

**State of Washington  
Department of Enterprise Services  
Engineering & Architectural Services**

**Job Order Contract Manual  
2017-083 G Western Region Contract**



# TABLE OF CONTENTS

Contact Information

Introduction

## **Sections**

	<u>Page number</u>
I. Summary of the Job Order Contract (JOC) Process	1
II. Job Order Contractor Selection Process	2
A. Request for Proposal	
1. Contracting Process	
2. Scope of Job Order Contract Services	
3. Limitation	
B. Advertisement for Job Order Contracting Firm	
1. Proposal Requirements	
2. Selection Scoring Process	
3. Composite Coefficient Weighting Formula	
4. Example of Scoring Calculation	
C. Process for Evaluating JOC Phase I Proposals and Selecting Firms for Phase II	
D. Procedure for Publicly Announcing Interview Scores and Open Bids	
E. Selection Process Forms	
1. Letter of Invitation to Submit Bid and Interview-Phase II	
2. Phase I Proposal Score Sheet	
3. Interview Score Sheet	
4. Selection Analysis and Ranking	
5. Sample Scorecard Inclusion Plan	
III. Contract Documents	16
A. Instructions to Bidders	
1. Explanation to Prospective Bidders	
2. Preparation of Bids	
3. Bid Guarantee	
4. Acknowledgement of Addenda to Invitations to Bids	
5. JOC Coefficients, Standard and Non-Standard Hours	
6. Site Investigation and Conditions Affecting the Work	
7. Taxes	
8. Voluntary Minority and Women’s Business Enterprise (MWBE) Utilization	
9. Submission of Bids	
10. Bid Results	
11. Contract Award	
12. Partnering	
B. Job Order Contractor Bid Proposal	
1. Description	
2. Unit Price Book	
3. Schedule	
4. Bid Proposal	

C. Washington State General Conditions

D. Supplemental Conditions

- 1.01 Definitions of Job Order Contracting Terms
- 1.02 Order of Precedence
- 1.03 Execution and Intent
- 2.02 Coverage Limits, Insurance Certificates
- 2.04 Payment and Performance Bonds
- 2.06 Builders Risk
- 3.02 Construction Schedule
- 3.03 Owners Right to Suspend Work
- 3.07 Damages for Failure to Achieve Timely Completion
- 4.00 Specifications Drawings and Other Documents
- 4.005 NEW SECTION** Design Requirements and Design Documentation
- 4.01 Discrepancies and Contract Document Review
- 4.02 Project Record
- 4.03 Shop Drawings
- 4.04 Organization of Specifications
- 4.05 Ownership and Use of Drawings, Specifications and Other Documents
- 5.04 Prevailing Wages
- 6.02 Schedule of Values
- 6.03 Application for Payment
- 7.00 Changes
- 7.01 Changes in the Job Order Contract Work or Time
- 7.02 Equitable Adjustment Due to Fault or Negligence of Owner
- 7.03 Changes in the Contract Time
- 10.11.01 New Section Preparation and Authorization of a Work Order
- 10.11.02 Work Order Request
- 10.11.03 Work Order Proposal
- 10.11.04 Work Order
- 10.11.05 Work Order Checklist
- 10.11.06 Use of Unit Price Book
- 10.11.07 Coefficient

E. Special Conditions

- 1. Definition of the Work Order Project Costs
- 2. Definition of the JOC Fee
- 3. Contractor Staffing
- 4. JOC Quality Control
- 5. Washington State Sales Tax (WSST)
- 6. Submittal of Requested Information

F. Basic Contract (Sample)

IV. Diverse Business Inclusion Plan	16
V. Sample Forms	31
VI. Statewide Map	44

**Department Of Enterprise Services**  
**Facility Professional Services**  
**Engineering and Architectural Services**

**CONTACTS**

***Department of Enterprise Services (DES)***

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***DES Business Diversity Questions***

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***Office of Minority and Women's Business Enterprises (OMWBE)***

Lawrence Coleman, Assistant Director of Communications and External Relations	(360) 664-9759	<a href="mailto:lawrenceC@omwbe.wa.gov">lawrenceC@omwbe.wa.gov</a>
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For assistance with the directory of firms certified by the Washington State Office of Minority and Women's Business Enterprises at: <http://omwbe.wa.gov/directory-of-certified-firms/>

***Department of Veteran Affairs (DVA)***

Jennifer Montgomery, Communications Consultant	(360) 725-2169	<a href="mailto:jenniferm@dva.wa.gov">jenniferm@dva.wa.gov</a>
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For help with the Washington State Department of Veteran Affairs' Certified Veteran-Owned Businesses Registry at: <http://www.dva.wa.gov/BusinessRegistry/default.aspx>. For general inquiry please email: [webmaster@dva.wa.gov](mailto:webmaster@dva.wa.gov) or call 1-800-562-0132 option '1' if you have questions or need assistance with the registry.

## **INTRODUCTION**

Job Order Contracting (JOC) is a process that differs from traditional low bid construction contract award. A Contractor is selected based upon price, quality and responsibility criteria. Individual small projects are assigned as Work Orders. The Contractor is paid for the Work Order based upon a fixed percentage multiplier (Coefficient) and fixed prices based on an industry standard (RS-Means Price Manual) agreed to in the initial contract.

The Job Order Contracting process was established by the Legislature of the state of Washington, which was signed into law in 2003. Job Order Contracting (JOC) is defined by: RCW 39.10.430, RCW 39.10.440, RCW 39.10.450; RCW 39.10.460.

Definitions of Job Order Contract terms can be found in Section 1.01 of the Supplemental Conditions of the Contract

# SECTION I

## SUMMARY OF THE JOB ORDER CONTRACT (JOC) PROCESS

By utilization of the Job Order Contract (JOC) alternative public works contracting procedure, the Owner expects a collaborative, synergistic process of project development that combines the commitment, expertise and skills of the Owner and the Contractor to achieve the completion of the project in the best interest of the public. Job Order Contracting shall provide an effective means of reducing total lead-time and cost for public works' projects. The early involvement of the Job Order Contractor shall facilitate the management of the project scope of work, budget and schedule; reduce construction risks; and add value by: facilitating and maintaining continuous teamwork, productive communication, coordination, continuity and skill of project administration, and sharing of resources, scheduling and sequencing, cost estimating and control, etc.

In the JOC process, a Job Order Contractor is selected through an advertised multi-phased process which includes:

- Phase I Selection: Evaluation based upon a proposal of qualifications, and other factors (exclusive of price).
- Phase II Selection: Evaluation of best-qualified firm based on Phase I Selection, interview, and unit price multiplier. The unit price multiplier is a fixed coefficient to be multiplied by unit prices in **RS-Means**.

The successful Job Order Contractor agrees to provide a variety of services including, but not limited to: cost estimating, assessment of construction options, and scheduling while performing small construction and repair projects throughout the state. The Owner will enter into contract with the Contractor for a predetermined minimum level of work. The JOC contract amount is defined as the total of all Contractors' Work Order Estimates (RS-Means unit price and non-priced items included in the project scope), each multiplied by the RS-Means City Cost Index, multiplied by the Job Order Contractor's Bid Coefficient. Each Work Order cost must be within the Owner's budget. The Owner will establish that funds are available prior to submitting for construction estimate.

The Job Order Contractor shall be required to provide a **master** Payment and Performance bond, and a Certificate of Insurance. The project schedule is guaranteed and may be subject to a liquidated damages provision.

The initial JOC term is two (2) years, with an owner option of extending the contract for an additional year. All extensions must be priced as in the RFP and mutually agreed to by the Owner and the Job Order Contractor.

The maximum dollar amount for the JOC shall not exceed \$6,000,000.00 per contract year. A Work Order issued for a particular project may not exceed \$350,000.00.

At least ninety percent (90%) of the work contained in a job order contract must be subcontracted to entities other than the Job Order Contractor.

## **SECTION II**

### **JOB ORDER CONTRACT SELECTION PROCESS**

- A. Request for Proposal
- B. Advertisement for Job Order Contract Firm
- C. Process for Evaluating JOC Phase I Proposals and Selecting Firms for Phase II
- D. Procedure for Publicly Announcing Interview Scores and Opening Bids
- E. Selection Process Forms

## **A. REQUEST FOR PROPOSAL (RFP): SELECTION OF JOB ORDER CONTRACTOR**

The Washington State Department of Enterprise Services (DES) is accepting proposals from experienced Job Order related Contracting firms.

### **1. CONTRACTING PROCESS**

The selection process consists of an evaluation and selection of the most qualified firms based on proposals submitted in response to this RFP, presentation/interview, and bid. Firms will be evaluated on the basis of their proposal, presentation/interview, and fixed fee (coefficient multiplier). It is the intention of the state to enter into a western region JOC. The region shall include all area west of the North-South line through Roslyn, WA (Longitude 121°). This region shall be referred to as the Western Region.

The JOC is defined as the sum of the Job Order Contractor's estimate (unit price items RS-Means) for the cost of the work, multiplied by the RS-Means City Cost Index, multiplied by the Job Order Contractor's fixed fee (coefficient multiplier).

The Job Order Contractor firm shall provide **master** Payment and Performance bonds in the amount of four million dollars \$4,000,000.00. The Job Order Contractor shall provide the Owner a Payment and Performance Bond Rider to cover the total active work order cost amount should it exceed \$4,000,000.00. A Certificate of Insurance shall be provided to the Owner prior to the issuance of the first work order.

All provisions of this RFP will become part of the contract. The Job Order Contractor's written response to the RFP will also become a part of the contract. The state reserves the right to reject items in the response to the RFP.

The Job Order Contractor shall provide an owner approved **Inclusion Plan** that could equitably spread subcontracting opportunities and encourage the achievement of statewide voluntary goals for participation with Washington State certified Veteran-Owned Businesses, certified Minority-Owned Business Enterprises (MBE) and certified Women-Owned Business Enterprises (WBE), as described in the advertisement. The Job Order Contractor will also be evaluated on their past performance in the achievement of meeting diverse business participation goals such as those for Washington certified Veteran Businesses, MBE/WBE Businesses and Washington State Small Businesses.

### **2. SCOPE OF JOB ORDER CONTRACT (JOC) SERVICES**

The Department of Enterprise Services (DES) is seeking a Job Order Contractor firm to manage/coordinate the construction process as a member of a team with the Owner and other agencies. At a minimum, the Job Order Contractor firm shall be skilled in producing detailed drawings and specifications, developing schedules; preparing construction cost estimates, and understanding construction methods and techniques; sequencing of work; and coordinating and communicating the activities of the project team throughout the design and construction phases to all members of the team. In addition, the Job Order Contractor shall be familiar with regional labor, prevailing wage requirements and the subcontracting market, and be capable of working well with subcontractors.

The Job Order Contractor is required to clearly identify the staff resources required.

- During the interview, the Job Order Contractor shall identify all project staff, their roles and responsibilities, and the level of effort to be committed (Full time vs. Part time).
- During the Work Order submittal/estimating process, the Contractor shall provide at least one full time, professional project manager or higher level professional staff to attend all project meetings.
- During the construction phase, the Contractor shall provide full supervision to coordinate the job in the field, and provide for sufficient and appropriately skilled staff to implement a quality control program.

The Contractor shall provide full documentation to the Owner of all work, including, but not limited to: weekly meeting notes during construction, inspection reports, a comprehensive monthly summary report including status of all open work orders, punch-list reports as needed, as-built drawings and related items.

- During construction the Contractor will be required to submit, on a monthly basis, in a format acceptable to the state, a full cost-accounting report of the status of all expenses and individual budget items within the JOC for each Work Order.

For complete scope of services description see Section III of this manual.

### **3. LIMITATION**

The cost of submittals and any related expenses, including travel, shall be entirely the responsibility of the respondent. The state reserves the right to reject any and all proposals.

## **B. ADVERTISEMENT FOR JOB ORDER CONTRACTING FIRM**

DEPARTMENT OF ENTERPRISE SERVICES (DES)  
JOB ORDER CONTRACT

### **1. PROPOSAL REQUIREMENTS**

**STATE OF WASHINGTON**  
DEPARTMENT OF ENTERPRISE SERVICES  
FACILITY PROFESSIONAL SERVICES  
ENGINEERING & ARCHITECTURAL SERVICES

**Notice to Job Order Contract Firms**

**Project No. 2017-083 G**  
**Western Region Job Order Contract**

The Department of Enterprise Services (DES), Facility Professional Services, Engineering & Architectural Services (E&AS), invites Job Order Contract (JOC) related firms to submit proposals.

**The Minimum Committed Amount to be contracted with the JOC is \$50,000.00.**

**The Unit Price Book utilized is RS MEANS.**

**Voluntary Diverse Business goals are: 12% Minority Business Enterprises (MBE) and 8% Women Business Enterprises (WBE), 5% Veteran Business Enterprises, and 5% Washington Small Business Enterprises.**

NOTE: E&AS has made the determination that the use of Job Order Contracting will benefit the public by providing an effective means of reducing total lead-time and cost for public works projects or repair required at public facilities through the use of unit price books and work orders by eliminating time-consuming, costly aspects of traditional public works process.

### **SCOPE OF WORK**

One contract shall be awarded for small construction and repair projects within the western Washington. The region shall include all area west of the North-South line through Roslyn, WA (Longitude 121°). This region shall be referred to as the Western Region.

**A pre-submittal meeting will be held on Thursday, 27 October 2016 1:00 P.M. in the Department of Enterprise Services, 2<sup>nd</sup> floor Conference Room 2331, located at 1500 Jefferson Street SE, Olympia, Washington 98504.**

Firms desiring consideration shall submit five (5) copies of their proposals/submittals prior to **4:00 P.M., Thursday, 17 November 2016.** Submittals should include requested data that will assist the selection committee

in making its evaluation. Mail or deliver submittals to the attention of: **Marlene Anglemeyer**, Department of Enterprise Services, Engineering & Architectural Services, 1500 Jefferson Street SE, PO Box 41476, Olympia, Washington 98504, telephone (360) 407-8023.

Contractors may obtain the **JOC Manual** from the Department of Enterprise Services, Facility Professional Services, Engineering & Architectural Services, at the above address. To view the JOC Manual on the internet, go to the [DES Approved Plan Center List](#) to access this solicitation through the plan center of your choice.

## **2. SELECTION SCORING PROCESS**

The Job Order Contractor selection will consist of two (2) Phases.

Phase I will evaluate the firms' submittals according to the point weighting system specified below. The highest-ranked firms will be invited to attend the Phase II selection.

Phase II will include an interview/presentation, if available, by at least the top three (3) firms scored using the point weighting system specified below. Prior to the interviews, each Phase II firm shall submit sealed bids (coefficient multiplier). Bids will be opened after completion of all interviews.

**The selection of the successful firms will be based on the highest scores of adjusted points. The adjusted points are determined by dividing the total points from the Phase II interview by the bidder's Composite Coefficient (a weighted coefficient calculated by a formula, standard and non-standard work hours).**

### **Phase I Selection Points Weighting:** firms will be evaluated on:

- 1) Ability and qualifications of professional personnel** **20 points**  
Provide a company-wide organization chart and list of key personnel including their roles and responsibilities, for example; specification development. Provide a project organization chart showing proposed staffing for this contract. Include resumes of all individuals listed on the chart, specifically, your proposed corporate personnel directly assigned to the contract. Describe the JOC experience of personnel assigned to this project.
- 2) Contractor's past performance in Construction** **20 points**  
Provide a list of construction projects, descriptions, construction cost, and project schedules. Identify public works projects located throughout the state of Washington that had complex Owner management teams. State Hospital Districts may be utilizing DES for work orders within the state hospital districts pursuant to RCW 39.10.420 2)(a). The Department of Enterprise Services may issue job order contract work orders for Washington State Parks Department projects and public hospital districts. Proposers should include past experience with working in hospital environments and substantiate qualifications of personnel.
- 3) Ability to meet time and budget requirements** **10 points**  
Discuss your firm's experience and ability to meet the project timelines and budget requirements. Include current references (contact persons, titles, and telephone numbers).
- 4) Recent, current and projected workload of firm** **3 points**  
Provide a brief description of your firm's history, firm size, location of home and corporate offices, and your firm's capabilities to perform the requirements of this contract. Include annual volume, financial

position, and bonding capacity. Summarize recent, current, and projected workloads (include number, size, and average monthly volume) of your firm.

- 5) References showing prior experience** **10 points**  
Provide references with current telephone numbers of all Owners, Owners' Project Managers and Stakeholders with which you have worked as a Contractor within the past five years:
1. List projects that required continuous occupancy during major renovation
  2. Description of the project
  3. Scope of your firm's work on the project
  4. Location
  5. Owner, contact person, telephone number
  6. Final construction cost
  7. Total dollar amount of Change Orders
  8. Total number and dollar amount of all claims against the Owner
  9. Total number and dollar amount of all claims against the Owner adjudicated by litigation
  10. Experience in dealing with craft labor relations
- 6) Demonstrated bonding capacity of \$4,000,000.00** **2 points**  
Include a statement from your bonding agent stating commitment to bond this contract. List the company name, agents name, address, telephone, fax and email numbers of your bonding agency.
- 7) Accident Prevention Program** **2 points**  
Provide a copy of an accident prevention plan that would be similar to that to be developed for this JOC. Indicate your Labor and Industries safety experience number.
- 8) Construction Estimating and Scheduling Experience** **10 points**  
Describe your firm's experience in construction estimating and in construction scheduling. Describe key staff experience in each of these areas. Provide examples that were developed and utilized on prior jobs. Describe approach to working with the Owner and other stakeholders.
- 9) Concept of Proposal** **3 points**  
Describe how you will integrate construction estimating, project scheduling, quality assurance, etc. into the project. Describe your approach in working with the Owner and project stakeholders. Explain how you will assure that a successful team atmosphere will be nurtured. Discuss how you plan to provide services statewide.
- 10) Diverse Business Inclusion Plan** **20 points**
- 10.1 Policy Statement**
- a. Statement describing your firm's commitment to developing opportunities to grow small and diverse businesses participation via your firm's inclusion plan.
  - b. As part of the selection process, the Job Order Contractor is required to submit a comprehensive Inclusion Plan for Washington State certified Minority/Women-Owned Business, Washington State Small Business and Washington State certified Veteran-Owned Business recruitment that will aid in an equitable spread of subcontracting opportunities to these diverse subcontracting firms. In detail, describe how your diverse, small business & veteran business plan will equitably spread subcontracting opportunities these subcontracting firms. (See sample plan in Section IV of this manual).

