agency, should the Contractor elect to submit a detailed cost reduction proposal.

A detailed cost reduction proposal shall include without limitation the following information:

- A description of existing Contract requirements for performing the Work and the proposed change;
- The Contract items of Work affected by the proposed change, including any quantity variation caused by the proposed change;
- Pay Items affected by the proposed change including any quantity variations;
- A detailed cost estimate for performing the Work under the existing Contract and under the proposed change. Cost estimates shall be made according to Section 00197. Costs of re-design, which are incurred after the Agency has accepted the proposal, will be included in the cost of proposed work; and
- A date by which the Engineer must accept the proposal in order to accept the proposed change without impacting the Contract Time or cost reduction amount.

(b) Continuing to Perform Work - The Contractor shall continue to perform the Work according to Contract requirements until the Engineer issues a Change Order incorporating the cost reduction proposal. If the Engineer fails to issue a Change Order by the date specified in the proposal, the proposal shall be deemed rejected.

(c) Consideration of Proposal - The Engineer is not obligated to consider any cost reduction proposal. The Agency will not be liable to the Contractor for failure to accept or act upon any cost reduction proposal submitted.

The Engineer will determine in its sole discretion whether to accept a cost reduction proposal as well as the estimated net savings in construction costs from the adoption of all or any part of the proposal. In determining the estimated net savings, the Engineer may disregard the Schedule of Items. The Engineer will establish prices that represent a fair measure of the value of Work to be performed or to be deleted as a result of the cost reduction proposal.

(d) Sharing Investigation Costs - As a condition for considering a Contractor's cost reduction proposal, the Agency reserves the right to require the Contractor to share in the Agency's costs of investigating the proposal. If the Agency exercises this right, the Contractor shall provide written acceptance of the condition to the Engineer. Such acceptance will authorize the Agency to deduct its share of investigation costs from payments due or that may become due to the Contractor under the Contract.

(e) Acceptance of Proposal Requirements - If the Contractor's cost reduction proposal is accepted in whole or in part, acceptance will be made by a Change Order that will include without limitation the following:

- Statement that the Change Order is made according to 00140.70;

- Revised Contract Documents that reflect all modifications necessary to implement the approved cost reduction measures;
- Any conditions upon which the Agency's approval is subject;
- Estimated net savings in construction costs attributable to the approved cost reduction measures; and
- A payment provision according to which the Contractor will be paid 50% of the estimated net savings amount as full and adequate consideration for performance of the Work of the Change Order.

The Contractor's cost of preparing the cost reduction proposal and the Agency's costs of investigating the proposal, including any portion paid by the Contractor, will be excluded from determination of the estimated net savings in construction costs. Costs of re-design, which are incurred after the Agency has accepted the proposal, will be included in the cost of the Work attributable to cost reduction measures.

If the Agency accepts the cost reduction proposal, the Change Order that authorizes the cost reduction measures will also address any Contract Time adjustment.

(f) Right to General Use - Once submitted, the cost reduction proposal becomes the property of the Agency. The Agency reserves the right to adopt the cost reduction proposal for general use without additional compensation to the Contractor when it determines that a proposal is suitable for application to other contracts.

00140.80 Use of Publicly Owned Equipment - The Contractor is prohibited from using publicly-owned Equipment except in the case of emergency. In an emergency, the Contractor may rent publicly-owned Equipment provided that:

- The Engineer provides written approval that states that such rental is in the public interest; and
- Rental does not increase the Project cost.

00140.90 Final Trimming and Cleanup - Before Final Inspection as described in 00150.90, the Contractor shall neatly trim and finish the Project and remove all remaining unincorporated Materials and debris. Final trimming and cleanup shall include without limitation the following:

- The Contractor shall retrim and reshape earthwork, and shall repair deteriorated portions of the Project Site.
- Where the Work has impacted existing facilities or devices, the Contractor shall restore or replace those facilities to their pre-existing condition.
- The Contractor shall clean all drainage facilities and sanitary sewers of excess Materials or debris resulting from the Work.
- The Contractor shall clean up and leave in a neat, orderly condition, Rights-of-Way, Materials sites, and other property occupied in connection with performance of the Work.
- The Contractor shall remove temporary buildings, construction plants, forms, falsework and scaffolding, surplus and discarded Materials, and rubbish.
- The Contractor shall dispose of Materials and debris including without limitation forms, falsework, scaffolding, and rubbish resulting from clearing, grubbing, trimming, clean-up, removal, and other Work. These Materials and debris become the property of the Contractor. The Contractor shall dispose of these Materials and debris immediately.
- The Contractor shall restore and replant or resurface adjoining properties to match existing grades and existing surfaces.

- Erosion and sediment controls needed to stabilize the Project Site.

Unless the Contract specifically provides for payment for this item, the Agency will make no separate or additional payment for final trimming and cleanup.

Section 00150 - Control of Work

00150.00 Authority of the Engineer - The Engineer has full authority over the Work and its suspension. (see Section 00180) The Contractor shall perform all Work to the complete satisfaction of the Engineer. The Engineer's determination shall be final on all matters, including but not limited to the following:

- Quality and acceptability of Materials and workmanship
- Measurement of unit price Work
- Timely and proper prosecution of the Work
- Interpretation of Contract Documents
- Payments due under the Contract

The Engineer's decision is final and, except as provided in 00180.80 for adjustments of Contract Time and Section 00199 for claims for additional compensation, may be challenged only through litigation.

Work performed under the Contract will not be considered complete until it has passed Final Inspection by the Engineer and has been accepted by the Agency.

Interim approvals issued by the Engineer, including but not limited to Third Notification, will not discharge the Contractor from responsibility for errors in prosecution of the Work, for improper fabrication, for failure to comply with Contract requirements, or for other deficiencies, the nature of which are within the Contractor's control.

00150.01 Project Manager's Authority and Duties - The Engineer may designate a Project Manager as its representative on the Project with authority to enforce the provisions of the Contract.

When the Engineer has designated a Project Manager, the Contractor should direct all requests for clarification or interpretation of the Contract, in writing, to the Project Manager. The Project Manager will respond within a reasonable time. Contract clarification or interpretation obtained from persons other than the Project Manager will not be binding on the Agency.

The Project Manager shall have the authority to appoint Inspectors and other personnel as required to assist in the administration of the Contract.

00150.02 Inspector's Authority and Duties - To the extent delegated under 00150.01, Inspectors are authorized to represent the Engineer and Project Manager to perform the following:

- Inspect Work performed and Materials furnished, including without limitation, the preparation, fabrication, or manufacture of Materials to be used;
- Orally reject defective Materials and to confirm such rejection in writing;
- By oral order, temporarily suspend the Work for improper prosecution pending the Engineer's decision; and
- Exercise additional delegated authority.

Inspectors are not authorized to:

- Accept Work or Materials.
- Alter or waive provisions of the Contract.
- Give instructions or advice inconsistent with the Contract Documents.

00150.10 Coordination of Contract Documents - The Contract Documents, including but not limited to Contract Change Orders, the Special Provisions, the Plans, and the Standard Specifications are intended to collectively describe all of the items of Work necessary to complete the Project.

(a) Order of Precedence - The Engineer will resolve any discrepancies between these documents in the following order of precedence:

- Permits from governmental agencies;
- Contract Change Orders;
- Addenda;
- Bid schedule;
- Special Provisions;
- Agency-prepared drawings specifically applicable to the Project and bearing the Project title;
- Reviewed and accepted, stamped Working Drawings;
- Standard Drawings;
- Approved Unstamped Working Drawings;
- Supplemental Specifications;
- Standard Specifications; ~~and~~
- The Public Improvement Contract; and
- All other Contract Documents not listed above.

Notes on a drawing shall take precedence over drawing details.

Dimensions shown on the drawings, or that can be computed, shall take precedence over scaled dimensions.

(b) Immaterial Discrepancies - The Contract Documents specify details for the construction and completion of the Work. If Contract Documents describe portions of the Work in sufficient detail but are silent in some minor respect, the Contractor may proceed utilizing the current best industry practices.

(c) Material Discrepancies - If the Contractor identifies a discrepancy, error, or omission in the Contract Documents that cannot be resolved by the approach specified in (b) above, the Contractor shall immediately request clarification from the Engineer.

00150.15 Construction Stakes, Lines, and Grades:

(a) General - The Contractor shall perform no Work until the Engineer establishes field controls. Work performed without field controls will be subject to removal at the Contractor's expense.

(b) Agency Responsibilities - The Engineer will:

- Lay out and set construction stakes and marks to establish the lines, grades, Slopes, Cross Sections, and curve super-elevations for the Work;
- Provide one set of construction stakes for line and grade for each additional phase of the Work as follows:
    1. Streets – Top face of curb.

2. Alleys – Finish grade in the invert of the alley.
3. Sidewalks – Finish grade nearest the back of walk.
4. Pipes – Invert elevation at centerline of the pipe.
5. Access Ramps – Finish grade at grade breaks.
6. Manhole/Inlets/Catch Basins – Location and one invert elevation.

- The Agency will replace survey monuments disturbed during construction that~~which~~ have not been noted in the Plans to be protected.
- Set bench marks and stakes for centerline of Bridges and bents;
- Calculate and provide finish deck grades; and
- Deduct from payments due the Contractor all costs incurred to replace stakes and marks negligently or intentionally damaged, removed, or destroyed by the Contractor.

(c) Contractor Responsibilities - The Contractor shall:

- Inform the Engineer of staking requirements at least 5 Calendar Days before the staking needs to begin;
- Coordinate construction to provide sufficient area for the Engineer to perform surveying work efficiently and safely;
- Accurately measure detailed dimensions, elevations, and Slopes from the Engineer's stakes and marks;
- Perform the Work in such a manner as to preserve stakes and marks; and
- Set any reference lines for automatic control from the control stakes provided by the Engineer.
- Inform the Engineer of any property corners monuments and/or survey markers that are not shown on the plans and are found during construction activities prior to disturbing the monuments. Allow the Agency 2 Work days for referencing all found markers before they are removed. Monuments that are noted on the plans to be protected and are disturbed by the Contractor's activities shall be replaced by the Contractor's surveyor at the Contractor's expense.

00150.20 Inspection:

(a) Inspection by the Engineer - The Engineer may test Materials furnished and inspect Work performed by the Contractor to ensure Contract compliance. The Contractor shall notify the Engineer 24 hours (one full Work Day) in advance for inspection of each portion of the Work.

Contractor shall not begin placing successive Courses or portions of Work until preceding Courses or portions of the Work have been inspected.

If the Contractor performs Work without the Engineer's inspection or uses Materials that the Engineer has not approved, the Engineer may order affected portions of the Work removed at the Contractor's expense.

At the Engineer's direction, any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore these portions of Work to the standard required by the Contract. If the Engineer rejects Work due to Materials or workmanship, or if the Contractor performed such Work without providing sufficient advance request for inspection to the Engineer, the Contractor shall bear all costs of uncovering and restoring the Work. If the Engineer accepts the uncovered Work, and the Contractor

performed the Work only after providing the Engineer with sufficient advance notice, the costs of uncovering and restoring the Work will be paid for by the Agency according to 00195.20.

(b) Inspection Facilities - The Contractor shall furnish walkways, railings, ladders, shoring, tunnels, platforms, and other facilities necessary to permit the Engineer to have safe access to the Work to be inspected. The Contractor shall require producers and fabricators to provide safe inspection access as requested by the Engineer.

(c) Sampling - When directed by the Agency, the Contractor shall furnish the Engineer with samples of Materials that the Engineer will test. All of the Contractor's costs related to this required sampling are Incidental.

(d) Inspection by Third Parties - Where third parties have the right to inspect the Work, the Contractor shall coordinate with the Engineer and shall provide safe inspection access.

(e) Contractor's Duty to Make Corrections - The Contractor shall perform all Work according to the Contract Documents. The Contractor shall correct Work that does not comply with the Contract Documents at its own expense. Inspection of the Work by the Engineer does not relieve the Contractor of responsibility for improper prosecution of the Work.

00150.25 Acceptability of Materials and Work - The Contractor shall furnish Materials and shall perform Work in Close Conformance to the Contract Documents. If the Engineer determines that the Materials furnished or the Work performed are not in Close Conformance with the Contract Documents, the Engineer may:

- Reject the Materials or Work and order the Contractor, at the Contractor's expense, to remove, replace, or otherwise correct any non-conformity; or
- Accept the Materials or Work as suitable for the intended purpose, adjust the amount paid for applicable Pay Items to account for diminished cost to the Contractor or diminished value to the Agency, document the adjustment, and provide written documentation to the Contractor regarding the basis of the adjustment.

The Engineer's decisions concerning acceptability of Materials or Work will be final.

00150.30 Delivery of Notices - Written notices to the Contractor by the Engineer or the Agency will be delivered:

- In person;
- by electronically confirmed facsimile transmission;
- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested), to the current office address as shown in the records of the Agency; or
- By overnight delivery service of a private industry courier, to the current office address as shown in the records of the Agency.

Notices shall be considered as having been received by the Contractor:

- At the time of actual receipt when delivered in person or by facsimile transmission;
- At the time of actual receipt or 7 Calendar Days after the postmarked date when deposited for delivery by first class or priority mail, whichever is earlier; or
- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier.

Written notices to the Engineer or the Agency by the Contractor shall be delivered to the Agency address shown in the Special Provisions, unless a different address is agreed to by the Engineer, and shall be delivered:

- In person;
- by electronically confirmed facsimile transmission;
- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested); or
- By overnight delivery service of a private industry courier.

Notices will be considered as having been received by the Agency:

- At the time of actual receipt when delivered in person or by facsimile transmission;
- At the time of actual receipt or 7 Calendar Days after the postmarked date when deposited for delivery by first class or priority mail, whichever is earlier; or
- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier.

00150.35 Plans and Working Drawings:

(a) Plans - The Plans will show details of lines, grades, and Typical Section of the Roadway, and locations and design details of Structures.

(b) Working Drawings - The Contractor shall supplement the Agency-prepared Plans with stamped or unstamped Working Drawings that show all information necessary to complete the Work. The applicable Section or Subsection of the Standard Specifications will indicate the supplemental information required and whether the drawings are to be stamped or unstamped. Stamped and unstamped Working Drawings are defined as follows:

(1) Stamped Working Drawings - Working Drawings, calculations, and other data which are prepared by or under the direction of a Professional Engineer licensed in the State of Oregon, and which bear the engineer's signature, seal, and expiration date.

(2) Unstamped Working Drawings - Working Drawings, calculations, and other data that do not bear an engineering seal.

(c) Number and Size of Drawings - The Contractor shall submit Working Drawings according to one of the following methods:

(1) Paper Submittal - For paper submissions, submit seven copies of Working Drawings for steel Structures and six copies of Working Drawings for other Structures to the Engineer. The submitted copies shall be clear and readable. Drawing dimensions shall be 8 1/2 inches by 11 inches, 11 inches by 17 inches, or 22 inches by 36 inches in size. One copy of the submitted Working Drawings will be returned to the Contractor after processing. The Contractor shall submit such additional number of copies to the Engineer for processing that the Contractor would like to have returned.

(2) Electronic Submittal - For electronic submissions, submit Working Drawings according to the "Guide to Electronic Shop Drawing Submittal" which is available from ODOT.

(d) Processing Working Drawings - The Engineer will process Working Drawings and include all comments on them as follows:

(1) Stamped Working Drawings - Stamped Working Drawings will be designated as "reviewed " or "reviewed with comments" by the Engineer.

(2) Unstamped Working Drawings - Unstamped Working Drawings will be designated on the face of the Drawing, as "approved", "approved as noted", or "returned for correction" by the Engineer.

The Contractor shall not fabricate or construct any structural components until the stamped or unstamped Working Drawings are returned by the Engineer with written notation of approval or review, as applicable, of the Working Drawings.

The Engineer's processing of the Working Drawings does not amend any contractual obligations of the parties. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems.

The Engineer will process and return Working Drawings within 21 Calendar Days (65 Calendar Days if Railroad approval is required) after receipt by the Engineer. If the Engineer fails to return such drawings within this period of time, the Engineer will consider granting a Contract Time extension according to 00180.80.

00150.37 Equipment Lists and Other Submittals - The Contractor shall submit Equipment lists, and other required submittals for approval by the Engineer. Within each submittal, the Contractor shall clearly identify the applicable specification sub-section and the product make, model, size and any proposed options. The Engineer will respond to requests for approval within time frames specified in each Section of the Specifications that requires such approval.

00150.40 Cooperation and Superintendence by the Contractor -
The Contractor is responsible for full management of all aspects of the Work, including superintendence of all Work by Subcontractors, Suppliers, and other providers. The Contractor shall appoint a single Superintendent and may also appoint alternate Superintendents as necessary to control the Work. The form of appointment of the alternate shall state, in writing, the alternate's name, duration of appointment in the absence of the Superintendent, and scope of authority. The Contractor shall:

- Provide for the cooperation and superintendence on the Project by:
  - Furnishing the Engineer all data necessary to determine the actual cost of all or any part of the Work, added Work, or changed Work.
  - Allowing the Engineer reasonable access to the Contractor's books and records at all times. To the extent permitted by public records laws, the Engineer will make reasonable efforts to honor the Contractor's request for protection of confidential information.
  - Keeping one complete set of Contract Documents on the Project Site at all times, available for use by all the Contractor's own organization, and by the Engineer if necessary.
- Appoint a single Superintendent and any alternate Superintendent who shall meet the following qualifications:
  - Appointees shall be competent to manage all aspects of the Work.
  - Appointees shall be from the Contractor's own organization.
  - Appointees shall have performed similar duties on at least one previous project of the size, scope and complexity as the current Contract.
  - Appointees shall be experienced in the types of Work being performed.

- Appointees shall be capable of reading and thoroughly understanding the Contract Documents.

- The appointed single Superintendent, or any alternate Superintendent shall:
  - Be present for all On-Site Work, regardless of the amount to be performed by the Contractor, Subcontractors, Suppliers, or other providers, unless the Engineer provides prior approval of the Superintendent's or alternate Superintendent's absence.
  - Be equipped with a two way radio or cell phone capable of communicating throughout the project during all the hours of Work on the Project Site and be available for communication with the Engineer.
  - Have full authority and responsibility to promptly execute orders or directions of the Engineer.
  - Have full authority and responsibility to promptly supply the Materials, Equipment, labor, and Incidentals required for performance of the Work.
  - Coordinate and control all Work performed under the Contract, including without limitation the Work performed by Subcontractors, Suppliers, and Owner Operators.
  - Diligently pursue progress of the Work according to the schedule requirements of Section 00180.
  - Cooperate in good faith with the Engineer, Inspectors, and other contractors in performance of the Work.
  - Provide all assistance reasonably required by the Engineer to obtain information regarding the nature, quantity, and quality of any part of the Work.
  - Provide access, facilities and assistance to the Engineer in establishing such lines, grades and points as the Engineer requires.
  - Carefully protect and preserve the Engineer's marks and stakes.

Any Superintendent or alternate Superintendent who repeatedly fails to follow the Engineer's written or oral orders, directions, instructions, or determinations, shall be subject to removal from the project.

If the Contractor fails or neglects to provide a Superintendent, or an alternate Superintendent, and no prior approval has been granted, the Engineer has the authority to suspend the Work according to 00180.70. Any continued Work by the Contractor, Subcontractors, Suppliers, or other providers may be subject to rejection and removal. The Contractor's repeated failure or neglect to provide the superintendence required by these provisions constitutes a material breach of the Contract, and the Engineer may impose any remedies available under the Contract, including but not limited to Contract termination.

00150.50 Cooperation with Utilities:

(a) General - Unless otherwise specified in the Special Provisions or on the Plans, existing Utilities requiring adjustment may be adjusted by the Utility before, during, or after Project construction. "Adjustment of Utilities" shall mean the alteration, improvement, connection, disconnection, relocation, or removal of existing Utility lines, facilities, or systems in temporary or permanent manner.

(b) Agency Responsibilities - Before Bids are received, the Agency will make preliminary arrangements for planned Adjustment of Utilities. The Plans will not normally show the anticipated new location of Utilities that have been or will be adjusted.

(c) Contractor's Responsibilities - The Contractor shall:

- Follow applicable rules adopted by the Oregon Utility Notification Center;
- Contact Utility owners during Bid preparation and after the Contract is awarded to verify all Utilities' involvement on the Project Site;
- Coordinate Project construction with the Utilities' planned adjustments, take all precautions necessary to prevent disruption of Utility service, and perform its Work in the manner that results in the least inconvenience to the Utility owners;
- Include all Utility adjustment work, whether to be performed by the Contractor or the Utilities, on the Contractor's Project Work schedule submitted under 00180.41;
- Protect from damage or disturbance any Utility that remains within the area in which Work is being performed;
- Not disturb an existing Utility if it requires an unanticipated adjustment, but shall protect it from damage or disturbance and promptly notify the Engineer; and
- Report to the Engineer any Utility owner who fails to cooperate or fails to follow the planned Utility adjustment.

Unless the delay is caused by acts or omissions of the contracting agency or persons acting therefor, ~~If~~ if the Contractor is delayed and has stopped Contract Item work for 60 minutes or less, neither additional Contract Time nor additional compensation will be considered.

Subject to the Engineer's approval, the Contractor may adjust the Utilities by asking the Utility owners to move, remove, or alter their facilities in ways other than as shown on the Plans or in the Special Provisions. The Contractor shall conduct all negotiations, make all arrangements, and assume all costs that arise from such changes.

(d) Notification - If the Project is located within the area served by the Oregon Utility Notification Center, the Contractor shall notify owners of Utilities prior to the performance of Work in the vicinity of their facilities. The Utilities notification system telephone number is 1-800-332-2344.

The Contractor shall comply with the rules of the Oregon Utility Notification Center, OAR 952-001-0010 through OAR 952-001-0090, and ORS 757.993. The Contractor may contact the Oregon Utility Notification Center at 503-232-1987 about these rules.

00150.55 Cooperation with Other Contractors - The Agency reserves the right to perform other work on or near the Project Site, including without limitation any Materials site, with forces other than those of the Contractor.

If such work takes place on or near the Project Site, the Contractor shall have the following obligations:

- The Contractor shall coordinate Work with other contractors or forces.
- The Contractor shall cooperate in good faith with all other contractors or forces.
- The Contractor shall perform the Work specified in the Contract in a way that will minimize interference and delay for all forces involved.
- The Contractor shall place and dispose of the Materials being used so as not to interfere with the operations of other forces.
- The Contractor shall join the Work with that of other forces in a manner acceptable to the Engineer or the Agency, and shall perform it in the accepted sequence with the work of the other force.

The Engineer will resolve any disagreements under this Subsection that may arise among the Contractor and other work forces, or between the Contractor and the Agency. The Engineer's decision in these matters is final, as provided in 00150.00.

When the schedules for Work of the Contractor and the work of other forces overlap, each contractor involved shall submit a current, realistic progress schedule to the Engineer. Before the Engineer accepts the schedule, each party shall have the opportunity to review all schedules. After this review and any necessary consultations, the Engineer will determine acceptable schedules.

The Contractor waives any right it may have to make claims against the Agency for any damages or claims that may arise because of inconvenience, delay, or loss due solely to the presence of other contractors working on or near the Project Site.

If the Contract gives notice of work to be performed by other forces that may affect the Contractor's Work under the Contract, the Contractor shall include any costs associated with coordination of the Work in the appropriate Pay Item or as a portion of a Pay Item.

In an emergency, the contractor most immediately able to respond may repair a facility or Utility of another contractor in order to prevent further damage to the facility, Utility, or other Structure as a result of the emergency.

00150.60 Construction Equipment Restrictions:

(a) Load and Speed Restrictions for Construction Vehicles and Equipment - The Contractor shall comply with legal weight and speed restrictions when moving Materials or Equipment beyond the limits of the Project Site.

The Contractor shall control vehicle and Equipment loads and speeds within the Project Site according to the following restrictions, unless the Special Provisions provide otherwise:

- The Contractor shall restrict loads and speeds as necessary to avoid displacement or loss of Materials on Subgrades and Aggregate Bases.
- The Contractor shall restrict weights to legal loads, and shall travel at speeds of no more than 45 mph or the posted construction speed, whichever is less, on treated Bases, Pavement, or wearing Courses.
- The Contractor shall not cross Bridges or other Structures with Equipment or vehicles exceeding the legal load limit without prior written permission of the Engineer. The Contractor shall make any such request in writing, describing the loading details and the arrangement, movement, and position of the Equipment on the Structure. The Contractor shall comply with any restrictions or conditions included in the Engineer's written permission.

(b) Protection of Buried Items - The Contractor shall use temporary fill or other methods to avoid overload of pipes, box culverts, and other items that are covered, or to be covered, by fill or backfill.

(c) Responsibility for Damages - The Contractor shall assume responsibility for damages caused by excessive Equipment speed or loads while performing the Work, both inside and outside the Project Site. The Engineer's permission to cross Bridges and other Structures, according to 00150.60(a) will not relieve the Contractor from responsibility for load-caused damages.

00150.70 Detrimental Operations - The Contractor shall avoid operations whose methods, conditions, or timing may injure people or damage property or the Work. Damage may include without limitation, staining surfaces with mud or asphalt. (also see 00150.60, 00150.75, and Section 00170)

When any such damage occurs, the Engineer will determine if it is to be corrected by repair, replacement, or compensatory payment by the Contractor. If compensatory payment is required, the Engineer will determine the amount. Compensatory payment may be deducted from monies due or to become due to the Contractor under the Contract.

00150.75 Protection and Maintenance of Work During Construction - The Contractor shall protect and maintain the Work during construction and until Third Notification has been issued, unless otherwise provided in the Contract. For the purposes of this Subsection, "maintenance" shall include measures to prevent deterioration of Roadway and Structures at the Project Site, and to keep them in good condition at all times during the prosecution of the Work. The Contractor shall continuously allocate sufficient Equipment and workers to achieve such maintenance.

If the Contract requires the placement of a Course upon a previously constructed Course or Subgrade, the Contractor shall maintain the previous Course or Subgrade during all construction operations.

The Contractor shall include costs of protecting and maintaining the Work during construction in the unit prices bid for the various Pay Items. The Contractor will not be paid an additional amount for this Work, unless otherwise specified.

The Engineer will timely notify the Contractor of Contractor's noncompliance with this Subsection. If the Contractor fails to remedy unsatisfactory protection or maintenance within 24 hours after receipt of such notice, the Engineer may proceed to remedy the deficiency, and deduct the entire cost from monies due or to become due the Contractor under the Contract.

00150.80 Removal of Unacceptable and Unauthorized Work - The Contractor shall correct or remove unacceptable Work and remove unauthorized work, as directed by the Engineer in writing. The Contractor shall replace such work with Work and Materials conforming to the requirements of the Contract.

For the purposes of this Subsection, "unauthorized work" shall include without limitation the following:

- Work that extends beyond lines shown on the Plans or otherwise established by the Engineer;
- Work that is contrary to the Engineer's instructions; and
- Work that is conducted without the Engineer's written authorization.

The Agency will not pay the Contractor for unacceptable Work or unauthorized work. The Engineer may issue a written order for the correction or removal of such work at the Contractor's expense.

If, when ordered by the Engineer, the Contractor fails to correct or remove unacceptable Work or unauthorized work, the Engineer may have the correction, or removal and replacement, done by others and deduct the entire cost from monies due or to become due the Contractor under the Contract.

00150.90 Final Inspection:

(a) On-site Construction Work - The Engineer will inspect the Project at a time close to the completion of On-Site Work for Contractor’s compliance with the Contract Documents.

When all On-Site Work on the Project is completed, including but not limited to Change Order Work and Extra Work, the Engineer will issue Second Notification as specified in 00180.50(g).

Within 15 Calendar Days after the Engineer receives the Contractor's written notification that all punch list items, final trimming and cleanup according to 00140.90 have been completed, the Engineer will review the Project and notify the Contractor that all Work is complete, or will give the Contractor written instruction regarding incomplete or unsatisfactory Work.

(b) All Contract Work - The Engineer will issue the Third Notification when the Contractor has satisfactorily accomplished all of the following:

- The Contractor has completed all On-Site Work required under the Contract, including the punch list items from (a) above;
- The Contractor has removed all Equipment; and
- The Contractor has submitted all required certifications, bills, forms, warranties and other documents.

Upon issuing the Third Notification the Engineer will release retainage. If retainage is due, it will be paid according to the normal pay cycle per 00195.50.

00150.91 Post-Construction Review - The Contractor or the Engineer may request a Post-Construction Review meeting, to be held at a time prior to issuance of Third Notification but not earlier than 15 Days following the date of Second Notification. The meeting may be held if agreed to by both parties. The party making the request will conduct the meeting, and will announce the time and place of the meeting at least 15 Days prior to the meeting date. The purpose of this meeting is to examine the Project for possible process improvements that may benefit future projects.

00150.95 Final Acceptance - The Agency will issue a Notice of Final Acceptance after completion of the Contractor's warranty period.

00150.96 Maintenance Warranties and Guarantees - Prior to Third Notification, the Contractor shall transfer to the Agency all unexpired manufacturers' warranties and guarantees for Materials and Equipment installed on the Project. Such warranties and guarantees shall recite that they are enforceable by the Agency.

00150.97 Responsibility for Materials and Workmanship:

(a) The Contractor shall perform the Work according to the terms, conditions, and requirements of the Contract.

(b) Whether ~~B~~before or after the Agency's acceptance of the Work, the Contractor shall~~,~~ at no additional expense to the Agency, be responsible for:

- Correcting or repairing any defects in, or damage to, the Work which results from the use of improper or defective materials or workmanship; or
- Replacing, in its entirety, the Work affected by the use of improper or defective materials or workmanship to the extent provided by law; and
- Correcting or repairing any Work, Materials, Structures, Existing Surfacings, Pavement, Utilities, or sites, including without limitation Wetlands, damaged or disturbed in that correction, repair, or replacement. (see 00170.80 to 00170.85)

Section 00160 - Source of Materials

00160.00 Definitions - The following definitions apply to Section 00160:

(a) Prospective Source - Agency-furnished Materials source, use of which by the Contractor is optional. The Agency makes no guarantee or representation, by implication or otherwise, of the land use status, quantity, quality, or acceptability of Materials available from it, except as may be stated in the Special Provisions.

(b) Mandatory Source - Agency-furnished Materials source, use of which by the Contractor is required.

00160.01 Notification of Source of Supply and Materials:

(a) All Materials - The Contractor shall notify the Engineer in writing of all proposed Materials sources of supply, including without limitation any steel or other fabricators within the following time frames:

- At least 15 Calendar Days before using or fabricating Materials, if source is within the State; or
- At least 45 Calendar Days before using or fabricating Materials, if source is outside the State

(b) Prospective Source Materials - When given an option to use Prospective Sources of Materials to be incorporated into the Work, the Contractor shall notify the Engineer in writing of the option selected within 15 Calendar Days from date of Notice to Proceed. Otherwise, such Materials sources may become unavailable.