## 10.2 Responsibility and Accountability

- a. Provide the Names and Title of individual(s) within your firm's organization who will have the authority and responsibility to implement, monitor and report to customer on your firm's inclusion plan progress. What are their roles? Provide the name(s) of the person who oversees this program.

Phase I Points for inclusion participation will be awarded commensurate with your commitment goal. For example, a commitment of an overall goal of 30% participation will yield the maximum number of points available for phase I of the scoring criteria, 20 points. Every percentage of anticipated participation will yield .667 points in Phase I of the scoring, for a maximum of twenty (20) points. Percentage of anticipated (overall) diverse goals divided by 1.5 will achieve number of points earned with committed goal.

### Example:

If a bidder anticipates thirteen (13%) overall goals, 8.67 points would be earned for phase I.  
 $13 \times .667 = 8.67$  points.

## Phase II Selection Points Weighting: firms will be evaluated on:

- 1) **Ability and qualifications of professional personnel** **20 points**  
Provide a company-wide organization chart and list of key personnel including their roles and responsibilities, for example; specification development. Provide a project organization chart showing proposed staffing for this contract. Include resumes of all individuals listed on the chart, specifically, your proposed corporate personnel directly assigned to the contract. Describe the JOC experience of personnel assigned to this project.
- 2) **Contractor's past performance in Construction** **20 points**  
Provide a list of construction projects, descriptions, construction cost, and project schedules. Identify public works projects located throughout the state of Washington that had complex Owner management teams. State Hospital Districts may be utilizing DES for work orders within the state hospital districts pursuant to RCW 39.10.420 2)(a). The Department of Enterprise Services may issue job order contract work orders for Washington State Parks Department projects and public hospital districts. Proposers should include past experience with working in hospital environments and substantiate qualifications of personnel.
- 3) **Ability to meet time and budget requirements** **10 points**  
Discuss your firm's experience and ability to meet the project timelines and budget requirements. Include current references (contact persons, titles, and telephone numbers).
- 4) **Recent, current and projected workload of firm** **5 points**  
Provide a brief description of your firm's history, firm size, location of home and corporate offices, and your firm's capabilities to perform the requirements of this contract. Include annual volume, financial position, and bonding capacity. Summarize recent, current, and projected workloads (include number, size, and average monthly volume) of your firm.
- 5) **Construction Estimating/Cost Control and Scheduling Experience** **10 points**  
Describe your firm's experience in construction estimating/cost control and in construction scheduling. Describe key staff experience in each of these areas. Provide examples that

were developed and utilized on prior jobs. Describe approach to working with the Owner and other stakeholders.

**6) Overall Concept of Proposal** **15 points**

Describe how you will integrate construction estimating, project scheduling, quality assurance, etc. into the project. Describe your approach in working with the Owner and project stakeholders. Explain how you will assure that a successful team atmosphere will be nurtured. Discuss how you plan to provide services regionally.

**7) Diverse Business Inclusion Plan** **20 points**

In detail, describe how your Plan has spread subcontracting opportunities to Washington Diverse, Small Business, Minority/Women-Owned Business, Veteran-Owned Businesses and subcontracting firms. (See sample plan in Section IV of this manual).

**3. COMPOSITE COEFFICIENT WEIGHTING FORMULA:**

For the purpose of evaluation only, a composite coefficient will be calculated from the coefficients bid for the standard and non-standard working hours.

Multiply Std/Non-Std Multiplier (1) Bid Coefficient (2) to get Calc Coef. (3)

Std/Non-std Coefficient	1 Std/Non-std Multiplier	2 Bid Coefficient	3 Calculated Adjusted Coef
Standard	.75	<i>a</i>	.75 <i>a</i>
Non-standard	.25	<i>b</i>	.25 <i>b</i>
			<b>.75<i>a</i>+.25<i>b</i></b>

**4. EXAMPLE OF SCORING CALCULATION:**

**Firm A**

Std/Non-std	1 Std/Non-std multiplier	2 Bid Coefficient	3 Calculated Adjusted Coef
Standard	.75	<b>0.90</b>	0.675
Non-standard	.25	<b>1.25</b>	0.313
			<b>0.988</b>

Phase II Interview Points = 475  
 Subtotal Points = 475

Adjusted Points (Subtotal/Composite Coef. from Col. 3...475/**0.988**) = **480.769**

**Firm B**

Std/Non-std	1 Std/Non-std multiplier	2 Bid Coefficient	3 Calculated Adjusted Coef
Standard	.75	<b>0.80</b>	0.600
Non-standard	.25	<b>1.20</b>	0.300
			<b>0.900</b>

Phase II Interview Points =  $\frac{472}{472}$

Adjusted Points (Subtotal/Composite Coef from Col 3...472/0.900) = **524.444**

**In this example, Firm B would be selected as the successful JOC firm since it has the higher adjusted point total.**

The state reserves the right to accept or reject any or all proposals and to waive informalities.

STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES  
FACILITY PROFESSIONAL SERVICES  
ENGINEERING & ARCHITECTURAL SERVICES

--- END OF JOC FIRM SELECTION ADVERTISEMENT ---

## **C. PROCESS FOR EVALUATING JOC PHASE I PROPOSALS AND SELECTING FIRMS FOR PHASE II**

### **1. PURPOSE**

The purpose of the selection process is to determine which firm is the best fit for this contract.

The selection process is broken into two phases:

Phase I - Determination of top qualified firms.

Phase II - Determination of the best-qualified firm through a combination of interviews/presentations scoring and bid coefficients.

### **2. PROCEDURE – PHASE I**

- a. For the panel to determine the most qualified Job Order Contracting firms, it first scores the proposals received in response to the newspaper advertisement. Each firm will receive points based on their proposals.
- b. The criteria on the Phase I score sheet used for scoring the firm's proposal reflects the specialized needs of the contract.
- c. Using a Phase I score sheet, each panel member individually reviews and scores the qualifications of the submitting firms.
- d. After tabulating the panel's scoring, the finalists and non-finalists are notified of the results. The Phase I scoring point totals are released after the Contract Award.
- e. A firm shall be disqualified if it cannot demonstrate all of the following:
  - (1) Possession of a Washington State Contractor's License
  - (2) Ability to provide required bond with AM Best Rated Companies A+ or better
  - (3) Ability to provide required insurance

### **3. PROCEDURE – PHASE II**

- a. The firms determined to be the most highly qualified will be invited to participate in the second phase of the process. The finalists will be invited to a presentation/interview, and a bid for coefficients will be requested.
- b. The Job Order Contractor candidates shall be notified of the day and time set for the bid submittal and presentation/interviews.
- c. Following the presentation/interview, the panel will score the firm based on the presentation/interview. The format for the Phase II presentation/interview shall be as described in the Letter of Invitation.
- d. The rank of the firms will be determined by taking the total points scored in the Phase II presentation/interview and dividing the total score by the firm's composite bid coefficient. The firm with the highest adjusted points will be the highest ranked firm.
- e. If there is a tie for any rank, the panel members will reconvene for continued deliberations until the tie is broken.

### **D. PROCEDURE FOR PUBLICLY ANNOUNCING INTERVIEW SCORES AND OPENING BIDS**

1. Interview scores are announced
2. Sealed bids are opened, read, and recorded
3. Phase II scores and bid coefficients are tabulated
4. Highest scored firm is announced

### **E. SELECTION PROCESS FORMS** (samples on subsequent pages)

1. Letter of invitation to bid and interview
2. Proposal score sheet
3. Interview score sheet
4. Selection Analysis / Rank Order
5. Scorecard MWBE (see sample Inclusion Plan)

# 1. LETTER OF INVITATION TO SUBMIT BID AND INTERVIEW – PHASE II (SAMPLE)

Date

Company  
Address  
City, State Zip

RE: Project No. 2017-083G Job Order Contract  
Department of Enterprise Services  
Facility Professional Services  
Engineering and Architectural Services  
1500 Jefferson Street SE  
P.O. Box 41476  
Olympia, Washington 98504-1476

Dear: **Name:**

I am pleased to inform you that your firm has been selected for further consideration to provide Job Order Contracting Services for the above referenced project. Please submit your Coefficient Bids and Bid Bond on *(date/time)*. Your presentation/interview has been scheduled for *(time, day, date, location)*. The presentation/interview period is scheduled for sixty (60) minutes. Please be prepared to give a not-to-exceed 30-minute presentation followed by a not-to-exceed 30-minute question and answer period.

Person(s) with whom the Owner will be working most closely for the duration of the project should be at the presentation/interview.

Should you have any further questions regarding the interview process, please call me at (360) 407-8023.

Thank you.

Sincerely,

Marlene Anglemyer  
JOC Program Coordinator

ma

Enclosures

**2. PROPOSAL SCORE SHEET (SAMPLE)**

STATE OF WASHINGTON  
 DEPARTMENT OF ENTERPRISE SERVICES  
 ENGINEERING AND ARCHITECTURAL SERVICES

**JOC SELECTION PHASE I SCORE SHEET  
 FIRM PROPOSAL**

**This Score sheet Becomes Public Record**

<b>Project Description:</b> Western Region Job Order Contract Services	
<b>Date of Evaluation</b>	<b>Project Number</b> 2017-083 G
<b>Name of Committee Member</b> (Please Print) <i>SAMPLE SCORESHEET</i>	

Firm Name	Qualification Of Professional Staff	Contractor Past Performance	Time & Budget Requirement	Recent, Current & Projected Workload	References showing prior experience	Bonding Capacity	Safety Plan	Experience Scheduling And Estimating	Concept	Inclusion Plan	Subtotal Proposal Points
	(20)	(20)	(10)	(3)	(10)	(2)	(2)	(10)	(3)	(20)	(100)

\_\_\_\_\_  
 Committee Member's Signature (sign in INK to be valid)      Date

**3. INTERVIEW SCORE SHEET (SAMPLE)**

STATE OF WASHINGTON  
 DEPARTMENT OF ENTERPRISE SERVICES  
 ENGINEERING AND ARCHITECTURAL SERVICES

**JOC SELECTION PHASE II SCORE SHEET  
 FIRM PRESENTATION/INTERVIEW**

<b>Project Description:</b> Western Region Job Order Contract Services	
<b>Date of Evaluation</b>	<b>Project Number</b> 2017-083 G
<b>Name of Committee Member</b> (Please Print) <i>SAMPLE SCORESHEET</i>	

**This Score sheet Becomes Public Record**

Firm Name	Qualification Of Professional Staff	Contractor Past Performance	Time & Budget Requirement	Recent, Current & Projected Workload	Experience Scheduling And Estimating/Cost Control	Overall Concept	Inclusion Plan	Subtotal Proposal Points
	(20)	(20)	(10)	(5)	(10)	(15)	(20)	(100)

\_\_\_\_\_  
 Committee Member's Signature (sign in INK to be valid)                      Date

4. SELECTION ANALYSIS/RANK ORDER (SAMPLE)

**STATE OF WASHINGTON**  
DEPARTMENT OF ENTERPRISE SERVICES

JOC SELECTION ANALYSIS/RANK ORDER

JOB NO.  2017-083G	DATE
--------------------------	------

DESCRIPTION AND SCOPE OF WORK <b>Western Region Job Order Contract</b>	LOCATION <b>Olympia, Washington</b>
---	--

SELECTION GROUP
-----------------

SELECTION CRITERIA See Score Sheets
--

Firm Name	Phase I Points	Phase II Points	Bid Coefficient	Adjusted Points/Bid	Rank

RANK	NAME OF FIRM
1	
2	
3	

DATE OF COMMITTEE ADOPTION	COMMITTEE VOTE
----------------------------	----------------

JOC CONTACTED	FINAL SELECTION
---------------	-----------------

(1)	<b>SELECTION COMMITTEE APPROVAL</b>
-----	-------------------------------------

(2)	CHAIRPERSON (1)
-----	-----------------

(3)	(2)
-----	-----

(4)	(3)
-----	-----

(5)	(4)
-----	-----

(6)	(5)
-----	-----

BY	DATE
----	------

COMMENTS
----------

## **SECTION III**

### **CONTRACT DOCUMENTS**

- A. Instructions to Job Order Contract Bidders
- B. JOC Contract Bid Proposal: Description, Unit Price Book, Schedule and Bid Proposal
- C. Washington State General Conditions
- D. Supplemental Conditions
- E. Special Conditions
- F. Basic Contract (Sample)

## A. INSTRUCTIONS TO JOB ORDER CONTRACT BIDDERS

### 1. EXPLANATION TO PROSPECTIVE BIDDERS

Any prospective bidder desiring an explanation or interpretation of the solicitation, manual, etc., must make a request in writing to the E&AS JOC Project Coordinator no later than seven (7) days before the bid due date. Oral explanations or instructions given before the award of a contract will not be binding. Any information given to a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an addendum to the solicitation, if the information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

### 2. PREPARATION OF PHASE I PROPOSALS AND PHASE II BIDS

The Phase I Proposal and Phase II Bid incorporates the RFP (including the Contract Documents), the bidder's written proposal to the RFP, and the Coefficients bid, which are as fully a part of this package as if attached to this package or repeated herein.

The Job Order Contractor proposer shall submit the following:

**Phase I:** Written response to the RFP. Indicate proposer's qualifications as outlined in the Phase I Selection Points Weighting under the Selection Scoring Process shown in the ADVERTISEMENT FOR JOB ORDER CONTRACTING FIRM.

**Phase II:** Coefficients Bid (using the included Bid Proposal form): There should be two bid coefficients: (1) Standard, normal working hours' coefficient (2) Non-standard working hours' coefficient. These Coefficients are to be bid by the Contractor as the factors that will be used to multiply the price for each priced item obtained from the specified Unit Price Book. A City Cost Index from the Unit Price book will also multiply the price for each priced item, thus the Index should not be included in the Coefficients. The coefficient, when multiplied by a priced item unit price from the Unit Price Book, quantity, and city cost index, will represent the total compensation to the Contractor for that item, including any apportionment to the individual item of any administrative, work order proposal preparation effort, and other indirect costs, and increase or decrease in overhead and profit desired by the Contractor for a Work Order relative to that listed in the Unit Price Book.

No other entries, modifications, or qualifications to the bid shall be made. Failure to comply in full with these requirements shall be grounds for a bid being declared non-responsive.

The bidder shall complete all other required information on the bid proposal form, including signature in ink by an authorized official of the firm. Failure to complete the bid proposal form in full may result in a bid being declared non-responsive. The proposal form shall be submitted in a sealed envelope and delivered to: The Department of Enterprise Services, Facility Professional Services Division, Engineering and Architectural Services, Attn: **Marlene Anglemeyer**, 1500 Jefferson Street, Post Office Box 41476, Olympia, WA 98504. The Coefficients bid must be received in accordance with the advertisement prior to the time of the scheduled interview.

### 3. BID GUARANTEE

**A. If the bidder fails to furnish a bid guarantee in an amount equal to five percent (5%) of \$50,000 by the time set for receiving the Phase II bid, the bid will be determined non responsive.**

- B. The bidder shall furnish a bid guarantee in the form of a firm commitment, such as a bid bond, postal money order, certified check, or cashier's check, payable to the Washington State Treasurer. The Owner will return bid guarantees other than bid bond (the bid bond becomes the property of the Owner).
- C. The bidder will allow the Owner 60 days for acceptance of its bid. The bidder will submit executed contract, and Certificate of Insurance within fifteen (15) days after receipt of the contract forms from the Owner.

If the apparent successful bidder fails to execute all contractual documents or provide insurance as required by the solicitation within the time specified. The Owner may terminate the award of the contract.

4. ACKNOWLEDGMENT OF ADDENDA TO INVITATIONS FOR BIDS

Bidder shall acknowledge receipt of any addenda to this solicitation by identifying the addenda numbers and dates in the space provided for this purpose on the bid form. Failure to acknowledge addenda may result in the bid being declared non-responsive.

5. JOC COEFFICIENTS, STANDARD and NON-STANDARD HOURS

The Bidder shall submit two coefficients: the Standard Coefficient for Work that is conducted during normal working hours (7:00AM to 5:00PM, Monday through Friday) and the Non-standard for Work that occurs during other than normal working hours (5:00PM to 7:00AM, Monday through Friday, and weekends and holidays). For the purposes of evaluation, the Owner anticipates that 75% of the Work will occur during normal working hours and 25% will occur during non-standard hours. This distribution is presented for informational use only and is NOT a commitment of work.

6. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

The JOC acknowledges that, for each individual Work Request, it must take steps necessary to ascertain the nature and location of the work, and that it must investigate and satisfy itself as to the general and local conditions which can affect the work or its cost, including but not limited to:

- a. Conditions bearing upon transportation, disposal, handling and storage of materials;
- b. The availability of labor, water, electric power and road;
- c. Uncertainties of weather, river stages, tides or similar physical conditions at the site;
- d. The conformation and conditions of the grounds;
- e. The character of equipment and facilities needed preliminary to and during the work.

The Job Order Contractor also acknowledges that, for each individual Work Request, it must satisfy itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from a visual inspection of the site, unless other information is provided by the Owner upon which the Contractor may rely. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work.

## 7. TAXES

### A. Washington State Sales Tax (WSST)

The Contractor shall indicate the amount of Washington State Sales Tax (WSST) and all other taxes imposed by law on each Work Order Proposal and any associated Change Orders. The Owner will include WSST in progress payments. The Contractor shall pay the WSST to the Department of Revenue and shall furnish proof of payment to the Owner upon request.

### B. Business and Occupation Tax (B&O)

The Contractor shall include Washington State B&O Tax as part of their coefficient and NOT include it directly in any Work Order or associated Change Order.

## 8. WASHINGTON STATE DIVERSE BUSINESS GOALS

The state diverse business goals are: 12% Washington State Certified Minority-Owned Businesses; 8% Washington State Certified Women-Owned Businesses; 5% Washington State Certified Veteran-Owned Businesses; and 5% Washington State Law Defined Small Businesses ([RCW 39.26.010 \(21\)](#)).

In accordance with the legislative findings and policies the State of Washington encourages participation in all of its contracts by MWBE firms certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE), Veteran firms certified by the Washington State Department of Veterans' Affairs (DVA), and Washington State Law Defined Small Businesses: [EXECUTIVE ORDER 13-01 VETERANS TRANSITION SUPPORT](#); [RCW.39.19](#), [RCW 43.19.725](#), [RCW 39.26.005](#), and [RCW 39.26.010](#). Participation may be either on a direct basis in response to this invitation or as a subcontractor to the successful bidder.

The Job Order Contractors' past performance in achieving diverse business goals will be evaluated and weighted in Phase I of the selection process. (See Section IV for sample scorecard used in evaluation of proposed plans).

Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

Pursuant to [RCW 39.10.450\(5\)](#), awarded JOC contracts must submit, in writing, to DES and OMWBE, their plan to equitably spread subcontracting opportunities to certified Minority and Women-Owned Businesses to the extent permitted by state law. Work Orders cannot be performed without a letter from DES/OMWBE approving the JOC plan.

The state of Washington encourages participation in all of its contracts by Veteran-owned businesses (defined in RCW 43.60.010) and located at <http://www.dva.wa.gov/program/certified-veteran-and-servicemember-owned-businesses> and Small, Mini and Micro businesses (defined in RCW 39.26.010) which have registered in WEBS at <https://fortress.wa.gov/ga/webs/>.

- A. In order to report payment detail, the Contractor must create an account with the DES Diversity Compliance program (B2Gnow) or verify if an account has already been created on behalf of the Contractor: <https://des.diversitycompliance.com>. B2Gnow is designed to streamline and automate

compliance reporting requirements, empowering vendors to maintain accurate contact information and submit contract payment details online.

- B. For account login or account creation details, please refer to the Quick Reference Guides located on pages 4 - 6 or go to B2Gnow home page by clicking on the URL listed above and clicking on the “Help/First Time Users” link.
- C. Every month for the duration of your contract, submit the following payment information through B2Gnow:
  - 1. Payments received by the prime contractor from the Agency
  - 2. Payments paid to each subcontractor, including lower tier subcontractors
  - 3. Payments paid to each supplier

#### 9. SUBMISSION OF COEFFICIENTS BID

- A. Proposals must be submitted prior to the time shown on the Bid Proposal form in a sealed envelope, clearly marked with the project name, project number and the bidder’s name and address.
- B. Any modification to the proposal’s Coefficients shall be submitted in sealed envelopes on or before the time shown, and shall be addressed to the office specified in the solicitation, and shall include:
  - 1. The time specified for receipt
  - 2. The contract number and description
  - 3. The name and address of the bidder
- C. The only acceptable evidence to establish the time of receipt at the office designated in the solicitation is the time/date stamped or hand printed by the Owner's representative on the bid wrapper or other documentary evidence of receipt maintained by the Owner. Any bid or modification of a bid, received after the times specified will not be considered.
- D. All bids will be formally opened promptly following the completion and scoring of all the presentation/interviews.
- E. A bid may be withdrawn by a bidder's authorized representative before interviews begin.

#### 10. BID RESULTS

After the Bid Opening, Bidders may obtain bid results by calling (360) 407-8023.

#### 11. CONTRACT AWARD

The selection of the successful Job Order Contractor firm will be based on the highest number of Adjusted Points. Adjusted Points are determined by dividing the total number of points awarded by the panel during the Phase II presentation/interviews by the Composite Coefficient.

The Contract will only become effective when signed by the Owner. Prior to the Owner’s signature, any and all costs incurred shall be the sole responsibility of the bidder.

- A. The Job Order Contract (JOC) includes:

- B. The Contract Documents included in the RFP
- C. The Job Order Contractor’s Coefficients bid (regular/non-regular work). See Supplemental Conditions, Paragraph D1, for further definition of the Coefficient
- D. Owner Minimum Committed Amount = \$ 50,000
- E. Yearly Not to exceed Contract = \$ 6,000,000
- Not to exceed Contract over the first two years = \$ 12,000,000
- If extended one year, not to exceed Contract over three years= \$ 18,000,000

12. PARTNERING

A “Partnering” process between the Owner and Job Order Contractor will be required throughout the project. It is anticipated that the principals of the Contractor and the Owner may choose the form of partnering to be used during the project. The intent of partnering is to provide training for the Owner’s and the Contractor’s staffs, to develop mutually acceptable methods, procedures and forms, to encourage productive communication, improve the level of mutual trust, respect, and cooperation, and to expedite issue resolution.

## **B. JOC CONTRACT BID PROPOSAL: DESCRIPTION, UNIT PRICE BOOK, SCHEDULE AND BID PROPOSAL**

### **1. DESCRIPTION**

The JOC is for small construction and repair projects in the state of Washington, as follows:

1.1 Type of Work: Repair, remodeling, and new construction of public buildings and their associated parking lots, walkways, landscape features, and other site improvements. Work will include, but not be limited to, any or all of the following: Coordination with Owners regarding job and design requirements, preparation, or coordination with Owner regarding design and specification information; estimating, scheduling, and schedule coordination with Owner and other involved or affected parties; material acquisition; staffing or subcontracting, supervising and managing construction tasks; job status reporting to Owner; record keeping, quality control and coordination of inspections, and other administrative and performance requirements identified in this RFP and General Conditions.

1.2 Size of Jobs: It is the intention of the Owner to use the Contractor to perform the type of work described on primarily small, non-associated jobs. It is expected that the average job will be less than \$100,000. This expected average is presented for information only and is not a commitment. There is a \$50,000 Minimum Committed Amount established for this Contract. Maximum limits are as follows: The maximum total dollar amount that may be awarded shall not exceed \$6 million in the first year of the contract, \$12 million over the first two years of the contract; and, if extended for one additional year, \$18 million over the three years of the contract. A Work Order to be issued for a particular project shall not exceed \$350,000. All Work Orders for the same project shall be treated as a single work order for the purpose of the \$350,000 limit.

1.3 Location of Jobs: This JOC will include Work Orders located statewide.

### **2. UNIT PRICE BOOK**

2.1 The Unit Price Book to be used for establishing Job Order pricing is the 2016 Edition of RS Means, all volumes. The volumes should be used in the following order of precedence: (1) "Facilities Construction Cost Data"; if an item is not contained in this volume, use (2) All other RS Means volumes except Building Construction Cost Data; if the item is not included in these other volumes, use (3) Building Construction Cost Data.

2.2 The "*Assemblies*" volume can be used in lieu of using groups of individual listings in other volumes if agreed in advance by the Owner.

2.3 Use of Unit Price Book: The unit price for each item to be used from the Unit Price Book is the "Bare Costs Total" column. **Division 1, Items in 01-11, 01-21-16, and 01-31 should not be included on a Priced Item List in a Work Order Proposal;** The Coefficient bid should be used to achieve compensation for these items to the extent the Bidder proposes an increase or

decrease in the amounts in the Overhead and Profit column. The price (unit price x quantity x city cost index x Coefficient) is the total amount to be paid to the Contractor for the item for self-performed items or subcontractor-performed items.

2.4 When edition 2017 or subsequent issues of the volumes are issued; those volumes shall be used in pricing unit price items. The contracted Coefficients will not be changed due to new issue.

2.5 Non-priced items (specific line items not found in the Unit Price Book) shall be negotiated using labor rates and materials local to the Project. Owner may request up to 3 bids from sources acceptable to Owner; coefficients will be negotiated to reflect reasonable markups and incidental expenses attendant to the type, number, and value of each item. If no agreement can be reached, the bid coefficients will apply.

### **3. SCHEDULE**

The Job Order Contractor shall coordinate with the Owner to establish an acceptable schedule for the Work under each Work Order and shall be required to adhere strictly to this schedule. The Owner retains the option to establish Liquidated Damages for any Work Order.

**4. BID PROPOSAL**

STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES  
1500 Jefferson Street SE  
Post Office Box 41476  
Olympia, Washington 98504-1476  
  
PRICE (COEFFICIENT) PROPOSAL

**Thursday, November 17, 2016**

Western WA Job Order Contract (JOC) Services  
For  
Project Number 2017-083 G  
Department of Enterprise Services  
Facility Professional Services  
Engineering and Architectural Services  
1500 Jefferson Street, PO Box 41476, Olympia, Washington 98504-1476

The undersigned, having read all the requirements of this solicitation for bids, together with the RFP, agree to furnish all labor, materials, and construction management specified herein necessary to complete the work as follows:

- (A) First Year not-to-exceed Contract = \$ 6,000,000
- (B) Not-to-exceed Contract over the first two years = \$ 12,000,000
- (C) If extended one year, not-to-exceed Contract over three years = \$ 18,000,000
- (D) Minimum Committed Contract Amount = \$ 50,000

**(E) Enter Coefficients to be applied to Unit Cost Manual in the boxes below:**

- a. **Standard Coefficient** (normal, standard working hours)=
- b. **Non-Standard Coefficient** (non-standard working hours)=

PERIOD OF PERFORMANCE

Subject to other provisions, the period of performance of this contract shall commence upon the written approval of the state’s contracting officer and shall be completed twenty-four months thereafter, unless modified and approved by both parties.

LIQUIDATED DAMAGES

The Contractor shall coordinate with the Owner to develop an acceptable schedule for the Work under each Work Order and shall be required to adhere strictly to the performance schedule

established in each Work Order. The Owner retains the option to establish Liquidated Damages for any Work Order.

ADDENDUM RECEIPT

**Receipt of the following addenda to this bid solicitation is acknowledged:**

Addendum No. \_\_\_\_\_ Addendum No. \_\_\_\_\_  
Addendum No. \_\_\_\_\_ Addendum No. \_\_\_\_\_

NOTIFICATION

If the bidder is notified by telephone or facsimile communication on the date that bids are received, the bidder agrees to be available for contract negotiations in Olympia, Washington on the following day.

The undersigned hereby designates (*enter your company's street address, telephone and fax number and name of official contact person.*) \_\_\_\_\_  
\_\_\_\_\_ as the firm's office, to which such notice of acceptance shall be phoned, delivered, or communicated by facsimile transmission.

***This bid may be withdrawn at any time prior to the scheduled time for the opening of bids, or any authorized postponement thereof. The State reserves the right to reject any and all bids.***

In compliance with WAC 296-127, the Contractor shall pay all fees with each Statement of Intent and/or Affidavit of Wages Paid to the Department of Labor & Industries.

Firm Name \_\_\_\_\_

Signed by \_\_\_\_\_

Official Capacity \_\_\_\_\_

Address \_\_\_\_\_

City/State \_\_\_\_\_

Date \_\_\_\_\_ Telephone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail Address \_\_\_\_\_

State of Washington Contractor's License Number \_\_\_\_\_

Federal Tax Identification Number \_\_\_\_\_

Uniform Business Identifier (UBI) Number \_\_\_\_\_

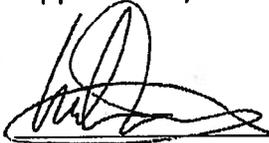
**Instructions to Bidders – July 2016**  
**General Conditions – July 2010**  
**Supplemental Conditions – July 2016**

For State Facility Construction

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Effective: July 1, 2016

Approved by:



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William J. Frare, Assistant Director  
Engineering and Architectural Services



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Dawn Cortez, Assistant Attorney General  
Washington State Office of the Attorney General



Facilities Division, Engineering and Architectural Services  
P.O. Box 41476  
Olympia, Washington 98504-1476  
360.902.7272

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

<u>Section</u>	<u>Description</u>	<u>Page</u>
<b>PART 1 – GENERAL PROVISIONS</b>		
1.01	Definitions.....	3
1.02	Order of Precedence.....	4
1.03	Execution and Intent.....	5
<b>PART 2 – INSURANCE AND BONDS</b>		
2.01	Contractor’s Liability Insurance.....	5
2.02	Coverage Limits.....	6
2.03	Insurance Coverage Certificates.....	6
2.04	Payment and Performance Bonds.....	6
2.05	Alternative Surety.....	7
2.06	Builder’s Risk.....	7
<b>PART 3 – TIME AND SCHEDULE</b>		
3.01	Progress and Completion.....	7
3.02	Construction Schedule.....	7
3.03	Owner’s Right to Suspend the Work for Convenience.....	8
3.04	Owner’s Right to Stop the Work for Cause.....	9
3.05	Delay.....	9
3.06	Notice to Owner of Labor Disputes.....	10
3.07	Damages for Failure to Achieve Timely Completion.....	10
<b>PART 4 – SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS</b>		
4.01	Discrepancies and Contract Document Review.....	11
4.02	Project Record.....	11
4.03	Shop Drawings.....	12
4.04	Organization of Specifications.....	13
4.05	Ownership and Use of Drawings, Specifications & other Documents.....	13
<b>PART 5 – PERFORMANCE</b>		
5.01	Contractor Control and Supervision.....	13
5.02	Permits, Fees and Notices.....	14
5.03	Patents and Royalties.....	14
5.04	Prevailing Wages.....	15
5.05	Hours of Labor.....	15
5.06	Nondiscrimination.....	16
5.07	Safety Precautions.....	16
5.08	Operations, Material Handling, and Storage Areas.....	18
5.09	Prior Notice of Excavation.....	19
5.10	Unforeseen Physical Conditions.....	19
5.11	Protection of Existing Structures, Equipment, Vegetation, Utilities, & Improvements.....	19
5.12	Layout of Work.....	19
5.13	Material and Equipment.....	20
5.14	Availability and Use of Utility Services.....	20
5.15	Tests and Inspections.....	20
5.16	Correction of Nonconforming Work.....	21
5.17	Clean Up.....	22
5.18	Access to Work.....	22
5.19	Other Contracts.....	23
5.20	Subcontractors and Suppliers.....	23
5.21	Warranty of Construction.....	24

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

5.22	Indemnification.....	25
------	----------------------	----

**PART 6 – PAYMENTS AND COMPLETION**

6.01	Contract Sum.....	25
6.02	Schedule of Values.....	25
6.03	Application for Payment.....	25
6.04	Progress Payments.....	26
6.05	Payments Withheld.....	27
6.06	Retainage and Bond Claim Rights.....	27
6.07	Substantial Completion.....	27
6.08	Prior Occupancy.....	28
6.09	Final Completion, Acceptance, and Payment.....	28

**PART 7 – CHANGES**

7.01	Change in the Work.....	28
7.02	Change in the Contract Sum.....	30
7.03	Change in the Contract Time.....	36

**PART 8 – CLAIMS AND DISPUTE RESOLUTION**

8.01	Claims Procedure.....	38
8.02	Arbitration.....	39
8.03	Claims Audits.....	40

**PART 9 – TERMINATION OF THE WORK**

9.01	Termination by Owner for Cause.....	41
9.02	Termination by Owner for Convenience.....	42

**PART 10 – MISCELLANEOUS PROVISIONS**

10.01	Governing Law.....	43
10.02	Successors and Assigns.....	43
10.03	Meaning of Words.....	43
10.04	Rights and Remedies.....	44
10.05	Contractor Registration.....	44
10.06	Time Computations.....	44
10.07	Records Retention.....	44
10.08	Third-Party Agreements.....	44
10.09	Antitrust Assignments.....	44
10.10	Headings and Captions.....	44

**FOR WASHINGTON STATE FACILITY CONSTRUCTION  
PART 1 – GENERAL PROVISIONS**

**1.1 DEFINITIONS**

- A. “Application for Payment” means a written request submitted by Contractor to A/E for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner or A/E may require.
- B. “Architect,” “Engineer,” or “A/E” means a person or entity lawfully entitled to practice architecture or engineering, representing Owner within the limits of its delegated authority.
- C. “Change Order” means a written instrument signed by Owner and Contractor stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any, and (3) the extent of the adjustment in the Contract Time, if any.
- D. “Claim” means Contractor’s exclusive remedy for resolving disputes with Owner regarding the terms of a Change Order or a request for equitable adjustment, as more fully set forth in Part 8.
- E. “Contract Award Amount” is the sum of the Base Bid and any accepted Alternates.
- F. “Contract Documents” means the Advertisement for Bids, Instructions for Bidders, completed Bid Form, General Conditions, Modifications to the General Conditions, Supplemental Conditions, Public Works Contract, other Special Forms, Drawings and Specifications, and all addenda and modifications thereof.
- G. “Contract Sum” is the total amount payable by Owner to Contractor, for performance of the Work in accordance with the Contract Documents, including all taxes imposed by law and properly chargeable to the Work, except Washington State sales tax.
- H. “Contract Time” is the number of calendar days allotted in the Contract Documents for achieving Substantial Completion of the Work.
- I. “Contractor” means the person or entity who has agreed with Owner to perform the Work in accordance with the Contract Documents.
- J. “Day(s): Unless otherwise specified, day(s) shall mean calendar day(s).”
- K. “Drawings” are the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.
- L. “Final Acceptance” means the written acceptance issued to Contractor by Owner after Contractor has completed the requirements of the Contract Documents, as more fully set forth in Section 6.09 B.
- M. “Final Completion” means that the Work is fully and finally complete in accordance with the Contract Documents, as more fully set forth in Section 6.09 A.
- N. “Force Majeure” means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in paragraph 3.05A.
- O. “Notice” means a written notice which has been delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended or, if delivered or sent by registered or certified mail, to the last business address known to the party giving notice.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

- P. "Notice to Proceed" means a notice from Owner to Contractor that defines the date on which the Contract Time begins to run.
- Q. "Owner" means the state agency, institution, or its authorized representative with the authority to enter into, administer, and/or terminate the Work in accordance with the Contract Documents and make related determinations and findings.
- R. "Person" means a corporation, partnership, business association of any kind, trust, company, or individual.
- S. "Prior Occupancy" means Owner's use of all or parts of the Project before Substantial Completion, as more fully set forth in Section 6.08 A.
- T. "Progress Schedule" means a schedule of the Work, in a form satisfactory to Owner, as further set forth in Section 3.02.
- U. "Project" means the total construction of which the Work performed in accordance with the Contract Documents may be the whole or a part and which may include construction by Owner or by separate contractors.
- V. "Project Record" means the separate set of Drawings and Specifications as further set forth in paragraph 4.02A.
- W. "Schedule of Values" means a written breakdown allocating the total Contract Sum to each principal category of Work, in such detail as requested by Owner.
- X. "Specification" are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- Y. "Subcontract" means a contract entered into by Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind for or in connection with the Work.
- Z. "Subcontractor" means any person, other than Contractor, who agrees to furnish or furnishes any supplies, materials, equipment, or services of any kind in connection with the Work.
- AA. "Substantial Completion" means that stage in the progress of the Work when the construction is sufficiently complete, as more fully set forth in Section 6.07.
- AB. "Work" means the construction and services required by the Contract Documents, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.