(c) Approval Required - Before allowing production or delivery of Materials to begin from any source, the Contractor must obtain the Engineer's approval. Approval to use any source does not imply that Materials from that source will be accepted. If approved sources do not provide Materials that meet Specifications, the Materials will be rejected. The Contractor will then be responsible for locating other sources and obtaining the Engineer's approval.

(d) Terms Required - The Contractor shall comply with 00170.07.

00160.05 Qualified Products List (QPL) - The QPL is a listing of manufactured products available on the market (shelf items) that ODOT has evaluated and found suitable for a specified use in highway construction. The QPL is published twice a year and is available from ODOT's Construction Section; 800 Airport Road SE; Salem, OR 97301-4798; phone 503-986-3000. It may also be viewed on ODOT's web site.

The current version of the QPL at the time of Award is the version in effect for the Project. The Engineer may approve for use a conditionally qualified product, or a product qualified for inclusion in a later edition of the QPL, if the Engineer finds the product acceptable for use on the Project.

Use of listed products shall be restricted to the category of use for which they are listed. The Contractor shall install all products as recommended by the manufacturer. The Contractor shall replace qualified products not conforming to Specifications or not properly handled or installed at the Contractor's expense.

00160.10 Ordering, Producing, and Furnishing Materials - The Contractor shall not place orders for or produce full quantities of Materials anticipated to be required to complete the Work until the Work has advanced to a stage that allows the quantities to be determined with reasonable accuracy.

(a) Contractor's Duties - In purchasing, producing, or delivering Materials, the Contractor shall take into account the following:

- Kind of work involved;
- Amount of work involved;
- Time required to obtain Materials; and
- Other relevant factors.

(b) Approval of Quantity of Materials Ordered - Materials quantities shown on the Plans, or indicated by quantities and Pay Items, are subject to change or elimination. The Contractor is responsible for payment for excess Materials delivered to the Project Site or storage sites. Unless otherwise specified in the Contract, the Agency will not be responsible for:

- Materials the Contractor may deliver or produce in excess of Contract requirements;
- Extra expense the Contractor may incur because Materials were not ordered or produced earlier; or
- The Contractor's expenses related to Materials ordered by the Contractor that are not subsequently approved for use.

Excess Materials, ordered or produced by the Contractor, without approval of the Engineer, may be purchased by the Agency at the sole discretion of the Agency. (see 00195.80)

00160.20 Preferences for Materials:

(a) Buy America - On all projects the Contractor shall limit the quantity of foreign Materials incorporated into the Work as follows. Section 635.410 of Title 23, Code of Federal Regulations, and the Intermodal Surface Transportation Efficiency Act require that all iron or steel manufacturing processes, including without limitation the casting of ingots, for iron or steel Materials permanently incorporated into the Project shall occur in the United States, unless the cost of foreign-origin iron or steel Materials does not exceed one-tenth of one percent (0.1%) of the Contract Amount or $2,500, whichever is greater. The Contractor shall not incorporate foreign-origin iron or steel Materials in excess of this amount into the Project. All foreign-origin iron or steel Materials incorporated in the Project in excess of the amount indicated above shall be removed and replaced with domestic iron or steel Materials at the Contractor's expense. For purposes of this Specification, the cost of foreign-origin iron or steel Materials shall be the value of the iron or steel products as of the date they are delivered to the Project Site.

Manufacturing processes include without limitation the application of coatings to finished iron or steel products or components. Coatings include epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of the steel or iron product or component.

The Contractor shall provide the Engineer with a Certificate of Materials Origin, on a form furnished by the Engineer, before incorporating any iron or steel products into the Project. Unless a Certificate of Materials Origin has been provided to the Engineer, the Materials shall be considered of foreign origin.

The Contractor shall retain manufacturers' certificates verifying the origin of all domestic iron or steel Materials for 3 years after the date of final payment for the Project, and shall furnish copies to the Engineer upon request.

(b) Buy Oregon - According to ORS 279A.120, the Contractor shall give preference to goods or services produced in Oregon if price, fitness, availability, and quality are equal. This provision does not apply to Contracts financed wholly or in part by federal funds.

(c) Recycled Materials - According to ORS 279A.010, ORS 279A.125, ORS 279A.145, ORS 279A.150, and ORS 279A.155, and subject to the approval of the Engineer, the Contractor shall use recycled products to the maximum extent economically feasible.

00160.30 Agency-Furnished Materials - Unless otherwise specified in the Special Provisions, Materials listed as Agency-furnished will be available to the Contractor free of charge.

The Contractor shall be responsible for all Materials furnished by the Agency and shall pay all demurrage and storage charges. The Contractor shall replace at its expense Agency-furnished Materials lost or damaged due to any cause.

The locations at which Agency-furnished Materials are available will be specified in the Special Provisions. If the locations are not listed in the Special Provisions, the Agency-furnished Materials will be furnished to the Contractor at the Project Site. In either case, all costs of handling, hauling, unloading, and placing Agency-furnished Material shall be considered included in the price paid for the Pay Item involving such Material.

All Agency-furnished Materials not incorporated into the Work remains the property of the Agency. The Contractor shall deliver such Materials as directed by the Engineer.

00160.40 Agency-Furnished Sources - The Agency may list in the Special Provisions, or show on the Plans, Borrow pits or Aggregate sources from which the Contractor may, or shall, obtain Materials. These sources will be identified and referred to as Prospective or Mandatory Sources. A development plan will be included in Section 00235 of the Special Provisions when such sources are shown on the Plans.

(a) Working in a Different Area of the Materials Source - If the Contractor desires to work in a different area of the Materials source than that shown on the development plan, the Contractor must submit a written request stating the reasons for the requested change. If a new land use permit, development plan, or reclamation plan is needed, the Contractor must submit it and obtain approval from the Engineer before starting work in any area other than that shown on the Plans. Approval for work in a different area will not entitle the Contractor to any added compensation or adjustment of Contract Time.

The Agency will not be responsible for the availability of sources other than as stated in the Special Provisions. If the Contractor has given notice of intent to use, but does not use the source(s) on the Project, the Contractor shall reimburse the Agency for any costs the Agency incurs in making such source(s) available.

(b) Cost of Sources - Unless otherwise specified in the Special Provisions, any Prospective or Mandatory Source will be provided by the Agency for use without payment of royalty or other charge. (see 00160.50)

(c) Exhaustion of Sources - If the Engineer determines that the quantities of specified Materials that can be produced from a Mandatory Source are insufficient for the Work, and it becomes necessary to move to another source, the Agency will pay for the reasonable cost of moving the plant to, and erecting it at, a new approved source from which specified Materials can be produced. Adjustment in hauling costs, other costs, and Contract Time will be determined as provided in 00140.30.

No allowance, reimbursement, compensation, or adjustment will be made for changes in the use of sources, or for moving from one source to another, except as provided above.

00160.50 Agency-Controlled Land; Limitations and Requirements:

(a) General - The Contractor shall have no property rights in, or right of occupancy on, Agency-Controlled Land. Nor shall the Contractor have the right to sell, use, remove, or otherwise dispose of any material from Agency-Controlled Land, areas, or property, except as specified in the Special Provisions or by the written authorization of the Engineer.

Unless authorized in the Contract, the Contractor shall not disturb any material within Rights-of-Way without written authorization from the Engineer.

Unless otherwise specified in the Contract, the ownership of all materials originating on Agency-Controlled Lands will at all times vest in, and remain within the control of, the Agency.

(b) Waste, Excess, and By-Product Materials - All waste, excess, and by-product materials, collectively referred to in this Subsection as "By-Products", from the manufacture or production of Materials from Agency-Controlled Lands shall remain Agency property. Unless otherwise ordered by the Engineer in writing, By-Products shall be placed as required by the development plan:

- In stockpiles at designated locations;
- At locations and in shapes that are readily accessible; and
- In such a manner as to avoid fouling areas containing useable materials, or interfering with future plant setups to use materials from the property.

The Agency will not compensate the Contractor for handling and stockpiling By-Products according to the development plan requirements. If by written order the Engineer directs the Contractor to stockpile or place designated By-Products at alternate sites, the By-Products designated shall be loaded, hauled, and placed as directed, and this work will be paid for according to 00195.20.

00160.60 Contractor-Furnished Materials and Sources:

(a) General - The Contractor shall furnish, at its own expense, all products and Materials required for the Project from sources of its own choosing, unless such sources have been specified in the Special Provisions or Plans as Prospective or Mandatory Sources.

(b) Acquisition of Sources - The Contractor shall acquire, at its own expense, the rights of access to, and the use of, all sources the Contractor chooses which are not Agency-controlled and made available by the Agency to the Contractor.

(c) Additional Requirements - Except for continuously-operated commercial sources, Work shall not begin, nor will any Materials be accepted by the Engineer, until the Contractor has:

(1) Given to the Engineer a copy of permits from, or proof that permits are not required from:

The Department of Geology and Mineral Industries, as required under ORS 517.790;

The Department of State Lands, as required under ORS 196.815 (when removing material from the bed or banks of any waters or from any Wetland); and

Local governmental authorities having jurisdiction over land use at the source location.

(2) Furnished to the Engineer written approval of the property owner, if other than the Contractor, for the Contractor's proposed plans of operation in, and reclamation of, the source. The Contractor shall include in the document containing the property owner's written approval

a summary of the requirements of the permits described above, which shall be subject to the Engineer's approval.

00160.70 Requirements for Plant Operations - Before operating mixing plants, Rock crushers, or other Equipment, the Contractor shall provide the Engineer copies of all applicable discharge permits for noise, air contaminants, and water pollutants from DEQ or applicable local jurisdictions, or a letter from DEQ or the local jurisdiction stating that no permits are required for the use of the Equipment and sites.

00160.80 Requirements for Sources of Borrow and Aggregate - The Contractor shall conduct operations according to all applicable federal, State, and local laws (including without limitation ORS 517 and OAR 632-030) when developing, using, and reclaiming all sources of Borrow material and Aggregate. The Contractor shall provide erosion control at Borrow sources that are not within the Project Site. The Contractor shall not operate in Wetlands except as allowed by permit. The Contractor shall comply with all requirements for pollution and sediment control, including without limitation the National Pollutant Discharge Elimination System where applicable.

Except for continuously-operated commercial sources, the Contractor shall also conform to the following:

(a) If a natural growth of trees or shrubs is present, preserve a border of such to conceal land scars.

(b) Excavate Borrow sources and Aggregate sources, except for those in streams and rivers, to provide:

- Reasonably uniform depths and widths;
- Natural drainage so no water stands or collects in excavated areas, when practicable;
- Slopes trimmed to blend with the adjacent terrain upon completion of operations;
- Slopes covered with native soil, or acceptable plant rejects to support plant growth, if required by Specifications, Plans, or permits; and
- A vegetative cover that blends with the adjacent natural growth.

(c) Excavate in quarries so that:

- Faces will not be steeper than vertical (no overhang);
- Vertical faces conform to Oregon OSHA standards, Division 3, and as shown on an approved development plan;
- Floors or benches are excavated to a uniform Slope free of depressions and will drain and not interfere with the downland owner's property; and
- Upon completion, the quarry is left appearing neat and compatible with surrounding terrain.

(d) Obliterate haul roads specifically built for access to sources, and restore the areas disturbed by these roads as nearly as practicable to the conditions that existed before the roads were built, unless otherwise directed by the landowner or regulatory body.

Section 00165 - Quality of Materials

Description

00165.00 General - The Contractor shall incorporate into the Work only Materials conforming to the Specifications and approved by the Engineer. The Contractor shall incorporate into the Work only manufactured products made of new materials unless otherwise specified in the Contract. The Agency may require additional testing or retesting to determine whether the Materials or manufactured products meet Specifications.

Materials or manufactured products not meeting the Specifications at the time they are to be used are unacceptable and must be removed immediately from the Project Site, unless otherwise directed by the Engineer.

00165.01 Rejected Materials - The Engineer may reject any Materials that appear to be defective (00150.25) or that contain asbestos. The Contractor shall not incorporate any rejected Materials into the Work. Rejected Materials whose defects have been corrected may not be incorporated into the Work until the Engineer has approved their use. The Engineer may order the removal and replacement by the Contractor, at Contractor's expense, of any defective Materials. (refer also to 00150.20)

00165.02 Materials Conformance and Quality Compliance Documents - For purposes of this Section, "Materials Conformance Documents" means the Contractor's quality-control, the Agency's verification, and the independent assurance test results, and the identity of the testing facility, as specified in the ODOT Manual of Field Test Procedures (MFTP), unless otherwise specified in the Contract.

For purposes of this Section, "Quality Compliance Documents" means those documents specified in ODOT's Nonfield-Tested Materials Acceptance Guide, unless otherwise specified in the Contract.

00165.03 Testing by Agency - When testing Materials, the Agency will conduct the tests in its central laboratory, field laboratories, or other laboratories designated by the Engineer, even though certain AASHTO, ASTM, and other Materials specifications may require testing at the place of manufacture. Results of the Agency's tests will be made available to the Contractor.

00165.04 Costs of Testing - When the Contract requires that the Agency performs the testing, the testing will be at the Agency's expense. The Agency will pay the cost of Contractor-requested source-review tests on unprocessed Aggregates from no more than two sources for each Project, and on no more than three unprocessed samples from each source. Additional source-review tests performed at the Contractor's request shall be at the Contractor's expense.

Unless otherwise provided in the Contract, all testing required to be performed by the Contractor will be at the Contractor's expense.

Provisions and Requirements

00165.10 Materials Acceptance Guides - Unless otherwise specified elsewhere in the Contract, Materials will be accepted according to the following guides:

(a) Field-Tested Materials - Field-tested Materials will be accepted according to the ODOT Manual of Field Test Procedures (MFTP) as modified by the Local Public Agency Quality Assurance Program. The MFTP is published once per year and is available from the ODOT – Construction Section, 800 Airport Road SE; Salem, OR 97301-4798; phone 503-986-3000. The MFTP is also available on the ODOT Construction Section web site. The Local Public Agency

Quality Assurance Program is available online at the Eugene Public Works Standard Specifications website.

(b) Nonfield-Tested Materials - Nonfield-tested Materials will be accepted according to the ODOT Nonfield Tested Materials Acceptance Guide (NTMAG), unless otherwise specified in the Contract. The NTMAG is available on the ODOT Construction Section web site.

00165.20 Materials Specifications and Test Method References - References to Materials specifications and test methods of ODOT, WAQTC, AASHTO, ASTM, other governmental agencies, or other recognized organizations mean those officially adopted and in current use by the agency or organization on the date of Advertisement.

If there are conflicting references, or if no reference is made to Materials specifications or test method, Materials must meet the Materials specifications or test methods required by the first applicable of the following agencies and organizations:

- Field-Tested Materials:
  - Special Provisions;
  - MFTP as modified by the Local Public Agency Quality Assurance Program; and
  - Standard Specifications.
- Nonfield Tested Materials:
  - ODOT;
  - WAQTC;
  - AASHTO;
  - ASTM;
  - Other recognized national organizations, such as ANSI, AWPA, IMSA, and UL; and
  - Industry standards in the location where the Work is being performed.

If there are conflicting references in the Contract or the Quality Assurance program, to required sampling and testing frequencies, the Contractor shall sample and test the Materials according to the first applicable of the following:

- Special Provisions;
- Supplemental Specifications;
- MFTP as modified by the Local Public Agency Quality Assurance Program; and
- Standard Specifications.

00165.30 Field-Tested Materials:

(a) Contractor's Duties - The Contractor shall:

- Furnish Materials of the quality specified in the Contract;
- Provide and administer a quality control program as described in the Quality Assurance Program portion of the MFTP. Upon request, the Contractor shall provide to the Engineer the names, telephone numbers, and copies of certifications for all personnel performing field testing; and
- Perform other testing as required by the Contract.

(b) Types of Tests - The types of tests and testing methods generally required by the Agency are described in the MFTP.

(c) Acceptance of Field-Tested Materials - The Contractor's test results for field-tested Materials will be verified by the Agency according to the Quality Assurance program outlined in the MFTP as modified by the Local Public Agency Quality Assurance Program. Materials will be analyzed as determined by the Engineer for acceptance before the Engineer will accept them for incorporation into the Work. Incorporated Materials that do not meet Specifications will be evaluated according to 00165.01 and 00150.25.

00165.35 Nonfield-Tested Materials - The Contractor shall furnish Materials meeting Specifications, along with all Materials Conformance and Quality Compliance Documents.

(a) Test Results Certificate - The Certificate shall:

- Be from the manufacturer verifying that the Material furnished has been sampled and tested and the test results meet the Specifications.
- Include, or be accompanied by, a copy of the specified test results (ODOT, AASHTO, ASTM, UL or other).
- Identify the testing agency and the representative responsible for the test results.
- Permit positive determination that Material delivered to the Project is the same Material covered by the test results.
- Be delivered to the Engineer with the shipment of the material.

(b) Quality Compliance Certificate - The Certificate from the manufacturer shall:

- Verify that the Material meets the Specifications, and identify by number the specified test methods used, (ODOT, AASHTO, ASTM, UL, or other)
- Permit positive determination that Material delivered to the Project is the same Material covered by the certificate,
- Be delivered to the Engineer with the shipment of the Material, or be an identification plate or mark, decal, sticker, label, or tag attached to the container or Material,

(c) Equipment List and Drawings - These consist of lists of proposed Equipment and Materials, such as:

- Shop drawings
- Material lists
- Equipment lists
- Catalog description sheets
- Manufacturer's brochures

Submit these lists to the Engineer for review of conformance with the Specifications.

(d) Certificate of Origin of Steel Materials - When specified, complete this document (ODOT Form 734-2126) as required by 00160.20 for Federal-aid projects.

Materials will be subject to acceptance testing if the Engineer so elects. The Engineer may reject damaged or non-Specification Materials regardless of the Materials Conformance Documents furnished.

00165.40 Statistical Analysis - Statistical Analysis is not required. If this subsection has been referenced it shall be understood that Statistical Analysis is not required and the Engineer will perform verification testing according to 00165.10.

00165.50 Acceptance Sampling and Testing -The Engineer will sample and test Materials for acceptance, as required by the Contract. Materials will be analyzed as determined by the Engineer for acceptance before the Engineer will accept them for incorporation into the Work. Acceptance based on Statistical Analysis is not required. When the Engineer determines the Materials or Work does not conform to the Specifications the Engineer may accept the Materials or Work with pay adjustments or reject the Materials or Work per 00150.25.

00165.70 Use of Materials without Acceptable Materials Conformance Documents:

(a) General - The Contractor shall not incorporate Materials into the Project prior to submittal of Materials Conformance Documents acceptable to the Engineer. The Engineer may waive this requirement temporarily if Materials are necessary for immediate traffic safety.

(b) Materials Incorporated for Immediate Traffic Safety - If Materials are incorporated into the Project for immediate traffic safety before acceptable Materials Conformance Documents are available, no payment will be made for the value of the Materials, or the costs of incorporating them, until Materials Conformance Documents have been submitted to and approved by the Engineer, or the Materials are otherwise found through testing to comply with Specifications.

(c) Contractor's Request for Testing Assistance - If acceptable Materials Conformance Documents are not available, the Contractor may either have the necessary tests performed at a private laboratory or request in writing that the Engineer:

- Determine if the Agency or its agents can sample and test;
- Estimate the cost to the Contractor for the testing service; and
- Estimate the time required to obtain the test results.

The Engineer will provide this information to the Contractor in writing. If the Contractor requests the Engineer, in writing, to proceed, the Engineer will arrange for the sampling and testing, at the Contractor's expense. If these tests determine the Material complies with the Specifications, the Materials may be incorporated into the Project, or for Materials previously incorporated according to (b) above, payment will be authorized.

00165.75 Storage and Handling of Materials - The Contractor shall store and handle Materials so as to preserve their quality and fitness for incorporation into the Work. The Contractor shall restore all storage sites to their original condition according to 00140.90, or to comply with any applicable permits, orders, or agreements, at the Contractor's expense.

Stored Materials:

- Shall be readily accessible for inspection;
- May be stored on approved parts of the Right-of-Way; and
- May be stored on private property if written permission of the owner or lessor is obtained.

Measurement

00165.80 Measurement - No separate measurement will be made of Work performed under this Section.

Payment

00165.90 Incidental Basis - No separate or additional payment will be made for sampling, testing, certification, or other associated Work performed under this Section, whether performed by the Contractor, manufacturer, producer or supplier. No payment will be made for providing quality control personnel.

00165.91 Fabrication Inspection Expense - Fabrication of certain items outside of the State creates additional shop and plant inspection expense to the Agency. It is impractical, and extremely difficult, to determine the actual additional expenses incurred. Therefore, each time that inspection by Agency personnel is necessary, payment to the Contractor will be reduced by an amount computed at the following rates:

Zone	Place of Fabrication	Reduction in Payment
1	All of State of Oregon, and those portions of adjacent states within 50 airline miles of the Oregon border	$0
2	Outside of Zone 1, and up to 300 airline miles from the Oregon border	$100 per Calendar Day
3	Outside of Zone 2, up to 3,000 airline miles from the Oregon border, and within the continental United States.	Round trip coach airfare from Portland, Oregon plus $100 per Calendar Day
4	Outside of Zone 3, or outside of the continental United States.	Round trip coach airfare from Portland, Oregon plus $150 per Calendar Day

Calendar Day charges begin on the first day the Agency's inspector begins travel to begin work at the fabrication site, and continue without interruption through the final day of travel back to the State. The Contractor will be notified in writing of the dates of beginning and ending of Calendar Days used in computing payment reduction.

This Subsection applies to all fabricated items or manufactured Materials that are inspected by Agency personnel, which include, but are not limited to:

- Structural steel fabrication;
- Prestressed concrete members;
- Precast concrete;
- Signs;
- Preservative treatment of wood products;
- Epoxy coating of reinforcing steel; and
- Other items specifically identified in the Specifications as requiring fabrication site or in-plant inspection by the Agency.

Section 00170 - Legal Relations and Responsibilities

Description

00170.00 General - The Contractor shall comply with all laws, ordinances, codes, regulations and rules, (collectively referred to as "Laws" in this Section), that relate to the Work or to those engaged in the Work. Where the provisions of the Contract are inconsistent or in conflict, the Contractor shall comply with the more stringent standard.

The Contractor shall indemnify, defend, and hold harmless the Agency and its representatives from liability arising from or related to the violation of Laws by those engaged in any phase of the Work. This provision does not apply to Work performed by Agency employees.

In any litigation, the entire text of any order or permit issued by a governmental or regulatory authority, as well as any documents referenced or incorporated therein by reference, shall be admissible for the purpose of Contract interpretation.

The Contract shall not be construed against either party regardless of which party drafted it. Other than as modified by the Contract, the applicable rules of contract construction and evidence shall apply. This Contract shall be governed by and construed according to the laws of the State of Oregon without regard to principles of conflict of laws.

Any dispute between the Agency and the Contractor that arises from or relates to this Contract and that is not resolved under the provisions of Section 00199 shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon in the county where the Agency's main office is located; provided, however, if a dispute must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon, Eugene Division. In no event shall this Subsection be construed as a waiver by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THE CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.

Provisions and Requirements

00170.01 Other Agencies Affecting Agency Contracts - Representatives of regulatory bodies or units of government whose Laws may apply to the Work shall have access to the Work according to 00150.20(d). These may include but are not limited to those in the following (a), (b), (c), and (d).

(a) Federal Agencies:

Agriculture, Department of
- Forest Service
- Natural Resource Conservation Service

Army, Department of the
- Corps of Engineers

Commerce, Department of
- National Marine Fisheries Service

Defense, Department of

Energy, Department of

Environmental Protection Agency (EPA)

Federal Energy Regulatory Commission

Geology Survey

Health and Human Services, Department of

Homeland Security, Department of
- U.S. Coast Guard (USCG)

Housing and Urban Development, Department of

Interior, Department of
- Heritage, Conservation, and Recreation Service
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Bureau of Reclamation
- Geological Survey
- Minerals Management Service
- Office of Surface Mining, Reclamation, and Enforcement

Minerals Management Service

Solar Energy and Energy Conservation Bank

U.S. Fish and Wildlife Service

Labor, Department of
- Mine Safety and Health Administration
- Occupational Safety and Health Administration (OSHA)

Transportation, Department of
- Federal Highway Administration

Water Resources Council

(b) State of Oregon Agencies:

Administrative Services, Department of

Agriculture, Department of
- Natural Resources Division
- Soil and Water Conservation District

Columbia River Gorge Commission

Consumer and Business Services, Department of
- Insurance Division
- Oregon Occupational Safety and Health Division (OR-OSHA)

Energy, Office of

Environmental Quality, Department of (DEQ)

Fish and Wildlife, Department of

Forestry, Department of

Geology and Mineral Industries, Department of

Human Resources, Department of

Labor and Industries, Bureau of

Land Conservation and Development Department

Parks and Recreation, Department of

State Lands, Department of

Water Resources Department

(c) Local Agencies:

City Councils

County Courts

County Commissioners, Boards of

Design Commissions

Historical Preservation Commissions

Lane Regional Air Pollution Authority (LRAPA)

Planning Commissions

Port Districts

Special Districts

(d) Oregon Federally Recognized Tribal Governments:

Burns Paiute Tribe

Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians

Confederated Tribes of Grand Ronde

Confederated Tribes of Siletz

Confederated Tribes of Umatilla Indian Reservation

Confederated Tribes of Warm Springs

Coquille Tribe

Cow Creek Band of Umpqua Indians

Klamath Tribe

00170.02 Permits, Licenses, and Taxes - As required to accomplish the Work, the Contractor shall do the following:

- Obtain all necessary permits and licenses, except for those noted in 00170.03;
- Pay all applicable charges, fees and taxes, except for those noted in 00170.03;
- Give all notices required by applicable Laws, or under the terms of the Contract;
- Comply with ORS 274.530 relating to lease of stream beds by Oregon Division of State Lands;
- License, in the State of Oregon, all vehicles subject to licensing;
- Comply with ORS 477.625 and ORS 527.670 relating to clearing and fire hazards on forest lands; and
- Comply with all orders and permits issued by a governmental authority, whether local, State, or federal.
- When the work necessitates the temporary use and/or removal of public parking, a permit is required. The permits may be obtained at the City of Eugene Permit and Information Center.

00170.03 Furnishing Right-of-Way and Permits - For projects performed by contract with the Agency, unless required to be obtained in the name of the Contractor, the Agency will obtain and pay for the following when they are required by the applicable Laws or by Plans or Specifications:

- All necessary Rights-of-Way;
- Permits required for crossing or encroaching upon navigable streams;
- Permits required for removing materials from or depositing materials in waterways;
- Permits required for operating in Agency-controlled source of Materials or disposal area;
- System development fees charged by local units of government;
- Building construction permits, including specialty work such as heating, ventilation, air conditioning, or electrical;
- Electrical permits for signals and illumination work;
- Cost of referencing and replacing endangered survey monuments; and
- Environmental permits, including erosion control permits.

00170.04 Patents, Copyrights, and Trademarks - Prior to use of designs, devices, materials, or processes protected by patent, copyright, or trademark, the Contractor shall obtain from the Entity entitled to enforce the patent, copyright, or trademark all necessary evidence of legal right.

The Contractor shall indemnify, defend and hold harmless the Agency and all third parties and political subdivisions having a possessory or ownership interest or regulatory authority over the Project or Project Site from claims of patent, copyright or trademark infringement, and from costs, expenses and damages the Contractor or Agency may be obligated to pay as a result of such infringement during or after completing the Work.

00170.05 Assignment of Antitrust Rights - The Contractor irrevocably assigns to the Agency any claim for relief or cause of action the Contractor acquires during the term of the Contract, or which may accrue thereafter, by reason of any violation of:

- Title 15 (Commerce and Trade), United States Code;
- ORS 646.725; and
- ORS 646.730.

In connection with this assignment, it is an express obligation of the Contractor to take no action that would in any way impair or diminish the value of the rights assigned to the Agency according to the provisions of this Subsection. Further, it is the express obligation of the Contractor to take all action necessary to preserve the rights assigned. It is an express obligation of the Contractor to advise the Agency's legal counsel:

- In advance, of its intention to commence any action involving such claims for relief or causes of action;
- Immediately upon becoming aware of the fact that an action involving such claims for relief or causes of action has been commenced by some other person or persons;
- The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of the Contractor's assignment to the Agency according to the provisions of this Subsection; and
- Immediately upon the discovery of any such antitrust claim for relief or cause of action.

In the event any payment is made to the Contractor under any such claims for relief, the Contractor shall promptly pay the full sum over to the Agency. In the event the Contractor fails to make such payment, the Agency may deduct the amount from monies due or to become due the Contractor under the Contract.

00170.07 Record Requirements - For purposes of this Subsection the term "Contractor" includes the Contractor, all subcontractors, Material Suppliers, and providers of rented operated Equipment (except non-DBE truck drivers), at all tiers, for all subcontracts with first-tier Subcontractors, all subcontracts between the first-tier Subcontractors and their subcontractors and any other lower tier subcontracts, and "Related Entities" as that term is defined in OAR 731-005-0780. The Material Suppliers included in this definition are those for Aggregates, Asphalt Cement Concrete, Portland Cement Concrete and the supply and fabrication of structural steel items or Material Suppliers that provide quotes.

(a) Records Required - The Contractor shall maintain all records, whether created before or after execution of the Contract, or during Contract performance, or after Contract completion, to clearly document:

- The Contractor's performance of the Contract or a subcontract;
- The Contractor's ability to continue performance of the Contract or a subcontract; and
- All claims arising from or relating to performance under the Contract or a subcontract.

These records shall include all records, including fiscal records, regardless of when created for the Contractor's business. The records for the Contractor's business include without limitation the:

- Bidding estimates and records, worksheets, tabulations or similar documents.
- Job cost detail reports, including monthly totals.
- Payroll records (including without limitation the ledger or register, and tax forms) and all documents which establish the periods, individuals involved, the hours for the individuals, and the rates for the individuals.
- Records that identify the Equipment used by the Contractor and subcontractors in the performance of the Contract or subcontracts, including without limitation, Equipment lists, rental contracts and any records used in setting rental rates.
- Invoices from vendors, rental agencies, and subcontractors.
- Material quotes, invoices, purchase orders and requisitions.
- Contracts with subcontractors and contracts with Material Suppliers, Suppliers and providers of rented equipment.
- Contracts or documents of other arrangements with any Related Entity as defined in OAR 731-005-0780.
- General ledger.
- Trial Balance.
- Financial statements (including without limitation the balance sheet, income statement, statement of cash flows, and financial statement notes).
- Income tax returns.
- All worksheets used to prepare bids or claims, or to establish the cost components for the Pay Items, including without limitation, the labor, benefits and insurance, Materials, Equipment, and subcontractors.