**1.2 ORDER OF PRECEDENCE**

Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order:

1. Signed Public Works Contract, including any Change Orders.
2. Supplemental Conditions.
3. Modifications to the General Conditions.
4. General Conditions.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

5. Specifications. Provisions in Division 1 shall take precedence over provisions of any other Division.
6. Drawings. In case of conflict within the Drawings, large scale drawings shall take precedence over small scale drawings.
7. Signed and Completed Bid Form.
8. Instructions to Bidders.
9. Advertisement for Bids.

**1.3 EXECUTION AND INTENT**

Contractor Representations: Contractor makes the following representations to Owner:

1. Contract Sum reasonable: The Contract Sum is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work, as represented by the Contract Documents;
2. Contractor familiar with project: Contractor has carefully reviewed the Contract Documents, visited and examined the Project site, become familiar with the local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and subsurface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof;
3. Contractor financially capable: Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required by the Contract Documents; and
4. Contractor can complete Work: Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform the obligations required by the Contract Documents and has sufficient experience and competence to do so.

**PART 2 – INSURANCE AND BONDS**

**2.1 CONTRACTOR'S LIABILITY INSURANCE**

General insurance requirements: Prior to commencement of the Work, Contractor shall obtain all the insurance required by the Contract Documents and provide evidence satisfactory to Owner that such insurance has been procured. Review of the Contractor's insurance by Owner shall not relieve or decrease the liability of Contractor. Companies writing the insurance to be obtained by this part shall be licensed to do business under Chapter 48 RCW or comply with the Surplus Lines Law of the State of Washington. Contractor shall include in its bid the cost of all insurance and bond costs required to complete the base bid work and accepted alternates. Insurance carriers providing insurance in accordance with the Contract Documents shall be acceptable to Owner, and its A.M. Best rating shall be indicated on the insurance certificates.

- A. Term of insurance coverage: Contractor shall maintain the following insurance coverage during the Work and for one year after Final Acceptance. Contractor shall also maintain the following insurance coverage during the performance of any corrective Work required by Section 5.16.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

1. General Liability Insurance: Commercial General Liability (CGL) on an Occurrence Form. Coverage shall include, but not be limited to:
    - a. Completed operations/products liability;
    - b. Explosion, collapse, and underground; and
    - c. Employer's liability coverage.
  2. Automobile Liability Insurance: Automobile liability
- B. Industrial Insurance compliance: Contractor shall comply with the Washington State Industrial Insurance Act and, if applicable, the Federal Longshoremen's and Harbor Workers' Act and the Jones Act.
- C. Insurance to protect for the following: All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Contractor or any Subcontractor.
- D. Owner as Additional Insured: All insurance coverages shall be endorsed to include Owner as an additional named insured for Work performed in accordance with the Contract Documents, and all insurance certificates shall evidence the Owner as an additional insured.

**2.2 COVERAGE LIMITS**

Insurance amounts: The coverage limits shall be as follows:

- A. Limits of Liability shall not be less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage (other than Automobile Liability) Each Occurrence; Personal Injury and Advertising Liability Each Occurrence.
- B. \$2,000,000 Combined Single Limit Annual General Aggregate.
- C. \$2,000,000 Annual Aggregate for Products and Completed Operations Liability.
- D. \$1,000,000 Combined Single Limit for Automobile Bodily Injury and Property Damage Liability, Each Accident or Loss.

**2.3 INSURANCE COVERAGE CERTIFICATES**

- A. Certificate required: Prior to commencement of the Work, Contractor shall furnish to Owner a completed certificate of insurance coverage.
- B. List Project info: All insurance certificates shall name Owner's Project number and Project title.
- C. Cancellation provisions: All insurance certificates shall specifically require 45 Days prior notice to Owner of cancellation or any material change, except 30 Days for surplus line insurance.

**2.4 PAYMENT AND PERFORMANCE BONDS**

Conditions for bonds: Payment and performance bonds for 100% of the Contract Award Amount, plus state sales tax, shall be furnished for the Work, using the Payment Bond and Performance Bond form published by and available from the American Institute of Architects (AIA) – form A312. Prior to execution of a Change Order that, cumulatively with previous Change Orders, increases the Contract Award Amount by 15% or more, the Contractor shall provide either new payment and performance bonds for the

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

revised Contract Sum, or riders to the existing payment and performance bonds increasing the amount of the bonds. The Contractor shall likewise provide additional bonds or riders when subsequent Change Orders increase the Contract Sum by 15% or more. No payment or performance bond is required if the Contract Sum is \$35,000 or less and Contractor agrees that Owner may, in lieu of the bond, retain 50% of the Contract Sum for the period allowed by RCW 39.08.010.

**2.5 ALTERNATIVE SURETY**

When alternative surety required: Contractor shall promptly furnish payment and performance bonds from an alternative surety as required to protect Owner and persons supplying labor or materials required by the Contract Documents if:

- A. Owner has a reasonable objection to the surety; or
- B. Any surety fails to furnish reports on its financial condition if required by Owner.

**2.6 BUILDER'S RISK**

- A. Contractor to buy Property Insurance: Contractor shall purchase and maintain property insurance in the amount of the Contract Sum including all Change Orders for the Work on a replacement cost basis until Substantial Completion. For projects not involving New Building Construction, "Installation Floater" is an acceptable substitute for the Builder's Risk Insurance. The insurance shall cover the interest of Owner, Contractor, and any Subcontractors, as their interests may appear.
- B. Losses covered: Contractor property insurance shall be placed on an "all risk" basis and insure against the perils of fire and extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for A/E's services and expenses required as a result of an insured loss.
- C. Waiver of subrogation rights: Owner and Contractor waive all subrogation rights against each other, any Subcontractors, A/E, A/E's subconsultants, separate contractors described in Section 5.20, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**PART 3 – TIME AND SCHEDULE**

**3.1 PROGRESS AND COMPLETION**

Contractor to meet schedule: Contractor shall diligently prosecute the Work, with adequate forces, achieve Substantial Completion within the Contract Time, and achieve Final Completion within a reasonable period thereafter.

**3.2 CONSTRUCTION SCHEDULE**

- A. Preliminary Progress Schedule: Unless otherwise provided in Division 1, Contractor shall, within 14 Days after issuance of the Notice to Proceed, submit a preliminary Progress Schedule. The Progress Schedule shall show the sequence in which Contractor proposes to perform the Work, and the dates on which Contractor plans to start and finish major portions of the Work, including

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

dates for shop drawings and other submittals, and for acquiring materials and equipment.

- B. Form of Progress Schedule: Unless otherwise provided in Division 1, the Progress Schedule shall be in the form of a bar chart, or a critical path method analysis, as specified by Owner. The preliminary Progress Schedule may be general, showing the major portions of the Work, with a more detailed Progress Schedule submitted as directed by Owner.
- C. Owner comments on Progress Schedule: Owner shall return comments on the preliminary Progress Schedule to Contractor within 14 Days of receipt. Review by Owner of Contractor's schedule does not constitute an approval or acceptance of Contractor's construction means, methods, or sequencing, or its ability to complete the Work within the Contract Time. Contractor shall revise and resubmit its schedule, as necessary. Owner may withhold a portion of progress payments until a Progress Schedule has been submitted which meets the requirements of this section.
- D. Monthly updates and compliance with Progress Schedule: Contractor shall utilize and comply with the Progress Schedule. On a monthly basis, or as otherwise directed by Owner, Contractor shall submit an updated Progress Schedule at its own expense to Owner indicating actual progress. If, in the opinion of Owner, Contractor is not in conformance with the Progress Schedule for reasons other than acts of Force Majeure as identified in Section 3.05, Contractor shall take such steps as are necessary to bring the actual completion dates of its work activities into conformance with the Progress Schedule, and if directed by Owner, Contractor shall submit a corrective action plan or revise the Progress Schedule to reconcile with the actual progress of the Work.
- E. Contractor to notify Owner of delays: Contractor shall promptly notify Owner in writing of any actual or anticipated event which is delaying or could delay achievement of any milestone or performance of any critical path activity of the Work. Contractor shall indicate the expected duration of the delay, the anticipated effect of the delay on the Progress Schedule, and the action being or to be taken to correct the problem. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Contract Time.

**3.3 OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE**

- A. Owner may suspend Work: Owner may, at its sole discretion, order Contractor, in writing, to suspend all or any part of the Work for up to 90 Days, or for such longer period as mutually agreed.
- B. Compliance with suspension; Owner's options: Upon receipt of a written notice suspending the Work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period up to 90 Days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Owner shall either:
  - 1. Cancel the written notice suspending the Work; or
  - 2. Terminate the Work covered by the notice as provided in the termination provisions of Part 9.
- C. Resumption of Work: If a written notice suspending the Work is cancelled or the period of the notice or any extension thereof expires, Contractor shall resume Work.
- D. Equitable Adjustment for suspensions: Contractor shall be entitled to an equitable adjustment in the Contract Time, or Contract Sum, or both, for increases in the time or cost of performance

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

directly attributable to such suspension, provided Contractor complies with all requirements set forth in Part 7.

**3.4 OWNER'S RIGHT TO STOP THE WORK FOR CAUSE**

- A. Owner may stop Work for Contractor's failure to perform: If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. No Equitable Adjustment for Contractor's failure to perform: Contractor shall not be entitled to an equitable adjustment in the Contract Time or Contract Sum for any increased cost or time of performance attributable to Contractor's failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.

**3.5 DELAY**

- A. Force Majeure actions not a default; Force Majeure defined: Any delay in or failure of performance by Owner or Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("Force Majeure"). Acts of Force Majeure include, but are not limited to:
  - 1. Acts of God or the public enemy;
  - 2. Acts or omissions of any government entity;
  - 3. Fire or other casualty for which Contractor is not responsible;
  - 4. Quarantine or epidemic;
  - 5. Strike or defensive lockout;
  - 6. Unusually severe weather conditions which could not have been reasonably anticipated; and
  - 7. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to Owner was available.
- B. Contract Time adjustment for Force Majeure: Contractor shall be entitled to an equitable adjustment in the Contract Time for changes in the time of performance directly attributable to an act of Force Majeure, provided it makes a request for equitable adjustment according to Section 7.03. Contractor shall not be entitled to an adjustment in the Contract Sum resulting from an act of Force Majeure.
- C. Contract Time or Contract Sum adjustment if Owner at fault: Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Sum, if the cost or time of Contractor's performance is changed due to the fault or negligence of Owner, provided the Contractor makes a request according to Sections 7.02 and 7.03.
- D. No Contract Time or Contract Sum adjustment if Contractor at fault: Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused by Contractor or anyone for whose acts Contractor is responsible.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

- E. Contract Time adjustment only for concurrent fault: To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it makes a request for equitable adjustment according to Section 7.03, but shall not be entitled to an adjustment in Contract Sum.
- F. Contractor to mitigate delay impacts: Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

**3.6 NOTICE TO OWNER OF LABOR DISPUTES**

- A. Contractor to notify Owner of labor disputes: If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract Documents, Contractor shall immediately give notice, including all relevant information, to Owner.
- B. Pass through notification provisions to Subcontractors: Contractor agrees to insert a provision in its Subcontracts and to require insertion in all sub-subcontracts, that in the event timely performance of any such contract is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor or Sub-subcontractor shall immediately notify the next higher tier Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

**3.7 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION**

A. Liquidated Damages

- 1. Reason for Liquidated Damages: Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract Documents are of the essence. Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, provisions for liquidated damages are included in the Contract Documents.
- 2. Calculation of Liquidated Damages amount: The liquidated damage amounts set forth in the Contract Documents will be assessed not as a penalty, but as liquidated damages for breach of the Contract Documents. This amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. This amount shall be construed as the actual amount of damages sustained by the Owner, and may be retained by the Owner and deducted from periodic payments to the Contractor.
- 3. Contractor responsible even if Liquidated Damages assessed: Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents.

B. Actual Damages

Calculation of Actual Damages: Actual damages will be assessed for failure to achieve Final Completion within the time provided. Actual damages will be calculated on the basis of direct architectural, administrative, and other related costs attributable to the Project from the date when Final Completion should have been achieved, based on the date Substantial Completion is actually achieved, to the date Final Completion is actually achieved. Owner may offset these costs against any payment due Contractor.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION  
PART 4 – SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS**

**4.1 DISCREPANCIES AND CONTRACT DOCUMENT REVIEW**

- A. Specifications and Drawings are basis of the Work: The intent of the Specifications and Drawings is to describe a complete Project to be constructed in accordance with the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, permits, and supplies, and perform the Work required in accordance with the Drawings, Specifications, and other provisions of the Contract Documents.
- B. Parts of the Contract Documents are complementary: The Contract Documents are complementary. What is required by one part of the Contract Documents shall be binding as if required by all. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.
- C. Contractor to report discrepancies in Contract Documents: Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner. If, during the performance of the Work, Contractor finds a conflict, error, inconsistency, or omission in the Contract Documents, it shall promptly and before proceeding with the Work affected thereby, report such conflict, error, inconsistency, or omission to A/E in writing.
- D. Contractor knowledge of discrepancy in documents – responsibility: Contractor shall do no Work without applicable Drawings, Specifications, or written modifications, or Shop Drawings where required, unless instructed to do so in writing by Owner. If Contractor performs any construction activity, and it knows or reasonably should have known that any of the Contract Documents contain a conflict, error, inconsistency, or omission, Contractor shall be responsible for the performance and shall bear the cost for its correction.
- E. Contractor to perform Work implied by Contract Documents: Contractor shall provide any work or materials the provision of which is clearly implied and is within the scope of the Contract Documents even if the Contract Documents do not mention them specifically.
- F. Interpretation questions referred to A/E: Questions regarding interpretation of the requirements of the Contract Documents shall be referred to the A/E.