The following are examples, but not an exhaustive list, of records that would be included, if generated by the Contractor. If the Contractor generates such records, or equivalent records, they are included among the records subject to 00170.07.

- Daily time sheets and supervisor's daily reports.

- Collective bargaining agreements.
- Earnings records.
- Journal entries and supporting schedules.
- Insurance, welfare, and benefits records.
- Material cost distribution worksheet.
- Subcontractors' and lower tier subcontractors' payment certificates.
- Payroll and vendor's cancelled checks.
- Cash disbursements journal.
- All documents related to each and every claim together with all documents that support the amount of damages as to each claim.
- Additional financial statements (including without limitation the balance sheet, income statement, statement of cash flows, and financial notes) preceding the execution of the Contract and following final payment of the Contract.
- Depreciation records on all business Equipment maintained by the business involved, its accountant, or other Entity. (If a source other than depreciation records is used to develop cost for the Contractor's internal purposes in establishing the actual cost of owning and operating Equipment, all such other source documents.)

The Contractor shall maintain all fiscal records in material compliance with generally accepted accounting principles, or other accounting principles that are accepted accounting principles and practices for the subject industry and adequate for the nature of the Contractor's business, and in such a manner that providing a complete copy is neither unreasonably time consuming nor unreasonably burdensome for the Contractor or the Agency. Failure to maintain the records in this manner shall not be an excuse for not providing the records.

The Contractor shall include in its subcontracts, purchase orders, and all other written agreements, a provision requiring all subcontractors, Material Suppliers and providers of rented operated Equipment, (except non-DBE truck drivers), at all tiers to comply with 00170.07. The Contractor shall also require all subcontractors, Material Suppliers, and providers of rented operated Equipment, (except non-DBE truck drivers), at all tiers and Related Entities to include in their contracts, purchase orders, and all other written agreements, a provision requiring all lower tier subcontractors, Material Suppliers and providers of rented operated Equipment (except non-DBE truck drivers) to comply with 00170.07. The Material Suppliers to which this applies are those for Aggregates, Asphalt Cement Concrete, Portland Cement Concrete and the supply and fabrication of structural steel items or Material Suppliers that provide Material quotes and Related Entities as defined in OAR 731-005-0780.

(b) Access to Records - The Contractor shall provide the Engineer access to or a copy of all Contractor records upon request. A Project Manager's authority to request or access records is subject to OAR 731-005-0780(9). During the record retention period the Engineer, employees of the Agency, representatives of the Agency, or representatives of regulatory bodies or units of government may:

- Inspect, examine and copy or be provided a copy of all Contractor records;
- Audit the records, a Contract or the performance of a Contract;
- Inspect, examine and audit the records when, in the Agency's sole discretion, the records may be helpful in the resolution of any claim, litigation, administrative proceeding or controversy arising out of or related to a Contract.

Reasons for access to audit, inspect, examine and copy records include without limitation, general auditing, reviewing claims, checking for collusive bidding, reviewing or checking payment of required wages, performance and contract compliance, workplace safety compliance, evaluating related Entities, environmental compliance, and qualifications for performance of the Contract, including the ability to perform and the integrity of the Contractor.

Where such records are stored in a computer or in other digital media, the Engineer may request, and the Contractor shall provide, a copy of the data files and such other information or access to software to allow the Engineer review of the records.

Nothing in 00170.07 is intended to operate as a waiver of the confidentiality of any communications privileged under the Oregon Evidence Code. Nothing in 00170.07 limits the records or documents that can be obtained by legal process.

(c) Record Retention Period - The Contractor shall maintain the records and keep the records accessible and available at reasonable times and places for at least 3 years from the date of final payment under the Contract, or until the conclusion of all audits, litigation, administrative proceedings, disputes and claims arising out of or related to the Contract, whichever date is later.

(d) Public Records Requests - If records provided under this section contain any information that may be considered exempt from disclosure as a trade secret under either ORS 192.501(2) or ORS 646.461(4), or under other grounds specified in Oregon Public Records Law, ORS 192.410 through ORS 192.505, the Contractor shall clearly designate on or with the records the portions which the Contractor claims are exempt from disclosure, along with a justification and citation to the authority relied upon. Entire records or documents should not be designated as a trade secret or otherwise exempt from disclosure. Only specific information within a record or document should be so designated.

To the extent allowed by the Oregon Public Records Law or other applicable law related to the disclosure of public records, Agency will not disclose records or portions of records the Contractor has designated as trade secrets to a third party, who is not a representative of the Agency, to the extent the records are exempt from disclosure as trade secrets under the Oregon Public Records Law or other applicable law, except to the extent Agency is ordered to disclose in accordance with the Oregon Public Records Law or by a court of competent jurisdiction. Application of the Oregon Public Records Law or other applicable law shall determine whether any record, document or information is actually exempt from disclosure.

In addition, in response to a public records request, the Agency will not produce or disclose records so identified as exempt by the Contractor to any person other than representatives of the Agency, and others with authorized access under 00170.07(b), without providing the Contractor a copy of the public records request, unless:

The Contractor consents to such disclosure; or

Agency is prohibited by applicable law or court order from providing a copy of the public records request to the Contractor.

00170.10 Required Payments by Contractors - The Contractor shall comply with ORS 279C.505 and ORS 279C.515 during the term of the Contract.

(a) Prompt Payment by Contractor for Labor and Materials - As required by ORS 279C.505, the Contractor shall:

- Make payment promptly, as due, to all Entities supplying labor or Materials under the Contract;

- Pay all contributions or amounts due the Industrial Accident Fund, whether from the Contractor or a subcontractor, incurred in the performance of the Contract;
- Not permit any lien or claim to be filed against the State or any political subdivision thereof, on account of any labor or Material furnished in performance of the Contract; and
- Pay to the Department of Revenue all sums withheld from employees according to ORS 316.167.

(b) Prompt Payment by Contractor to First-Tier Subcontractor(s) - According to ORS 279C.580(3)(a), after the Contractor has determined and certified to the Agency that one or more of its Subcontractors has satisfactorily performed subcontracted Work, the Contractor may request payment from the Agency for the Work, and shall pay the Subcontractor(s) within 10 Calendar Days out of such amounts as the Agency has paid to the Contractor for the subcontracted Work.

(c) Interest on Unpaid Amount - If the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract within 30 Days after the Contractor's receipt of payment, the Contractor or first-tier Subcontractor shall owe the Entity the amount due plus interest charges that begin at the end of the 10 day period within which payment is due under ORS 279C.580(3) and that end upon final payment, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b). As required by ORS 279C.515(2), the rate of interest on the amount due shall be 9 percent per annum. The amount of interest shall not be waived.

(d) Agency's Payment of the Contractor's Prompt Payment Obligations - If the Contractor fails, neglects or refuses to make prompt payment of any invoice or other demand for payment for labor or services furnished to the Contractor or a Subcontractor by any Entity in connection with the Contract as such payment becomes due, the Agency may pay the Entity furnishing the labor or services and charge the amount of the payment against monies due or to become due the Contractor under the Contract. (The Agency has no obligation to pay these Entities, and will not normally do so, but will refer them to the Contractor and the Contractor's Surety.)

The payment of a claim by the Agency in the manner authorized in this Subsection shall not relieve the Contractor or the Contractor's Surety from obligations with respect to any such claims.

(e) Right to Complain to the Construction Contractors Board - If the Contractor or a subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b).

(f) Notice of Claim Against Bond - An Entity (which by definition includes a natural person) claiming not to have been paid in full for labor or Materials supplied for the prosecution of the Work may have a right of action on the Contractor's Payment Bond as provided in ORS 279C.600 and ORS 279C.605.

The Commissioner of the Bureau of Labor and Industries (BOLI) may have a right of action on the Contractor's and Subcontractors' public works bonds and Payment Bonds for workers who have not been paid in full, as provided in ORS 279C.600 and ORS 279C.605.

00170.20 Public Works Bond - Before starting Work, the Contractor and subcontractors shall each file with the Construction Contractors Board, and maintain in full force and effect, a separate public works bond, in the amount of $30,000 unless otherwise exempt, as required by ORS 279C.830(3) and ORS 279C.836. The Contractor shall verify subcontractors have filed a public works bond before the subcontractor begins Work.

00170.32 Protection of Navigable Waters - The Contractor shall comply with all applicable Laws, including without limitation the Federal River and Harbor Act of March 3, 1899 and its amendments.

The Contractor shall not interfere with waterway navigation or impair navigable depths or clearances, except as U.S. Coast Guard or Corps of Engineer permits allow.

00170.60 Safety, Health, and Sanitation Provisions - The Contractor shall comply with all Laws concerning safety, health, and sanitation standards. The Contractor shall not require workers to perform Work under conditions that are hazardous, dangerous, or unsanitary.

Workers exposed to traffic shall wear upper body garments or safety vests that are highly visible and meet the requirements of 00225.25.

Workers exposed to falling or flying objects or electrical shock shall wear hard hats.

Upon their presentation of proper credentials, the Contractor shall allow inspectors of the U.S. Occupational Safety and Health Administration (OSHA) and the Oregon Occupational Safety and Health Division (OR-OSHA) to inspect the Work and Project Site without delay and without an inspection warrant.

According to ORS 468A.715 and ORS 468A.720, the Contractor or a Subcontractor who performs Project Work involving asbestos abatement shall possess a valid DEQ asbestos abatement license.

00170.61 Industrial Accident Protection:

(a) Workers' Compensation - The Contractor shall provide workers' compensation coverage for on-the-job injuries as required by 00170.70(d).

(b) Longshoremen's and Harbor Workers' Compensation - If Work to be performed is over or adjacent to navigable waters, the Longshoremen's and Harbor Workers' Compensation Act, (Chapter 18, Title 33 of the USC) may apply, and the Contractor shall be responsible for complying with its provisions (which may include the provision of additional workers' compensation benefits to employees).

00170.62 Labor Nondiscrimination - The Contractor shall comply with all Laws concerning equal employment opportunity, including without limitation those prohibiting discrimination because of race, religion, color, sex, disability, or national origin.

00170.63 Payment for Medical Care - According to ORS 279C.530, the Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

00170.65 Minimum Wage and Overtime Rates for Public Works Projects:

(a) General - The Contractor is responsible for investigating local labor conditions. The Agency does not imply that labor can be obtained at the minimum hourly wage rates specified in State or federal wage rate publications, and no increase in the Contract Amount will be made if wage rates paid are more than those listed.

(**b) State Prevailing Wage Requirements** - The Contractor shall comply with the prevailing wage provisions of ORS 279C.800 through ORS 279C.870.

(1) Minimum Wage Rates - The Bureau of Labor and Industries (BOLI) determines and publishes the existing State prevailing wage rates in the publication "Prevailing Wage Rates for Public Works Contracts in Oregon". The Contractor shall pay workers not less than the specified minimum hourly wage rate according to ORS 279C.838 and ORS 279C.840 and shall include this requirement in all subcontracts.

See the Project Wage Rates page included with the Special Provisions for additional information about which wage rates apply to the project and how to access the applicable wage rates.

The applicable BOLI wage rates will be included in the Contract.

(2) Payroll and Certified Statements - As required in ORS 279C.845, the Contractor and every subcontractor shall submit written certified statements to the Engineer on the form prescribed by the Commissioner of BOLI in OAR 839-025-0010 certifying compliance with wage payment requirements and accurately setting out the Contractor's or subcontractor's weekly payroll records for each worker employed upon the project.

The Contractor and subcontractors shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

(3) Additional Retainage:

a. Agency - As required in ORS 279C.845(7) the Agency will retain 25% of any amount earned by the Contractor on the project until the Contractor has filed the certified statements required in ORS 279C.845 and in FHWA Form 1273, if applicable. The Agency will pay to the Contractor the amount retained within 14 Days after the Contractor files the required certified statements, regardless of whether a subcontractor has failed to file certified statements.

b. Contractor - As required in ORS 279C.845(8) the Contractor shall retain 25% of any amount earned by a first tier subcontractor on the project until the first tier subcontractor has filed with the Agency the certified statements required in ORS 279C.845 and in FHWA Form 1273, if applicable. Before paying any amount retained, the Contractor shall verify that the first tier subcontractor has filed the certified statement. Within 14 Days after the first tier subcontractor files the required certified statement the Contractor shall pay the first tier subcontractor any amount retained.

(4) Owner/Operator Data - For a project funded by the FHWA, the Contractor shall furnish data to the Engineer for each owner/operator providing trucking services. Furnish the data before the time the services are performed and include without limitation for each owner/operator:

Drivers name;

Copy of driver's license;

Vehicle identification number;

Copy of vehicle registration;

Motor vehicle license plate number;

Motor Carrier Plate Number;

- Copy of ODOT Motor Carrier 1A Permit; and Name of owner/operator from the side of the truck.

(c) State Overtime Requirements - As a condition of the Contract, the Contractor shall comply with the pertinent provisions of ORS 279C.540.

(1) Maximum Hours of Labor and Overtime Pay - According to ORS 279C.540, no person shall be employed to perform Work under this Contract for more than 10 hours in any 1 Day, or 40 hours in any 1 week, except in cases of necessity, emergency, or where public policy absolutely requires it. In such instances, the Contractor shall pay the employee at least time and a half pay:

- For all overtime in excess of 8 hours a day or 40 hours in any 1 week when the work week is 5 consecutive days, Monday through Friday; or
- For all overtime in excess of 10 hours a day or 40 hours in any 1 week when the work week is 4 consecutive days, Monday through Friday; and
- For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

For additional information on requirements for overtime and establishing a work schedule see OAR 839-025-0050 and OAR 839-025-0034.

(2) Notice of Hours of Labor - The Contractor shall give written notice to employees of the number of hours per day and days per week the employees may be required to work. Provide the notice either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees.

(3) Exception - The maximum hours of labor and overtime requirements under ORS 279C.540 will not apply to the Contractor's Work under this Contract if the Contractor is a party to a collective bargaining agreement in effect with any labor organization. For a collective bargaining agreement to be in effect it shall be enforceable within the geographic area of the project, and its terms shall extend to workers who are working on the project (see OAR 839-025-0054).

(d) State Time Limitation on Claim for Overtime - According to ORS 279C.545, any worker employed by the Contractor is foreclosed from the right to collect any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Contractor within 90 Days from the completion of the contract, provided the Contractor posted and maintained a circular as specified in this provision. Accordingly, the Contractor shall:

Cause a circular, clearly printed in boldfaced 12-point type containing a copy of ORS 279C.545, to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed to perform Work; and
Maintain such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

(e) Additional Requirements When Federal Funds are Involved - When federal funds are involved, the following requirements shall apply in addition to the requirements of 00170.65(a) through 00170.65(d). The Contractor shall include these provisions in all subcontracts as well as ensure that all Subcontractors include these provisions in their lower tier subcontracts.

(1) FHWA Requirements - For Federal-Aid projects, the Contractor shall comply with the provisions of FHWA Form 1273, "Required Contract Provisions Federal-Aid Construction Contracts".

(2) Minimum Wage Rates - The Contractor shall pay each worker in each trade or occupation employed to perform any work under the contract not less than the existing State (BOLI)

prevailing wage rate or the applicable federal prevailing wage rate required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.), whichever is higher. The Contractor shall include this provision in all subcontracts.

- See the Project Wage Rates page included with the Special Provisions for additional information about which wage rates apply to the project and how to access the applicable wage rates.

- The applicable Davis-Bacon and BOLI wage rates will be included in the Contract.

(3) Payroll and Certified Statements - In addition to providing the payroll information and certified statements required under ORS 279C.845 (see 00170.65(b-2)), the Contractor and every subcontractor shall submit written certified statements that also meet the requirements in Section IV of FHWA Form 1273 except the Contractor and every subcontractor shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

(4) Overtime - With regard to overtime pay, the Contractor shall comply with the overtime provision affording the greatest compensation required under FHWA Form 1273 and ORS 279C.540.

00170.70 Insurance:

(a) Insurance Coverages - The Contractor shall obtain, at its expense, and keep in effect during the term of the Contract, the insurance coverages listed below. Each policy required by these provisions shall be written as a primary policy, not contributing with or in excess of any coverage which the Agency may carry. A copy of each policy or a certificate satisfactory to the Agency shall be delivered to the Agency prior to commencement of the Work. Unless otherwise specified, each policy shall be written on an "occurrence" form with an admitted insurance carrier licensed to do business in the state of Oregon and should any of the described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In the event the statutory limit of liability of a public body for claims arising out of a single accident or occurrence is increased above the combined single limit coverage requirements specified below, the Agency shall have the right to require Contractor to increase the Contractor's coverage by the amount of the statutory limit increase for such claims and to increase the aggregate coverage by an amount that is twice as large as the statutory increase. The adequacy of all insurance required by these provisions shall be subject to approval by the Agency's Risk Manager. Failure to maintain any insurance coverage required by this contract shall be cause for immediate termination of this contract by the Agency.

The Contractor may however, contractually obligate an appropriate subcontractor to obtain, at the subcontractor's expense or at the Contractor's expense, and keep in effect during the term of the Contract, pollution liability coverage, asbestos liability, lead liability, or automobile liability with pollution coverages, or such other types of insurance coverage that, before execution of the Contract, the Agency approves as types of insurance coverage that may be obtained by appropriate subcontractors for the performance of specifically approved abatement-related work. If both the Contractor and an appropriate subcontractor will perform pollution related Work or other Work that would be covered by the other above-described types of insurance permitted to be obtained by an appropriate subcontractor, the insurance coverages listed below that correspond to such Work shall be obtained, at the Contractor's or subcontractor's expense, and shall cover the liability of the Contractor and the subcontractor, either under the same or separate insurance policies.

- **Commercial General Liability** - Contractor shall maintain a broad form commercial general liability insurance policy with coverage of not less than $2,000,000 combined single limit per occurrence, with an annual aggregate of not less than $4,000,000, for bodily injury, personal injury or property damage. Such policy shall contain a contractual liability endorsement to

cover Contractor's indemnification obligations under the Contract and products/completed operations liability. The policy shall also contain an endorsement naming the Agency as an additional insured, in a form satisfactory to the Agency, and expressly providing that the interest of the Agency shall not be affected by Contractor's breach of policy provisions. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to the Contract.

If the Contractor's Commercial General Liability Insurance limits are less than the required limits stated above, the Contractor shall obtain Excess or Umbrella Liability Insurance with sufficient limits such that when added to the Contractor's Commercial General Liability Insurance limits the total combined limits of Commercial General Liability Insurance and Excess or Umbrella Liability Insurance equal or exceed the above-stated Commercial General Liability Insurance limits required for this Project. The above-stated combined single limit per occurrence and the above-stated annual aggregate limit must each be met. Excess or Umbrella Liability Insurance coverage shall extend to the same perils, terms, and conditions as the underlying Commercial General Liability Insurance coverage.

- **Pollution Liability** - If indicated by Special Provision, Pollution Liability Insurance covering the Contractor's liability, or the liability of an appropriate subcontractor, if the coverage is obtained by the subcontractor, for bodily injury and property damage, and environmental damage resulting from sudden and accidental pollution, gradual pollution, and related clean-up costs incurred by the Contractor, or by the subcontractor if the coverage is obtained by the subcontractor, while performing Work required by the Contract. If the coverage is obtained by the Contractor, the coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Pollution Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in the Special Provisions. The annual aggregate limit shall not be less than the dollar amount indicated in the Special Provisions. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

- **Asbestos Liability** - If indicated by Special Provision, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide an Asbestos Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, The Contractor or subcontractor shall provide separate Asbestos Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

- **Lead Liability** - If indicated by Special Provision, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide a Lead Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, the Contractor or subcontractor shall provide separate Lead Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the separate policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

- **Commercial Automobile Liability** - Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Contractor shall maintain a commercial automobile liability insurance policy with coverage of not less than $2,000,000 combined single limit per occurrence, with an annual aggregate limit of not less than $4,000,000 for bodily injury, personal injury or property damage. The coverage shall include both hired and non-owned auto liability. The policy shall also contain an endorsement naming the Agency as an additional insured, in a form satisfactory to the Agency, and expressly providing that the interest of the Agency shall not be affected by Contractor's breach of policy provisions.

- **Commercial Automobile Liability with Pollution Coverage** - If indicated by Special Provision, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide Commercial Automobile Liability Insurance with Pollution coverage covering the Contractor's liability, or the liability of an appropriate subcontractor, if the coverage is obtained by the subcontractor, for bodily injury and property damage, and environmental damage arising out of the use of all owned, non-owned, or hired vehicles while performing Work under the Contract. If the coverage is obtained by the Contractor, the coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability with Pollution Coverage and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in the Special Provisions or the amount required by the U.S. Department of Transportation, whichever is greater. If this coverage is written in combination with the Commercial General Liability, the policy shall be endorsed to state that the Commercial General Liability annual aggregate limit shall apply separately to the Contract.

  Commercial Automobile Liability with Pollution Coverage is required for this Project because the Project includes pollution related Work. If the Contractor will be performing pollution related Work, this coverage covering the Contractor must be provided. If an appropriate subcontractor, but not the Contractor, will perform the pollution related Work, Commercial Automobile Liability with Pollution Coverage covering the subcontractor, but not the Contractor, must be provided, however, the Contractor shall provide Commercial Automobile Liability insurance coverage covering the Contractor as provided in the Commercial Automobile Liability bullet above. If both the Contractor and an appropriate subcontractor will be performing pollution related Work, Commercial Automobile Liability with Pollution Coverage covering both the Contractor and the subcontractor shall be provided, and the Contractor may provide the coverage covering both the Contractor and the subcontractor, or the Contractor and the subcontractor may provide their own, separate Commercial Automobile Liability with Pollution coverages.

(b) Tail Coverage - If any of the required liability insurance coverages of 00170.70(a) are on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 24 months, or the maximum time period reasonably available in the marketplace. The Contractor shall furnish certification of "tail" coverage as described, or continuous "claims made" liability coverage for 24 months following Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. If Continuous "claims made" coverage is used, the Contractor shall keep the coverage in effect for a duration of not less than 24 months from the end of the Contract. This will be a condition to the Engineer’s issuance of a Third Notification.

(c) Additional Insured - The liability insurance coverages of 00170.70(a) shall include the Agency, the Agency's governing body, board, or Commission and its members, and the Agency's officers, agents and employees as Additional Insureds, but only with respect to the Contractor's activities to be performed under the Contract. When federal transportation funding is involved, the liability coverages of 00170.70(a) shall also include the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers, members and employees as additional insureds, but only with respect to the Contractor’s activities to be performed under the Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The liability coverages of 00170.70(a) that are permitted by the Agency to be obtained by an appropriate subcontractor shall include all of the foregoing as Additional Insureds and shall also include Contractor and its officers and employees as Additional Insureds.

(d) Workers' Compensation - All employers, including the Contractor and its Subcontractors, if any, that employ subject workers who are performing Work or providing labor or Materials under the Contract in the State shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. The Contractor shall ensure that each of its Subcontractors complies with these requirements.

The Contractor shall certify in the Contract that the Contractor is registered by the Oregon Workers' Compensation Division either as a carrier-insured employer, a self-insured employer, an exempt employer, or is an independent contractor who will perform the Work without the assistance of others.

The Contractor shall ensure that its insurance carrier files a guaranty contract with the Oregon Workers' Compensation Division before performing any Work.

(e) Notice of Cancellation or Change - The Contractor shall not cancel, change materially, or take any action showing intent not to renew the insurance coverage(s) without 30 days' advance written notice from the Contractor or its insurer(s) to the Agency. The Contractor shall be responsible for ensuring that insurance coverage(s) obtained by an appropriate subcontractor, as permitted by the Agency under 00170.70(a), are not cancelled, changed materially, or have any action taken by the subcontractor showing intent not to renew the insurance coverage(s) without 30 days' advance written notice from the Contractor or the insurer(s) to the Agency. Any failure to comply with the reporting provisions of this insurance shall not affect the coverage(s) provided to the Agency, County, City, or other applicable political jurisdiction or to the Agency's governing body, board, or Commission and its members, and the Agency's officers and employees.

(f) Certificate(s) of Insurance - As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance to the Agency at the time(s) provided in 00130.50(a). As evidence of insurance coverages required by this Contract but permitted by the Agency under 00170.70(a) to be obtained by an appropriate subcontractor, the Contractor shall furnish Certificate(s) of Insurance to the Agency for such coverages together with the Contractor's request under 00180.21 for approval of the subcontract with that subcontractor. The Certificate(s) will specify all of the parties who are Additional Insureds. The Contractor shall obtain, or ensure that the appropriate subcontractors obtain, insurance coverages required under this Contract from insurance companies or entities acceptable to the Agency and authorized to issue insurance in the State. The Contractor, or the appropriate subcontractor, but not the Agency, shall be responsible for paying all deductibles, self-insured retentions and/or self-insurance included under these provisions.

(g) Builders' Risk - If indicated by Special Provision, the Contractor shall obtain, at its expense, and keep in effect during the term of the Contract, Builders' Risk insurance on an all risks of direct physical loss basis, including, without limitation, earthquake and flood damage, for an amount equal to at least the value indicated in the Special Provisions. Any deductible shall not exceed $50,000 for each loss, except that the earthquake and flood deductible shall not exceed 5% of each loss or $50,000, whichever is greater. The policy shall include the Agency as loss payee.

00170.71 Independent Contractor Status - The service or services to be rendered under this Contract are those of an independent contractor. The Contractor is not an officer, employee, or agent of the State as those terms are used in ORS 30.265.

00170.72 Indemnity/Hold Harmless - To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, the Contractor shall indemnify, defend (with counsel approved by the Agency) and hold harmless the Agency, Agency's Authorized Representative, Eugene City Council and its officers, agents and employees, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies, and when federal transportation funding

is involved the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers and members and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to the following:

- Any damage, injury, loss, expense, inconvenience or delay described in this Subsection.
- Any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects.
- Any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract.
- The negligent acts or omissions of the Contractor, a subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
- Any lien filed upon the project or bond claim in connection with the Work.

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subsection.

In claims against any person or entity indemnified under this Subsection by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Subsection shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts, other employee benefit acts, or applicable insurance coverage.

00170.74 Employee Drug Testing Program - As required by ORS 279C.505(2), the Contractor shall have in place, and maintain during the period of the Contract, an employee drug-testing program. The Agency retains the right to audit and/or monitor the program. On request by the Engineer, the Contractor shall furnish a copy of the employee drug-testing program.

00170.78 Conflict of Interest - The Contractor shall not give or offer any gift, loan, or other thing of value to any member of the Agency's governing body or employee of the Agency in connection with the award or performance of any Contract.

The Contractor shall not rent, lease, or purchase Materials, supplies, or Equipment, with or through any Agency employee or member of the Agency's governing body.

No ex-employee of the Agency who has worked for the Agency on any phase of the Project within the prior 2 years may be employed by the Contractor to perform Work on the Project.

00170.79 Third Party Beneficiary - There are no third-party beneficiaries of the Contract, unless federal transportation funding is involved then the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers and members and employees, are third-party beneficiaries of the Contract.

00170.80 Responsibility for Damage to Work:

(a) Responsibility for Damage in General - The Contractor shall perform Work, and furnish Materials and Equipment for incorporation into the Work, at the Contractor's own risk, until the

entire Project has been completed and accepted by the Agency. The Contractor shall repair all damages to Work performed, Materials supplied, and Equipment incorporated into the Work, except as otherwise provided in this Section.

(b) Repair of Damage to Work - Until ~~Third Notification~~ Final Acceptance, the Contractor shall promptly rebuild, repair, restore, and make good damages to all portions of the permanent or temporary Work, except to the extent the Agency has assumed responsibility according to the provisions of (c) below. The Contractor shall perform all repairs of damage to Work at no additional cost to the Agency, except for repairs necessitated by damage caused by:

- Acts of God or Nature, as defined in Section 00110; or
- Actions of governmental authorities.

(c) Responsibility for Damage to Work Caused by Public Traffic - The Contractor may apply for relief of responsibility for damage to Work caused by public traffic by submitting a signed Contractor's Request for Relief of Responsibility, ODOT form 734-2768 or equivalent information, to the Engineer by mail, personal delivery or courier, by FAX, or other agreed-upon method.

The Engineer will process a maximum of two forms per month and return the forms within 7 Calendar Days indicating each item as "approved" or "denied".

The approval of the Engineer is limited, and is made only for the purposes of determining relief of responsibility for damage to completed portions of the Work caused by public traffic. The completed portions of the Work are not considered complete, and are not finally accepted for any other purposes under the Contract.

(1) Request for Relief - The Agency will only accept a request for relief from and will only assume responsibility for damages caused by public traffic, to the following completed portions of the Work:

A segment of Roadway, drainage facilities, Slopes, lighting, traffic control devices and access facilities;

A Bridge or other Structure within a segment of Roadway;

Traffic signals and appurtenances at an intersection;

Permanent, passive traffic control devices;

Complete circuits of a highway lighting system; and

Portions of a building open to public use.

The Agency will approve a request for the Agency to assume responsibility for damages to the completed portions of the Work caused by public traffic only under the following conditions:

- The completed portions of the Work are completed according to Contract Change Orders, the Plans or approved stage construction Plans;
- The traffic control complies with approved traffic control Plans; and
- All required Materials conformance and quality compliance documents pertaining to the completed portions of the Work are on file with the Engineer (see Section 00165).

(2) Scope of Relief - When the Agency assumes responsibility for damage to completed portions of the Work caused by public traffic any damages will be repaired by the Contractor on a Changed Work basis, or by Agency forces, or by other means as determined by the Engineer. If completed portions of the Work are damaged by public traffic before Final

Inspection, and the Agency requires the Contractor to repair the damages, the Engineer will reimburse the Contractor for the Changed Work at 75% of the total amount calculated according to Section 00197.

If completed portions of the Work are damaged by public traffic after Final Inspection, and the Agency requires the Contractor to repair the damages, the Engineer will reimburse the Contractor for the Work at 100% of the total amount calculated according to Section 00197.

If any additional Work is performed by the Contractor on completed portions of the Work for which the Agency has assumed responsibility for damages caused by public traffic, and the Work is performed outside of the approved stage construction Plans or approved traffic control Plans, the Contractor shall become fully responsible and liable, and shall make good all damages caused by public traffic at no additional cost to the Agency.

(d) Vandalism and Theft - Vandalism includes damage to or destruction of Work or portions of Work that remain on the Project Site resulting from vandalism, criminal mischief, arson, or other criminal or illegal behavior.

The Contractor shall provide reasonable protection of the Work from vandalism and shall be solely responsible for replacement and repair costs associated with damage to the Work and/or the Project Site resulting from vandalism until Third Notification.

Theft includes the loss of Work or portions of Work that are lost or stolen or otherwise unaccounted for from the Project Site or from Materials or fabrication locations. The Contractor shall remain solely responsible for all losses caused by theft, including without limitation theft that occurs in conjunction with vandalism until Third Notification.

00170.82 Responsibility for Damage to Property and Facilities:

(a) In General - As used in this Subsection, the term "Contractor" shall include the Contractor's agents, Subcontractors, and all workers performing Work under the Contract; and the term "damage" shall include without limitation soiling or staining surfaces by tracking or splashing mud, asphalt, and other materials, as well as damage of a more serious nature.

The Contractor shall be solely responsible for damages arising from:

- The Contractor's operations;
- The Contractor's negligence, gross negligence, or intentional wrongful acts; and
- The Contractor's failure to comply with any Contract provision.

The Agency may withhold funds due the Contractor or the Contractor's Surety until all lawsuits, actions, and claims for injuries or damages are resolved, and satisfactory evidence of resolution is furnished to the Agency.

(b) Protection and Restoration of Agency Property and Facilities - The following requirements apply to highways, highway Structures and other improvements that are existing, under construction, or completed. The Contractor shall:

- Provide adequate protection to avoid damaging Agency property and facilities;
- Be responsible for damage to Agency property and facilities caused by or resulting from the Contractor's operations; and

- Clean up and restore such damage by repair, rebuilding, replacement, or compensation, as determined by the Engineer.

(c) Protection and Restoration of Non-Agency Property and Facilities - The Contractor shall determine the location of properties and facilities that could be damaged by the Contractor's operations, and shall protect them from damage. The Contractor shall protect monuments and property marks until the Engineer has referenced their location and authorized their removal. The Contractor shall restore property or facilities damaged by its operations to the condition that existed before the damage, at no additional compensation.

The Contractor shall provide temporary facilities when needed, e.g., to maintain normal service or as directed by the Engineer, until the required repair, rebuilding, or replacement is accomplished.

The Contractor shall protect specific service signs, e.g., business logos, and tourist-oriented directional signs (TODS) from damage, whether the signs are to remain in place or be placed on temporary supports. The Contractor shall repair or replace damaged signs at no cost to the Agency. Liquidated damages will be assessed against the Contractor in the amount of $200 per day for each sign out of service for more than 5 Calendar Days because of the Contractor's operations.

00170.85 Responsibility for Defective Work - The Contractor shall make good any defective Work, Materials or Equipment incorporated into the Work, according to the provisions of Section 00150.

(a) Latent Defects - The Contractor shall remain liable for all latent defects resulting from causes other than fraud or gross mistakes that amount to fraud until the expiration of all applicable statutes of limitation and ultimate repose, the Performance Bond, Warranty Bond, or warranty period, whichever expires last. The Contractor shall remain liable for all latent defects resulting from fraud or gross mistakes that amount to fraud regardless of when those latent defects may be discovered, and regardless of whether such discovery occurs outside any applicable statutes of limitation or ultimate repose or any applicable Performance Bond, Warranty Bond, or warranty period.

(b) Contractor Furnished Warranties:

(1) Contractor Warranty for Specific Items - For those Items with Specifications referencing this 00170.85(b-1) warranty, the Contractor warrants that the Work for those Items, including Changed Work, Additional Work, Incidental Work, On-Site Work, and Extra Work, and Materials and Equipment incorporated into the Work, shall meet the technical and performance Specifications required under the Contract. The warranty period will be identified in each applicable Specification or elsewhere in the Contract and will begin on the date of Second Notification. The Contractor shall be responsible for making good the Work, and for all repairs of damage to the Work and other improvements, natural and artificial structures, systems, equipment, and vegetation caused by, or resulting in whole or in part from, defects in warranted Materials, Equipment, and workmanship. The Contractor shall be responsible for all costs caused by, or resulting in whole or in part from, defects in warranted Materials, Equipment, or workmanship.

When the Agency makes written notification of failure of an item covered by this warranty, the warranty period will stop for the effected item or the portion of the effected item that failed, as applicable, until the required repairs or replacements are made and accepted. All repaired or replaced items shall meet current specifications, unless otherwise specified in the Contract, and will be warranted for the remaining warranty period.

This warranty provision shall survive expiration or termination of the Contract.

(2) General Warranty for Local Public Agency Projects - For those Contracts that are developed, advertised, awarded, and administered by Local Public Agencies, and are not for FHWA-funded projects on the National Highway System, this 00170.85(b-2) warranty applies.

The warranty described herein is an extension of the Performance Bond for a period of one year from the date of Third Notification. The Contractor shall warrant all Work and workmanship, including Changed Work, Additional Work, Incidental Work, On-Site Work, and Extra Work, and Materials and Equipment incorporated in the Work, except that warranties according to 00170.85(b-1) and manufacturers' warranties and extended warranties according to 00170.85(c) shall not be abridged.

The Contractor shall be responsible for meeting the technical and performance Specifications required, making good the Work, and for all repairs of damage to the Work and other improvements, natural and artificial structures, systems, equipment, and vegetation caused by, or resulting in whole or in part from occurrences beginning during the warranty period and are the result of defects in Materials, Equipment, and workmanship. The Contractor shall be responsible for all costs associated with completing the repair of the defects and for associated Work including but not limited to permitting, mobilization, traffic control, erosion control, surface restoration, site cleanup and remediation caused by, or resulting in whole or in part from, defects in Materials, Equipment, or workmanship, and other Work determined by the Engineer to be necessary to complete the repair of the defects.

Within 10 Calendar Days of the Agency's written notice of defects, the Contractor, or the Contractor's Surety, shall vigorously and continuously correct and repair the defects and all related damage. If the Contractor or the Contractor's Surety fails to correct and repair the defects, the Agency may have the correction and repair done by others. The Contractor or Contractor's Surety shall promptly reimburse the Agency for all expenses incurred to correct and repair the defects.

In the event of an emergency, where delay could result in serious loss or damage, the Agency may make emergency corrections and repairs, without written notice. The Contractor or Contractor's Surety shall promptly reimburse the Agency for all expenses incurred to correct and repair the defects.

Corrections, repairs, replacements or changes shall be warranted for an additional 1 year period beginning on the date of the Agency's acceptance of the corrections, repairs, replacements or changes.

Without limiting the general applicability of other survival clauses under the Contract, this warranty provision shall survive expiration or termination of the Contract.

(c) Manufacturer Warranties and Guarantees:

(1) Manufacturer Warranties - For those Specification Sections referencing this 00170.85(c-1) Subsection, the Contractor shall furnish Warranties from the Manufacturer and signed by a Manufacturer's Representative.

The warranty period will be specified in the applicable Specification Section for which it applies.

The warranty period will begin on the date the Engineer issues Third Notification unless otherwise specified in the Contract.

When the Agency makes written notification to the Manufacturer of failure of an item covered by this warranty, the warranty period will stop for the effected item or the portion of the effected item that failed, as applicable, until the required repairs or replacements are made and accepted. All repaired or replaced items shall meet current specifications, unless otherwise specified in the Contract, and will be warranted for the remaining warranty period.

Warranty work shall be performed when weather permits. If, in the opinion of the Engineer, temporary repairs are necessary, the temporary repairs will be made by the Agency or an independent contractor at the Manufacturer's expense. The Manufacturer shall replace all temporary repairs at no additional cost to the Agency.

The Manufacturer shall provide all required traffic control during repair or replacement of failed items at no additional cost to the Agency.

(2) Trade Practice Guarantees - For those Items installed on the Project that have customary trade practice guarantees, the Contractor shall furnish the guarantees to the Engineer at the completion of the Contract.

00170.89 Protection of Utility, Fire-control, and Railroad Property and Services; Repair; Roadway Restoration:

(a) Protection of Utility, Fire-Control, and Railroad Property and Services; Coordination - The Contractor shall avoid damaging the properties of Utilities, Railroads, railways, and fire-control authorities during performance of the Work. The Contractor shall cooperate with and facilitate the relocation or repair of all Utilities and Utility services, as required under 00150.50, and of Railroad and fire-control property and railways.

The Contractor shall conduct no activities of any kind around fire hydrants until the local fire-control authority has approved provisions for continued service.

The Contractor shall immediately notify any Utility, Railroad, or fire-control authority whose facilities have been damaged.

If an Entity has a valid permit from the proper authority to construct, reconstruct, or repair Utility, Railroad, or fire-control service in the Roadway, the Contractor shall allow the permit holder to perform the work.

(b) Restoration of Roadway after Repair Work - The Contractor shall restore the Roadway to a condition at least equal to that which existed before the repair work addressed under this Subsection was performed, as directed by the Engineer. All restoration work required as a result of Contractor’s failure to protect Utilities, Railroads, railways and fire-control facilities shall be at the Contractor’s expense. Restoration which constitutes Extra Work will be paid as Extra Work.

00170.92 Fencing, Protecting Stock, and Safeguarding Excavations - The Contractor shall be responsible for loss, injury, or damage that results from its failure to restrain stock and persons.

(a) At the Contractor's Expense - The Contractor shall restrain stock to lands on which they are confined using temporary fences or other adequate means. The Contractor shall provide adequate temporary fences or other protection around excavations to prevent animals and unauthorized persons from entering.

The Contractor shall repair, at Contractor's expense and to the Engineer's satisfaction, fences damaged by the Contractor's operations and the operations of the Contractor's agents, employees and Subcontractors.

(b) At the Agency's Expense - The Contractor shall construct fences, or move and reconstruct fences, as shown on the Contract Documents or as directed by the Engineer. The Contractor shall tear down and remove fencing within the Right-of-Way when no longer needed, as part of the removal Work described in and paid for according to Section 00310.

00170.93 Trespass - The Contractor shall be responsible for its own, its agents' and employees', and its Subcontractors' trespass or encroachment upon, or damage to, property during performance of the Contract.

00170.94 Use of Explosives - The Contractor shall comply with all Laws pertaining to the use of explosives. The Contractor shall notify anyone having facilities near the Contractor's operations of Contractor's intended use or storage of explosives. The Contractor shall be responsible for all damage resulting from its own, its agents' and employees', and its Subcontractors' use of explosives. (see 00330.41(e) and Section 00335)

Section 00180 - Prosecution and Progress

00180.00 Scope - This Section consists of requirements for assignment of the Contract, subcontracting, time for performance, Contract responsibility, suspensions, terminations, and related provisions.

00180.05 Assignment/Delegation of Contract - Unless the Agency gives prior written consent, the Contractor shall not assign, delegate, sell, or transfer to any Entity, or otherwise dispose of any Contract rights or obligations, including without limitation:

- The power to execute or perform the Contract; or
- Any of its right, title or interest in the Contract.

Any attempted assignment, delegation, or disposition without prior Agency consent shall be void.

Such Agency consent will not normally be given except for the assignment of funds due under the Contract, as provided in 00180.06.

If written Agency consent is given to assign, delegate, or otherwise dispose of any Contract rights or obligations, it shall not relieve the Contractor or its Surety of any part of their responsibility under the Contract.

00180.06 Assignment of Funds Due under the Contract - Assignment of funds due or to become due under the Contract to the Contractor will not be permitted unless:

- The assignment request is made on the form acceptable to the Agency;
- The Contractor secures the written consent of the Contractor's Surety to the assignment; and
- The Engineer approves the assignment.

00180.10 Responsibility for Contract - The Contractor shall direct and coordinate the operations of its employees, Subcontractors and agents performing Work, and see that the Engineer's orders are carried out promptly. The Contractor's failure to direct, supervise and control its employees, Subcontractors and agents performing Work will result in one or more of the following actions, or other actions as the Engineer deems appropriate:

- Suspension of the Work;
- Withholding of Contract payments, as necessary to protect the Agency;
- Ordering removal of individuals from the Project Site; or
- Termination of the Contract.

Action by the Agency under this provision will not prejudice any other remedy it may have.

00180.15 Agency's Right to Do Work at Contractor's Expense - Except as otherwise provided in 00150.75 and 00220.60, if the Contractor neglects to prosecute the Work properly or fails to perform any provision of the Contract, the Agency may, after 2 Calendar Days' written notice, correct the deficiencies at the Contractor's expense. In situations where the Engineer reasonably believes there is danger to life or property, the Agency may immediately and without notice correct the deficiencies at the Contractor's expense.

Action by the Agency under this provision will not prejudice any other remedy it may have.

00180.20 Subcontracting Limitations:

(a) General - The Contractor's own organization shall perform Work amounting to at least 30% of the original Contract Amount. The value of subcontracted Work is the full compensation to be paid to the Subcontractor(s) for all pay items in the Subcontract(s).

(b) Own Organization - The term "own organization", as used in Section 00180, includes only employees of the Contractor, Equipment owned or rented by the Contractor, Incidental rental of operated Equipment, truck hauling of materials, and Materials and Equipment to be incorporated into the Work purchased or produced by the Contractor.

(c) Rental of Operated Equipment - ~~For projects funded by the FHWA, the Agency will not allow a Disadvantaged Business Enterprise (DBE) firm to provide services without a subcontract covering all Work to be performed by the DBE firm. For non-DBE firms on FHWA funded projects and for all Agency funded projects, the use of Equipment rented with operators will be allowed without a subcontract only when the following requirements are met:~~ The use of Equipment rented with operators, except truck hauling of materials which is addressed in 00180.20(e), will be allowed without a subcontract only when the following requirements are met:

(1) Written Request - For a project funded by the FHWA, the Contractor has submitted to the Engineer a written request describing the work or service to be provided, its estimated cost, and the estimated duration. The Engineer must approve the request before the service is provided.

(2) Limitations - The use of Equipment rented with operators is limited to ~~P~~performing minor, Incidental, short-duration work under the direct supervision of the Contractor or Subcontractor, with Equipment not customarily owned, leased, or operated by a Contractor, or with Equipment that is temporarily unavailable to the Contractor. ~~the following services:~~

~~Truck hauling of Materials (If the trucking is by an owner/operator, in addition to the requirements of 00170.65(e), each truck shall have the name of the owner/operator clearly displayed on the side of the truck); or~~

(3) Submittals - The Contractor shall provide the Engineer with a copy of the rental agreement or purchase order covering the work or service to be provided. ~~For owner/operator trucking, attach copies of the data required under 00170.65(e).~~ The Contractor shall make certain that the provider of approved services submits payrolls required under Section 00170 and complies with applicable Contract provisions, including without limitation 00170.07. The work or service provider will not be considered a ~~S~~subcontractor under the Contract, but will be considered an agent of the Contractor in the performance of ~~W~~work or service.

(4) Revocation of Approval - The Engineer may revoke approval for the work or services provided through rented, operated Equipment at any time the Engineer determines that the work is outside that authorized under 00180.20(c-2). Unless the Contractor promptly submits to the Engineer a subcontract agreement for consent under 00180.21, the work or service provider shall be immediately removed from the Project Site.

(d) Disadvantaged Business Enterprise (DBE) - Every agreement to perform Work, including without limitation subcontracts, trucking services agreements, purchase orders, and rental agreements, shall indicate whether the Work will be performed by a DBE or non-DBE.

(e) Trucking – For all truck hauling of materials not performed with trucks owned and operated by the Contractor. This Section does not apply to delivery of materials by or for or from a Supplier.

(1) Trucking Services Agreement – For a project funded by the FHWA, the Contractor shall submit at the pre-construction meeting one or more proposed trucking services agreements for all trucking services for hauling materials. The proposed agreements shall include:

- Statement specifying whether the services will be provided by a DBE;
- Statement specifying whether the services will be provided by an owner/operator;
- Prompt payment clause (10 days) (ORS 279C.580);
- Interest penalty clause (ORS 279C.580);
- Lower tier clause. (ORS 279C.580);
- Statement about the provider's ability to file a complaint with the Construction Contractors Board. (ORS 279C.515);
- Statement that workers shall be paid not less than the specified minimum hourly rate of wage (ORS 279C.830) as applicable;
- Provision requiring the provider to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4) or (9) or has elected to not file a bond under ORS 279C.836 (7) or (8) or is otherwise not applicable;
- Insurance clauses that include Commercial Automobile Liability and Workers Compensation (ORS 656.017 unless exempt under ORS 656.126);
- Provision requiring the provider to comply with applicable Contract provisions including without limitation Record Requirements in 00170.07; and
- Construction Contractors Board License Number if applicable.

The Agency must review and consent to the proposed trucking services agreements prior to use.

(2) Limitations - The approved trucking services agreements shall be used for all trucking services for hauling materials not provided by trucks owned and operated by the Contractor except for trucking services provided by committed DBEs that require a

subcontract under 00180.21. The Contractor shall execute a trucking services agreement with every trucking services provider for hauling materials prior to the trucking services provider doing any work on the Project Site.

(3) Submittals - The Contractor shall provide the Engineer with an executed copy of the trucking services agreement not later than 2 days after the trucking services provider for hauling materials has started work. The Contractor shall make certain that the provider of approved trucking services submits payrolls required under Section 00170, complies with applicable Contract provisions, including without limitation 00170.07, and complies with applicable trucking services agreement provisions. The work or service provider will not be considered a subcontractor under the Contract, but will be considered an agent of the Contractor in the performance of work or service. If the trucking services are provided by an owner/operator:

- Attach a copy of the data required under 00170.65(b-4) to the trucking services agreement; and
- Each truck shall have the name of the owner/operator clearly displayed on the side of the truck.

(4) Revocation of Approval - The Engineer may revoke approval for trucking services provided under the trucking services agreement at any time the Engineer determines that the work or service is outside that authorized under 00180.20(e). Upon revocation of approval, the service provider shall be immediately removed from the Project Site.

If the services under Rental of Operated Equipment or Trucking are provided by a committed DBE firm a subcontract is required under 00180.21. For this purpose a committed DBE firm is one that was identified by the Contractor to meet an assigned DBE goal including DBE firms substituting for DBE firms committed as a condition of contract award.

00180.21 Subcontracting:

(a) General - For a project funded by the FHWA, the Contractor shall not subcontract or perform any portion of the Contract by other than the Contractor's own organization without the Agency's prior written consent. A request for consent to subcontract, at any tier, solely for the furnishing of a labor force will not be considered.

For a project funded by the FHWA, a written request for consent to subcontract any portion of the Contract at any tier shall be submitted to the Engineer, and when required by the Engineer, shall be accompanied by background information showing that the organization proposed to perform the Work is experienced and equipped for such Work. The Agency will review the Contractor's submission to verify compliance with Contract requirements, confirm the percentage of Work subcontracted, and evaluate the proposed Subcontractor's ability to perform the Work. If the Agency approves the Contractor's request to subcontract, the Agency will provide written notice of its determination to give or withhold consent to the Contractor's request as follows:

- If the subcontractor is not providing any of the insurance coverages as permitted under 00170.70(a), the Agency will respond within 7 Calendar Days after the Engineer's receipt of the request.
- If the subcontractor is providing any of the insurance coverages as permitted under 00170.70(a), the Agency will respond within 35 Calendar Days after the Engineer's receipt of the request. (28 Calendar Days for the Agency to review and approve the Certificates of Insurance required by 00170.70(f) plus 7 Calendar Days to review and approve the subcontract request.)

(b) Submittal of Requests - The Contractor must submit requests for consent to subcontract any portion of the Contract, at any tier, on the Agency's form, available from the Engineer. The Contractor shall attach a duplicate original subcontract agreement. The Contractor must also submit in writing any amendments or modifications proposed to Agency-approved subcontract agreements, at any tier, before the affected Work begins. The Agency's written consent will be required before such amendments or modifications become effective.

(c) Substitution of Disclosed Subcontractors - The Contractor may only substitute a previously undisclosed first-tier Subcontractor according to the provisions of ORS 279C.585. The Contractor shall provide the Engineer with a written notification that identifies the name of the proposed new Subcontractor and the reason for the substitution. Authorized reasons for substitution are limited to the following circumstances (see ORS 279C.585(1) through ORS 279C.585(10)):

- The disclosed Subcontractor fails or refuses to execute a written contract that is reasonably based either upon the Project Plans and Specifications, or the terms of the Subcontractor's written Bid, after having had a reasonable opportunity to do so;
- The disclosed Subcontractor becomes bankrupt or insolvent;
- The disclosed Subcontractor fails or refuses to perform the contract;
- The disclosed Subcontractor fails or refuses to meet the bond requirements of the prime Contractor that had been identified prior to the Bid submittal;
- The Contractor demonstrates to the Agency that the Subcontractor was disclosed as the result of an inadvertent clerical error;
- The disclosed Subcontractor does not hold a license from the Construction Contractors Board and is required to be licensed by the board;
- The Contractor determines that the Work performed by the disclosed Subcontractor is not in substantial compliance with the Plans and Specifications, or that the Subcontractor is substantially delaying or disrupting the progress of the Work;
- The disclosed Subcontractor is ineligible to work on a public improvement according to the applicable statutory provisions;
- The substitution is for "good cause" as defined by State Construction Contractors Board rule; or
- The substitution is reasonably based on the Contract alternates chosen by the Agency.

(d) Terms of Subcontracts - Subcontracts shall provide that work performed under the subcontract shall be conducted and performed according to the terms of the Contract.

Compliance with 00170.07 is required. All subcontracts, including Contractor's with the first-tier Subcontractors and those of the first-tier Subcontractors with their subcontractors, and any other lower tier subcontracts shall contain a clause or condition that if the Contractor or a subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580. Additionally, according to the provisions of ORS 279C.580, subcontracts shall include:

(1) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within 10 Calendar Days out of amounts the Agency pays to the Contractor under the Contract.

(2) A clause that requires the Contractor to provide the first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor.

(3) A clause that requires the Contractor, except as otherwise provided in this subsection, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:

- Notifies the Subcontractor in writing at least 45 Calendar days before the date on which the Contractor makes the change; and
- Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(4) An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within 30 Calendar Days after receiving payment from the Agency, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under 00180.21(d-1). The Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from the Agency or the Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and ends on the date on which the amount due is paid; and shall be computed at the rate specified in 00170.10(c).

(5) A clause that requires the Contractor's first-tier Subcontractor to include a payment clause and an interest penalty clause that conform to the standards of ORS 279C.580 (see 00180.21(d-1) and 00180.21(d-4)) in each of the first-tier Subcontractor's subcontracts and to require each of the first-tier Subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or Material supplier.

These payment clauses shall require the Contractor to return all retainage withheld from the Subcontractor, whether held by the Contractor or the Agency, as specified in 00195.50(d).

As required by ORS 279C.800 through ORS 279C.870, subcontracts shall include:

- A provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work on the Project, unless exempt.
- A provision requiring that the workers shall be paid not less than the specified minimum hourly rate of wage.

(e) Contractor's Responsibilities - As a condition of the Agency's grant of consent to subcontract, whether or not stated in the subcontract agreement itself, the Contractor shall remain solely responsible for administration of the subcontract, including but not limited to:

- Performance of subcontracted Work;
- Progress of subcontracted Work;
- Payments for accepted subcontracted Work; and
- Disputes and claims for additional compensation regarding subcontracted Work.

The Engineer's consent to subcontract will not create a contract between the Agency and the Subcontractor, will not convey to the Subcontractor any rights against the Agency, and will not relieve the Contractor or the Contractor's Surety of any of their responsibilities under the Contract.

(f) Failure to Comply - Failure to comply with 00180.21 will be cause for the Engineer to take action reasonably necessary to obtain compliance. This action may include, but is not limited to:

- Suspension of the Work;
- Withholding of Contract payments as necessary to protect the Agency; and
- Termination of the Contract.

00180.22 Payments to Subcontractors and Agents of the Contractor - To the extent practicable, the Contractor shall pay in the same units and on the same basis of measurement as listed in the Schedule of Items for subcontracted Work or other Work not done by the Contractor's own organization. In making payment to Subcontractors and to its other agents performing Work and furnishing Materials and Equipment to be incorporated into the Work, the Contractor shall assume all losses resulting from overpayment.

If requested in writing by a first-tier Subcontractor, the Contractor shall send to the Subcontractor, within 10 Calendar Days of receiving the request, a copy of that portion of any invoice or request for payment submitted to the Agency, or pay document provided by the Agency to the Contractor, specifically related to any labor, Equipment, or Materials supplied by the first-tier Subcontractor.

00180.30 Materials, Equipment, and Work Force - The Contractor shall furnish suitable and sufficient Materials, Equipment, and personnel to properly prosecute and complete the Work. The Contractor shall use only Equipment of adequate size and condition to meet the requirements of the Work and Specifications, and to produce a satisfactory quality of Work. Upon receipt of the Engineer's written order, the Contractor shall immediately remove, and not use again on the Project without the Engineer's prior written approval, Equipment that, in the Engineer's opinion, fails to meet Specifications or produce a satisfactory product or result.

The work force shall be trained and experienced for the Work to be performed. Upon receipt of the Engineer's written order, the Contractor shall immediately remove from the Project Site, and shall not employ again on the Project without the Engineer's prior written approval, any supervisor or employee of the Contractor or any subcontractor who, in the Engineer's opinion, does not perform satisfactory Work or whose conduct interferes with the progress of the Work.

If the Contractor fails to remove Equipment or persons as ordered, or fails to furnish suitable and sufficient Materials, Equipment and personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until such orders are complied with and such deficiencies are corrected, or the Engineer may terminate the Contract under the provisions of 00180.90(a).

00180.31 Required Materials, Equipment, and Methods - The Engineer's decisions under this Section are final.

(a) General - When the Equipment and methods to be used are not specified in the Contract, any Equipment or methods that accomplish the Work as required by the Contract will be permitted.

When the Contract specifies certain Equipment or methods, the Contractor shall use the Equipment or methods specified unless otherwise authorized by the Engineer in writing.

(b) Substitution of Materials and Equipment to be Incorporated into the Work - After execution of the Contract, the Engineer may approve substitution of Materials and Equipment to be incorporated into the Work as follows:

(1) Reasons for Substitution - The Engineer will consider substitution only if:

~~In the judgment of the Engineer t~~The proposed Materials or Equipment are equal to or superior to the specified items in construction, efficiency and utility; or

Due to reasons beyond the control of the Contractor, the specified Materials or Equipment cannot be delivered to the Project in sufficient time to complete the Work in proper sequence.

(2) Submittal of Request - The Contractor shall submit requests for substitution to the Engineer, including manufacturers' brochures and other information needed to verify equality of the proposed item(s).

(c) Substitution of Equipment Specified to Perform Work - The Agency encourages development of new or improved Equipment and innovative use of Equipment. When the Specifications require Equipment of a particular size or type to be used to perform certain portions of the Work, the Contractor may submit a request to the Engineer to use Equipment of a different size or type. The request will not be considered as a cost reduction proposal under 00140.70. The request shall:

- Be in writing and include a full description of the Equipment proposed and its intended use;
- Include the reasons for requesting the substitution; and
- Include evidence, obtained at the Contractor's expense and satisfactory to the Engineer, that the proposed Equipment is capable of functioning as well as or better than the specified Equipment.

The Engineer will consider the Contractor's request and will provide a written response to the Contractor, either permitting or denying use of the proposed Equipment.

Permission may be granted on a trial basis to test the quality of Work actually produced, subject to the following:

- There will be no cost to the Agency, either in Contract Amount or in Contract Time;
- The permission may be withdrawn by the Engineer at any time if, in the Engineer's opinion, the Equipment is not performing in all respects equivalent to the Equipment specified in the Contract;
- If permission is withdrawn, the Contractor shall perform the remaining Work with the originally-specified Equipment; and

- The Contractor shall remove and replace nonspecification Work resulting from the use of the Contractor's proposed Equipment, or otherwise correct it as the Engineer directs, at no additional compensation.

(d) Substitution of Methods - The Agency encourages development of new, improved, and innovative construction methods. When the Plans or Specifications require a certain construction method for a portion of the Work, the Contractor may submit a request for a change by following the provisions of 00140.70, "Cost Reduction Proposals".

00180.32 Alternative Materials, Equipment, and Methods - Whenever the Contract authorizes certain alternative Materials, Equipment, or methods of construction for the Contractor's use to perform portions of the Work, and leaves the selection to the Contractor, the Agency does not guarantee that all listed alternative Materials, Equipment, or methods of construction can be used successfully throughout all or any part of the Work.

The Contractor shall employ only those alternatives that can be used to satisfactorily perform the Work. No additional compensation will be paid for corrective work necessitated by the Contractor's use of an inappropriate alternative.

00180.40 Limitation of Operations:

(a) In General - The Contractor shall comply with all Contract provisions and shall:

- Conduct the Work at all times so as to cause the least interference with traffic, and
- Not begin Work that may allow damage to Work already started.
- Not perform work at the project site on a day not defined as a work day according to sub-section 00110.20
- Not begin Work prior to 7:00 a.m. nor continue Work past 7:00 p.m., except saw cutting joints in new concrete may continue past 7:00 p.m. when approved by Engineer.

(b) On-Site Work - The Contractor shall not begin On-Site Work until the Contractor has:

- Received Notice to Proceed;
- Filed with the Construction Contractors Board the public works bond as required in 00170.20;
- An approved Project Work schedule;
- An approved Traffic Control Plan;
- An approved Pollution Control Plan;
- An approved Erosion and Sediment Control Plan;
- Met with the Engineer at the required preconstruction conference; and
- Assembled all Materials, Equipment, and labor on the Project Site, or has reasonably assured that they will arrive on the Project Site, so the Work can proceed according to the Project Work schedule.

00180.41 Project Work Schedules - The Contractor shall submit a Project Work schedule meeting the requirements of this Subsection to the Engineer. The Project Work schedule is intended to identify the sequencing of activities and time required for prosecution of the Work. The schedule is used to plan, coordinate, and control the progress of construction. Therefore, the Project Work schedule shall provide for orderly, timely, and efficient prosecution of the Work, and shall contain sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, analyze, document, and control their respective Contract responsibilities. Sufficient detail shall also include

all required double shifts, overtime work, or combination of both necessary to complete Contract Work within the Contract Time.

Contractor's activity related to developing, furnishing, monitoring, and updating these required schedules is Incidental.

The Contractor shall submit a supplemental "look ahead" Project Work schedule each week to the Engineer by Tuesday, 5:00p.m. The "look ahead" Project Work schedule is supplemental to the Type A, B, or C schedule specified below. The supplemental "look ahead" Project Work schedule shall:

- Identify the sequencing of activities and time required for prosecution of the Work.
- Provide for orderly, timely, and efficient prosecution of the Work.
- Contain sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, analyze, document, and control their respective Contract responsibilities.