**4.2 PROJECT RECORD**

- A. Contractor to maintain Project Record Drawings and Specifications: Contractor shall legibly mark in ink on a separate set of the Drawings and Specifications all actual construction, including depths of foundations, horizontal and vertical locations of internal and underground utilities and appurtenances referenced to permanent visible and accessible surface improvements, field changes of dimensions and details, actual suppliers, manufacturers and trade names, models of installed equipment, and Change Order Proposals (COP). This separate set of Drawings and Specifications shall be the "Project Record."
- B. Update Project Record weekly and keep on site: The Project Record shall be maintained on the project site throughout the construction and shall be clearly labeled "PROJECT RECORD." The Project Record shall be updated at least weekly noting all changes and shall be available to Owner at all times.
- C. Final Project Record to A/E before Final Acceptance: Contractor shall submit the completed and finalized Project Record to A/E prior to Final Acceptance.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**  
**4.3 SHOP DRAWINGS**

- A. Definition of Shop Drawings: "Shop Drawings" means documents and other information required to be submitted to A/E by Contractor pursuant to the Contract Documents, showing in detail: the proposed fabrication and assembly of structural elements; and the installation (i.e. form, fit, and attachment details) of materials and equipment. Shop Drawings include, but are not limited to, drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Contract Documents. For materials and equipment to be incorporated into the Work, Contractor submittal shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples at its own expense. Owner may duplicate, use, and disclose Shop Drawings provided in accordance with the Contract Documents.
- B. Approval of Shop Drawings by Contractor and A/E: Contractor shall coordinate all Shop Drawings, and review them for accuracy, completeness, and compliance with the Contract Documents and shall indicate its approval thereon as evidence of such coordination and review. Where required by law, Shop Drawings shall be stamped by an appropriate professional licensed by the state of Washington. Shop Drawings submitted to A/E without evidence of Contractor's approval shall be returned for resubmission. Contractor shall review, approve, and submit Shop Drawings with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or separate contractors. Contractor's submittal schedule shall allow a reasonable time for A/E review. A/E will review, approve, or take other appropriate action on the Shop Drawings. Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings until the respective submittal has been reviewed and the A/E has approved or taken other appropriate action. Owner and A/E shall respond to Shop Drawing submittals with reasonable promptness. Any Work by Contractor shall be in accordance with reviewed Shop Drawings. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.
- C. Contractor not relieved of responsibility when Shop Drawings approved: Approval, or other appropriate action with regard to Shop Drawings, by Owner or A/E shall not relieve Contractor of responsibility for any errors or omissions in such Shop Drawings, nor from responsibility for compliance with the requirements of the Contract Documents. Unless specified in the Contract Documents, review by Owner or A/E shall not constitute an approval of the safety precautions employed by Contractor during construction, or constitute an approval of Contractor's means or methods of construction. If Contractor fails to obtain approval before installation and the item or work is subsequently rejected, Contractor shall be responsible for all costs of correction.
- D. Variations between Shop Drawings and Contract Documents: If Shop Drawings show variations from the requirements of the Contract Documents, Contractor shall describe such variations in writing, separate from the Shop Drawings, at the time it submits the Shop Drawings containing such variations. If A/E approves any such variation, an appropriate Change Order will be issued. If the variation is minor and does not involve an adjustment in the Contract Sum or Contract Time, a Change Order need not be issued; however, the modification shall be recorded upon the Project Record.
- E. Contractor to submit 5 copies of Shop Drawings: Unless otherwise provided in Division 1, Contractor shall submit to A/E for approval 5 copies of all Shop Drawings. Unless otherwise indicated, 3 sets of all Shop Drawings shall be retained by A/E and 2 sets shall be returned to Contractor.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**  
**4.4 ORGANIZATION OF SPECIFICATIONS**

Specification organization by trade: Specifications are prepared in sections which conform generally with trade practices. These sections are for Owner and Contractor convenience and shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by any trade.

**4.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS**

- A. A/E, not Contractor, owns Copyright of Drawings and Specifications: The Drawings, Specifications, and other documents prepared by A/E are instruments of A/E's service through which the Work to be executed by Contractor is described. Neither Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by A/E, and A/E shall be deemed the author of them and will, along with any rights of Owner, retain all common law, statutory, and other reserved rights, in addition to the copyright. All copies of these documents, except Contractor's set, shall be returned or suitably accounted for to A/E, on request, upon completion of the Work.
- B. Drawings and Specifications to be used only for this Project: The Drawings, Specifications, and other documents prepared by the A/E, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner and A/E. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by A/E appropriate to and for use in the execution of their Work.
- C. Shop Drawing license granted to Owner: Contractor and all Subcontractors grant a non-exclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all Shop Drawings, together with the information and diagrams contained therein, prepared by Contractor or any Subcontractor. In providing Shop Drawings, Contractor and all Subcontractors warrant that they have authority to grant to Owner a license to use the Shop Drawings, and that such license is not in violation of any copyright or other intellectual property right. Contractor agrees to defend and indemnify Owner pursuant to the indemnity provisions in Section 5.03 and 5.22 from any violations of copyright or other intellectual property rights arising out of Owner's use of the Shop Drawings hereunder, or to secure for Owner, at Contractor's own cost, licenses in conformity with this section.
- D. Shop Drawings to be used only for this Project: The Shop Drawings and other submittals prepared by Contractor, Subcontractors of any tier, or its or their equipment or material suppliers, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor of any tier, or material or equipment supplier, on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. The Contractor, Subcontractors of any tier, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Shop Drawings and other submittals appropriate to and for use in the execution of their Work under the Contract Documents.

**PART 5 – PERFORMANCE**

**5.1 CONTRACTOR CONTROL AND SUPERVISION**

- A. Contractor responsible for Means and Methods of construction: Contractor shall supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

disclose its means and methods of construction when requested by Owner.

- B. Competent Superintendent required: Performance of the Work shall be directly supervised by a competent superintendent who has authority to act for Contractor. The superintendent must be satisfactory to the Owner and shall not be changed without the prior written consent of Owner. Owner may require Contractor to remove the superintendent from the Work or Project site, if Owner reasonably deems the superintendent incompetent, careless, or otherwise objectionable, provided Owner has first notified Contractor in writing and allowed a reasonable period for transition.
- C. Contractor responsible for acts and omissions of self and agents: Contractor shall be responsible to Owner for acts and omissions of Contractor, Subcontractors, and their employees and agents.
- D. Contractor to employ competent and disciplined workforce: Contractor shall enforce strict discipline and good order among all of the Contractor's employees and other persons performing the Work. Contractor shall not permit employment of persons not skilled in tasks assigned to them. Contractor's employees shall at all times conduct business in a manner which assures fair, equal, and nondiscriminatory treatment of all persons. Owner may, by written notice, request Contractor to remove from the Work or Project site any employee Owner reasonably deems incompetent, careless, or otherwise objectionable.
- E. Contractor to keep project documents on site: Contractor shall keep on the Project site a copy of the Drawings, Specifications, addenda, reviewed Shop Drawings, and permits and permit drawings.
- F. Contractor to comply with ethical standards: Contractor shall ensure that its owner(s) and employees, and those of its Subcontractors, comply with the Ethics in Public Service Act RCW 42.52, which, among other things, prohibits state employees from having an economic interest in any public works contract that was made by, or supervised by, that employee. Contractor shall remove, at its sole cost and expense, any of its, or its Subcontractors' employees, if they are in violation of this act.

**5.2 PERMITS, FEES, AND NOTICES**

- A. Contractor to obtain and pay for permits: Unless otherwise provided in the Contract Documents, Contractor shall pay for and obtain all permits, licenses, and inspections necessary for proper execution and completion of the Work. Prior to Final Acceptance, the approved, signed permits shall be delivered to Owner.
- B. Allowances for permit fees: If allowances for permits or utility fees are called for in the Contract Documents and set forth in Contractor's bid, and the actual costs of those permits or fees differ from the allowances in the Contract Documents, the difference shall be adjusted by Change Order.
- C. Contractor to comply with all applicable laws: Contractor shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

**5.3 PATENTS AND ROYALTIES**

Payment, indemnification, and notice: Contractor is responsible for, and shall pay, all royalties and license fees. Contractor shall defend, indemnify, and hold Owner harmless from any costs, expenses, and liabilities arising out of the infringement by Contractor of any patent, copyright, or other intellectual property right used in the Work; however, provided that Contractor gives prompt notice, Contractor shall not be responsible for such defense or indemnity when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents. If Contractor has

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

reason to believe that use of the required design, process, or product constitutes an infringement of a patent or copyright, it shall promptly notify Owner of such potential infringement.

**5.4 PREVAILING WAGES**

- A. Contractor to pay Prevailing Wages: Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work, is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate.
- B. Statement of Intent to Pay Prevailing Wages: Before payment is made by the Owner to the Contractor for any work performed by the Contractor and subcontractors whose work is included in the application for payment, the Contractor shall submit, or shall have previously submitted to the Owner for the Project, a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.
- C. Affidavit of Wages Paid: Prior to release of retainage, the Contractor shall submit to the Owner an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Contractor and every subcontractor, of any tier, that performed work on the Project.
- D. Disputes: Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.
- E. Statement with pay application; Post Statements of Intent at job site: Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the prefilled statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.
- F. Contractor to pay for Statements of Intent and Affidavits: In compliance with chapter 296-127 WAC, Contractor shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.
- G. Certified Payrolls: Consistent with WAC 296-127-320, the Contractor and any subcontractor shall submit a certified copy of payroll records if requested.

**5.5 HOURS OF LABOR**

- A. Overtime: Contractor shall comply with all applicable provisions of RCW 49.28 and they are incorporated herein by reference. Pursuant to that statute, no laborer, worker, or mechanic employed by Contractor, any Subcontractor, or any other person performing or contracting to do the whole or any part of the Work, shall be permitted or required to work more than eight hours in any one calendar day, provided, that in cases of extraordinary emergency, such as danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight hours of each calendar day shall be not less than one and one-half times the rate allowed for this same amount of time during eight hours of service.
- B. 4-10 Agreements: Notwithstanding the preceding paragraph, RCW 49.28 permits a contractor or subcontractor in any public works contract subject to those provisions, to enter into an agreement

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

with its employees in which the employees work up to ten hours in a calendar day. No such agreement may provide that the employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees. The overtime provisions of RCW 49.28 shall not apply to the hours, up to forty hours per week, worked pursuant to any such agreement.

**5.6 NONDISCRIMINATION**

A. Discrimination prohibited by applicable laws: Discrimination in all phases of employment is prohibited by, among other laws and regulations, Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Act of 1974, Sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, the Washington State Law Against Discrimination, RCW 49.60, and Gubernatorial Executive Order 85-09. These laws and regulations establish minimum requirements for affirmative action and fair employment practices which Contractor must meet.

B. During performance of the Work:

1. Protected Classes: Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability, Vietnam era veteran status, or disabled veteran status, nor commit any other unfair practices as defined in RCW 49.60.
2. Advertisements to state nondiscrimination: Contractor shall, in all solicitations or advertisements for employees placed by or for it, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.
3. Contractor to notify unions and others of nondiscrimination: Contractor shall send to each labor union, employment agency, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or workers' representative of Contractor's obligations according to the Contract Documents and RCW 49.60.
4. Owner and State access to Contractor records: Contractor shall permit access to its books, records, and accounts, and to its premises by Owner, and by the Washington State Human Rights Commission, for the purpose of investigation to ascertain compliance with this section of the Contract Documents.
5. Pass through provisions to Subcontractors: Contractor shall include the provisions of this section in every Subcontract.

**5.7 SAFETY PRECAUTIONS**

A. Contractor responsible for safety: Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.

B. Contractor safety responsibilities: In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of employees performing the Work and other persons who may be affected by the Work; prevent damage to materials, supplies, and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

them from damage, injury, or loss; shall erect and maintain all necessary safeguards for such safety and protection; and shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.

- C. Contractor to maintain safety records: Contractor shall maintain an accurate record of exposure data on all incidents relating to the Work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. Contractor shall immediately report any such incident to Owner. Owner shall, at all times, have a right of access to all records of exposure.
- D. Contractor to provide HazMat training: Contractor shall provide all persons working on the Project site with information and training on hazardous chemicals in their work at the time of their initial assignment, and whenever a new hazard is introduced into their work area.
1. Information. At a minimum, Contractor shall inform persons working on the Project site of:
    - a. WAC: The requirements of chapter 296-62 WAC, General Occupational Health Standards;
    - b. Presence of hazardous chemicals: Any operations in their work area where hazardous chemicals are present; and
    - c. Hazard communications program: The location and availability of written hazard communication programs, including the required list(s) of hazardous chemicals and material safety data sheets required by chapter 296-62 WAC.
  2. Training. At a minimum, Contractor shall provide training for persons working on the Project site which includes:
    - a. Detecting hazardous chemicals: Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);
    - b. Hazards of chemicals: The physical and health hazards of the chemicals in the work area;
    - c. Protection from hazards: The measures such persons can take to protect themselves from these hazards, including specific procedures Contractor, or its Subcontractors, or others have implemented to protect those on the Project site from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and
    - d. Hazard communications program: The details of the hazard communications program developed by Contractor, or its Subcontractors, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.
- E. Hazardous, toxic or harmful substances: Contractor's responsibility for hazardous, toxic, or harmful substances shall include the following duties:
1. Illegal use of dangerous substances: Contractor shall not keep, use, dispose, transport, generate, or sell on or about the Project site, any substances now or hereafter designated as, or which are subject to regulation as, hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

collectively referred to as "hazardous substances"), in violation of any such law, regulation, statute, or ordinance, but in no case shall any such hazardous substance be stored more than 90 Days on the Project site.

2. Contractor notifications of spills, failures, inspections, and fines: Contractor shall promptly notify Owner of all spills or releases of any hazardous substances which are otherwise required to be reported to any regulatory agency and pay the cost of cleanup. Contractor shall promptly notify Owner of all failures to comply with any federal, state, or local law, regulation, or ordinance; all inspections of the Project site by any regulatory entity concerning the same; all regulatory orders or fines; and all responses or interim cleanup actions taken by or proposed to be taken by any government entity or private party on the Project site.
  
- F. Public safety and traffic: All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.
  
- G. Contractor to act in an emergency: In an emergency affecting the safety of life or the Work or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and Contractor shall so act if so authorized or instructed.
  
- H. No duty of safety by Owner or A/E: Nothing provided in this section shall be construed as imposing any duty upon Owner or A/E with regard to, or as constituting any express or implied assumption of control or responsibility over, Project site safety, or over any other safety conditions relating to employees or agents of Contractor or any of its Subcontractors, or the public.

**5.8 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS**

- A. Limited storage areas: Contractor shall confine all operations, including storage of materials, to Owner-approved areas.
  
- B. Temporary buildings and utilities at Contractor expense: Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner and without expense to Owner. The temporary buildings and utilities shall be removed by Contractor at its expense upon completion of the Work.
  
- C. Roads and vehicle loads: Contractor shall use only established roadways or temporary roadways authorized by Owner. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.
  
- D. Ownership and reporting by Contractor of demolished materials: Ownership and control of all materials or facility components to be demolished or removed from the Project site by Contractor shall immediately vest in Contractor upon severance of the component from the facility or severance of the material from the Project site. Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal. Contractor shall provide Owner with a copy of all manifests and receipts evidencing proper disposal when required by Owner or applicable law.
  
- E. Contractor responsible for care of materials and equipment on-site: Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Project site. Materials and equipment may be stored on the premises subject to approval of Owner. When Contractor uses any portion of the Project site as a shop, Contractor shall be responsible for any repairs, patching, or cleaning arising from such use.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

- F. Contractor responsible for loss of materials and equipment: Contractor shall protect and be responsible for any damage or loss to the Work, or to the materials or equipment until the date of Substantial Completion, and shall repair or replace without cost to Owner any damage or loss that may occur, except damages or loss caused by the acts or omissions of Owner. Contractor shall also protect and be responsible for any damage or loss to the Work, or to the materials or equipment, after the date of Substantial Completion, and shall repair or replace without cost to Owner any such damage or loss that might occur, to the extent such damages or loss are caused by the acts or omissions of Contractor, or any Subcontractor.

**5.9 PRIOR NOTICE OF EXCAVATION**

- A. Excavation defined; Use of locator services: "Excavation" means an operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than 12 inches in depth for agricultural purposes, or road ditch maintenance that does not change the original road grade or ditch flow line. Before commencing any excavation, Contractor shall provide notice of the scheduled commencement of excavation to all owners of underground facilities or utilities, through locator services.

**5.10 UNFORESEEN PHYSICAL CONDITIONS**

- A. Notice requirement for concealed or unknown conditions: If Contractor encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Contractor shall give written notice to Owner promptly and in no event later than 7 Days after the first observance of the conditions. Conditions shall not be disturbed prior to such notice.
- B. Adjustment in Contract Time and Contract Sum: If such conditions differ materially and cause a change in Contractor's cost of, or time required for, performance of any part of the Work, the Contractor may be entitled to an equitable adjustment in the Contract Time or Contract Sum, or both, provided it makes a request therefore as provided in Part 7.

**5.11 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES AND IMPROVEMENTS**

- A. Contractor to protect and repair property: Contractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation: at or near the Project site; and on adjacent property of a third party, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Contractor.
- B. Tree and vegetation protection: Contractor shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place.

**5.12 LAYOUT OF WORK**

- A. Advanced planning of the Work: Contractor shall plan and lay out the Work in advance of operations so as to coordinate all work without delay or revision.
- B. Layout responsibilities: Contractor shall lay out the Work from Owner-established baselines and bench marks indicated on the Drawings, and shall be responsible for all field measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates,

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

platforms, equipment, tools, materials, and labor required to lay out any part of the Work. Contractor shall be responsible for executing the Work to the lines and grades that may be established. Contractor shall be responsible for maintaining or restoring all stakes and other marks established.

**5.13 MATERIAL AND EQUIPMENT**

- A. Contractor to provide new and equivalent equipment and materials: All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract Documents. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of A/E, is equal to that named in the specifications, unless otherwise specifically provided in the Contract Documents.
- B. Contractor responsible for fitting parts together: Contractor shall do all cutting, fitting, or patching that may be required to make its several parts fit together properly, or receive or be received by work of others set forth in, or reasonably implied by, the Contract Documents. Contractor shall not endanger any work by cutting, excavating, or otherwise altering the Work and shall not cut or alter the work of any other contractor unless approved in advance by Owner.
- C. Owner may reject defective Work: Should any of the Work be found defective, or in any way not in accordance with the Contract Documents, this work, in whatever stage of completion, may be rejected by Owner.

**5.14 AVAILABILITY AND USE OF UTILITY SERVICES**

- A. Owner to provide and charge for utilities: Owner shall make all reasonable utilities available to Contractor from existing outlets and supplies, as specified in the Contract Documents. Unless otherwise provided in the Contract Documents, the utility service consumed shall be charged to or paid for by Contractor at prevailing rates charged to Owner or, where the utility is produced by Owner, at reasonable rates determined by Owner. Contractor will carefully conserve any utilities furnished.
- B. Contractor to install temporary connections and meters: Contractor shall, at its expense and in a skillful manner satisfactory to Owner, install and maintain all necessary temporary connections and distribution lines, together with appropriate protective devices, and all meters required to measure the amount of each utility used for the purpose of determining charges. Prior to the date of Final Acceptance, Contractor shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.

**5.15 TESTS AND INSPECTION**

- A. Contractor to provide for all testing and inspection of Work: Contractor shall maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall be responsible for inspection and quality surveillance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Contractor shall give Owner timely notice of when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Owner.
- B. Owner may conduct tests and inspections: Owner may, at any reasonable time, conduct such

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract Documents. Owner shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless the subject items are expressly accepted by Owner, such Owner inspection and tests are for the sole benefit of Owner and do not:

1. Constitute or imply acceptance;
  2. Relieve Contractor of responsibility for providing adequate quality control measures;
  3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
  4. Relieve Contractor of its responsibility to comply with the requirements of the Contract Documents; or
  5. Impair Owner's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.
- C. Inspections or inspectors do not modify Contract Documents: Neither observations by an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.
- D. Contractor responsibilities on inspections: Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes reinspection or retest necessary. Owner shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

**5.16 CORRECTION OF NONCONFORMING WORK**

- A. Work covered by Contractor without inspection: If a portion of the Work is covered contrary to the requirements in the Contract Documents, it must, if required in writing by Owner, be uncovered for Owner's observation and be replaced at the Contractor's expense and without change in the Contract Time.
- B. Payment provisions for uncovering covered Work: If, at any time prior to Final Completion, Owner desires to examine the Work, or any portion of it, which has been covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an adjustment in the Contract Sum for the costs of uncovering and replacement, and, if completion of the Work is thereby delayed, an adjustment in the Contract Time, provided it makes such a request as provided in Part 7. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of examination and reconstruction.
- C. Contractor to correct and pay for non-conforming Work: Contractor shall promptly correct Work found by Owner not to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. Contractor shall bear all costs of correcting such nonconforming Work, including additional testing and inspections.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

- D. Contractor's compliance with warranty provisions: If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or within one year after the date for commencement of any system warranties established under Section 6.08, or within the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so. Owner shall give such notice promptly after discovery of the condition. This period of one year shall be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual performance of the Work. Contractor's duty to correct with respect to Work repaired or replaced shall run for one year from the date of repair or replacement. Obligations under this paragraph shall survive Final Acceptance.
- E. Contractor to remove non-conforming Work: Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.
- F. Owner may charge Contractor for non-conforming Work: If Contractor fails to correct nonconforming Work within a reasonable time after written notice to do so, Owner may replace, correct, or remove the nonconforming Work and charge the cost thereof to the Contractor.
- G. Contractor to pay for damaged Work during correction: Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- H. No Period of limitation on other requirements: Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Contractor might have according to the Contract Documents. Establishment of the time period of one year as described in Section 5.16D relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, including the time within which such proceedings may be commenced.
- I. Owner may accept non-conforming Work and charge Contractor: If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum may be reduced as appropriate and equitable.

**5.17 CLEAN UP**

Contractor to keep site clean and leave it clean: Contractor shall at all times keep the Project site, including hauling routes, infrastructures, utilities, and storage areas, free from accumulations of waste materials. Before completing the Work, Contractor shall remove from the premises its rubbish, tools, scaffolding, equipment, and materials. Upon completing the Work, Contractor shall leave the Project site in a clean, neat, and orderly condition satisfactory to Owner. If Contractor fails to clean up as provided herein, and after reasonable notice from Owner, Owner may do so and the cost thereof shall be charged to Contractor.

**5.18 ACCESS TO WORK**

Owner and A/E access to Work site: Contractor shall provide Owner and A/E access to the Work in progress wherever located.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**  
**5.19 OTHER CONTRACTS**

Owner may award other contracts; Contractor to cooperate: Owner may undertake or award other contracts for additional work at or near the Project site. Contractor shall reasonably cooperate with the other contractors and with Owner's employees and shall carefully adapt scheduling and perform the Work in accordance with these Contract Documents to reasonably accommodate the other work.

**5.20 SUBCONTRACTORS AND SUPPLIERS**

A. Subcontractor Responsibility: The Contractor shall include the language of this paragraph in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Owner, the Contractor shall promptly provide documentation to the Owner demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this paragraph apply to all subcontractors regardless of tier. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:

1. Have a current certificate of registration as a contractor in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
2. Have a current Washington Unified Business Identifier (UBI) number;
3. If applicable, have:
  - a. Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
  - b. A Washington Employment Security Department number, as required in Title 50 RCW;
  - c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
  - d. An electrical contractor license, if required by Chapter 19.28 RCW;
  - e. An elevator contractor license, if required by Chapter 70.87 RCW.
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
5. On a project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the Owner's first advertisement of the project.

B. Provide names of Subcontractors and use qualified firms: Before submitting the first Application for Payment, Contractor shall furnish in writing to Owner the names, addresses, and telephone numbers of all Subcontractors, as well as suppliers providing materials in excess of \$2,500. Contractor shall utilize Subcontractors and suppliers which are experienced and qualified, and meet the requirements of the Contract Documents, if any. Contractor shall not utilize any Subcontractor or supplier to whom the Owner has a reasonable objection, and shall obtain Owner's written consent before making any substitutions or additions.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

- C. Subcontracts in writing and pass through provision: All Subcontracts must be in writing. By appropriate written agreement, Contractor shall require each Subcontractor, so far as applicable to the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner in accordance with the Contract Documents. Each Subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. However, nothing in this paragraph shall be construed to alter the contractual relations between Contractor and its Subcontractors with respect to insurance or bonds.
- D. Coordination of Subcontractors; Contractor responsible for Work: Contractor shall schedule, supervise, and coordinate the operations of all Subcontractors. No Subcontracting of any of the Work shall relieve Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or any other obligations of the Contract Documents.
- E. Automatic assignment of subcontracts: Each subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that:
1. Effective only after termination and Owner approval: The assignment is effective only after termination by Owner for cause pursuant to Section 9.01 and only for those Subcontracts which Owner accepts by notifying the Subcontractor in writing; and
  2. Owner assumes Contractor's responsibilities: After the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Contractor assumed in the Subcontract.
  3. Impact of bond: The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

**5.21 WARRANTY OF CONSTRUCTION**

- A. Contractor warranty of Work: In addition to any special warranties provided elsewhere in the Contract Documents, Contractor warrants that all Work conforms to the requirements of the Contract Documents and is free of any defect in equipment, material, or design furnished, or workmanship performed by Contractor.
- B. Contractor responsibilities: With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract Documents, Contractor shall:
1. Obtain warranties: Obtain all warranties that would be given in normal commercial practice;
  2. Warranties for benefit of Owner: Require all warranties to be executed, in writing, for the benefit of Owner;
  3. Enforcement of warranties: Enforce all warranties for the benefit of Owner, if directed by Owner; and
  4. Contractor responsibility for subcontractor warranties: Be responsible to enforce any subcontractor's, manufacturer's, or supplier's warranties should they extend beyond the period specified in the Contract Documents.
- C. Warranties beyond Final Acceptance: The obligations under this section shall survive Final Acceptance.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**  
**5.22 INDEMNIFICATION**

- A. Contractor to indemnify Owner: Contractor shall defend, indemnify, and hold Owner and A/E harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:
1. Sole negligence of Contractor: The sole negligence of Contractor or any of its Subcontractors;
  2. Concurrent negligence: The concurrent negligence of Contractor, or any Subcontractor, but only to the extent of the negligence of Contractor or such Subcontractor; and
  3. Patent infringement: The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret.
- B. Employee action and RCW Title 51: In any action against Owner and any other entity indemnified in accordance with this section, by any employee of Contractor, its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Contractor waives immunity as to Owner and A/E only, in accordance with RCW Title 51.

**PART 6 – PAYMENTS AND COMPLETION**

**6.1 CONTRACT SUM**

Owner shall pay Contract Sum: Owner shall pay Contractor the Contract Sum plus state sales tax for performance of the Work, in accordance with the Contract Documents.

**6.2 SCHEDULE OF VALUES**

Contractor to submit Schedule of Values: Before submitting its first Application for Payment, Contractor shall submit to Owner for approval a breakdown allocating the total Contract Sum to each principal category of work, in such detail as requested by Owner (“Schedule of Values”). The approved Schedule of Values shall include appropriate amounts for demobilization, record drawings, O&M manuals, and any other requirements for Project closeout, and shall be used by Owner as the basis for progress payments. Payment for Work shall be made only for and in accordance with those items included in the Schedule of Values.

**6.3 APPLICATION FOR PAYMENT**

- A. Monthly Application for Payment with substantiation: At monthly intervals, unless determined otherwise by Owner, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the Contract Documents and the approved Schedule of Values. Each application shall be supported by such substantiating data as Owner may require.
- B. Contractor certifies Subcontractors paid: By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.011, as their interests appeared in the last preceding certificate of payment. By submitting an Application for Payment, Contractor is recertifying that the representations set forth in Section 1.03, are true and correct, to the best of Contractor’s knowledge, as of the date of the Application for Payment.
- C. Reconciliation of Work with Progress Schedule: At the time it submits an Application for Payment,

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Progress Schedule.

- D. Payment for material delivered to site or stored off-site: If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Project site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off the Project site, provided Contractor complies with or furnishes satisfactory evidence of the following:
1. Suitable facility or location: The material will be placed in a facility or location that is structurally sound, dry, lighted and suitable for the materials to be stored;
  2. Facility or location within 10 miles of Project: The facility or location is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
  3. Facility or location exclusive to Project's materials: Only materials for the Project are stored within the facility or location (or a secure portion of a facility or location set aside for the Project);
  4. Insurance provided on materials in facility or location: Contractor furnishes Owner a certificate of insurance extending Contractor's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
  5. Facility or location locked and secure: The facility or location (or secure portion thereof) is continuously under lock and key, and only Contractor's authorized personnel shall have access;
  6. Owner right of access to facility or location: Owner shall at all times have the right of access in company of Contractor;
  7. Contractor assumes total responsibility for stored materials: Contractor and its surety assume total responsibility for the stored materials; and
  8. Contractor provides documentation and Notice when materials moved to site: Contractor furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish Notice to Owner when materials are moved from storage to the Project site.

**6.4 PROGRESS PAYMENTS**

- A. Owner to pay within 30 Days: Owner shall make progress payments, in such amounts as Owner determines are properly due, within 30 Days after receipt of a properly executed Application for Payment. Owner shall notify Contractor in accordance with chapter 39.76 RCW if the Application for Payment does not comply with the requirements of the Contract Documents.
- B. Withholding retainage; Options for retainage: Owner shall retain 5% of the amount of each progress payment until 45 Days after Final Acceptance and receipt of all documents required by law or the Contract Documents, including, at Owner's request, consent of surety to release of the retainage. In accordance with chapter 60.28 RCW, Contractor may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Contractor. Owner may permit Contractor to provide an appropriate bond in lieu of the retained funds.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

- C. Title passes to Owner upon payment: Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Contractor from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Contractor with the Contract Documents.
- D. Interest on unpaid balances: Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in chapter 39.76 RCW.

**6.5 PAYMENTS WITHHELD**

- A. Owner's right to withhold payment: Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including but not limited to:
1. Non-compliant Work: Work not in accordance with the Contract Documents;
  2. Remaining Work to cost more than unpaid balance: Reasonable evidence that the Work required by the Contract Documents cannot be completed for the unpaid balance of the Contract Sum;
  3. Owner correction or completion Work: Work by Owner to correct defective Work or complete the Work in accordance with Section 5.16;
  4. Contractor's failure to perform: Contractor's failure to perform in accordance with the Contract Documents; or
  5. Contractor's negligent acts or omissions: Cost or liability that may occur to Owner as the result of Contractor's fault or negligent acts or omissions.
- B. Owner to notify Contractor of withholding for unsatisfactory performance: In any case where part or all of a payment is going to be withheld for unsatisfactory performance, Owner shall notify Contractor in accordance with chapter 39.76 RCW.

**6.6 RETAINAGE AND BOND CLAIM RIGHTS**

Chapters 39.08 RCW and 60.28 RCW incorporated by reference: Chapters 39.08 RCW and 60.28 RCW, concerning the rights and responsibilities of Contractor and Owner with regard to the performance and payment bonds and retainage, are made a part of the Contract Documents by reference as though fully set forth herein.

**6.7 SUBSTANTIAL COMPLETION**

Substantial Completion defined: Substantial Completion is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner has full and unrestricted use and benefit of the facilities (or portion thereof designated and approved by Owner) for the use for which it is intended. All Work other than incidental corrective or punch list work shall be completed. Substantial Completion shall not have been achieved if all systems and parts are not functional, if utilities are not connected and operating normally, if all required occupancy permits have not been issued, or if the Work is not accessible by normal vehicular and pedestrian traffic routes. The date Substantial Completion is achieved shall be established in writing by Owner. Contractor may request an early date of Substantial Completion which must be approved by Change Order. Owner's occupancy of the Work or designated portion thereof does not necessarily indicate that Substantial Completion has been achieved.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**  
**6.8 PRIOR OCCUPANCY**

- A. Prior Occupancy defined; Restrictions: Owner may, upon written notice thereof to Contractor, take possession of or use any completed or partially completed portion of the Work ("Prior Occupancy") at any time prior to Substantial Completion. Unless otherwise agreed in writing, Prior Occupancy shall not: be deemed an acceptance of any portion of the Work; accelerate the time for any payment to Contractor; prejudice any rights of Owner provided by any insurance, bond, guaranty, or the Contract Documents; relieve Contractor of the risk of loss or any of the obligations established by the Contract Documents; establish a date for termination or partial termination of the assessment of liquidated damages; or constitute a waiver of claims.
- B. Damage; Duty to repair and warranties: Notwithstanding anything in the preceding paragraph, Owner shall be responsible for loss of or damage to the Work resulting from Prior Occupancy. Contractor's one year duty to repair any system warranties shall begin on building systems activated and used by Owner as agreed in writing by Owner and Contractor.

**6.9 FINAL COMPLETION, ACCEPTANCE, AND PAYMENT**

- A. Final Completion defined: Final Completion shall be achieved when the Work is fully and finally complete in accordance with the Contract Documents. The date Final Completion is achieved shall be established by Owner in writing, but in no case shall constitute Final Acceptance which is a subsequent, separate, and distinct action.
- B. Final Acceptance defined: Final Acceptance shall be achieved when the Contractor has completed the requirements of the Contract Documents. The date Final Acceptance is achieved shall be established by Owner in writing. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents, submit to Owner a written notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment, shall release Contractor or its sureties from any obligations of these Contract Documents or the payment and performance bonds, or constitute a waiver of any claims by Owner arising from Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Final payment waives Claim rights: Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to Owner of all claims by Contractor, or any such Subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those Claims made in accordance with the procedures, including the time limits, set forth in Part 8.

**PART 7 – CHANGES**

**7.1 CHANGE IN THE WORK**

- A. Changes in Work, Contract Sum, and Contract Time by Change Order: Owner may, at any time and without notice to Contractor's surety, order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Contract Documents through the execution of Change Orders. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Contract Time, an equitable adjustment shall be made as provided in Section 7.02 or 7.03, respectively, and such adjustment(s) shall be incorporated into a Change Order.
- B. Owner may request COP from Contractor: If Owner desires to order a change in the Work, it may request a written Change Order Proposal (COP) from Contractor. Contractor shall submit a Change Order Proposal within 14 Days of the request from Owner, or within such other period as mutually agreed. Contractor's Change Order Proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.

- C. COP negotiations: Upon receipt of the Change Order Proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, as provided in Sections 7.02 and 7.03, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor. Pending agreement on the terms of the Change Order, Owner may direct Contractor to proceed immediately with the Change Order Work. Contractor shall not proceed with any change in the Work until it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.
- D. Change Order as full payment and final settlement: If Owner and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.
- E. Failure to agree upon terms of Change Order; Final offer and Claims: If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, Contractor may at any time in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within 30 Days of Contractor's request. Owner may also provide Contractor with a final offer at any time. If Contractor rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file a Claim as provided in Part 8.
- F. Field Authorizations: The Owner may direct the Contractor to proceed with a change in the work through a written Field Authorization (also referred to as a Field Order) when the time required to price and execute a Change Order would impact the Project.

The Field Authorization shall describe and include the following:

1. The scope of work
2. An agreed upon maximum not-to-exceed amount
3. Any estimated change to the Contract Time
4. The method of final cost determination in accordance with the requirements of Part 7 of the General Conditions
5. The supporting cost data to be submitted in accordance with the requirements of Part 7 of the General Conditions

Upon satisfactory submittal by the Contractor and approval by the Owner of supporting cost data, a Change Order will be executed. The Owner will not make payment to the Contractor for Field Authorization work until that work has been incorporated into an executed Change Order.

**7.2 CHANGE IN THE CONTRACT SUM**

**A. General Application**

1. Contract Sum changes only by Change Order: The Contract Sum shall only be changed

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

by a Change Order. Contractor shall include any request for a change in the Contract Sum in its Change Order Proposal.

2. Owner fault or negligence as basis for change in Contract Sum: If the cost of Contractor's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Sum in accordance with the following procedure. No change in the Contract Sum shall be allowed to the extent: Contractor's changed cost of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible; the change is concurrently caused by Contractor and Owner; or the change is caused by an act of Force Majeure as defined in Section 3.05.
  - (a) Notice and record keeping for equitable adjustment: A request for an equitable adjustment in the Contract Sum shall be based on written notice delivered to Owner within 7 Days of the occurrence of the event giving rise to the request. For purposes of this part, "occurrence" means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such records and, if requested shall promptly furnish copies of such records to Owner.
  - (b) Content of notice for equitable adjustment; Failure to comply: Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than 7 Days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Sum requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
  - (c) Contractor to provide supplemental information: Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph a. above with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Contractor shall demonstrate the impact on the critical path, in accordance with Section 7.03C. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
  - (d) Contractor to proceed with Work as directed: Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
  - (e) Contractor to combine requests for same event together: Any requests by Contractor for an equitable adjustment in the Contract Sum and in the Contract Time

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

that arise out of the same event(s) shall be submitted together.