The supplemental "look ahead" Project Work schedule shall be written in common terminology and show the planned Work activities broken down into logical, separate activities by area, stage, and size and include the following information:

- The resources the Contractor, subcontractors, or services will use.
- The locations of each activity that will be done including the limits of the work by mile posts, stations, or other indicators.
- The time frames of each activity by Calendar Days, shifts, and hours.
- All anticipated shoulder, lane, and road closures.

At a minimum, the Contractor shall prepare a bar chart that:

- Shows at least 3 weeks of activity including the week the bar chart is issued.
- Uses a largest time scale unit of 1 Calendar Day. Smaller time scale units may be used if needed.
- Is appropriate to the activities.
- Identifies each Calendar Day by month and day.

Include the Contract name, Contract number, Contractor's name, and date of issue on each page of the bar chart.

The Contractor shall submit the supplemental "look ahead" Project Work schedule starting at First Notification and continuing each week until Second Notification has been issued and all punch list items and final trimming and clean-up has been completed. The Contractor shall meet with the Engineer each week to review the supplemental "look ahead" Project Work schedule. If the Engineer or the Contractor determines that the current supplemental "look ahead" Project Work schedule requires changes or additions, either notations can be made on the current schedule or the Engineer may require the submittal of a revised supplemental "look ahead" Project Work schedule. Review of the current and subsequent supplemental "look ahead" Project Work schedules does not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

One of the following Type "A", "B", or "C" schedules will be required under the Contract. The type of schedule will be identified in the Special Provisions.

(a) Type "A" Schedule - When a Type "A" schedule is required, the Contractor shall do the following:

(1) Schedule - 5 Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer four copies of a Project Work schedule, including a time-scaled bar chart and narrative, showing:

- Expected beginning and completion dates of each activity, including all staging; and
- Elements of the Traffic Control Plan as required under 00225.05.

The schedule shall show detailed Work activities as follows:

- Construction activities;
- The time needed for completion of the utility relocation work;
- Submittal and approval of Materials samples and shop drawings;
- Fabrication, installation, and testing of special Materials and Equipment; and
- Duration of Work, including completion times of all stages and their sub phases.

For each activity, the Project Work schedule shall list the following information:

- A description in common terminology;
- The quantity of Work, where appropriate, in common units of measure;
- The activity duration in Calendar Days; and
- Scheduled start, completion, and time frame shown graphically using a time-scaled bar chart.

The schedule shall show the Work broken down into logical, separate activities by area, stage, or size. The duration of each activity shall be verifiable by manpower and Equipment allocation, in common units of measure, or by delivery dates.

The bar chart shall be prepared as follows:

- The length of bar shall represent the number of workdays scheduled.
- The time scale shall be appropriate for the duration of the Contract.
- The time scale shall be in Calendar Days.
- The smallest unit shown shall be 1 Calendar Day.
- The first day and midpoint of each month shall be identified by date.
- Distinct symbols shall be used to denote multiple shift, holiday, and weekend Work.

Each page of the bar chart shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the bar chart shall be drawn on a reasonable size of paper up to a maximum of 36 inch by 36 inch, using multiple sheets when needed.

Within 7 Calendar Days after the preconstruction conference, the Engineer and the Contractor shall meet to review the Project Work schedule as submitted. The Engineer will review the schedule for compliance with all Contract Time limitations and other restraints. Review of this and subsequent schedules by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract. Within 10 Calendar Days of this meeting, the Contractor shall resubmit to the Engineer four copies of the Project Work schedule, including required revisions.

(2) Review by the Engineer - The Project Work schedule may need revision as the Work progresses. Therefore, the Contractor shall periodically review the Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the Project Work schedule.

The Contractor shall compile an updated Project Work schedule incorporating any changes to the Project completion time(s). The bar chart shall reflect the updated information. The Contractor shall submit four copies of the updated Project Work schedule to the Engineer within 7 Calendar Days after the meeting. The report shall include without limitation the following:

- Sufficient narrative to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule; and
- Proposed corrective actions.

(b) Type "B" Schedule - When a Type "B Schedule is required, the Contractor shall do the following:

(1) Initial Schedule - 5 Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer four copies of a time-scaled bar chart Project Work schedule showing:

- Expected beginning and completion date of each activity, including all staging; and
- Elements of the Traffic Control Plan as required under 00225.05.

The initial schedule shall show all Work intended for the first 60 Days of the Contract to the level of detail described in (2) below, and shall show the priority and interdependence (sequencing and network logic) of all major segments of the remainder of the Work.

(2) Detailed Schedule - In addition to the above requirements, and within 30 Calendar Days after the Notice to Proceed, the Contractor shall provide the Engineer one digital copy and four paper copies of a detailed time-scaled bar chart Project Work schedule indicating the critical course of the Work. The digital copy shall be compatible with MS Project 2003, Primavera P3, SureTrak Project Manager 3.0, or another scheduling program approved by the Engineer.

Detailed work schedule activities shall include the following:

- Construction activities;
- The time needed for completion of the utility relocation work;
- Submittal and approval of Material samples and shop drawings;
- Procurement of critical Materials;
- Fabrication, installation, and testing of special Material and Equipment; and
- Duration of Work, including completion times of all stages and their sub phases.

For each activity, the Project Work schedule shall list the following information:

- A description in common terminology;

- The quantity of Work, where appropriate, in common units of measure;
- The activity duration in normal workdays; and
- Scheduled start, completion, and time frame shown graphically using a time-scaled bar chart.

The schedule shall show the Work broken down into logical, separate activities by area, stage, or size. The duration of each activity shall be verifiable by manpower and Equipment allocation, in common units of measure, or by delivery dates.

The bar chart shall be prepared as follows:

- The length of bar shall represent the number of normal workdays scheduled.
- The time scale shall be appropriate for the duration of the Contract.
- The time scale shall be in normal workdays (every day except Saturday, Sunday, and legal holidays).
- The smallest unit shown shall be 1 Calendar Day.
- The first day and midpoint of each month shall be identified by date.
- Distinct symbols shall be used to denote multiple shift, holiday, and weekend Work.

The bar chart drawing(s) shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the bar chart shall be drawn on a reasonable size of paper up to a maximum of 36 inch x 36 inch, using multiple sheets when needed.

Within 10 Calendar Days after submission of the Project schedule the Engineer and the Contractor shall meet to review the Project schedule as submitted. Within 10 Days of the review meeting, the Contractor shall resubmit to the Engineer one digital and four paper copies of the Project schedule, including required revisions.

The accepted Project schedule shall represent all Work, as well as the planned sequence and time for the Work. Review of this and subsequent schedules by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

(3) Review and Reporting - The Project Work schedule may require revision as the Work progresses. Therefore, the Contractor shall monitor and when necessary revise the Project Work schedule as follows:

a. Review with the Engineer - The Contractor shall perform ongoing review of the Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the Project Work schedule. After any necessary action has been agreed upon, the Contractor shall make required changes to the Project Work schedule.

The Contractor shall collect information on all activities worked on or scheduled to be worked on during the previous report period, including shop drawings, Material procurement, and Contract Change Orders that have been issued. Information shall include commencement and completion dates on activities started or completed, or if still in progress, the remaining time duration.

The Contractor shall develop detailed sub-networks to incorporate changes, Additional Work, and Extra Work into the Project Work schedule. Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. The restraints shall include those activities from the Project Work schedule that initiated the sub-network as well as those restrained by it.

The Contractor shall evaluate this information and compare it with the Contractor's project schedule. If necessary, the Contractor shall make an updated bar chart schedule to incorporate the effect changes may have on the Project completion time(s). For any activity that has started, the Contractor shall add a symbol to show the actual date the activity started and the number of normal workdays remaining until completion. For activities that are finished, a symbol shall be added to show the actual date. The Contractor shall submit one digital and four paper copies of the updated bar chart to the Engineer within 7 Days after the progress meeting, along with a progress report as required by "b." below.

b. Progress Report - The Contractor shall submit a progress report to the Engineer each month. The report shall include the following:

- Sufficient narrative to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule; and
- Proposed corrective actions.

(c) Type "C" Schedule - When a Type "C" Schedule is required, the Contractor shall do the following:

(1) Initial Schedule - 10 Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer one digital copy and four paper copies of a time-scaled bar chart Project Work schedule. The digital copy shall be compatible with MS Project 2003, Primavera P3, SureTrak Project Manager 3.0, or another scheduling program approved by the Engineer. The initial schedule shall show:

- The expected beginning and completion date of each activity, including all stages and phases;
- The time needed for completion of the utility relocation work; and
- The elements of the traffic control plan as required under 00225.05.

A logic diagram and a time-scaled bar chart will be acceptable in lieu of a time-scaled logic diagram.

The initial schedule shall show all Work intended for the first 60 Days of the Contract to the level of detail described in (2) below, and shall show the priority and interdependence (sequencing and network logic) of all major segments of the remainder of the Work.

(2) Detailed Project Work Schedule - In addition to the above requirements, and within 30 Calendar Days after First Notification, the Contractor shall provide the Engineer one digital copy and four paper copies of a detailed time-scaled critical path method (CPM) network Project Work schedule and computer analysis printout, both clearly indicating the critical path. The digital copy shall be compatible with MS Project 2003, Primavera P3, SureTrak Project Manager 3.0, or another scheduling program approved by the Engineer. The first submitted detailed time-scaled critical path method (CPM) network Project Work schedule shall also

contain a listing of the quantity of Work for each activity, when appropriate, in common units of measure.

Detailed work schedule activities shall include the following:

- Construction activities;
- Any limitations of operation specified in 00180.40;
- The time needed for completion of the utility relocation work;
- Implementation of TCP for each stage and phase;
- Submittal and approval of Material samples, mix designs, and shop drawings;
- Agency timeframes to process and return Contractor submitted plans, working drawings, equipment lists and other submittals;
- Procurement of critical Materials;
- Fabrication, installation, and testing of special Material and Equipment;
- Duration of Work, including completion times of all stages and their sub-phases; and
- Specified cure times for all concrete elements.

The activities shall be separately identifiable by coding or use of sub-networks or both. The duration of each activity shall be verifiable and consistent with the description in the Project narrative required in (3) below.

Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. In the restraints, include those activities from any Project Work schedule that initiated the sub-network as well as those restrained by it.

The time scale used on the Contractor's detailed time-scaled critical path method (CPM) network Project Work schedule shall be appropriate for the duration of the activities and the Project duration. The time scale shall be in normal workdays, defined as every day except Saturday, Sunday and legal holidays, with calendar dates identified no less than the first and midpoint of each calendar month. The smallest unit shown shall be 1 Day. The network shall show the length of the activity or part scaled to accurately represent the number of normal workdays scheduled. Distinct symbols or graphics shall be used to show multiple shift, holiday, or weekend work.

The schedule network drawing(s) shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the drawings shall be on a reasonable size of paper up to a maximum of 36 inch x 36 inch, using multiple sheets when needed.

The Contractor shall include a tabulation of each activity in the computer mathematical analysis of the network diagram. The following information represents the minimum required for each activity:

- Event (node) number(s) for each activity;
- Maintain event (node) numbers throughout the Project;
- Activity description;
- Original duration of activities (in normal workdays);
- Estimated remaining duration of activities (in normal workdays);
- Earliest start date and actual start date (by calendar date);

- Earliest finish date and actual finish date (by calendar date);
- Latest start date (by calendar date);
- Latest finish date (by calendar date); and
- Slack or float time (in workdays).

Computer print-outs shall consist of at least a node sort and an "early start/total-float" sort.

Within 14 Calendar Days after submission of the detailed time-scaled critical path method (CPM) network Project Work schedule, the Engineer and the Contractor shall meet to review the detailed time-scaled critical path method (CPM) network Project Work schedule as submitted. Within 7 Calendar Days of the meeting, the Contractor shall resubmit to the Engineer one digital and four paper copies of the detailed time-scaled critical path method (CPM) network Project Work schedule, including required revisions.

This first accepted detailed time-scaled critical path method (CPM) network Project Work schedule, also called the accepted Project Work schedule, shall represent all Work, as well as the planned sequence and time for the Work. Review and acceptance of any Project Work schedules and Project narratives by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

(3) Project Narrative - In addition to the above requirements, and within 30 Calendar Days after First Notification, the Contractor shall provide to the Engineer a final written Project narrative that discusses the planning, coordinating, scheduling and resourcing of the Work. The Project narrative shall include the following written description:

- Plans for staging the project.
- All critical activities.
- All near critical activities defined as those with less than 30 Days of float.
- All subcontractor activities that are critical, near critical, and those that are greater than two weeks in duration.
- Labor resourcing, by stage and phase, to include the number of crews, average crew size and planned night/weekend shifts including that of subcontractors.
- Equipment allocation, by stage and phase to include mobilization, demobilization and planned activities including that of subcontractors.
- Notifications required under the Contract during each stage and phase which may include but is not limited to road closures, lanes closures, night work, cold plane pavement removal, and pile driving.
- Provide discussion on addressing reasonably predictable weather conditions and their impact on all weather sensitive activities. Also, provide discussion on other weather limitations that may affect the project schedule.
- Submittal and approval of material samples, mix designs, and shop drawings.
- Procurement of critical materials.
- Plans for dealing with "unique" construction items.
- Coordination of utilities and any immediate concerns for impacts/delays.
- Constructability issues.
- Cost Reduction Proposals and/or immediate requests for changes to the specifications.
- Concerns/issues that need to be addressed within the first 90 Days following First Notification.

The accepted Project narrative shall represent all critical and near critical Work, as well as the planned sequence and time for the Work.

(4) Review and Reporting - The Project Work schedule may require revision as the Work progresses. Therefore, the Contractor shall monitor and when necessary revise the Project Work schedule as follows:

a. Review with the Engineer - The Contractor shall perform ongoing review of the accepted Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the accepted Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the accepted Project Work schedule. After any necessary action has been agreed upon, the Contractor shall make required changes to the accepted Project Work schedule and associated Project narrative. Upon acceptance by the Engineer, this will become the new accepted Project Work schedule and associated Project narrative.

The Contractor shall collect information on all activities worked on or scheduled to be worked on during the previous report period, including shop drawings, Material procurement, and Contract Change Orders that have been issued. Information shall include actual start and completion dates on activities started or completed, or if still in progress, the remaining time duration.

The Contractor shall develop detailed sub-networks to incorporate changes, Additional Work, and Extra Work into the Project Work schedule. Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. The restraints shall include those activities from the Project Work schedule that initiated the sub-network as well as those restrained by it. The procedure for acceptance of the revised or updated Project Work schedule as the new accepted Project Work schedule will be as provided above.

The Contractor shall evaluate this information each month and compare it with the accepted Project Work schedule. The Contractor shall make an updated bar chart schedule to incorporate the effect changes may have on the Project completion time(s). For any activity that has started, the Contractor shall add a symbol to show the actual date the activity started and the number of normal workdays remaining until completion. For activities that are finished, a symbol shall be added to show the actual date. The Contractor shall submit digitally and in paper, copies of the updated bar chart to the Engineer within 7 Days after the progress meeting, along with a progress report as required by "b." below.

b. Progress Report - Each month the Contractor shall submit a progress report and an update of the Project Work schedule to the Engineer. The report and updated schedule shall be submitted both digitally and in paper copy and shall include the following:

- A sufficient description, in narrative form, to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule;
- Proposed corrective actions;
- Proposals to keep the Project on schedule in the event of a delay; and
- Any changes to the logic as compared to the accepted Project Work schedule.

(d) Substitution of Schedules - When a Type "A" schedule is required, a Type "B" or Type "C" schedule may be substituted for the Type "A" schedule.

When a Type "B" schedule is required, a Type "C" schedule may be substituted for the Type "B" schedule.

(e) Specified Contract Time Not Superseded by Schedule Revisions - The completion dates in any Project Work schedule and any revised or updated Project Work schedules shall be within the Contract Time(s) specified for the Project, or within adjusted Contract Times approved according to 00180.80(c). Acceptance of any Project Work schedule or any revised or updated Project Work schedules shall not constitute approval of any completion dates that exceed such Contract Time(s). If the Contractor believes that additional Contract Time is due, the Contractor shall submit, with a revised Project Work schedule, a request for adjustment of Contract Time according to 00180.80(c). A request for an adjustment of Contract Time will be evaluated using the most recently accepted Project Work schedule.

(f) Float Time - Float time shown on the Project Work schedule, including any time between a Contractor's scheduled completion date and the specified Contract Time(s), does not exist for the exclusive use of either party to the Contract and belongs to the Project.

(g) Schedules Do Not Constitute Notice - Submittal of a Project Work schedule, with supporting Project narrative, does not constitute or substitute for any notice the Contractor is required under the terms of the Contract to give the Agency.

(h) Failure to Provide Schedule - The Project Work schedule is essential to the Agency. The Contractor's failure to provide the schedule, schedule information, progress reports, Project narratives, or schedule updates when required will be cause to suspend the Work, or to withhold Contract payments as necessary to protect the Agency, until the Contractor provides the required information to the Engineer.

00180.42 Preconstruction Conference - Unless otherwise approved in writing by the Engineer, before any Work is performed and within 30 Calendar Days of the Notice to Proceed, the Contractor shall meet with the Engineer for a preconstruction conference at a time mutually agreed upon.

00180.43 Commencement and Performance of Work - From the time of commencement of the Work to the time of Final Acceptance the Contractor shall:

- Provide adequate Materials, Equipment, labor, and supervision to perform and complete the Work;
- Perform the Work as vigorously and as continuously as conditions permit, and according to a Project Work schedule that ensures completion within the Contract Time or the adjusted Contract Time;
- Not voluntarily suspend or slow down operations without prior written approval from the Engineer; and
- Not resume suspended Work without the Engineer's written authorization.

00180.50 Contract Time to Complete Work:

(a) General - The time allowed to complete the Work or Pay Item is stipulated in the Solicitation Documents, and will be known as the "Contract Time". (see 00110.20)

(b) Kinds of Contract Time - The Contract Time will be expressed in one or more of the following ways:

(1) Fixed Date Calculation - The calendar date on which the Work or Pay Item shall be completed; or

(2) Calendar Day Calculation - The number of Calendar Days from a specified beginning point in which the Work or Pay Item shall be completed.

(3) Work Day Calculation – The number of Work Days from a specified beginning point in which the Work or Pay item shall be completed.

(c) Beginning of Contract Time - When the Contract Time is stated in Calendar Days, counting of Contract Calendar Days will begin with the fifteenth Calendar Day following the date of the Notice to Proceed. When the Contract Time is stated in Work Days, counting of Contract Work Days will begin with the 10th Work Day following the date of the Notice to Proceed or the first day of work, whichever comes first.

Once Contract Time has commenced, the assessment of Contract Time will continue uninterrupted until the specified number of Days is exhausted.

(d) Recording Contract Time - All Contract Time will be recorded and charged to the nearest one-half Day.

For days in Calendar Day contracts or Work Day contracts when, in the judgment of the Engineer, weather conditions preclude work, the Contractor shall not work, and Contract Time will not be assessed, A full Contract Day will be assessed for days when, in the judgment of the Engineer, the Contractor is able to work at least at a 60% efficiency rate, or for 60% of the day, Partial Contract Days will be charged as determined by the Engineer.

For Fixed Date Contracts, normally expected inclement weather conditions are considered in the Engineer's selection of the completion date, and time extensions will only be considered for reasons shown in 00180.50(e) and for weather conditions which in the opinion of the Engineer have an extraordinarily low statistical probability. Low statistical probability will be determined using historical weather data from a government website for the previous 10 years in which weather that occurs within 7 years of the 10-year period is considered reasonable and predictable.

On Contracts with Calendar Day or Work Day counts, the Engineer will furnish the Contractor a weekly statement of Contract Time charges. The statement will show the number of Calendar Days counted for the preceding week and the number of Calendar Days remaining prior to the established completion date.

For Contracts with fixed completion dates for Pay Items, the Engineer will furnish the Contractor a weekly statement of Contract Time charges only after expiration of the Contract Time. The statement will show the number of Calendar Days of liquidated damages that have been assessed, if any.

These statements will include any exclusions from, or adjustments to, Contract Time.

(e) Exclusions from Contract Time - Regardless of the way Contract Time is expressed in the Contract, certain Calendar Days will not be charged against Contract Time. These exclusions will be allowed when the Contractor is prevented from performing Work due to one of the following reasons, resulting in delay:

- Acts of God or Nature;
- Court orders enjoining prosecution of the Work;

- Strikes, labor disputes or freight embargoes that, despite the Contractor's reasonable efforts to avoid them, cause a shutdown of the entire Project or one or more major operations. "Strike" and "labor dispute" may include union action against the Contractor, a Subcontractor, a Materials supplier, or the Agency; or
- Suspension of the Work by written order of the Engineer for reasons other than the Contractor's failure or neglect.

(f) Time Calculation Protest - In the event the Contractor disputes the accuracy of the statement of Contract Time charges, it shall immediately contact the Engineer and attempt to resolve the dispute. If the dispute cannot be resolved informally, the Contractor shall submit a formal written protest to the Engineer within 7 Calendar Days of the date the Engineer mailed or delivered the statement. Failure to submit a formal written protest within the 7 Calendar Day period constitutes the Contractor's approval of the time charges, or adjusted time charges, itemized in the statement.

(g) End of Contract Time - When the Engineer determines that the On-Site Work has been completed, except for the items listed below, the Engineer will issue a Second Notification.

The Second Notification will list:

- The date the time charges stopped;
- Final trimming and cleanup tasks (see 00140.90);
- Equipment to be removed from the Project Site;
- Minor corrective work not involving additional payment to be completed; and
- Submittals, including without limitation all required certifications, bills, forms, warranties, certificate of insurance coverage (00170.70(b)), and other documents, required to be provided to the Engineer before Third Notification will issue.

The Contractor shall complete all tasks listed in the Second Notification in an expeditious manner within the time frame proposed by the Contractor and accepted by the Engineer. Unless otherwise agreed by the Agency, failure of the Contractor to complete all tasks listed in the Second Notification within the time frame accepted, will result in the Agency rescinding the Second Notification. Counting of time charges will resume upon expiration of the accepted time frame.

00180.60 Notice of Delay - The Contractor shall notify the Engineer of any delay that will likely prevent completion of the Work or a Pay Item by the date specified in the Project Work schedule. The notice shall be in writing and shall be submitted within 7 Calendar Days of when the Contractor knew or should have known of the delay. The notice shall include, to the extent available, the following:

- The reasons or causes for the delay;
- The estimated duration of the delay and the estimated resulting cumulative delay in Contract completion;
- Except for 00180.50(e) and 00180.65 delays, whether or not the Contractor expects to request an adjustment of Contract Time due to the delay;
- Whether or not the Contractor expects to accelerate due to the delay; and
- Whether or not the Contractor expects to request additional compensation due to the delay. Except for 00180.50(e) and 00180.65 delays, failure to include this information will constitute waiver of the Contractor's right to later make such a request.

00180.65 Right-of-Way and Access Delays - Right-of-Way and access delays will be taken into consideration in adjusting Contract Time, and in approving additional compensation if the performance of the Work is delayed because of the Agency's failure to make available to the Contractor:

- Necessary Rights-of-Way;
- Agency-owned or Agency-controlled Materials sources that are offered in the Contract for the Contractor's use; or
- Access to, or rights of occupancy of, buildings and other properties the Contractor is required to enter or to disturb according to Contract requirements.

If the ending date of an anticipated delay is stated in the Special Provisions, only the delay occurring after that date will be considered for adjusting Contract Time or providing additional compensation.

00180.70 Suspension of Work:

(a) General - The Engineer has authority to suspend the Work, or part of the Work, for any of the following causes:

- Failure of the Contractor to correct unsafe conditions;
- Failure of the Contractor to carry out any provision of the Contract;
- Failure of the Contractor to carry out orders issued by the Engineer, the Agency, or any regulatory authority;
- Existence of conditions unsuitable to proper or safe performance of the Work; or
- Any reason considered by the Agency to be in the public interest.

When Work has been suspended for any reason, the Contractor shall not resume Work without the Engineer's written authorization.

(b) Contractor's Responsibilities during and after Suspension - During periods of suspension of the Work, the Contractor shall continue to be responsible for protecting and repairing the Work according to 00170.80, and for ensuring that a single designated representative responsible for the Project remains available according to 00150.40(b).

When Work is resumed after suspension, unless otherwise specified in the Contract, the Contractor shall perform the following at no additional compensation:

- Replace or repair any Work, Materials, and Equipment to be incorporated into the Work that was lost or damaged because of the temporary use of the Project Site by the public; and
- Remove Materials, Equipment, and temporary construction necessitated by temporary maintenance during the suspension, as directed by the Engineer.

(c) Compensation and Allowances for Suspension - Compensation and allowance of additional Contract Time due to suspension of any portion of the Work will be authorized only for Agency-initiated suspensions for reasons other than the Contractor's failure or neglect. (refer to 00180.50(e), 00180.65, and 00195.40)

00180.80 Adjustment of Contract Time:

(a) General - Contract Time established for the Work will be subject to adjustment, either by increase or decrease, for causes beyond the control of the Contractor, according to the terms of this Subsection. After adjustment, the Contract Time will become, and be designated as, the

"Adjusted Contract Time". Except as provided in 00180.65 and 00195.40, an adjustment of Contract Time shall be the Contractor's only remedy for any delay arising from causes beyond the control of the Contractor.

(b) Contractor's Request Not Required - The Engineer may increase or decrease the Contract Time or the Adjusted Contract Time if Change Orders or Extra Work orders issued actually increase or decrease the amount of time required to perform the Work. The Engineer may also increase Contract Time in the event of Right-of-Way and Access delays (see 00180.65), and those delays due to causes beyond the Contractor's control specified in 00180.50(e). The Engineer will promptly inform the Contractor of adjustments made to Contract Time according to this Subsection, and will include the reasons for adjustment.

If the Agency anticipates delay during performance of the Contract, and specifies its expected duration in the Special Provisions, the Engineer will only consider additional delay beyond the stipulated duration in determining whether to adjust Contract Time.

(c) Contractor's Request Required - In the event the Contractor believes that additional Contract Time is due, the Contractor shall submit to the Engineer a timely request for adjustment of Contract Time. The Engineer will not consider untimely requests. The Agency regards as timely only those requests for adjustment of Contract Time that:

- Accompany a proposed revised Project Work schedule submitted according to 00180.41, for comparison with the last revision of the Project Work schedule; or
- Are not otherwise deemed waived and are submitted within 15 Days after the date of Second Notification, if Second Notification has been issued.

The Engineer will not grant an adjustment of Contract Time for events that occurred prior to the date of the last revision of the Project Work schedule. The Engineer will not authorize, nor the Agency pay, acceleration costs incurred by the Contractor prior to its submittal of a request for adjustment of Contract Time to which the acceleration costs relate.

The Contractor's request for adjustment of Contract Time shall be submitted to the Engineer on a form provided by, or in a format acceptable to, the Engineer, and shall include a copy of the written notice required under 00180.60. The request shall include without limitation:

- Consent of the Contractor's Surety if the request totals more than 30 Calendar Days of additional Contract Time;
- Sufficient detail for the Engineer to evaluate the asserted justification for the amount of additional Contract Time requested;
- The cause of each delay for which additional Contract Time is requested, together with supporting analysis and data;
- Reference to the Contract provision allowing Contract Time adjustment for each cause of delay;
- The actual or expected duration of delay resulting from each cause of delay, expressed in Calendar Days; and
- A schedule analysis based on the current approved Project Work schedule for each cause of delay, indicating which activities are involved and their impact on Contract completion.

(d) Basis for Adjustment of Contract Time - In the adjustment of Contract Time, the Engineer will consider causes that include, but are not limited to:

- Failure of the Agency to submit the Contract and bond forms to the Contractor for execution within the time stated in 00130.50, or to submit the Notice to Proceed within the time stated in 00130.90;
- Errors, changes, or omissions in the Supplemental Drawings, quantities, or Specifications;
- Performance of Extra Work;
- Failure of the Agency or Entities acting for the Agency to act promptly in carrying out Contract duties and obligations;
- Acts or omissions of the Agency or Entities acting for the Agency that result in unreasonable delay referenced in 00195.40;
- Causes cited in 00180.50(e); and
- Right-of-way and access delays referenced in 00180.65.

The Engineer will not consider requests for adjustment of Contract Time based on any of the following:

- Contentions that insufficient Contract Time was originally specified in the Contract;
- Delays that do not affect the specified or Adjusted Contract Time;
- Delays that affect the Contractor's planned early completion, but that do not affect the specified or adjusted Contract Time;
- Shortage or inadequacy of Materials, Equipment or labor;
- Work stoppage required by the Engineer to determine the extent of Work defects
- Time for the Contractor to correct the Work defects from date of notification of the defects until the correction work is completed and has been approved by the Engineer. Late delivery of Materials and Equipment to be incorporated into the Work, except under those conditions referenced in 00180.50(e);
- Different area of Material source in 00160.40(a);
- Substitution of Equipment in 00180.31(c);
- Reasonably predictable weather conditions; or
- Other matters within the Contractor's control or Contract responsibility.

(e) Consideration and Response by Agency - The Engineer will only consider a Contractor's request for Contract Time adjustment submitted according to the requirements of 00180.80(c). The Engineer may elect not to consider claimed delays that do not affect the specified or adjusted Contract Time required to complete the Work.

The Engineer may adjust Contract Time for causes not specifically identified by the Contractor in its request.

The Engineer will review a properly submitted request for Contract Time adjustment, and within a reasonable time will advise the Contractor of the Engineer's findings. If the Contractor disagrees with the Engineer's findings, the Contractor may request review according to the procedure specified in 00199.40.

00180.85 Failure to Complete on Time; Liquidated Damages:

(a) Time is of the Essence - Time is of the essence in the Contractor's performance of the Contract. Delays in the Contractor's performance of the Work may inconvenience the traveling public, interfere with business and commerce, and increase cost to the Agency. It is essential

and in the public interest that the Contractor prosecute the Work vigorously to Contract completion.

The Agency does not waive any rights under the Contract by permitting the Contractor to continue to perform the Contract, or any part of it, after the Contract Time or adjusted Contract Time has expired.

(b) Liquidated Damages - The Agency will sustain damage if the Work is not completed within the specified Contract Time. However, in certain Agency projects it may be unduly burdensome and difficult to demonstrate the exact dollar value of such damages. The Agency will identify such projects in the Special Provisions related to them. In these projects, the Contractor agrees to pay to the Agency, not as a penalty but as liquidated damages, the amount specified in the Special Provisions for each Calendar Day the Contractor expends performing the Contract in excess of the Contract Time or adjusted Contract Time.

Payment by the Contractor of liquidated damages does not release the Contractor from its obligation to fully and timely perform the Contract according to its terms. Nor does acceptance of liquidated damages by the Agency constitute a waiver of the Agency's right to collect any additional damages it may sustain by reason of the Contractor's failure to fully perform the Contract according to its terms. The liquidated damages shall constitute payment in full only of damages incurred by the Agency due to the Contractor's failure to complete the Work on time.