3. Methods for calculating Change Order amount: The value of any Work covered by a Change Order, or of any request for an equitable adjustment in the Contract Sum, shall be determined by one of the following methods:
  - a. Fixed Price: On the basis of a fixed price as determined in paragraph 7.02B.
  - b. Unit Prices: By application of unit prices to the quantities of the items involved as determined in paragraph 7.02C.
  - c. Time and Materials: On the basis of time and material as determined in paragraph 7.02D.
4. Fixed price method is default; Owner may direct otherwise: When Owner has requested Contractor to submit a Change Order Proposal, Owner may direct Contractor as to which method in subparagraph 3 above to use when submitting its proposal. Otherwise, Contractor shall determine the value of the Work, or of a request for an equitable adjustment, on the basis of the fixed price method.

**B. Change Order Pricing – Fixed Price**

Procedures: When the fixed price method is used to determine the value of any Work covered by a Change Order, or of a request for an equitable adjustment in the Contract Sum, the following procedures shall apply:

1. Breakdown and itemization of details on COP: Contractor's Change Order Proposal, or request for adjustment in the Contract Sum, shall be accompanied by a complete itemization of the costs, including labor, material, subcontractor costs, and overhead and profit. The costs shall be itemized in the manner set forth below, and shall be submitted on breakdown sheets in a form approved by Owner.
2. Use of industry standards in calculating costs: All costs shall be calculated based upon appropriate industry standard methods of calculating labor, material quantities, and equipment costs.
3. Costs contingent on Owner's actions: If any of Contractor's pricing assumptions are contingent upon anticipated actions of Owner, Contractor shall clearly state them in the proposal or request for an equitable adjustment.
4. Markups on additive and deductive Work: The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work. Where a change in the Work involves additive and deductive work by the same Contractor or Subcontractor, small tools, overhead, profit, bond and insurance markups will apply to the net difference.
5. Breakdown not required if change less than \$1,000: If the total cost of the change in the Work or request for equitable adjustment does not exceed \$1,000, Contractor shall not be required to submit a breakdown if the description of the change in the Work or request for equitable adjustment is sufficiently definitive for Owner to determine fair value.
6. Breakdown required if change between \$1,000 and \$2,500: If the total cost of the change in the Work or request for equitable adjustment is between \$1,000 and \$2,500, Contractor may submit a breakdown in the following level of detail if the description of the change in the Work or if the request for equitable adjustment is sufficiently definitive to permit the Owner to determine fair value:

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

- a. lump sum labor;
  - b. lump sum material;
  - c. lump sum equipment usage;
  - d. overhead and profit as set forth below; and
  - e. insurance and bond costs as set forth below.
7. Components of increased cost: Any request for adjustment of Contract Sum based upon the fixed price method shall include only the following items:
- a. Craft labor costs: These are the labor costs determined by multiplying the estimated or actual additional number of craft hours needed to perform the change in the Work by the hourly labor costs. Craft hours should cover direct labor, as well as indirect labor due to trade inefficiencies. The hourly costs shall be based on the following:
    - (1) Basic wages and benefits: Hourly rates and benefits as stated on the Department of Labor and Industries approved "statement of intent to pay prevailing wages" or a higher amount if approved by the Owner. Direct supervision shall be a reasonable percentage not to exceed 15% of the cost of direct labor. No supervision markup shall be allowed for a working supervisor's hours.
    - (2) Worker's insurance: Direct contributions to the state of Washington for industrial insurance; medical aid; and supplemental pension, by the class and rates established by the Department of Labor and Industries.
    - (3) Federal insurance: Direct contributions required by the Federal Insurance Compensation Act; Federal Unemployment Tax Act; and the State Unemployment Compensation Act.
    - (4) Travel allowance: Travel allowance and/or subsistence, if applicable, not exceeding those allowances established by regional labor union agreements, which are itemized and identified separately.
    - (5) Safety: Cost incurred due to the Washington Industrial Safety and Health Act, which shall be a reasonable percentage not to exceed 2% of the sum of the amounts calculated in (1), (2), and (3) above.
  - b. Material costs: This is an itemization of the quantity and cost of materials needed to perform the change in the Work. Material costs shall be developed first from actual known costs, second from supplier quotations or if these are not available, from standard industry pricing guides. Material costs shall consider all available discounts. Freight costs, express charges, or special delivery charges, shall be itemized.
  - c. Equipment costs: This is an itemization of the type of equipment and the estimated or actual length of time the construction equipment appropriate for the Work is or will be used on the change in the Work. Costs will be allowed for construction equipment only if used solely for the changed Work, or for additional rental costs actually incurred by the Contractor. Equipment charges shall be computed on the basis of actual invoice costs or if owned, from the current edition of one of the following sources:

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

- (1) Associated General Contractors Washington State Department of Transportation (AGC WSDOT) Equipment Rental Agreement current edition, on the Contract execution date.
- (2) The National Electrical Contractors Association for equipment used on electrical work.
- (3) The Mechanical Contractors Association of America for equipment used on mechanical work.

The EquipmentWatch Rental Rate Blue Book shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed that shown in the AGC WSDOT Equipment Rental Agreement, current edition on the Contract execution date.

- d. Allowance for small tools, expendables & consumable supplies: Small tools consist of tools which cost \$250 or less and are normally furnished by the performing contractor. The maximum rate for small tools shall not exceed the following:

- (1) 3% for Contractor: For Contractor, 3% of direct labor costs.
- (2) 5% for Subcontractors: For Subcontractors, 5% of direct labor costs.

Expendables and consumables supplies directly associated with the change in Work must be itemized.

- e. Subcontractor costs: This is defined as payments Contractor makes to Subcontractors for changed Work performed by Subcontractors of any tier. The Subcontractors' cost of Work shall be calculated and itemized in the same manner as prescribed herein for Contractor.

- f. Allowance for overhead: This is defined as costs of any kind attributable to direct and indirect delay, acceleration, or impact, added to the total cost to Owner of any change in the Contract Sum. If the Contractor is compensated under Section 7.03D, the amount of such compensation shall be reduced by the amount Contractor is otherwise entitled to under this subsection (f). This allowance shall compensate Contractor for all noncraft labor, temporary construction facilities, field engineering, and schedule updating, as-built drawings, home office cost, B&O taxes, office engineering, estimating costs, additional overhead because of extended time, and any other cost incidental to the change in the Work. It shall be strictly limited in all cases to a reasonable amount, mutually acceptable, or if none can be agreed upon to an amount not to exceed the rates below:

- (1) Projects less than \$3 million: For projects where the Contract Award Amount is under \$3 million, the following shall apply:
  - (a) Contractor markup on Contractor Work: For Contractor, for any Work actually performed by Contractor's own forces, 16% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
  - (b) Subcontractor markup for Subcontractor Work: For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 16% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
  - (c) Contractor markup for Subcontractor Work: For Contractor, for any work performed by its Subcontractor(s) 6% of the first \$50,000 of the amount due each Subcontractor, and 4% of the remaining amount if any.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

- (d) Subcontractor markup for lower tier Subcontractor Work: For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, 4% of the first \$50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.
  - (e) Basis of cost applicable for markup: The cost to which overhead is to be applied shall be developed in accordance with Section 7.02B 7a. – e.
- (2). Projects more than \$3 million: For projects where the Contract Award Amount is equal to or exceeds \$3 million, the following shall apply:
- (a) Contractor markup on Contractor Work: For Contractor, for any Work actually performed by Contractor's own forces, 12% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
  - (b) Subcontractor markup for Subcontractor Work: For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 12% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
  - (c) Contractor markup for Subcontractor Work: For Contractor, for any Work performed by its Subcontractor(s), 4% of the first \$50,000 of the amount due each Subcontractor, and 2% of the remaining amount if any.
  - (d) Subcontractor markup for lower tier Subcontractor Work: For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, 4% of the first \$50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.
  - (e) Basis of cost applicable for markup: The cost to which overhead is to be applied shall be developed in accordance with Section 7.02B 7a. – e.
- g. Allowance for profit: Allowance for profit is an amount to be added to the cost of any change in contract sum, but not to the cost of change in Contract Time for which contractor has been compensated pursuant to the conditions set forth in Section 7.03. It shall be limited to a reasonable amount, mutually acceptable, or if none can be agreed upon, to an amount not to exceed the rates below:
- (1) Contractor / Subcontractor markup for self-performed Work: For Contractor or Subcontractor of any tier for work performed by their forces, 6% of the cost developed in accordance with Section 7.02B 7a. – e.
  - (2) Contractor / Subcontractor markup for Work performed at lower tier: For Contractor or Subcontractor of any tier for work performed by a subcontractor of a lower tier, 4% of the subcontract cost developed in accordance with Section 7.02B 7a. – h.
- h. Insurance and bond premiums: Cost of change in insurance or bond premium: This is defined as:
- (1) Contractor's liability insurance: The cost of any changes in Contractor's liability insurance arising directly from execution of the Change Order; and
  - (2) Payment and Performance Bond: The cost of the additional premium for Contractor's bond arising directly from the changed Work.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

The cost of any change in insurance or bond premium shall be added after overhead and allowance for profit are calculated in accordance with subparagraph f. and g above.

**C. Change Order Pricing – Unit Prices**

1. Content of Owner authorization: Whenever Owner authorizes Contractor to perform Work on a unit-price basis, Owner's authorization shall clearly state:
  - a. Scope: Scope of work to be performed;
  - b. Reimbursement basis: Type of reimbursement including pre-agreed rates for material quantities; and
  - c. Reimbursement limit: Cost limit of reimbursement.
2. Contractor responsibilities: Contractor shall:
  - a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, Contractor shall identify workers assigned to the Change Order Work and areas in which they are working;
  - b. Leave access as appropriate for quantity measurement; and
  - c. Not exceed any cost limit(s) without Owner's prior written approval.
3. Cost breakdown consistent with Fixed Price requirements: Contractor shall submit costs in accordance with paragraph 7.02B and satisfy the following requirements:
  - a. Unit prices must include overhead, profit, bond and insurance premiums: Unit prices shall include reimbursement for all direct and indirect costs of the Work, including overhead, profit, bond, and insurance costs; and
  - b. Owner verification of quantities: Quantities must be supported by field measurement statements signed by Owner.

**D. Change Order Pricing – Time-and-Material Prices**

1. Content of Owner authorization: Whenever Owner authorizes Contractor to perform Work on a time-and-material basis, Owner's authorization shall clearly state:
  - a. Scope: Scope of Work to be performed;
  - b. Reimbursement basis: Type of reimbursement including pre-agreed rates, if any, for material quantities or labor; and
  - c. Reimbursement limit: Cost limit of reimbursement.
2. Contractor responsibilities: Contractor shall:
  - a. Identify workers assigned: Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, identify workers assigned to the Change Order Work and areas in which they are working;
  - b. Provide daily timesheets: Identify on daily time sheets all labor performed in

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

accordance with this authorization. Submit copies of daily time sheets within 2 working days for Owner's review.

- c. Allow Owner to measure quantities: Leave access as appropriate for quantity measurement;
  - d. Perform Work efficiently: Perform all Work in accordance with this section as efficiently as possible; and
  - e. Not exceed Owner's cost limit: Not exceed any cost limit(s) without Owner's prior written approval.
3. Cost breakdown consistent with Fixed Price requirements: Contractor shall submit costs in accordance with paragraph 7.02B and additional verification supported by:
- a. Timesheets: Labor detailed on daily time sheets; and
  - b. Invoices: Invoices for material.

**7.3 CHANGE IN THE CONTRACT TIME**

- A. COP requests for Contract Time: The Contract Time shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Time in its Change Order Proposal.
- B. Time extension permitted if not Contractor's fault: If the time of Contractor's performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.
- 1. Notice and record keeping for Contract Time request: A request for an equitable adjustment in the Contract Time shall be based on written notice delivered within 7 Days of the occurrence of the event giving rise to the request. If Contractor believes it is entitled to adjustment of Contract Time, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such record and if requested, shall promptly furnish copies of such record to Owner.
  - 2. Timing and content of Contractor's Notice: Contractor shall not be entitled to an adjustment in the Contract Time for any events that occurred more than 7 Days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Time requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
  - 3. Contractor to provide supplemental information: Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph 7.03B.2 with additional supporting data. Such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

analysis that confirms not only that Contractor suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an equitable adjustment in Contract Time for such act, event, or condition; and supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

4. Contractor to proceed with Work as directed: Pending final resolution of any request in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
- C. Contractor to demonstrate impact on critical path of schedule: Any change in the Contract Time covered by a Change Order, or based on a request for an equitable adjustment in the Contract Time, shall be limited to the change in the critical path of Contractor's schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Any Change Order Proposal or request for an adjustment in the Contract Time shall demonstrate the impact on the critical path of the schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event: had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by resequencing of the Work or other reasonable alternatives.
- D. Cost of change in Contract Time: Contractor may request compensation for the cost of a change in Contract Time in accordance with this paragraph, 7.03D, subject to the following conditions:
1. Must be solely fault of Owner or A/E: The change in Contract Time shall solely be caused by the fault or negligence of Owner or A/E;
  2. Procedures: Contractor shall follow the procedure set forth in paragraph 7.03B;
  3. Demonstrate impact on critical path: Contractor shall establish the extent of the change in Contract Time in accordance with paragraph 7.03C; and
  4. Limitations on daily costs: The daily cost of any change in Contract Time shall be limited to the items below, less the amount of any change in the Contract Sum the Contractor may otherwise be entitled to pursuant to Section 7.02B 7f for any change in the Work that contributed to this change in Contract Time:
    - a. Non-productive supervision or labor: cost of nonproductive field supervision or labor extended because of delay;
    - b. Weekly meetings and indirect activities: cost of weekly meetings or similar indirect activities extended because of the delay;
    - c. Temporary facilities or equipment rental: cost of temporary facilities or equipment rental extended because of the delay;
    - d. Insurance premiums: cost of insurance extended because of the delay;
    - e. Overhead: general and administrative overhead in an amount to be agreed upon, but not to exceed 3% of the Contract Award Amount divided by the originally specified Contract Time for each Day of the delay.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

**PART 8 – CLAIMS AND DISPUTE RESOLUTION**

**8.1 CLAIMS PROCEDURE**

- A. Claim is Contractor's remedy: If the parties fail to reach agreement on the terms of any Change Order for Owner-directed Work as provided in Section 7.01, or on the resolution of any request for an equitable adjustment in the Contract Sum as provided in Section 7.02 or the Contract Time as provided in Section 7.03, Contractor's only remedy shall be to file a Claim with Owner as provided in this section.
- B. Claim filing deadline for Contractor: Contractor shall file its Claim within 120 Days from Owner's final offer made in accordance with paragraph 7.01E, or by the date of Final Acceptance, whichever occurs first.
- C. Claim must cover all costs and be documented: The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Contractor may be entitled. It shall be fully substantiated and documented. At a minimum, the Claim shall contain the following information:
1. Factual statement of Claim: A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;
  2. Dates: The date on which facts arose which gave rise to the Claim;
  3. Owner and A/E employee's knowledgeable about Claim: The name of each employee of Owner or A/E knowledgeable about the Claim;
  4. Support from Contract Documents: The specific provisions of the Contract Documents which support the Claim;
  5. Identification of other supporting information: The identification of any documents and the substance of any oral communications that support the Claim;
  6. Copies of supporting documentation: Copies of any identified documents, other than the Contract Documents, that support the Claim;
  7. Details on Claim for Contract Time: If an adjustment in the Contract Time is sought: the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time;
  8. Details on Claim for adjustment of Contract Sum: If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail as required by Section 7.02; and
  9. Statement certifying Claim: A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes Owner is liable.
- D. Owner's response to Claim filed: After Contractor has submitted a fully documented Claim that complies with all applicable provisions of Parts 7 and 8, Owner shall respond, in writing, to

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

Contractor as follows:

1. Response time for Claim less than \$50,000: If the Claim amount is less than \$50,000, with a decision within 60 Days from the date the Claim is received; or
  2. Response time for Claim of \$50,000 or more: If the Claim amount is \$50,000 or more, with a decision within 60 Days from the date the Claim is received, or with notice to Contractor of the date by which it will render its decision. Owner will then respond with a written decision in such additional time.
- E. Owner's review of Claim and finality of decision: To assist in the review of Contractor's Claim, Owner may visit the Project site, or request additional information, in order to fully evaluate the issues raised by the Claim. Contractor shall proceed with performance of the Work pending final resolution of any Claim. Owner's written decision as set forth above shall be final and conclusive as to all matters set forth in the Claim, unless Contractor follows the procedure set forth in Section 8.02.
- F. Waiver of Contractor rights for failure to comply with this Section: Any Claim of the Contractor against the Owner for damages, additional compensation, or additional time, shall be conclusively deemed to have been waived by the Contractor unless made in accordance with the requirements of this Section.