If the Contract is terminated according to 00180.90(a), and if the Work has not been completed by other means on or before the expiration of Contract Time or adjusted Contract Time, liquidated damages will be assessed against the Contractor for the duration of time reasonably required to complete the Work.

00180.90 Termination of Contract and Substituted Performance:

(a) Termination for Default - Termination of the Contract for default may result if the Contractor:

- Fails to comply with the requirements for records;
- Violates any material provision of the Contract;
- Disregards applicable laws and regulations or the Engineer's instructions;
- Refuses or fails to supply enough Materials, Equipment or skilled workers for prosecution of the Work in compliance with the Contract;
- Fails to make prompt payment to Subcontractors;
- Makes an unauthorized general assignment for the benefit of the Contractor's creditors;
- Has a receiver appointed because of the Contractor's insolvency;
- Is adjudged bankrupt and the court consents to the Contract termination; or
- Otherwise fails or refuses to faithfully perform the Contract according to its terms and conditions.

If the Contract is terminated by the Agency, upon demand the Contractor and the Contractor's Surety shall provide the Engineer with immediate and peaceful possession of the Project Site, and of all Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50.

If the Contract is terminated for default, neither the Contractor nor its Surety shall be:

- Relieved of liability for damages or losses suffered by the Agency because of the Contractor's breach of Contract; or
- Entitled to receive any further progress payments until the Work is completed. However, progress payments for completed Work that remain due and owing at the time of Contract termination may be made according to the terms of 00195.50, except that the Engineer will be entitled to withhold sufficient funds to cover costs incurred by the Agency as a result of the termination. Final payment to the Contractor will be made according to the provisions of Section 00195.

If a termination under this provision is determined by a court of competent jurisdiction to be unjustified, the termination shall be deemed a termination for public convenience.

(b) Substituted Performance - According to the Agency's procedures, and upon the Engineer's recommendation that sufficient cause exists, the Agency, without prejudice to any of its other rights or remedies and after giving the Contractor and the Contractor's Surety 10 Calendar Days' written notice, may:

- Terminate the Contract;
- Substitute the Contractor with another Entity to complete the Contract;
- Take possession of the Project Site;
- Take possession of Materials on the Project Site;
- Take possession of Materials not on the Project Site, for which the Contractor received progress payments under 00195.50;
- Take possession of Equipment on the Project Site that is to be incorporated into the Work;
- Take possession of Equipment not on the Project Site that is to be incorporated into the Work, and for which the Contractor received progress payments under 00195.50; and
- Finish the Work by whatever method the Agency deems expedient.

If, within the 10 Calendar Day notice period provided above, the Contractor and/or its Surety corrects the basis for declaration of default to the satisfaction of the Engineer, or if the Contractor's Surety submits a proposal for correction that is acceptable to the Engineer, the Contract will not be terminated.

(c) Termination for Public Convenience - The Engineer may terminate the Contract for convenience in whole or in part whenever the Engineer determines that termination of the Contract is in the best interest of the public.

The Engineer will provide the Contractor and the Contractor's Surety 7 Calendar Days' written notice of termination for public convenience. After such notice, the Contractor and the Contractor's Surety shall provide the Engineer with immediate and peaceful possession of the Project Site, and of Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50.

If the Contract is terminated for public convenience, neither the Contractor nor its Surety shall be relieved of liability for damages or losses suffered by the Agency as a result of defective, unacceptable or unauthorized Work completed or performed.

Compensation for Work terminated by the Engineer under this provision will be determined according to the provisions of 00195.70(b).

Section 00190 - Measurement of Pay Quantities

Description

00190.00 Scope - The Engineer will measure pay quantities for accepted Work according to the United States standard measure unless otherwise provided in the Contract. Unless otherwise specified in the Contract, the Engineer will round off all quantity computations using the following convention:

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

The measurement provisions contained in the Specifications for each Pay Item will supplement or modify the above convention by:

- Imposing measurement limitations
- Describing measurement or computation procedures
- Giving conversion factors or adjustment conditions
- Providing for determination of reasonably accurate and representative Pay Item quantities

Measurements required or allowed to be made by the Contractor will be subject to the Engineer's verification. The Engineer's decision about measurement is final.

00190.10 Measurement Guidelines - Measurement of quantities will be made on the following bases, unless otherwise specified in the Contract:

(a) Unit Basis - Unit will be each, unless otherwise specified in the Contract and will be determined by actual count of units in place.

(b) Length Basis - Length will be feet or mile, unless otherwise specified in the Contract and will be determined by measuring the length at least to the nearest 0.1 foot or at least to the nearest 0.1 mile, as applicable, unless otherwise specified in the Contract. Measurements will be limited to the dimensions shown or specified, or as directed by the Engineer.

(c) Area Basis - Area will be square foot, square yard, or acre, unless otherwise specified in the Contract and will be determined by measuring the width and the length (or height) at least to the nearest 0.1 foot and computed at least to the nearest 0.1 square foot, nearest 0.1 square yard, or nearest 0.1 acre, as applicable, unless otherwise specified in the Contract.

(d) Weight Basis - Weight will be pound or ton, unless otherwise specified in the Contract and will be determined as follows:

(1) Pound - Pound weight will be determined by the net weight identified on the manufacturer's packaged labels, subject to periodic check weighing. Weight by pound will be measured at least to the nearest 1.0 pound unless otherwise specified in the Contract.

Provide a certificate with each shipment together with a certified copy of the weight of each delivery. If the check weight is less than the manufacturer weight by more than 0.4%, the discrepancy will be resolved by the Engineer.

(2) Ton - Ton weight will be determined on Contractor-provided scales as required under 00190.20 unless otherwise allowed by the Specifications. Weight by ton will be measured at least to the nearest 0.01 ton unless otherwise specified in the Contract.

If bituminous materials, portland cement, lime, and similar bulk Materials are shipped by truck or rail, the supplier's shipping invoice with net scale weights, or volumes converted to weights, may be used for Pay Item quantity determination in place of weights determined on the Contractor-provided vehicle scales.

Shipping invoice weights of the supplier's truck or transport shall be subject to periodic check weighing on the Contractor's vehicle scales, or other scales designated, according to 00190.20. If the check weight is less than the supplier weight by more than 0.4%, the discrepancy will be resolved by the Engineer.

No payment will be made:

For quantities in excess of the supplier weight

When Materials have been lost, wasted, or otherwise not incorporated into the Work

For additional hauling costs resulting from the check weighing

(e) Volume Basis - Volume will be cubic yard truck measure or in-place measure, gallons, foot board measure (FBM), or thousand foot board measure (MFBM), unless otherwise specified in the Contract and will be measured at least to the nearest 0.1 cubic yard, nearest 1.0 gallon, nearest 0.1 FBM, or nearest 0.1 MFBM, as applicable, unless otherwise specified in the Contract.

Truck measure will be the measured and calculated maximum "water level" capacity of the vehicle. Quantities will be determined at the point of delivery, with no allowance for settlement of Material during transit. When required to facilitate measurement, the vehicle load shall be leveled at the point of delivery. Payment will not be made for Material in excess of the maximum "water level" capacity. Deductions will be made for loads below the maximum "water level" capacity.

When bituminous materials are measured by volume, the volume will be measured at 60 °F or will be corrected to the volume at 60 °F using the correction factors found in the MFTP (ODOT TM 321).

(f) Time Basis - Time will be hour, Day, or year, unless otherwise specified in the Contract, and will be measured to at least the nearest 0.5 hour, nearest 1.0 Day, or nearest 1.0 year, as applicable, unless otherwise specified in the Contract.

(g) Standard Manufactured Items - If standard manufactured items, such as fence, wire, plates, rolled shapes, pipe, conduit and other similar items are specified in the Contract by properties such as gauge, unit weight, or section dimensions, the manufacturing tolerances established by the industry involved will be accepted unless more stringent tolerances are cited in the Contract.

(h) Lump Sum Basis - Lump sum, when used, means the Work described shall be completed and accepted without measurement unless changes are ordered in writing by the Engineer. If estimated quantities of the Work to be performed are listed in the Special Provisions, they provide only a basis for adjusting payment amounts. Estimated quantities are approximate only, and are made from a reasonable interpretation of the Contract Documents. Computations based on the details and dimensions shown on the Contract Documents are not guaranteed to equal estimated quantities.

If the Agency issues no Change Order, the Agency will make no pay adjustment for quantities based on the Contractor's computations that overrun or underrun the estimated quantities.

If the Agency issues Change Orders for changes in the Work, the Engineer will measure such changes according to the standards set by 00195.20 to determine adjustment of payment.

00190.20 Contractor to Provide Vehicle Weigh Scales:

(a) General - If the Specifications require measurement by weighing on vehicle weigh scales, the Contractor shall provide vehicle weigh scales and shall transport Materials to the scales. Subject to the Engineer's approval, weights may be determined by plant or hopper scales according to 00190.30.

Contractor-provided scales shall be furnished, installed and maintained by the Contractor or its supplier, or, subject to the Engineer's approval, may be commercial scales located in the vicinity of the Project.

Unless otherwise provided in the Contract, Pay Items to be measured by weight shall include all Contractor costs for providing, maintaining, inspecting, and testing scales; for furnishing appropriate weigh tickets; for self-printing scales; and for transporting Materials to the scales or to check weighing.

(b) Requirements - The scales shall conform to ORS 618, or the laws of the state in which they are located, and NIST Handbook 44, and shall be:

- Licensed by the Oregon Department of Agriculture, or by the analogous regulatory body for scales located outside the State;
- Technically suitable for weighing the Materials;
- Properly installed and maintained; and
- Accurate to the required tolerances.

The weight of any Materials weighed by anyone other than the Engineer will be subject to check weighing as the Engineer directs.

(c) Approaches - Vehicle scale approaches shall be:

- At each end of the scale platform;
- Straight and in line with the platform; and
- Long enough to accommodate combination vehicles longer than the scale platform so that they are level and allow release of brakes before weighing.

(d) Inspections - Contractor shall have all scales certified, that is inspected and their accuracy tested, by the Oregon Department of Agriculture, an analogous regulatory body for scales located outside the State, or a scale service company as follows:

- Before use if installed at a new site;
- 60 Calendar Days after initial inspection;
- Every 6 months thereafter; and
- When the Engineer directs additional inspections.

No Materials weighed on scales without current certifications according to this Subsection will be accepted. The Contractor shall provide a copy of all required certifications to the Engineer.

Testing by a scale service company within the State of Oregon shall comply with ORS 618.

If additional inspections directed by the Engineer confirm that the scale accuracy is within the required tolerances, the Agency will pay the cost for inspecting and testing the scales. If the

scale accuracy is not within these tolerances, the Contractor shall pay the cost for inspecting and testing the scales.

(e) Inspection Results - If an inspection indicates the scales have been under-weighing (indicating less than the true weight), the Agency will make no additional payment to the Contractor for Materials previously weighed.

If an inspection indicates the scales have been over-weighing (indicating more than the true weight), the weights will be reduced for Materials received after the time the Engineer determines the overweighing began or, if that is not possible, after the last acceptable certification of the scales. The reduction will be the amount of error in excess of the 0.2% maintenance tolerance allowed in the Contract.

(f) Contractor-Provided Weigh Technician - The Contractor shall provide a technician to operate Contractor-provided vehicle weigh scales. The Agency may observe procedures and require check weighing according to the following:

(1) Scale with Automatic Printer - If the scales have an automatic weigh memo printer that does not require manual entry of gross weight information, the Agency may periodically have a representative at the scales to observe the weighing procedures. In addition, the Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20(b) and 00190.20(d).

If a different scale is not available within a 30 mile round trip from the regular haul route the Agency will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Engineer will resolve discrepancies found by check weighing. Agency employee costs will be paid by the Agency. The Contractor shall pay all other costs resulting from the check weighings, including without limitation the use of other scales.

If more than 50 tons per Day of all types of Materials are received from a scale, the Contractor shall make random check weighings at least every tenth Day on which more than 50 tons is received or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by the Engineer. The Contractor shall make at least one check weighing on projects where more than 2,000 tons of all types of Materials are received from a scale. The Contractor shall provide the Engineer with the results of the check weighing.

(2) Scale Without Automatic Printer - If the scales require manual entry of gross weight information, the Agency may periodically have a representative weigh witness at the scales to observe the weighing procedures. The Contractor shall inform the Engineer of his intent to use a scale without an automatic printer at least 3 working Days before weighing begins or before the Contractor changes to a scale that does not have an automatic printer. The Contractor shall pay costs for the weigh witness. The hourly cost of the weigh witness will be as stated in the Special Provisions. In addition, the Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20(b) and 00190.20(d).

If a different scale is not available within a 30 mile round trip from the regular haul route the Agency will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Engineer will resolve discrepancies found by check weighing. Agency employee costs for check weighings will be paid by the Agency. The Contractor shall pay all other costs resulting from the check weighings, including without limitation the use of other scales.

If more than 50 tons per Day of all types of Materials are received from a scale, the Contractor shall make random check weighings at least every tenth day on which more than 50 tons is received or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by the Engineer. The Contractor shall make at least one check weighing on all projects where materials are received from a scale without an automatic printer. The Contractor shall provide the Engineer with the results of the check weighing.

(3) Duties of Weigh Technician - The Contractor's weigh technician shall:

Determine twice a Day, or as otherwise directed by the Engineer, the empty haul weights (tare weights) of hauling vehicles, unless vehicles are tared before each load;

Furnish daily a listing of the tare weights if 10 or more loads are hauled during that Day;

Furnish a note listing the net weight for each consecutive ten loads with the following load;

Furnish a daily listing of the net weights and total weight for each type of Material hauled during that Day; and

Furnish a legible, serially numbered weigh memo for each load of Materials to the Agency's Materials receiver at the point of delivery, or as directed by the Engineer. The memo shall identify the Project, the Materials, the date, net weight (gross and tare as appropriate), and identification of vehicle, driver and weigh technician.

(g) Agency-Provided Weigh Technician - If the Contractor provides vehicle weigh scales without a weigh technician meeting the requirements of this Subsection, the Agency will provide a weigh technician at the Contractor's expense. The hourly cost for the weigh technician will be as stated in the Special Provisions. The Contractor shall provide a weighhouse for the weigh technician according to Section 00205. The Agency's weigh technician will:

- Determine tare weights;
- Prepare weigh memos for each load;
- Compile the weigh records; and
- Not participate in the production of Materials or the loading of haul vehicles.

00190.30 Plant Scales - The Contractor, with the Engineer's written approval, may weigh plant-mixed Materials on scales that have either:

- An automatic weight batching and mixing control printer system; or
- A weigh hopper printer system.

Any additional costs resulting from the use of these scales shall be borne by the Contractor. Check weighing will be done according to 00190.20(f).

Except for 00190.20(c) regarding approaches, the Contractor's use of plant scales shall comply with all provisions of 00190.20.

The Engineer's approval for the Contractor's use of plant scales to determine pay weights will be rescinded if check weighing or scale inspections indicate the scales do not consistently determine weights within the tolerances allowed by state law.

Section 00195 - Payment

Description

00195.00 Scope and Limit:

(a) General - The Agency will pay only for measured Pay Item quantities incorporated into the Work or performed according to the terms of the Contract. The Contractor understands and agrees that Pay Item quantities listed in the Schedule of Items do not govern payment.

Payment constitutes full compensation to the Contractor for furnishing all Materials, Equipment, labor, and Incidentals necessary to complete the Work; and for risk, loss, damage, and expense arising from the nature or prosecution of the Work or from the action of the elements, subject to the provisions of 00170.80. The Contractor shall include the costs of bonds and insurance for the Project in the unit price for each Pay Item of Work to be performed.

(b) Essential or Incidental Materials or Work - When the Specifications state that the unit price for a Pay Item is compensation for certain Materials or Work essential or Incidental to the Pay Item, the same Materials or Work will not be measured or paid under any other Pay Item.

Provisions and Requirements

00195.10 Payment For Changes in Materials Costs - On certain projects, as identified in the Special Provisions, an escalation/de-escalation clause with respect to certain materials will be in effect during the life of the Contract.

00195.12 Steel Material Price Escalation/De-Escalation Clause - Subsections 00195.12, 00195.12(a), 00195.12(b), 00195.12(c), and 00195.12(d) contain the price escalation/de-escalation clause relating to steel materials (as defined in 00195.12(d)). This exclusive steel material price escalation/de-escalation clause, and the steel escalation/de-escalation program described in 00195.12 through 00195.12(d), are in effect for the life of the Contract regardless of the number of steel material Pay Items, if any, that are included, and whether or not the Contractor elects to participate in the steel escalation/de-escalation program according to 00195.12(d).

(a) Steel Material Price Escalation/De-Escalation Participation - The Contractor may select individual Pay Items to include in the steel escalation/de-escalation program from those Pay Items listed for this Project under 00195.12(d) by following the directions provided in 00195.12(d). The Contractor is not obligated to select any Pay Items. Before or within 5 business days after the date of the preconstruction conference, the Contractor shall submit in writing to the Project Manager the Pay Items selected by the Contractor to be included in the steel escalation/de-escalation program, in the manner required under 00195.12(d). If the Contractor fails to inform the Project Manager of Pay Items to include in the steel escalation/de-escalation program in the manner and within the time limits stated in 00195.12(d) (or the Contractor otherwise elects not to participate in the program), the Contractor thereby elects not to participate in the program and forfeits all present and future rights to participate in the program for this Project.

The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this steel material price escalation/de-escalation provision will not limit those rights. Adjustment for fluctuations in the cost of steel material will apply only to the Pay Items individually selected by the Contractor from the Pay Items listed under 00195.12(d), and will be made using the respective steel cost basis (CB) listed.

(b) Monthly Steel Materials Value (MV) and Base Steel Materials Value (BV) - The Monthly Steel Materials Value (MV) will be established by the Agency from the IDWPUSISTEEL1 Bureau

of Labor Statistics (BLS), Producer Price Indexes (PPI) using non-seasonally adjusted indexes only. Preliminary numbers may be referenced on the IDWPUSISTEEL1 BLS PPI for 6 months or more before IDWPUSISTEEL1 BLS PPI determines they are final numbers.

The Base Steel Materials Value (BV) for this Project will be the MV published on the Agency website for the month of the bid opening for this Project. The agency will only publish values on the ODOT website for use after the IDWPUSISTEEL1 BLS PPI establishes the numbers as final numbers. The final values of MV and BV will be available at the Agency website. See the ODOT web site page included with the Special Provisions for the web site address where the final values of MV and BV are available.

The Agency has no control of when the IDWPUSISTEEL1 BLS PPI establishes final values. The Agency steel material price escalation/de-escalation adjustments made under 00195.12 through 00195.12(d) may not be reflected on payments made to the Contractor for up to 2 months after the IDWPUSISTEEL1 BLS PPI applicable values become final. This timing for steel material price escalation/de-escalation adjustments is an agreed term of this Contract and shall not constitute late payment under ORS 279C.570, nor shall the Agency be responsible to pay interest on any such steel material price adjustments.

If the Agency-selected index ceases to be available for any reason, the Agency in its discretion will select and begin using a substitute price source or index to establish the MV each month. The MV will only apply to Pay Items selected by the Contractor and provided in writing to the Project Manager from the Pay Item list contained under, and in the manner and within the time limits required by 00195.12(d). The Agency does not guarantee that steel material will be available at any stated or implied materials price.

(c) Monthly Steel Materials Price Adjustment - If the Contractor has properly informed the Project Manager of Pay Items to include in the steel escalation/de-escalation program as required by 00195.12(a) and 00195.12(d), a price adjustment evaluation will be made for the Pay Items individually selected. No adjustments will be made using the BV or MV until such time as they are listed as final values by the IDWPUSISTEEL1 BLS PPI. The price adjustment as calculated in this provision for a given Pay Item will use the MV for the month the Work associated with that Pay Item is performed and added to the monthly progress estimate. A price adjustment for that Pay Item will only be made if the MV for the month the Work associated with the Pay Item is performed and added to the monthly progress estimate differs by more than 10% from the BV. A price adjustment will be made, as and when required by 00195.12 through 00195.12(d), only for the Pay Items, if any, that were selected by the Contractor in the manner and within the time limits required under 00195.12(a) and 00195.12(d).

The Monthly Steel Materials Price Adjustment will be determined as follows:

- If the MV is within 10% ± of the BV, there will be no adjustment.
- If the MV is more than 110% of the BV, then:
  - PA = (((MV-BV) ÷ BV) - 0.10) x (CB x PIP)
- If the MV is less than 90% of the BV, then:
  - PA = (((MV-BV) ÷ BV) + 0.10) x (CB x PIP)

Where:

PA = Price Adjustment, dollars
MV = Monthly Steel Materials Value from BLS PPI for the month determined above (after becomes final)
BV = Base Steel Materials Value from month of the bid opening (after becomes final)
PIP = Amount paid for the Pay Item for the month for which the adjustment is made

CB = Cost Basis for the applicable steel material, in percent (see 00195.12(d))

(d) Steel Materials Pay Item Selection - The Agency has a process using estimated quantities to determine which Pay Items containing steel material qualify for the steel escalation/de-escalation program by meeting a minimum threshold, and are therefore included in the eligible Pay Items listed in the Special Provisions.

For purposes of 00195.12 through 00195.12(d), "steel material" means structural and reinforcing steel, steel studs, sheet piling, guardrail, ductile iron pipe and other steel products used for the construction, reconstruction or major renovation of a road or highway.

The Contractor may elect to participate in the steel escalation/de-escalation program for this Project by marking the list in the Special Provisions checking each box next to each Pay Item the Contractor wants included in the program and submitting this information in writing, signed and dated by the Contractor, to the Project Manager before or within 7 Calendar Days after the date of the preconstruction conference. The steel material price escalation/de-escalation clause for price adjustments for fluctuations in the cost of steel material will apply only to the Pay Items selected by the Contractor, from the Pay Item list included in the Special Provisions, and provided in writing to the Project Manager in the manner and within the time limits stated above.

If the Contractor fails to inform the Project Manager of Pay Items to include in the steel escalation/de-escalation program in the manner and within the time limits stated above (or the Contractor otherwise elects not to participate in the program), the Contractor thereby elects not to participate in the program and forfeits all present and future rights to participate in the program for this Contract and this Project.

00195.13 Asphalt Cement Material Price Escalation/De-Escalation Clause - Subsections 00195.13, 00195.13(a), 00195.13(b), 00195.13(c), and 00195.13(d) contain the price escalation/de-escalation clause relating to asphalt cement materials (as defined in 00195.13(d)).

<u>The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision shall not limit those rights.</u>

(a) Monthly Asphalt Cement Material Price (MACMP) - The Monthly Asphalt Cement Material Price (MACMP) will be established by ODOT each month. For information regarding the calculation of the MACMP, and for the actual MACMP, go to the ODOT website at:

http://www.oregon.gov/ODOT/HWY/ESTIMATING/asphalt_fuel.shtm

If the ODOT selected index ceases to be available for any reason, the Agency in its discretion will select and begin using a substitute price source or index to establish the MACMP each month. The MACMP will apply to all asphalt cement including but not limited to paving grade, polymer modified, and emulsified asphalts, and recycling agents. The Agency does not guarantee that asphalt cement will be available at the MACMP

(b) Base Asphalt Cement Material Price (Base) - The Base price for this Project is the MACMP published on the ODOT website for the month immediately preceding the bid opening date.

(c) Monthly Asphalt Cement Adjustment Factor - The Monthly Asphalt Cement Adjustment Factor will be determined each month as follows:

- If the MACMP is within ± 5% of the Base, there will be no adjustment.
- If the MACMP is more than 105% of the Base, then:

Adjustment = (MACMP) - (Base) - (5% of Base)

- If the MACMP is less than 95% of the Base, then:

  Adjustment = (MACMP) - (Base) + (5% of Base)

(d) Asphalt Cement Price Adjustment – If specified in the Special Provisions, an asphalt cement escalation/de-escalation clause will be in effect during the life of the Contract. A price adjustment will be made for each pay item in the bid schedule containing asphalt cement. The price adjustment as calculated in 00195.13(c) above will use the MACMP for the month the asphalt is incorporated into the Project. Using the Adjustment calculated in (c), the price adjustment for Asphalt Concrete incorporated into the project for the applicable month will be determined by the following formula:

Price Adjustment = (Adjustment) x (Asphalt Content (%) x (Tons of Asphalt Concrete Incorporated)

The asphalt content (%) is the asphalt content according to the approved Job Mix Formula (JMF) for the asphalt concrete placed.

The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision shall not limit those rights.

00195.20 Changes to Plans or Character of Work:

(a) Insignificant Changed Work - If the changes made under 00140.30 do not significantly change the character or unit cost of the Work to be performed under the Contract, the Agency will pay for such work at the Pay Item price.

If the Work involved in the change is measured on a lump sum basis and its character is not significantly changed, payment for the Changed Work will be determined:

- As described in the applicable Section of the Specifications;
- If not described there, on a theoretical unit price determined by dividing the Contractor's lump sum price by the estimated quantity of the Pay Item listed in the Special Provisions; or
- If neither of the above apply, the Engineer will make an equitable adjustment.

(b) Significant Changed Work - If the changes made under 00140.30 significantly alter the character, unit cost, or lump sum cost of the Work, the Agency will adjust the Contract. The Contractor shall not be entitled to compensation for any loss in profits resulting from elimination of, reduction of, or other change to, a part of the Work.

Any such adjustments may be less than, but will not be more than the amount justified by the Engineer on the basis of the established procedures set out in Section 00197 for determining rates for Extra Work, but those procedures shall account for the decrease or elimination of Work as well as for increases in the Work. This does not limit the application of Section 00199.

The term "Significant Changed Work" shall apply only to that circumstance in which the character of the Work, as changed, differs materially in kind, nature, or unit cost from that involved or included in the originally proposed construction.

For purposes of this Section, “Significant” is defined as:

a) An increase or decrease of more than 25 percent of the total cost of the Work calculated from the original proposal quantities and the unit contract prices; or,

b) An increase or decrease of more than 25 percent in the quantity of any one major contract item.

For condition b) above, a major item is defined as any item that amounts to 10 percent or more of the original total contract price.

00195.30 Differing Site Conditions - Upon written notification, as required in 00140.40, the Engineer will investigate the identified conditions. If the Engineer determines that the conditions are differing Project Site conditions under 00140.40 and cause an increase or decrease in the cost or time required to perform any Work under the Contract, an adjustment in the Contract Amount or Contract Time, excluding loss of anticipated profits, will be made, and the Contract modified accordingly, in writing. The Engineer will notify the Contractor as to whether or not an adjustment of the Contract is warranted.

No Contract adjustment which benefits the Contractor will be allowed unless the Contractor has provided the required written notice. Any such adjustments will be made according to 00195.20.

00195.40 Unreasonable Delay by the Agency - If the Contractor believes that performance of all or any portion of the Work is suspended, delayed, or interrupted for an unreasonable period of time in excess of that originally anticipated or customary in the construction industry, due to acts or omissions of the Agency, or persons acting for the Agency, and that additional compensation, Contract Time, or both, are due the Contractor because of the suspension, delay or interruption, the Contractor shall immediately file a written notice of delay according to 00180.60. The Contractor shall then promptly submit a properly supported request for any additional compensation, Contract Time, or both, according to the applicable provisions in 00180.60 through 00180.80 and Section 00199.

The Engineer will promptly evaluate a properly submitted request for additional compensation. If the Engineer determines that the delay was unreasonable, and that the cost required for the Contractor to perform the Contract has increased as a result of the unreasonable suspension, delay or interruption, the Engineer will make an equitable adjustment, excluding profit, and modify the Contract in writing accordingly. The Engineer will notify the Contractor of the determination and whether an adjustment to the Contract is warranted.

Under this provision, no Contract adjustment will be allowed:

- Unless the Contractor has provided the written notice required by 00180.60;
- For costs incurred more than 10 Calendar Days before the Engineer receives the Contractor's properly submitted written request;
- For any portion of a delay that the Engineer deems to be a reasonable delay, or for which an adjustment is provided for or excluded under other terms of the Contract; or
- To the extent that performance would nevertheless have been suspended, delayed or interrupted by causes other than those described in this Subsection.

00195.50 Progress Payments and Retained Amounts:

(a) Progress Payments - The Agency's payment of progress payments, or determination of satisfactory completion of Pay Items or Work or release of retainage under 00195.50(d), shall not be construed as Final Acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective Materials or workmanship or for latent defects and warranty obligations.

The estimates upon which progress payments are based are not represented to be accurate estimates. All estimated quantities are subject to correction in the final estimate. If the

Contractor uses these estimates as a basis for making payments to Subcontractors, the Contractor assumes all risk and bears any losses that result.

(1) Progress Estimates - At the same time each month, the Engineer will make an estimate of the amount and value of Pay Item Work completed. The 25th day of the month shall be the cut-off date for the computation of progress payments based on the estimated value of work completed. Invoices and billings received after the 25th day shall not be processed for payment until the 25th day of the next month. No interest will be applied to invoices and billings as called for in ORS 279C.570 as long as they are processed in the billing cycle beginning on the 25th day of the month next following their delivery to the Agency. The amount of Work completed will be the sum of the estimated number of units completed for unit price Pay Items plus the estimated percentage completed of lump sum Pay Items.

The estimated value of the Work completed will then be determined by using the Contract unit price for unit price Pay Items, and by using one of the following methods to determine the value of the lump sum Pay Items:

- The "theoretical unit price", when the Special Provisions contain an estimated number of units;
- A Contractor-submitted, Engineer-approved Schedule of Values, when there is no theoretical unit price available; or
- Engineer's determination, when there is neither an available theoretical unit price, nor an approved, Contractor-submitted Schedule of Values.

The amounts to be allowed for lump sum Pay Items in progress payments will not exceed the reasonable value of the Work performed, as determined by the Engineer.

Incidentals such as formwork, falsework, shoring, and cribbing shall be included in the unit prices for the various Pay Items requiring their use, unless specified as a separate Pay Item. No payment will be made for Pay Items that include Incidentals until units or portions of such Pay Item Work are in place and completed. The costs of Incidentals will be paid in proportion to the percentage of Pay Item Work completed.

(2) Value of Materials on Hand - Agency will not consider payment for Materials on Hand.

(3) Value of Work Accomplished - The sum of the values in (1) above will be collectively referred to in this Subsection as the "value of Work accomplished", subject to (4) below.

(4) Limitations on Value of Work Accomplished - In determining the "value of Work accomplished", the Engineer's estimate will be based on the unit prices for the various Pay Items. Any amounts not included in progress payments due to substantial mathematical unbalancing of Pay Item prices will be included in the final payment issued according to 00195.90(b).

(5) Reductions to Progress Payments - With each progress payment, the Contractor will receive a Contract payment voucher and summary setting forth the value of Work accomplished reduced by the following:

- Amounts previously paid;
- Amounts deductible or owed to the Agency for any cause specified in the Contract;
- Additional amounts retained to protect the Agency's interests according to Subsection (e) below.

(b) Retainage - The amount to be retained from progress payments will be 5% of the value of Work accomplished, and will be retained in one of the forms specified in Subsection (c) below.

As provided in 00170.65(a) additional retainage of 25% of amounts earned will be withheld and released according to ORS 279C.845 when the Contractor fails to file the certified statements required in ORS 279C.845, FHWA Form 1273, and 00170.65.

(c) Forms of Retainage - Moneys retained by the Agency under ORS 279C.570(7) shall be retained in a fund by the contracting Agency and paid to the contractor in accordance with ORS 279C.570. Upon written request from the Contractor, other forms of acceptable retainage are specified below in Subsections (1) through (3). "Cash, Alternate A" is the Agency-preferred form of retainage. If the Agency incurs additional costs as a result of the Contractor's election to use a form of retainage other than Cash, Alternate A, the Agency may recover such costs from the Contractor by a reduction of the final payment.

(1) Cash, Alternate A - Retainage will be deducted from progress payments and held by the Agency until final payment is made according to 00195.90, unless otherwise specified in the Contract.

The Agency will deposit the cash retainage withheld in an interest-bearing account in a bank, trust company, or savings association for the benefit of the Agency, as provided by ORS 279C.560(5). Interest earned on the account shall accrue to the Contractor. Amounts retained and interest earned will be included in the final payment made according to 00195.90.

Any retainage withheld on Work performed by a Subcontractor will be released to the Contractor according to 00195.50(d).

(2) Cash, Alternate B (Retainage Surety Bond) – ~~Retainage Surety Bond is not an allowed alternative to retainage.~~ Upon receipt of an approved retainage surety bond, the Agency will limit the amount of cash retainage withheld to $10,000. The surety bond must be in the bond form provided by the Agency. The bond must be provided by the same Surety that provides the Performance and Payment Bonds.

If the Contractor elects this form of retainage, the Agency will withhold from progress payments up to 5% of the value of the Work accomplished as cash retainage until the retained amount equals $10,000. After that amount is retained, no further cash retainage will be withheld until the additional required retainage that would have been withheld exceeds the face amount of the retainage surety bond provided. Thereafter, retainage will be withheld from progress payments according to these Specifications. According to 00195.50(b), if at any time the Agency determines that satisfactory progress is not being made on the Work, the Agency may withhold up to 5% of the value of the Work accomplished from subsequent progress payments.

If an acceptable retainage surety bond is provided, the Contractor shall notify all Subcontractors of the existence of the retainage surety bond and shall advise them of their rights under ORS 279C.560(7) and ORS 701.435.

Amounts of retainage withheld under the provision will be included in the final payment according to 00195.90.

Any retainage withheld on Work performed by a Subcontractor shall be released to the Contractor according to 00195.50(d).

(3) Bonds, Securities, and Other Instruments - In accordance with ORS 279C.560, unless the Agency finds in writing that accepting a bond, security or other instrument poses an extraordinary risk that is not typically associated with the bond, security or other instrument, the Agency will approve the Contractor's written request to deposit bonds, securities or other instruments with the Agency or in a custodial account or other account satisfactory to the Agency with an approved bank or trust company, to be held instead of cash retainage for the benefit of the Agency. In such event, the Agency will reduce the cash retainage by an amount equal to the value of the bonds, securities and other instruments. Interest or earnings on the bonds, securities and other instruments shall accrue to the Contractor.

Bonds, securities and other instruments deposited instead of cash retainage shall be assigned to or made payable to the Agency and shall be of a kind approved by the Director of the Oregon Department of Administrative Services, including but not limited to:

- Bills, certificates, notes or bonds of the United States;
- Other obligations of the United States or agencies of the United States;
- Obligations of a corporation wholly owned by the federal government;
- Indebtedness of the Federal National Mortgage Association;
- General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon;
- Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Agency may require to protect its interests. When the Engineer determines that all requirements for the protection of the Agency's interest have been fulfilled, the bonds and securities deposited instead of cash retainage will be released to the Contractor.

(d) Reduction of Retainage - As the Work progresses, the amounts to be retained under (b) of this Subsection are subject to reduction in the Engineer's sole discretion. Retainage reductions will be considered only as follows:

- When the Work is 97.5% or more completed, the Engineer may, without application by the Contractor, reduce the retained amount to 100% of the value of the Work remaining.

- For a project funded by the FHWA, when a subcontractor has satisfactorily completed all of its Work, it may request release of retainage for that Work from the Contractor. The Contractor shall request reduction of retainage in the amount withheld for the subcontractor's Work after certifying to the Agency that the subcontractor's Work is complete, and that all contractual requirements pertaining to the subcontractor's Work have been satisfied. Within 60 Calendar Days of the end of the month in which the Agency receives the Contractor's certification regarding the subcontractor's Work, the Agency will either notify the Contractor of any deficiencies which require completion before release of retainage, or verify that the subcontractor's Work complies with the Contract and release all retainage for that Work with the next scheduled progress payment. Within 10 Calendar Days of receipt of retainage, the Contractor shall pay to the subcontractor all such retainage released except for latent defects or warranty.

- The Agency will only release retainage for satisfactorily completed portions of the Work represented by Pay Items in the Schedule of Items, or by Pay Items added by Change Order. Work not represented by a Pay Item, but which constitutes part of an uncompleted Pay Item, will not be regarded as satisfactorily completed Work for the purposes of this Subsection.

If retainage has been reduced or eliminated, the Agency reserves the right to protect its interests by retaining amounts from further progress payments at the rates provided in 00195.50(b).

(e) Withholding Payments - In addition to any other rights the Agency may have to withhold payments under other provisions on the Contract, the Engineer may withhold such amounts from progress payments or final payment as may reasonably protect the Agency's interests until the Contractor has:

- Complied with all orders issued by the Engineer according to the Specifications; and
- Satisfied all legal actions filed against the Agency, the Agency's governing body and its members, and Agency employees that the Contractor is obliged to defend. (see 00170.72)

Notwithstanding ORS 279C.555 or ORS 279C.570 or 00195.50(d), if a Contractor is required to file statements on the prevailing rate of wages, but fails to do so, the Agency will retain 25% of any amount earned as required in 00170.65.

(f) Prompt Payment Policy - Payments shall be made promptly according to ORS 279C.570.

00195.60 Advance Allowance for Materials on Hand: The Agency will not authorize an advance allowance for Materials on Hand.

00195.70 Payment under Terminated Contract - Payment for Work performed under a Contract that is terminated according to the provisions of 00180.90 will be determined under (a) or (b) of this Subsection.

(a) Termination for Default - Upon termination of the Contract for the Contractor's default, the Agency will make no further payment until the Project has been completed. The Agency will make progress payments to the party to whom the Contract is assigned, but may withhold an amount sufficient to cover anticipated Agency costs, as determined by the Engineer, to complete the Project.

Upon completion of the Project, the Engineer will determine the total amount that the defaulting Contractor would have been entitled to receive for the Work, under the terms of the Contract, had the Contractor completed the Work (the "cost of the Work").

If the cost of the Work, less the sum of all amounts previously paid to the Contractor, exceeds the expense incurred by the Agency in completing the Work, including without limitation expense for additional managerial and administrative services, the Agency will pay the excess to the Contractor, subject to the consent of the Contractor's Surety~~, but only to the extent that such excess is applied to Work performed by Contractor prior to the date of termination or to reimburse payments made by Contractor or its Surety to complete the Work~~.

If the expense incurred by the Agency in completing the Work, including without limitation, expense for additional managerial and administrative services, exceeds the cost of the Work less the sum of all amounts previously paid to the Contractor, the Contractor or the Contractor's Surety shall pay to the Agency the amount of the excess expense.

The Engineer will determine the expense incurred by the Agency and the total amount of Agency damage resulting from the Contractor's default. That determination will be final as provided in 00150.00.

If a termination for default is determined by a court of competent jurisdiction to be unjustified, it shall be deemed a termination for public convenience, and payment to the Contractor will be made as provided in Subsection (b) below.

(b) Termination for Public Convenience:

(1) General - Full or partial termination of the Contract shall not relieve the Contractor of responsibility for completed or performed Work, or relieve the Contractor's Surety of the obligation for any just claims arising from the completed or performed Work.

(2) Mobilization - If mobilization is not a separate Pay Item, and payment is not otherwise provided for under the Contract, the Agency may pay the Contractor for mobilization expenses, including moving Equipment to and from the Project Site. If allowed, payment of mobilization expenses will be based on cost documentation submitted by the Contractor to the Engineer.

(3) All Other Work - The Agency shall pay the Contractor at the unit price for the number of Pay Item units of completed, accepted Work. For units of Pay Items partially completed, payment will be as mutually agreed, or, if not agreed, as the Engineer determines to be fair and equitable. No claim for loss of anticipated profits will be allowed. The Agency will purchase Materials left on hand according to 00195.80.

00195.80 Allowance for Materials Left on Hand:

(a) Purchase of Unused Materials - If Materials are delivered to the Project Site, or otherwise acceptably stored at the order of the Engineer, but not incorporated into the Work due to

complete or partial elimination of Pay Items, changes in Plans, or termination of the Contract for public convenience according to 00180.90, and it is not commercially feasible for the Contractor to return them for credit or otherwise dispose of them on the open market; the Agency will purchase them according to the formula and conditions specified in Subsection (b) below.

(b) Purchase Formula and Conditions:

(1) Formula - The Agency will apply the following formula in determining the Contractor's allowance for Materials left on hand:

Contractor's Actual Cost, plus 5% Overhead Allowance, minus Advance Allowances under 00195.60, but no markup or profit.

(2) Conditions - The Agency will not purchase the Contractor's Materials left on hand unless the Contractor satisfies the following conditions:

- Requests the Agency's purchase of unused Materials;
- Shows acquisition of the Materials according to 00160.10;
- Shows that the Materials meet Specifications;
- Provides receipts, bills and other records of actual cost of Materials delivered to the designated delivery points; and
- Demonstrates to the satisfaction of the Engineer that the Materials cannot be returned for credit of otherwise disposed of on the open market.

00195.90 Final Payment:

(a) Final Estimate - As soon as practicable after Final Inspection of the Project, as provided in 00150.90, the Engineer will prepare a final estimate of the quantities of the Pay Items completed. With this estimate of quantities as a base, the total amount due the Contractor will be determined according to the terms of the Contract including without limitation any amounts due for Extra Work performed.

(b) Final Payment - The amount of final payment will be the difference between the total amount due the Contractor and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

After computation of the final amount due, and after the Engineer’s issuance of Third Notification, final payment will be mailed to the Contractor's last known address as shown in the records of the Agency.

(c) No Waiver of Right to Make Adjustment - The fact that the Agency has made any measurement, estimate, determination or certification either before or after completion of the Project, Final Acceptance, Agency assumption of possession of the Project Site, determination of satisfactory completion of Pay Items or Work or release of retainage under 00195.50(d) or payment for any part of the Work, shall not prevent either party from:

- Showing the true amount and character of the Work;
- Showing that any measurement, estimate, determination or certification is incorrect;
- Recovering from the other party damages that may have been suffered because the other party failed to comply with the Contract.

00195.95 Error in Final Quantities and Amounts:

(a) Request for Correction of Compensation - If the Contractor believes the quantities and amounts detailed in the final Contract payment voucher, prepared by the Engineer according to 00195.90, to be incorrect, the Contractor shall submit an itemized statement to the Engineer detailing all proposed corrections.

This statement must be submitted to the Engineer within 90 Calendar Days from the date the voucher was mailed to the Contractor, according to 00195.90(b). Any request for compensation not submitted and supported by an itemized statement within the 90 Calendar Day period will not be paid by the Agency. This does not limit the application of Section 00199.

(b) Acceptance or Rejection of Request:

(1) Consideration of Request - The Engineer will consider and investigate the Contractor's request for correction of compensation submitted according to 00195.95(a), and will promptly advise the Contractor of acceptance or rejection of the request in full or in part.

(2) Acceptance of Request - If the Engineer accepts the Contractor's request(s) in full or in part, the Engineer will prepare a post-final Contract payment voucher, including all accepted corrections, and will forward it to the Contractor.

(3) Rejection of Request - If the Engineer rejects the request(s) in full, the Engineer will issue a written notice of rejection and mail it to the Contractor.

(4) Contractor Objection to Revised Voucher or Notice of Rejection - If the Contractor disagrees with the revised voucher or notice of rejection, the Contractor may seek review and resolution according to the procedures specified in 00199.40, beginning at the City Engineer review level. If the Contractor fails to submit a request for 00199.40 review within 30 Calendar Days after the Engineer mails a post-final Contract payment voucher or notice of rejection, the Contractor waives all rights to a claim based on errors in quantities and amounts.

If the Engineer rejects the Contractor's request on the basis that the issue was not one that qualified for treatment under this Section, no review according to 00199.40 will be allowed.

Section 00196 - Payment for Extra Work

Description

00196.00 General - Only work not included in the Contract as awarded but deemed by the Engineer to be necessary to complete the Project (see 00140.60) will be paid as Extra Work. Regardless of alterations and changes, any item of Work provided for in the Contract will not constitute Extra Work. Payment for alterations and changes to Work will be made according to 00195.20.

Compensation for Extra Work will be paid only for Work authorized in writing by the Engineer and performed as specified. Work performed before issuance of the Engineer's written authorization shall be at the Contractor's risk. Extra Work will be paid as determined by the Engineer, according to 00196.10 and 00196.20.

Provisions and Requirements

00196.10 Negotiated Price - If the Engineer can reasonably determine a price estimate for Extra Work, the Engineer may then give written authorization to the Contractor to begin the Extra Work. As soon as practicable, but within 10 Calendar Days after that authorization, the Contractor shall respond in writing to the Engineer's Extra Work price estimate by submitting to the Engineer an Extra Work price quote. The price quote shall detail the following items related to the Extra Work:

- Types and amounts of Materials
- Hours of Equipment use and hours of labor
- Travel
- Overhead and profit
- Other costs associated with the proposed Extra Work

Pending approval of the price quote, the Engineer will maintain force account records of the Extra Work. As soon as practicable, but within 10 Calendar Days of receipt of a properly supported price quote, the Engineer will review the price quote and advise the Contractor if it is accepted or rejected. The Engineer will not accept a price quote that cannot be justified on a Force Account basis. If the Contractor's price is accepted, the Engineer will issue a Change Order, and the Extra Work will be paid at the accepted price.

00196.20 Force Account - If the Engineer and the Contractor cannot agree on a price for the Extra Work, the Engineer may issue a Force Account Work order requiring the Extra Work to be paid as Force Account Work. Force Account Work records and payment will be made according to Section 00197.

Section 00197 - Payment for Force Account Work

00197.00 Scope - The Materials, Equipment and labor rates and procedures established in this Section apply to Extra Work ordered by the Engineer to be performed as Force Account Work. With the exceptions identified in 00197.01(b), these rates and procedures also apply to other Work when according to other Sections this Section 00197 applies, including without limitation the following:

- 00140.70 - Cost Reduction Proposals
- 00195.20 - Changes to Plans or Character of Work
- 00195.30 - Differing Site Conditions
- 00199.30(b) - Claims Requirements

00197.01 General:

(a) Extra Work on a Force Account Basis - Before ordering Force Account Work, the Engineer will discuss the proposed work with the Contractor, and will seek the Contractor's comments and advice concerning the formulation of Force Account Work specifications. The Engineer is not bound by the Contractor's comments and advice, and has final authority to:

- Determine and direct the Materials, Equipment and labor to be used on the approved Force Account Work; and
- Determine the time of the Contractor's performance of the ordered Force Account Work.

Force account work performed by subcontractors will be measured and paid for on the same basis and in the same manner as force account work performed directly by the Contractor.

If the Engineer orders the performance of Extra Work as Force Account Work, the Engineer will record, on a daily basis, the Materials, Equipment, labor, and Special Services used for the Force Account Work during that day. The Engineer and the Contractor shall sign the record daily to indicate agreement on the Materials, Equipment, labor, and Special Services used for the Force Account Work performed on that day.

The following shall be reflected on the daily record:

- Materials used in the Force Account Work as directed by the Engineer, except those furnished and paid under rental rates for use of Equipment;
- Equipment which the Engineer considers necessary to perform the Force Account Work. Equipment hours will be recorded to the nearest quarter hour;
- Labor costs, including that of Equipment operators and supervisors in direct charge of the specific operations while engaged in the Force Account Work;
- Special Services; and
- The Engineer's and Contractor's signatures confirming its accuracy.

(b) Other Work - When according to other Sections this Section 00197 applies, the following exceptions apply to the Work under those other Sections, except for Extra Work ordered by the Engineer to be performed as Force Account Work.

- 00197.01(a) does not apply.
- Cost Efficiency - Agency will not be responsible for additional costs that are a direct or indirect result of the Contractor's inefficient means and methods or that reasonably could have been avoided if the Materials, Equipment, labor or services had been obtained at a more commercially reasonable cost.

- Standby Time - Equipment that is necessary for the Work but is not being operated to progress the Work will be considered to be on standby and will be limited to the standby rates and hour limitations in 00197.20(e). Equipment costs will be limited to a combination of operating time and standby time of not more than 8 hours in a 24 hour period or 40 hours in a 1 week period. The Equipment must be onsite and available for use to be eligible for standby time.

  For a period of 7 or fewer Calendar Days: If a continuous period of standby time for a piece of Equipment does not exceed 7 Calendar Days, the accumulated standby cost for that continuous period of standby time shall be limited to the standby rates and hour limitations in 00197.20(e).

  For a period of more than 7 Calendar Days: Unless the Engineer has otherwise agreed in advance in writing, if a continuous period of standby time for a piece of Equipment exceeds 7 Calendar Days, the accumulated standby cost shall be limited to:

  - For the first 7 Calendar Days, the standby rates and hour limitations in 00197.20(e), and
  - For the portion of the continuous period of standby time after the first 7 Calendar Days, the lesser of:
    - The standby rates and hour limitations in 00197.20(e); or
    - The cost for moving that piece of Equipment to and from the Project Site according to 00197.20(d).

00197.10 Materials:

(a) General - The Contractor will be paid for Materials actually used in the Force Account Work as directed by the Engineer, except for those furnished and paid for under rental rates included with the use of Equipment. Payments will be at actual cost, including transportation costs to the specified location, from the supplier to the purchaser, whether the purchaser is the Contractor, a Subcontractor, or other forces. All costs are subject to the provisions of this Subsection.

(b) Trade Discount - If a commercial trade discount is offered or available to the purchaser, it shall be credited to the Agency, even though the discount may not have actually been taken. The Agency will not take any discounts for prompt or early payment, whether or not offered or taken.

(c) Not Directly Purchased From Supplier - If Materials cannot be obtained by direct purchase from and direct billing by the supplier, the cost shall be considered to be the price billed to the purchaser less commercial trade discounts, as determined by the Engineer, but not more than the purchaser paid for the Materials. No markup other than actual handling costs will be permitted.

(d) Purchaser-Owned Source - If Materials are obtained from a supply or source wholly or partly owned by the purchaser, the cost shall not exceed the price paid by the purchaser for similar Materials furnished from that source on Pay Items, or the current wholesale price for the Materials delivered to the Project Site, whichever is lower.

00197.20 Equipment:

(a) General - Equipment approved by the Engineer to perform the Force Account Work will be eligible for payment at the established rates only during the hours it is operated or on standby if so ordered by the Engineer. Equipment hours will be recorded on the daily record to the nearest quarter hour.

Except as modified by these provisions, Equipment use approved by the Engineer will be paid at the rental rates given in the most current edition of the Rental Rate Blue Books for Construction

Equipment ("Blue Book"), Volumes 1, 2, and 3, published by Penton Media, Inc., and available from EquipmentWatch (phone 1-800-669-3282).

(b) Equipment Description - On the billing form for Equipment costs, the Contractor shall submit to the Engineer sufficient information for each piece of Equipment and its attachments to enable the Engineer to determine the proper rental rate from the Blue Book.

(c) Rental Rates (without Operator):

(1) Rental Rate Formula - Rental rates for Equipment will be paid on an hourly basis for Equipment and for attachments according to the following formula:

$$\text{Hourly Rate} = \frac{\text{Monthly Base Rate} \times \text{Rate Adjustment Factor}}{176 \text{ hours/month}} + \text{Hourly Operating Rate}$$

Some attachments are considered "standard Equipment" and are already included in the monthly base rate for the Equipment. That information can be obtained from EquipmentWatch.

(2) Monthly Base Rate - The monthly base rate used above for the machinery and for attachments represents the major costs of Equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs.

(3) Rate Adjustment Factor - The rate adjustment factor used above will be determined <u>by applying only the Model Year Adjustment to the Blue Book Rates. The Regional and User Defined Ownership/Operating Adjustments shall not apply.</u>~~as per page iii of each section of the Blue Book.~~

(4) Hourly Operating Rate - The hourly operating rate used above for the machinery and for attachments represents the major costs of Equipment operations, such as fuel and oil, lubrications, field repairs, tires or ground engaging components, and expendable parts.

(5) Limitations - ~~The Blue Book "Regional Adjustment Factor" shall not apply.~~

If multiple attachments are included with the rental Equipment, and are not considered "standard Equipment", only the attachment having the higher rental rate will be eligible for payment, provided the attachment has been approved by the Engineer as necessary to the Force Account Work.

Rental will not be allowed for small tools that have a daily rental rate of less than $5, or for unlisted Equipment that has a fair market value of $400 or less.

The above rates apply to approved Equipment in good working condition. Equipment not in good working condition, or larger than required to efficiently perform the work, may be rejected by the Engineer or accepted and paid for at reduced rates.

(d) Moving Equipment - If it is necessary to transport Equipment located beyond the Project Site exclusively for Force Account Work, the actual cost to transport the Equipment to, and return it from, its On-Site Work location will be allowed as an additional item of expense. However, the return cost will not exceed the original delivery cost. These costs will not be allowed for Equipment that is brought to the Project Site for Force Account Work if the Equipment is also used on Pay Item or related Work.

If transportation of such Equipment is by common carrier, payment will be made in the amount paid for the freight. No markups will be allowed on common carrier transportation costs. If the Equipment is hauled with the Contractor's own forces, transportation costs will include the rental

rate of the hauling unit and the hauling unit operator's wage. If Equipment is transferred under its own power, the rental rate allowed for transportation time will be 75% of the appropriate hourly rate for the Equipment, without attachments, plus the Equipment operator's wage.

(e) Standby Time - If ordered by the Engineer, standby time will be paid at 40% of the hourly rental rate calculated according to this Subsection, excluding the hourly operating rate. Rates for standby time that are calculated at less than $1 per hour will not be paid. Payment will be limited to not more than 8 hours in a 24-hour period or 40 hours in a 1 week period.

(f) Blue Book Omissions - If a rental rate has not been established in the Blue Book, the Contractor may:

- If approved by the Engineer, use the rate of the most similar model found in the Blue Book, considering such characteristics as manufacturer, capacity, horsepower, age and fuel type;
- Request EquipmentWatch to furnish a written response for a rental rate on the Equipment, which shall be presented to the Engineer for approval; or
- Request that the Engineer establish a rental rate.

(g) Outside Rental Equipment - If Contractor-owned or Subcontractor-owned Equipment is not available, and Equipment is rented from outside sources, payment will be based on the actual paid invoice. Approval of the Engineer to rent from outside sources shall be obtained prior to renting the equipment.

If the invoice specifies that rental rate does not include fuel, lubricants, field repairs, and servicing, an amount equal to the Blue Book hourly operating cost may be added for those items that were excluded.

The Agency may reduce the payment when the invoice amount plus allowance is higher than the amount authorized under (c) through (f) of this Subsection.

The provisions of 00180.20(c) apply to owner-operated Equipment.

00197.30 Labor - The Contractor will be paid for all labor engaged directly on Force Account Work, including Equipment operators and supervisors in direct charge of the specific force account operations, as follows:

(a) Wages - The actual wages paid to laborers and supervisors, if those wages are paid at rates not more than those for comparable labor currently employed on the Project, or at the recognized, current, prevailing rates in the locality of the Project.

(b) Required Contributions - The actual cost of industrial accident insurance, unemployment compensation contributions, payroll transit district taxes, and social security for old age assistance contributions incurred or required under statutory law and these Specifications. The actual cost of industrial accident insurance is the National Council on Compensation Insurance (NCCI) rate for the assigned risk pool for the appropriate work class multiplied by the experience modification factor for the Contractor.

(c) Required Benefits - The actual amount paid to, or on behalf of, workers as per diem and travel allowances, health and welfare benefits, pension fund benefits, or other benefits when such other benefits are required by a collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Project.

No work will be authorized which involves workers which would be paid overtime unless overtime is authorized in advance by the Engineer.

00197.40 Invoices for Special Services - Invoices for Special Services that reflect current market pricing may be accepted without complete itemization of Materials, Equipment, and labor costs, if the itemization is impractical or not customary. The invoice for Special Services shall show credit for commercial trade discounts offered or available.

No percentage markup will be allowed other than that specified in 00197.80.

00197.80 Percentage Allowances - To the Contractor's actual costs incurred, as limited in this Section 00197, amounts equal to a percentage markup of such costs will be allowed and paid to the Contractor as follows:

Subsection	Percent
00197.10 Materials	17
00197.20 Equipment	17
00197.30 Labor	22
00197.40 Special Services	17

When a Subcontractor performs ordered Force Account Work, the Contractor will be allowed a supplemental markup of 8% on each Force Account Work order.

These allowances made to the Contractor will constitute complete compensation for overhead, general and administrative expense, profit, and all other Force Account Work costs that were incurred by the Contractor, or by other forces that the Contractor furnished. No other reimbursement, compensation, or payment will be made.

00197.90 Billings - Billings for Force Account Work by the Contractor shall be submitted for the Engineer's approval on forms provided by the Agency or approved by the Engineer. Billings for Materials (other than Incidental items out of the inventory of the Contractor or Subcontractors), rental Equipment from sources other than the Contractor or Subcontractors, and Special Services, shall be accompanied by copies of invoices for the goods and services. The invoices shall be fully itemized showing dates, quantities, unit prices, and complete descriptions of goods and services provided. Invoices for amounts of $10 or less per invoice are not required, unless requested by the Engineer.

Costs included on the billings shall comply with 00197.01(a) and 00197.10 through 00197.40.

When a billing for Force Account Work has been paid at the Project level, no further corrections will be made because of further review if those corrections amount to less than $10.

Section 00199 - Disagreements, Protests, and Claims

Description

00199.00 General - This Section details the process through which the parties agree to resolve any disagreement concerning additional compensation or concerning a combination of additional compensation and Contract Time. (See 00180.80 for disagreements and claims concerning additional Contract Time only, and 00195.95 for disagreements and claims concerning correction of final compensation.) The Agency will not consider direct disagreements, protests, or claims from subcontractors, Suppliers, or any other Entity not a party to the Contract.

Provisions and Requirements

00199.10 Procedure for Resolving Disagreements - When disagreements occur concerning additional compensation or a combination of additional compensation and Contract Time, the Contractor shall first pursue resolution through the Engineer of all issues in the dispute, including without limitation the items to be included in the written notice in 00199.20. If the discussion fails to provide satisfactory resolution of the disagreement, the Contractor shall follow the protest procedures outlined in 00199.20. If the Engineer denies all or part of the Contractor's protest, and the Contractor desires to further pursue the issues, the Contractor shall submit a claim for processing according to 00199.30.

00199.15 Inappropriate Protest or Claim - It shall be presumed that the Contractor submits a protest or claim for additional compensation in good faith, based upon facts which reasonably support the Contractor's position and with full knowledge and understanding of the injury done to the Agency when notice of differing Project Site conditions or claims for additional compensation are not submitted in a timely manner as required under the Contract. Accordingly, the submission of a protest or claim without the concurrent submission of evidence that reasonably supports the protest or claim, or the submission of a protest or claim in an untimely manner will constitute a waiver of the protest or claim ~~not made in good faith or not based on facts that reasonably support the protest or claim, shall constitute a breach of the Contract~~.

00199.20 Protest Procedure - If the Contractor disagrees with anything required in a Change Order or other written or oral order from the Engineer, including any direction, instruction, interpretation, or determination, or if the Contractor asserts a disagreement or dispute on any other basis, except 0195.95, that, in the Contractor's opinion, entitles or would entitle the Contractor to additional compensation or a combination of compensation and Contract Time, the Contractor shall do all of the following in order to pursue a protest and preserve its claim:

(a) Oral Notice - Give oral notice of protest to the Engineer and outline the areas of disagreement before starting or continuing the protested Work.

(b) Written Confirmation of Oral Notice – Not later than the end of the next business day following the day that oral notice of protest is given, deliver written documentation to the Engineer of the oral notice that includes the notice of protest and the areas of disagreement.

(c) Written Notice - File a proper written notice of protest with the Engineer within 7 Calendar Days after receiving the protested order. In the notice the Contractor shall:

- Describe the acts or omissions of the Agency or its agents that allegedly caused or may cause damage to the Contractor or to the Project, citing specific facts, persons, dates and Work involved;
- Describe the Contractor's proposed alternative to the Work ordered, if any, which will avoid damage to Contractor or to the Project;
- Describe the nature of the damages;

- Cite the specific Contract provision(s), if any, that support the protest;
- Include the estimated dollar cost, if any, of the protested Work, and furnish a list of estimated Materials, Equipment and labor for which the Contractor might request additional compensation; and
- If additional compensation is estimated to be due, include the estimated amount of additional time required, if any.

FAILURE TO COMPLY WITH THIS NOTICE REQUIREMENT RENDERS THE NOTICE IMPROPER AND SHALL CONSTITUTE A WAIVER OF ANY CLAIM FOR ADDITIONAL COMPENSATION OR A COMBINATION OF ADDITIONAL COMPENSATION AND CONTRACT TIME FOR ANY PART OF THE PROTESTED WORK.

(d) Engineer's Record and Response – The Engineer will file a copy of each written notice of protest in the Project records and will issue a written response to the protest within seven (7) business days of receipt of a timely filed written notice of protest. The Engineer has no responsibility to evaluate the protest unless the Contractor has timely filed a proper notice submitting all of the above information.

(e) Final Documentation of Claim - Within 60 Calendar Days following completion of the protested work, Contractor shall provide the Engineer with complete documentation of protested work, listing exact materials, equipment and labor used for the work and the dollar amount requested for each. If the claim is accepted, no additional compensation will be awarded based on documentation submitted after this deadline. If the claim is denied or if the Contractor is not satisfied with the decision by the Engineer, the amount claimed by the Contractor in any subsequent Step or proceeding may not exceed the dollar amount requested under this subsection.

(f) Records - Keep complete records of all costs and time incurred throughout the protested Work, and allow the Engineer access to those and other supporting records. Provide daily records of protested Work, on a weekly basis, on a schedule to be set by agreement with the Engineer.

(g) Comparison of Records - Provide the Engineer adequate facilities for keeping cost and time records of the protested Work. The Contractor and the Engineer will compare records and either bring them into agreement at the end of each day, or record and attempt to explain any differences.

(h) Work to Proceed - In spite of any protest, proceed promptly with the Work ordered by the Engineer.

(i) Evaluation of Protest - The Engineer has no responsibility for evaluating a protest that is not timely filed, or for which adequate supporting documentation has not been made available to the Engineer. Provided the procedures above are followed, the Engineer will promptly evaluate all protests, after the Contractor has fully complied with the requirements described in 00199.20(c), Written Notice. If the protest is denied, the Engineer will notify the Contractor in writing of the reasons for full or partial denial. If a protest is found to be valid, the Engineer will, within a reasonable time, make an equitable adjustment of the Contract. Adjustment of time will be evaluated according to 00180.80.

The Engineer has no responsibility for evaluating and may reject a protest that does not comply with 00199.20(b). If the protest is rejected, the Engineer will notify the Contractor in writing of the reasons for rejection.

(j) Protest Evaluation by Third Party Neutral - If the Engineer agrees that the Contractor has fully complied with the requirements described in 00199.20(b), and if the Engineer fully or partially denies, in writing, the Contractor's protest according to 00199.20(f), the Contractor may request that a mutually selected Third Party Neutral review the protest. Procedures for selecting, using, and paying for the cost of the Third Party Neutral will be specified by Change Order.

If the Contractor does not accept the Engineer's evaluation of the protest, or either the Contractor or Engineer disagrees with the resolution recommended by the Third Party Neutral, the Contractor may pursue a claim as described in 00199.30.

00199.30 Claims Procedure:

(a) General - If the Contractor believes that additional compensation is due, or a combination of additional compensation and Contract Time, and has pursued and exhausted all the procedures provided in 00199.10 and 00199.20 to resolve a disagreement and protest, the Contractor may file a claim.

The Agency's Contract is with the Contractor. There is no contractual relationship between the Agency and any subcontractors, Suppliers or any Entity other than the Contractor. It is the Contractor's responsibility to fully evaluate any claim before presenting it to the Agency. In addition, when a claim includes Work done or costs incurred by any subcontractors, Suppliers, or any Entity other than the Contractor, the Contractor remains solely responsible for presenting the claim to the Agency.

Claims that include Work done or costs incurred by subcontractors, Suppliers, or any Entity other than the Contractor will not be considered by the Agency unless the Contractor has:

- Completed and provided its own written evaluation of the claim;
- Verified by its own independent review and evaluation of the amount of compensation sought; and
- Certified the claim in accordance with 00199.30(b) (Part 10).

(b) Claims Requirements - At any time during the progress of the Work, but not later than 15 Calendar Days following the date of the Second Notification, the Contractor shall submit to the Engineer in writing, claims for additional compensation or a combination of additional compensation and Contract Time additional to that specified in the Contract. For a claim not submitted within the 15 day limit, that has not met the requirements of 00199.20, or is not filed as provided in 00199.30, the Contractor waives any claim for additional compensation or for additional compensation and Contract Time, and the Agency may reject the claim.

Written claims to the Engineer or the Agency by the Contractor shall be delivered to the Agency address shown in the Special Provisions, unless a different address is agreed to by the Engineer, and shall be delivered:

- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested); or
- By overnight delivery service of a private industry courier.

Claims will be considered as having been received by the Agency:

- At the time of actual receipt or 7 Calendar Days after the postmarked date when deposited for delivery by first class or priority mail, whichever is earlier; or

- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier.

The Agency reserves the right at any time and at any step in the claim decision or review process to request additional information, records or documentation related to the claim or the Contract either directly or through agents working toward resolution of the disputed or claimed events and issues.

Claims shall be made in writing, and shall include all information, records and documentation necessary for the Agency to properly and completely evaluate the claim.

To be considered, claims for additional compensation, or for additional compensation and Contract Time, shall be completed according to 00199.30 and shall be submitted with the required information and in the format below and labeled as required below for each claimed issue:

(Part 1) Summary (label page 1.1 through page 1.X) - In the summary, include a detailed, factual statement of the claim for additional compensation and Contract Time, if any, with necessary dates and locations of Work involved in the claim and the dates of when the event arose. Also include detailed facts supporting the Contractor's position relative to the Engineer's decision (see 00199.20(f));

(Part 2) Proof of notice (label page 2.1 through page 2.X) - Submit a copy of the written notice, with all attachments, that was given to the Agency. Include the date when that written notice and the date when oral notice was given:

(Part 3) Copies of the Contract Specifications that support the Contractor's claim (label page 3.1 through page 3.X);

(Part 4) Theory of entitlement supporting the claim (label page 4.1 through page 4.X) - Include a narrative of how or why the specific Contract Specifications support the claim and a statement of the reasons why such Specifications support the claim;

(Part 5) Itemized list of claimed amounts (label page 5.1 through page 5.X) - Claimed damages that resulted from the event with a narrative of the theories and records and documents used to arrive at the value of the damages;

(Part 6) Additional Contract Time requests (label page 6.1 through page 6.X) - If the claim is for a combination of additional compensation and Contract Time, submit a copy of the schedule that was in effect when the event occurred and a detailed narrative which explains how the event impacted Contract Time. In addition, if an Agency-caused delay is claimed:

- Include the specific days and dates under claim;
- Provide detailed facts about the specific acts or omissions of the Agency that allegedly caused the delay, and the specific reasons why the resulting delay was unreasonable; and
- Provide a schedule evaluation that accurately describes the impacts of the claimed delay.

- Also see 00180.80 for additional requirements regarding claims for Contract Time and causes that are eligible and ineligible for consideration;

(Part 7) Copies of actual expense records (label page 7.1 through page 7.X) - Include documents that contain the detailed records and which support and total to the exact amount of additional compensation sought. Include the information and calculations necessary to

support that amount. That amount may be calculated on the basis of Section 00197, if applicable, or may be calculated using direct and indirect costs presented in the following categories:

- Direct Materials;
- Direct Equipment. The rate claimed for each piece of Equipment shall not exceed the actual cost. In the absence of actual Equipment costs, the Equipment rates shall not exceed 75 percent of those calculated under the provisions of 00197.20. For each piece of Equipment, the Contractor shall include a detailed description of the Equipment and attachments, specific days and dates of use or standby, and specific hours of use or standby;
- Direct labor;
- Job overhead;
- General and administrative overhead; and
- Other categories as specified by the Contractor or the Agency;

(Part 8) Supporting records and documents (label page 8.1 through page 8.X) - Include copies of, or excerpts from the following:

- Any documents that support the claim, such as manuals standard to the industry and used by the Contractor; and
- Any daily reports or diaries related to the event, photographs or media that help explain the issue or event (optional), or all other information the Contractor chooses to provide (optional);

(Part 9) Certification (label page 9.1 through 9.X) - A certified statement, signed by a person authorized to execute Change Orders, by the Contractor, subcontractor, Supplier, or Entity, originating the claim, as to the validity of facts and costs with the following certification:

Under penalty of law for perjury or falsification, the undersigned, (Name), (Title), (Company) certifies that this claim for additional compensation for Work on the Contract is a true statement of the actual costs incurred (in the amount of $_____, exclusive of interest) and is fully documented and supported under the Contract between the parties.

Signature: _____

Date: _____, *20*___

Subscribed and sworn before me this ____ *day of* _____, *20*___

_____

Notary Public

My commission expires _____.

(Part 10) Contractor evaluation of a lower tier claim (label page 10.1 through 10.X) - If the claim includes Work done or costs incurred by any subcontractors, Suppliers, or any Entity other than the Contractor, the following are required:

- Data required by the other Subsections of 00199.30(b);
- Copies of the Contractor's, subcontractor's, Supplier's and Entity's, at all tiers above the level of which the claim originates, separate evaluation of entitlement;

- Copies of the Contractor's, subcontractor's, Supplier's and Entity's, at all tiers above the level of which the claim originates, independent verification and evaluation of the amount of damages sought; and
- A person authorized to execute Change Orders on behalf of the Contractor, subcontractor, Supplier and Entity, at all tiers above the level of which the claim originates, must sign a statement with the following certification:

Under penalty of law for perjury or falsification, the undersigned, (Name) (Title), (Company) certifies that this claim originating from the subcontractor, Supplier or Entity (Company) for additional compensation for Work on the Contract is a reasonable statement, independently verified, of the costs incurred (in the amount of $_____, exclusive of interest) and is fully documented and supported under the Contract between the parties.

Signature: _____

Date: _____, *20*___

Subscribed and sworn before me this ____ *day of* _____, *20*__

_____

Notary Public

My commission expires _____.

If the Engineer determines that additional information, records or documentation is needed to allow proper evaluation of the claim submittal, the Engineer will request the information, records or documentation. The Contractor shall submit to the Engineer within 14 Calendar Days, or as otherwise agreed by the parties, the required additional information, records and documentation.

If the Engineer determines that the claim submittal with the additional information, records and documentation submitted is incomplete and not accepted as a claim, the Engineer will notify the Contractor in writing and the submittal will be rejected and will not be considered under 00199.40.

(c) Records Requirements - The Contractor shall comply with 00170.07.

(d) Compliance Required - Full compliance by the Contractor with the provisions of this Section is a condition precedent to the commencement of any lawsuit by the Contractor to enforce any claim.

00199.40 Claim Decision; Review; Exhaustion of Administrative Remedies - The Agency intends to resolve all claims at the lowest possible administrative level. The Engineer will also determine whether multiple claims should be advanced separately or together.

If the Engineer denies the claim for additional compensation or a combination of additional compensation and Contract Time, in full or in part, according to 00199.40(a), the Contractor may request review of the denial. The disputed claim for additional compensation or a combination of additional compensation and Contract Time may then be resolved, in full or in part, at any of the progressive steps of claim review procedure as specified in (b) through (c) of this Subsection.

If the Engineer has denied a claim, in full or in part, for Contract Time only according to 00180.80, or has denied a claim, in full or in part, for correction of final compensation according to 00195.95, those disputed claims may then be resolved, in full or in part, at either of the two progressive steps of claim review procedure as specified in (b) through (c) of this Subsection.

A person authorized by the Contractor to execute Change Orders on behalf of the Contractor must be present and attend all claim hearings. For all claims, all of the actions and review under each step of the review process shall occur before the review can be advanced to the next higher step.

If, at any step in the claim decision or review process, the Contractor fails to promptly submit requested information or documentation that the Agency deems necessary to analyze the claim, the Contractor is deemed to have waived its right to further review, and the claim will not be considered properly filed and preserved.

(a) Decision by the Engineer - The Engineer will, as soon as practicable, consider, investigate, and evaluate a Contractor's claim for additional compensation, or for a combination of additional compensation and Contract Time, if submitted as required by 00199.30.

Once the Engineer determines the Agency is in receipt of a properly submitted claim, the Engineer will arrange a meeting, within 21 Calendar Days or as otherwise agreed by the parties, with the Contractor in order to present the claim for formal review and discussion.

If the Engineer determines that the Contractor must furnish additional information, records or documentation to allow proper evaluation of the claim, the Engineer will schedule a second meeting, to be held within 14 Calendar Days or as otherwise agreed by the parties, at which the Contractor shall present the requested information, records and documentation.

The Engineer will provide a written decision to the Contractor within 30 Calendar Days of the last Engineer-level meeting.

If the Contractor does not accept the Engineer's decision, the Contractor may, within 10 Calendar Days of receipt of the written decision, request in writing that the Engineer arrange a review at Step 1 (see (b) below).

(b) Step 1: City Engineer Level Review - The Contractor shall request that the Engineer arrange a meeting with the City Engineer or the City Engineer's designee, as determined by the City Engineer, in order to present the denied or partially denied claim for formal review and discussion. The meeting will take place within 21 Calendar Days of the Agency's receipt of the request, or as otherwise agreed by the parties.

If the City Engineer (or designee) determines that the Contractor must furnish additional information, records or documentation to allow proper evaluation of the claim, the City Engineer (or designee) will schedule a second meeting, to be held within 14 Calendar Days, or as otherwise agreed by the parties, at which the Contractor shall present the requested information, records and documentation.

The City Engineer (or designee) will provide a written decision to the Contractor within 30 Calendar Days of the last meeting with the City Engineer (or designee).

The claim is subject to 00199.60, if not all of the records requested by the City Engineer (or designee) were furnished. If applicable, advancement of the claim is subject to the provisions of 00199.60 regarding waiver and dismissal of the claim or portions of the claim.

If the Contractor does not accept the decision, the Contractor may, within 180 Calendar Days from the date of receipt of the City Engineer (or designee) written decision or within 90 Calendar Days of the date of Second Notification, whichever is later, initiate Step 2 as set forth in subsection (c) below.

(c) Step 2: Arbitration and Litigation-The Contractor must follow each step in order, and exhaust all available administrative remedies before resort to arbitration and litigation. Litigation

of a claim that cannot be resolved in Step 1 shall be initiated by filing a complaint in the Circuit Court for the State of Oregon in the county where the Agency's main office is located that contains a stipulation to arbitration under ORS 36.410. The claim and all cross and counter-claims filed in response to the complaint shall be submitted to the Court Arbitration Program set forth in ORS 36.400 to 36.425, Chapter 13 of the Oregon Uniform Trial Court Rules and the Circuit Court supplemental local rules concerning arbitration. Either party may seek, and shall be entitled to, an order directing the other party to submit to arbitration as provided herein and to judgment for its costs, expenses and attorney fees in obtaining and enforcing the order.

~~In any litigation, the entire text of any order or permit issued by a governmental or regulatory authority, as well as any documents referenced or incorporated therein by reference, shall be admissible for the purpose of Contract interpretation.~~

~~The Contract shall not be construed against either party regardless of which party drafted it. Other than as modified by the Contract, the applicable rules of contract construction and evidence shall apply. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.~~

~~Any dispute between the Agency and the Contractor that arises from or relates to this Contract and that is not resolved under the provisions of Section 00199 shall be brought and conducted solely and exclusively within the Lane County Circuit Court; provided, however, if a dispute must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon, Eugene Division. In no event shall this Subsection be construed as a waiver by the City of Eugene on any form of defense or immunity, whether sovereign immunity, governmental immunity or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THE CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.~~

In no event shall this Subsection be construed as a waiver by the Agency or by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

(d) Payment of Costs, Expenses and Attorney's Fees – The prevailing party shall be entitled to an award for reasonable costs and expenses incurred after the initiation of Step 2, including costs and expenses incurred for arbitration, trial de novo and on appeal. Costs and Expenses shall include, but shall not be limited to, reasonable attorney fees and expenses, arbitrator fees and expenses, and costs of discovery.

As used in this subsection 00199.40(d), "prevailing party" for an arbitration award means (1) a Contractor who has received an arbitration award, exclusive of interest, costs and expenses, that is more than the dollar amount claimed by the Contractor in its Final Documentation of Claim under 00199.20(d) or (2) the Agency if there is no arbitration award to the Contractor or if the arbitration award to the Contractor, exclusive of interest, costs and expenses, is less than the dollar amount of the award in the Step 1 decision. For all other arbitration awards, there shall not be a "prevailing party."

The award of costs and expenses after trial de novo shall be made as provided for in ORS 36.425. The award of costs and expenses after appeal from a judgment entered after trial de novo shall be to the prevailing party designated as such by the appeals court.

The Contractor shall comply with 00170.00.

00199.50 Mediation - Notwithstanding the formal claims procedure specified above, the parties may enter into nonbinding mediation by mutual agreement at any time, in which case the parties may also agree to suspend the time requirements in Section 00199 pending the outcome of the mediation process. The rules, time and place for mediation, as well as selection of the mediator, shall be established by mutual agreement. Costs shall be divided equally between the Contractor and the Agency. Either party may terminate mediation at any time upon 5 Calendar Days notice to the other, after which the time requirements of Section 00199 shall be automatically reinstated and shall resume from the point at which the time requirements were suspended.

00199.60 Review of Determination Regarding Records - If not all of the records requested by the Agency under 00199.40(c) Step 2 were provided, then the Agency will determine:

- If the records are of the type described in 00170.07; and
- If the records have not been maintained or the records, or access to the records, has not been provided to the Agency as required by 00170.07 and this Section; and
- If the records are material and necessary for proper evaluation of part or all of the claim; and
- The portions of the claim for which the records are material and necessary for proper evaluation.

If the Agency makes the foregoing determinations, then subject to the review process described below, all portions of the claim for which the Agency determined the records are material and necessary for proper evaluation are immediately waived and irrevocably dismissed.

Even if the records have not been maintained or the records, or access to the records, have not been provided to the Agency in a given instance, the Agency may determine that sufficient records have been provided for the Agency to properly evaluate the claim in that instance. If the Agency makes this determination, the claim or portions of the claim will not be waived or dismissed under this provision.

If the Contractor does not accept the Agency written determination that the records are material and necessary for proper evaluation of part or all of the claim, and the portions of the claim for which the records are material and necessary, the Contractor may, within 14 Calendar Days of receipt of the Agency determination, request, in writing, a review of such determination by the City Engineer (or designee). If the Contractor does not request a review of the Agency determination, the Agency determination shall then become the Agency's final determination as of the expiration of the time limit to request review.

If the Contractor requests the review, the City Engineer (or designee) will schedule a review meeting within 14 Calendar Days, or as otherwise agreed by the parties, of when the City Engineer (or designee) receives the written review request. The Agency and the Contractor will each have an opportunity to explain their respective positions at the review meeting in a manner determined by the City Engineer (or designee).

Within 10 Calendar Days of the review meeting, the City Engineer (or designee) will issue a written proposed finding of whether the records not maintained or not provided to the Agency, or for which access was not provided to the Agency, are material and necessary for proper evaluation of part or all of the claim. If the City Engineer (or designee) makes that finding, then the City Engineer (or designee) will also make a proposed written finding as to what portions of the claim the records are material and necessary and, therefore, waived and irrevocably dismissed.

Even if the records have not been maintained or the records, or access to the records, have not been provided to the Agency in a given instance, the City Engineer (or designee) may determine that sufficient records have been provided for the Agency to properly evaluate the claim in that

instance. If the City Engineer (or designee) makes this determination, then the claim or portions of the claim will not be waived or dismissed under this provision.

The City Engineer's (or designee) findings will be submitted to the Contractor. The City Engineer's (or designee) findings are the Agency's final determination.

If the Agency's final determination is that the records are material and necessary for proper evaluation of part or all of the claim, then the claim or that portion of the claim for which the records are material and necessary is waived and irrevocably dismissed, unless the Contractor provides the records, or access to the records, to the Agency within 5 Calendar Days of the Agency's final determination. If the Contractor provides the records, or access to the records, within this time limit, the Agency will schedule a meeting with the Contractor within 14 Calendar Days or as otherwise agreed by the parties, to discuss the records.

The Agency's final determination that records are material and necessary for proper evaluation of part or all of the claim, and the Agency's final determination of the portions of the claim for which the records are material and necessary, shall be final and binding.

If the entire claim is waived and irrevocably dismissed pursuant to the Agency's final determination there will be no further decision by the Agency on the claim or further review of the claim under 00199.40 and the claim will not be eligible for mediation under 00199.50. If only portions of the claim are waived and irrevocably dismissed pursuant to the Agency's final determination, the Agency will provide a written decision to the Contractor regarding the remaining portions of the claim within 30 Calendar Days of the final Step 2 meeting, or the Agency's final determination regarding the records, whichever is later. There will be no further decision by the Agency on or further review under 00199.40 of the portions of the claim waived and irrevocably dismissed pursuant to Agency's final determination and those portions will not be eligible for mediation under 00199.50.

Pages 129-136 reserved for future updates.

A

Abbreviations 2
Acceptability of materials and work 34
Acceptance, final 41
Access to the work 33, 52, 92
Adjustment of contract time 92
Advances on materials 109
Agency-furnished materials 44
Agency-furnished sources 44
Allowances
  advance for materials on hand 109
  for materials left on hand 110
Altered quantities, compensation 113
Alternative materials, equipment, and methods 80
Approval of
  source of supply and material 42
  working drawings 35
Assignment of anti-trust rights 55
Assignment/delegation of contract 74
Authority
  inspector 31
  of the Engineer 31
  Project Manager 31
Authorized representative 31
Award and execution of contract 2

B

Beginning and end of contract time 90, 91
Bid
  booklet 13
  consideration 21
  irregular 18
  more than one 18
  opening and comparing 18
  rejection 18, 20
  revision or withdrawal 18
  submittal 18
Bid
  preparation 16
Bidder
  disqualification of 20
Bidding schedule, interpretation of quantities in 15
Bills
  force account 118
  payment by Contractor 58
Bonds
  execution of contract and 24
  performance and payment 23
Buy America requirements 43

C

Calendar day calculation 90
Cancellation of award 22
Certificate
  origin of steel material 49
  quality compliance 49
  test results 49
Changes in the work, Agency required 26
Changes to plans or character of work 105
Claims procedure 121
Claims, disagreements, and protests 119
Cleanup, final trimming and 29
Clear zone, definition 6
Commencement and performance of work 89
Compensation for changes to plans or character of work 105
Completion of work and liquidated damages 94
Compliance certificate, quality 49
Conflict of interest 67
Conformity with plans and specifications 35
Construction stakes, lines, and grades 32
Construction surveying and layout 32
Contents of bid booklet 13
Contract
  assignment/delegation of 74
  bonds, certificates, and registrations 23
  booklet 22
  commencement of work 25
  failure to execute 24
  purpose of 26
  subcontracting 75
  termination of 95
  time to complete work 89
Contract
  award of 21
  cancellation of award 22
Contract
  execution of 24
Contract
  notice to proceed 25
Contract
  responsibility for 74
Contract
  completion time 89
Contract payment
  final 111
  progress 106
  retainage 108
Contractor(s)
  claims procedure 121
  cooperation with other Contractors 38
  cooperation with utilities 37
  equipment restrictions 39
  furnished materials and sources 45
  insurance coverages 63

licences 54
minimum wage and overtime rates 60
protection of utilities 72
protest procedure 119
quality control 47
required payments by 58
responsibility for damages to property and facilities 69
responsibility for damages to work 67
responsibility for defective work 70
to provide vehicle weigh scales 99
Control of work 31
Coordination of specification and plans 32
Cost reduction proposals 27
Costs
fabrication inspection expense 51
of testing 47
payment for changes in material 102
samples of materials 34

D

Damages
liquidated, failure to complete on time 94
protection of utility, fire-control, and railroad property 72
responsibility for damages to property and facilities 69
responsibility for damages to work 67
Defective work 70
Definitions 5
Delay(s)
notice of 91
right-of-way and access 92
Delivery of bids 18
Differing site conditions 106
Disagreements 119
Discrepancies in plans and specifications 32
Disqualification of bidders 20
Drawings, plans, and working 35

E

Engineer, authority of the 31
Engineer's estimate 107
Environmental, pollution 27
Equipment
materials, and work force 78
rental rates 116
Equipment
use of publicly owned 29
Errors
in final quantities and amounts 112
in plans 32
Estimates
final 111
monthly 107
Execution of contract and bonds 24

Explosives, use of 73
Extension of contract time 92
Extra and force account work 114
Extra work 113, 114

F

Failure to complete work on time 94
Failure to execute contract and bonds 24
Failure to maintain work 40
Failure to provide schedule 89
Familiarity with laws, etc 52
Fees for fabrication inspection 51
Final
  acceptance 41
  estimate 111
  inspection 40
  payment 111
  trimming and cleanup 29
Force account 113, 114

G

General provisions
  examination of work site and solicitation documents 13
  measurement guidelines 97
  suspension of work 92
General provisions
  assignment/delegation of contract 74
Grades
  construction stakes and lines 32

H

Handling materials 50
Hauling equipment, load and speed restrictions 39
Health, safety, and sanitary provisions 60
Holidays, legal 62
Hours of labor and overtime rates 60

I

Incomplete bids 18
Increase or decrease in work or quantities 26
Increase or decrease of bid 18
Infringement of patents 55
Inspection
  fees 51
  final 40
Inspectors, authority and duties 31
Insurance
  certificate 66
  liability 63
  workmen's compensation 60
Insurance

workmen's compensation 66
Interest, conflict of 67
Interpretation of plans and specifications 26
Interpretation of quantities 15
Investigations of subsurface conditions 15
Irregular proposals 18

L

Labor
force account 117
nondiscrimination 60
wages on public works 60
work force 78
Land limitation and requirements, Agency-controlled 45
Laws
general 52
navigable waters 60
permits, licenses, and taxes 54
required payments by Contractor 58
safety, health, and sanitary provisions 60
trespass 73
Laws
industrial accident protection 60
Laws
wage rates for public works projects 60
Layout, construction stakes, lines, and grades 32
Legal holidays 62
Legal relations and responsibilities 52
Liability insurance 63
Licenses 54
Limitations of operations 80
Lines, grades, and construction stakes 32
Liquidated damages 95

M

Maintenance during suspension of work 92
Materials
acceptance guides 47
Agency furnished 44
buy Oregon 43
conformance and quality compliance documents 47
defective 70
notification of source 42
ordering, producing, and furnishing 42
ownership on Agency lands 45
quality control 47
source of 42
specifications and test methods reference 48
storage and handling 50
weighing 97
Materials
buy America 43
Materials

patented 55
Measurement of pay quantities 97
Monies due Contractor, assignment of 74

N

Navigable waters, protection 60
Nondiscrimination, labor 60
Notice of claims 121
Notice of completion 40
Notice of delay 91
Notice of protest 119
Notice to proceed 25
Notices, delivery of 34
Notification by Contractor of source of material 42

O

Omitted items, payment for 113
Opening and comparing bids 18
Operations, limitations of 80
Ordering, producing and furnishing materials 42
Orders by the Engineer 31
Overhead costs, adjustment of 118
Overruns in quantities 102
Overtime, hours and wages 60
Owner/operator data 61

P

Partial payments 106
Patents, copyrights, and trademarks 55
Payment
  Agency delays 106
  changes in material costs 102
  differing site conditions 106
  extra work 113
  final 111
  force account basis 114
  material on hand 110
  progress 106
  terminated contract 110
  unused material 110
  withholding 109
Payment
  changes of plans or character of work 105
Payment
  material on hand 109
Payment bond 23
Performance bond 23
Permits 54
Plans
  and working drawings 35
  examination of 13
Power and telephone lines, etc 37, 72

Preconstruction conference 89
Preparation of bid 16
Price adjustments 102, 106, 113
Processes, patented 55
Producing, ordering, and furnishing materials 42
Progress payments 106
Progress schedule 80
Project changes 26
Project manager's authority and duties 31
Project site restrictions 25
Property damage, responsibility for 69
Prosecution and progress 74
Protection
  and maintenance of work during construction 40
  and restoration of property 70
  explosives 73
  highway facilities, load and speed restrictions 39
  navigable waters 60
  stock 72
  stored materials 50
  work during suspension 92
Protest procedure 119
Protests 119
Public opening of bids 18
Public works, wages on 60
Publicly owned equipment, use of 29
Purpose of contract 26

Q

Qualifications of Contractor's personnel 78
Qualified products list 42
Quality of materials 47
Quantities of materials
  compensation for altered 102
  measurement guidelines 97
Quantities of materials
  interpretation in bid schedule 15

R

Rates for rented equipment 116
Records requirements 56
Rejected and unauthorized work, removal of 40
Rejected materials 47
Rejection of bids 18
Relief of responsibility 68
Removal, unacceptable and unauthorized work 40
Rental rates, equipment 116
Requirement of contract bond 23
Responsibilities, legal relations and 52
Responsibility for Agency-furnished materials 44
Responsibility for damage to work 67
Restoration of damaged property 69
Restrictions, Contractor's vehicles and equipment 39

Retainage 106
Return of bid guaranties 24
Right of Agency to do work 74
Right-of-way delays 92

S

Safeguarding excavations 72
Safety, health, and sanitary provisions 60
Samples and tests 47
Sanitary provisions 60
Scales
  Contractor to provide 99
  plant 101
Schedule and limitation of operations 80
Schedule, progress 80
Scope of payment 102
Scope of work 26
Shop drawings, requirements of 35
Site of work, examination of 13
Site, differing conditions 27
Source of materials
  limitations of Agency controlled 45
  mandatory 44
  notification 42
Source of materials
  prospective 42
Source of materials
  Agency-furnished 44
Source of materials
  Contractor-furnished 45
Special provisions, interpretation of 32
Specifications
  and plans, coordination of 32
Specifications
  examination of 13
Specifications
  interpretation of 32
Standard plans 32
Stockpiling by-products 45
Storage of materials 50
Streams, protecting 60
Subcontracting 75
Subletting of contract 75
Substitution of equipment and methods 79
Subsurface investigations 15
Survey control 32
Survey monuments 70
Surveying, construction 32
Suspension of work, maintenance during 92

T

Taxes 54
Termination of contract 95

Tests and samples of materials 47
Theft and vandalism 69
Thickness, of materials 26
Time
  adjustment of contract 92
  failure to complete 94
  to complete work 89
Trespass 73
Trimming, final 29
Truck weights 97
Typical sections 26

U

Unacceptable materials 40
Unauthorized work 40
Utilities, protection of 72

V

Value Engineering 27
Vandalism and theft 69
Variation in plan quantities 26
Variations of thickness 26
Vehicles, measuring and weighing quantities in 98

W

Wage rates 60
Warranties 70, 71
Warranty, maintenance 41
Waste, excess, and by-product materials 45
Weigh scales, Contractor to provide 99
Weigh sheets and slips 100
Weighing materials 97
Withdrawal of bids 18
Work
  beginning of 89
  changes to 26
  cleanup of 29
  control of 31
  done before contract approval 24
  examination of site 13
  extra 27
  failure to complete on time 94
  final acceptance 41
  final trimming and clean up 29
  force account, payment 114
  force account, payment 113
  limitations of 80
  payment for increased or decreased 102
  prosecution and progress 74
  protection during suspension 92
  removal of unauthorized or unacceptable 40
  responsibility for 67

right of Agency to do 74
schedule 80
scope of 26
start of 89
suspension of 92
termination of 95
Work
subcontracting 75
Work force, materials, and equipment 78
Worker's compensation 60
Working drawings, general 35
Working schedule 80