**8.2 ARBITRATION**

- A. Timing of Contractor's demand for arbitration: If Contractor disagrees with Owner's decision rendered in accordance with paragraph 8.01D, Contractor shall provide Owner with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than 30 Days after the date of Owner's decision on such Claim; failure to demand arbitration within said 30 Day period shall result in Owner's decision being final and binding upon Contractor and its Subcontractors.
- B. Filing of Notice for arbitration: Notice of the demand for arbitration shall be filed with the American Arbitration Association (AAA), with a copy provided to Owner. The parties shall negotiate or mediate under the Voluntary Construction Mediation Rules of the AAA, or mutually acceptable service, before seeking arbitration in accordance with the Construction Industry Arbitration Rules of AAA as follows:
1. Claims less than \$30,000: Disputes involving \$30,000 or less shall be conducted in accordance with the Northwest Region Expedited Commercial Arbitration Rules; or
  2. Claims greater than \$30,000: Disputes over \$30,000 shall be conducted in accordance with the Construction Industry Arbitration Rules of the AAA, unless the parties agree to use the expedited rules.
- C. Arbitration is forum for resolving Claims: All Claims arising out of the Work shall be resolved by arbitration. The judgment upon the arbitration award may be entered, or review of the award may occur, in the superior court having jurisdiction thereof. No independent legal action relating to or arising from the Work shall be maintained.
- D. Owner may combine Claims into same arbitration: Claims between Owner and Contractor, Contractor and its Subcontractors, Contractor and A/E, and Owner and A/E shall, upon demand by Owner, be submitted in the same arbitration or mediation.
- E. Settlement outside of arbitration to be documented in Change Order: If the parties resolve the Claim prior to arbitration judgment, the terms of the resolution shall be incorporated in a Change

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

**8.3 CLAIMS AUDITS**

- A. Owner may audit Claims: All Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.
- B. Contractor to make documents available: In support of Owner audit of any Claim, Contractor shall, upon request, promptly make available to Owner the following documents:
1. Daily time sheets and supervisor's daily reports;
  2. Collective bargaining agreements;
  3. Insurance, welfare, and benefits records;
  4. Payroll registers;
  5. Earnings records;
  6. Payroll tax forms;
  7. Material invoices, requisitions, and delivery confirmations;
  8. Material cost distribution worksheet;
  9. Equipment records (list of company equipment, rates, etc.);
  10. Vendors', rental agencies', Subcontractors', and agents' invoices;
  11. Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
  12. Subcontractors' and agents' payment certificates;
  13. Cancelled checks (payroll and vendors);
  14. Job cost report, including monthly totals;
  15. Job payroll ledger;
  16. Planned resource loading schedules and summaries;
  17. General ledger;
  18. Cash disbursements journal;
  19. Financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for 3 years preceding execution of the Work;
  20. Depreciation records on all company equipment whether these records are maintained by

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

the company involved, its accountant, or others;

21. If a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
  22. All nonprivileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim;
  23. Work sheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and
  24. Work sheets, software, and all other documents used by Contractor to prepare its bid.
- C. Contractor to provide facilities for audit and shall cooperate: The audit may be performed by employees of Owner or a representative of Owner. Contractor, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Contractor, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors.

**PART 9 – TERMINATION OF THE WORK**

**9.1 TERMINATION BY OWNER FOR CAUSE**

- A. 7 Day Notice to Terminate for Cause: Owner may, upon 7 Days written notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:
1. Contractor fails to prosecute Work: Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
  2. Contractor bankrupt: Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
  3. Contractor fails to correct Work: Contractor fails in a material way to replace or correct Work not in conformance with the Contract Documents;
  4. Contractor fails to supply workers or materials: Contractor repeatedly fails to supply skilled workers or proper materials or equipment;
  5. Contractor failure to pay Subcontractors or labor: Contractor repeatedly fails to make prompt payment due to Subcontractors or for labor;
  6. Contractor violates laws: Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
  7. Contractor in material breach of Contract: Contractor is otherwise in material breach of any provision of the Contract Documents.
- B. Owner's actions upon termination: Upon termination, Owner may at its option:
1. Take possession of Project site: Take possession of the Project site and take possession of or use all materials, equipment, tools, and construction equipment and machinery

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

thereon owned by Contractor to maintain the orderly progress of, and to finish, the Work;

2. Accept assignment of Subcontracts: Accept assignment of subcontracts pursuant to Section 5.20; and
  3. Finish the Work: Finish the Work by whatever other reasonable method it deems expedient.
- C. Surety's role: Owner's rights and duties upon termination are subject to the prior rights and duties of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.
- D. Contractor's required actions: When Owner terminates the Work in accordance with this section, Contractor shall take the actions set forth in paragraph 9.02B, and shall not be entitled to receive further payment until the Work is accepted.
- E. Contractor to pay for unfinished Work: If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for A/E's services and expenses made necessary thereby and any other extra costs or damages incurred by Owner in completing the Work, or as a result of Contractor's actions, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner. These obligations for payment shall survive termination.
- F. Contractor and Surety still responsible for Work performed: Termination of the Work in accordance with this section shall not relieve Contractor or its surety of any responsibilities for Work performed.
- G. Conversion of "Termination for Cause" to "Termination for Convenience": If Owner terminates Contractor for cause and it is later determined that none of the circumstances set forth in paragraph 9.01A exist, then such termination shall be deemed a termination for convenience pursuant to Section 9.02.

**9.2 TERMINATION BY OWNER FOR CONVENIENCE**

- A. Owner Notice of Termination for Convenience: Owner may, upon written notice, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for the convenience of Owner.
- B. Contractor response to termination Notice: Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor shall promptly:
1. Cease Work: Stop performing Work on the date and as specified in the notice of termination;
  2. No further orders or Subcontracts: Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
  3. Cancel orders and Subcontracts: Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;
  4. Assign orders and Subcontracts to Owner: Assign to Owner all of the right, title, and interest of Contractor in all orders and subcontracts;
  5. Take action to protect the Work: Take such action as may be necessary or as directed

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

by Owner to preserve and protect the Work, Project site, and any other property related to this Project in the possession of Contractor in which Owner has an interest; and

6. Continue performance not terminated: Continue performance only to the extent not terminated
- C. Terms of adjustment in Contract Sum if Contract terminated: If Owner terminates the Work or any portion thereof for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments. Contractor shall be required to make its request in accordance with the provisions of Part 7.
- D. Owner to determine whether to adjust Contract Time: If Owner terminates the Work or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Owner.

**PART 10 – MISCELLANEOUS PROVISIONS**

**10.1 GOVERNING LAW**

Applicable law and venue: The Contract Documents and the rights of the parties herein shall be governed by the laws of the state of Washington. Venue shall be in the county in which Owner's principal place of business is located, unless otherwise specified.

**10.2 SUCCESSORS AND ASSIGNS**

Bound to successors; Assignment of Contract: Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party shall assign the Work without written consent of the other, except that Contractor may assign the Work for security purposes, to a bank or lending institution authorized to do business in the state of Washington. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations set forth in the Contract Documents.

**10.3 MEANING OF WORDS**

Meaning of words used in Specifications: Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority,

whether such reference be specific or by implication, shall be to the latest standard specification, manual, or code in effect on the date for submission of bids, except as may be otherwise specifically stated. Wherever in these Drawings and Specifications an article, device, or piece of equipment is referred to in the singular manner, such reference shall apply to as many such articles as are shown on the drawings, or required to complete the installation.

**10.4 RIGHTS AND REMEDIES**

No waiver of rights: No action or failure to act by Owner or A/E shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall action or failure to act constitute approval or acquiescence in a breach therein, except as may be specifically agreed in writing.

**FOR WASHINGTON STATE FACILITY CONSTRUCTION**

**10.5 CONTRACTOR REGISTRATION**

Contractor must be registered or licensed: Pursuant to RCW 39.06, Contractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27.

**10.6 TIME COMPUTATIONS**

Computing time: When computing any period of time, the day of the event from which the period of time begins shall not be counted. The last day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next day that is not a weekend or holiday. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

**10.7 RECORDS RETENTION**

Six year records retention period: The wage, payroll, and cost records of Contractor, and its Subcontractors, and all records subject to audit in accordance with Section 8.03, shall be retained for a period of not less than 6 years after the date of Final Acceptance.

**10.8 THIRD-PARTY AGREEMENTS**

No third party relationships created: The Contract Documents shall not be construed to create a contractual relationship of any kind between: A/E and Contractor; Owner and any Subcontractor; or any persons other than Owner and Contractor.

**10.9 ANTITRUST ASSIGNMENT**

Contractor assigns overcharge amounts to Owner: Owner and Contractor recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, Contractor hereby assigns to Owner any and all claims for such overcharges as to goods, materials, and equipment purchased in connection with the Work performed in accordance with the Contract Documents, except as to overcharges which result from antitrust violations commencing after the Contract Sum is established and which are not passed on to Owner under a Change Order. Contractor shall put a similar clause in its Subcontracts, and require a similar clause in its sub- Subcontracts, such that all claims for such overcharges on the Work are passed to Owner by Contractor.

**10.10 HEADINGS AND CAPTIONS**

Headings for convenience only: All headings and captions used in these General Conditions are only for convenience of reference, and shall not be used in any way in connection with the meaning, effect, interpretation, construction, or enforcement of the General Conditions, and do not define the limit or describe the scope or intent of any provision of these General Conditions.

## **D. SUPPLEMENTAL CONDITIONS**

### **SUPPLEMENTAL CONDITIONS FOR JOB ORDER CONTRACTS**

Last update July, 1 2016

#### 1.01 Replaces Section 1.01 DEFINITIONS

- A. "Application for Payment" means a written request submitted by Contractor to the Owner, or if the Owner has retained an A/E for a Work Order, to the A/E for payment of Work completed in accordance with the Contract Documents and approved Work Order
- B. "Architect," "Engineer," or "A/E" means a person or entity lawfully entitled to practice architecture or engineering, representing Owner within the limits of its delegated authority.
- C. "Change Order" means a written instrument signed by Owner and Contractor stating their agreement upon all of the following, for the Contract or for an individual Work Order: (1) a change in the Work; (2) the amount of the adjustment in the Sum, if any, and (3) the extent of the adjustment in the Time, if any.
- D. "Claim" means Contractor's exclusive remedy for resolving disputes with Owner regarding the terms of a Change Order or a request for equitable adjustment, as more fully set forth in part 8.
- D.1 "Coefficient" is the Contractor's competitively bid price adjustment to the unit prices as published in the Unit Price Book. The contents and variations allowed in the "Coefficient" are further defined in the RFP and in this Supplemental Conditions document. The "Standard Coefficient" is for Work that is conducted during normal working hours (7:00AM to 5:00PM, Monday through Friday) and the "Non-standard Coefficient" is for Work that occurs during other than normal working hours (5:00PM to 7:00AM, Monday through Friday, and weekends and holidays). Coefficients may also vary according the location of the Work in a Zone specified in the RFP.
- E. "Contract" is the "Job Order Contract" as defined below in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated definitive Work Orders.
- E.1 "Contract Award Amount" is the "Minimum Committed Amount" of Work Orders stated in the RFP.
- F. "Contract Documents" means the Advertisement for Bids, Instructions for Bidders, completed Form of Proposal, General Conditions, Modifications to the General

Conditions, Supplemental Conditions, Public Works Job Order Contract and other Special Forms.

- F.1 "Contract Manual" means the volume assembled for the Request for Proposal (RFP) for the Job Order Contract that may include the bidding requirements, sample forms, and other Contract Documents.
- G. "Contract Sum" is the total amount payable by Owner to Contractor for performance of the Work in accordance with the Contract Documents, including the Contract Award Amount and any amount for Work Orders that is above the Contract Award Amount.
- H. "Contract Time" is the number of calendar days allotted in the Contract Documents for achieving Substantial Completion of the Work.
- I. "Contractor" (also "Job Order Contractor") means the person or entity awarded the Job Order Contract who has agreed with Owner to perform Work in accordance with specific Work Orders, associated Project Documents, and the Contract Documents.
- J. "Drawings" are the graphic and pictorial portions of the Project Documents showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.
- K. "Final Acceptance" means the written acceptance associated with a Work Order issued to Contractor by Owner after Contractor has completed the requirements of the Project Documents.
- L. "Final Completion" means that the Work is fully and finally completed in accordance with the Project Documents.
- M. "Force Majeure" means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in paragraph 3.05A.
- M.1 "Job Order Contract" (JOC) is a contract between the Owner and a licensed contractor in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated definitive Work Orders for public works as defined in RCW 39.04.010. The Contract and individual Work Orders are further defined and/or limited in location, work content, term, and amounts by the RFP, and other requirements included in the General and Supplemental Conditions documents.
- M.2 "Minimum Committed Amount" is the minimum dollar amount of total Work Orders stated in the RFP that the Owner commits to expending.
- N. "Notice" means a written notice which has been delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was

intended or, if delivered or sent by registered or certified mail, to the last business address known to the party giving notice.

- O. "Notice to Proceed" means a notice from Owner to Contractor that defines the date on which the Contract Time or individual Work Order begins to run.
- O.1 "Open Contract Sum" means the total sum of all open Work Orders. This term is used to set the parameters for bonding level and insurance requirements.
- P. "Owner" means the state agency, institution, or its authorized representative with the authority to enter into, administer, and/or terminate the Work in accordance with the Contract Documents and make related determinations and findings.
- Q. "Person" means a corporation, partnership, business association of any kind, trust, company, or individual.
- R. "Prior Occupancy" means Owner's use of all or parts of the Project before Substantial Completion.
- S. "Progress Schedule" means a schedule of the Work, in a form satisfactory to Owner, as further set forth in section 3.02.
- T. "Project" means the total construction of which the Work performed in accordance with the Contract Documents may be the whole or a part and which may include construction by Owner or by separate contractors.
- T.1 "Project Documents" means the documents associated with a specific Work Order and includes the scope of work, dollar amounts, schedule, Drawings and Specifications, and all addenda and modifications thereof.
- U. "Project Manual" see Contract Manual.
- V. "Project Record" means the separate set of Work Order Drawings and Specifications as further set forth in paragraph 4.02A.
- W. "Schedule of Values" means a written breakdown allocating the total Work Order Sum to each principle category of Work, in such detail as requested by Owner. The Work Order and its attachments satisfy the requirement for a Schedule of Values.
- X. "Specifications" are that portion of the Project Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- Y. "Subcontract" means a contract entered into by Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind for or in connection with the Work.

- Z. "Subcontractor" means any person, other than Contractor, who agrees to furnish or furnishes any supplies, materials, equipment, or services of any kind in connection with the Work.
- AA. "Substantial Completion" means that stage in the progress of the Work where Owner has full and unrestricted use and benefit of the facilities for the purposes intended, as more fully set forth in section 6.07.
- AA.1 "Unit Price Book" is the book specified in the RFP containing specific prices to be used in establishing a price for a Work Order.
- AB. "Work" means the construction and services required by the Project Documents associated with a specific Work Order, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and fabrication of components, performed, furnished, or provided in accordance with the Project Documents.
- AC. "Work Order" is the negotiated and agreed definition of the work to be performed, considering the Work Order Request and Proposal Order Proposal. The contents of the Work Order are further defined in Section 10.12.14 of these Supplemental Conditions.
- AD. "Work Order Request" is an order issued by an Owner to the Contractor for a definite scope of work to be performed pursuant to a Job Order Contract. Section 10.12.12 of these Supplemental Conditions describes what is to be included in the definite scope of work.
- AE. "Work Order Proposal" is a proposal from the Contractor for the work requested in a Work Order Request. The contents of the Proposal are further defined in Section 10.12.13 of these Supplemental Conditions.
- AF. "Small business" RCW 39.26.010(21) means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that:
- (a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either:
    - (i) Fifty or fewer employees; or
    - (ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or
  - (b) Is certified with the office of women and minority business enterprises under chapter 39.19 RCW.
- AG. "Veteran-Owned Businesses" In accordance with Executive Order 13-01-Veterans Transition Support, the Department of Enterprise Services (DES) shall set a target of awarding at least five (5) percent of all procurement contracts to certified veteran-owned businesses. The Department of Veterans Affairs (DVA), in consultation with DES, will establish agency reporting standards and protocols.

1.02 Replaces Section 1.02 ORDER OF PRECEDENCE

Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order.

1. Signed Public Works Contract, including any Work Orders, Change Orders, and any Special Forms.
2. Supplemental Conditions for State Facility Construction Using Job Order Contracting.
3. Special Conditions for Job Order Contracts.
4. General Conditions.
5. Specifications--provisions in Division 1 shall take precedence over provisions of any other Division.
6. Drawings--in case of conflict within the Drawings, large-scale drawings shall take precedence over small-scale drawings.
7. Signed and Completed Form of Proposal.
8. Instructions to Bidders.
9. RFP
10. Advertisement for Bids

1.02 Replaces Section 1.03 EXECUTION AND INTENT

Contractor makes the following representations to Owner:

1. The Contract Award Amount less the actual total amount payable by Owner to Contractor for work performed is reasonable compensation if the Owner fails to issue the Minimum Committed Amount of Work Orders stated in the RFP.
2. Contractor has carefully reviewed the Contract Documents and satisfied itself as to the typical or probable nature, locations, character, quality and quantity of the potential Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents.
3. Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required by the Contract Documents; and
4. Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform the obligations required by the Contract Documents and have sufficient experience and competence to do so.

5. The Unit Price Book prices, multiplied by the appropriate Contractor-proposed Coefficients and City Cost Index, when used as the basis for a Work Orders and Change Orders as described in this document, are reasonable and complete compensation for the Work.

2.02 Replaces Section 2.02 – COVERAGE LIMITS, INSURANCE COVERAGE CERTIFICATES

A. Insurance Coverage Certificates

The Contractor shall furnish acceptable proof of insurance coverage on the State of Washington Certificate of Insurance form SF500A, dated 07/02/92 or the ACCORD form.

B. Required Coverage

1. For a contract less than \$100,000.00, the coverage required is:

- a. Public Liability Insurance – The Contractor shall at all times during the term of this contract, at its cost and expense, carry and maintain general public liability insurance, including contractual liability, against claims for bodily injury, personal injury, death or property damage occurring or arising out of services provided under this contract. This insurance shall cover claims caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or servants. The limits of liability insurance, which may be increased as deemed necessary by the contracting parties, shall be:

Each Occurrence	\$1,000,000.00
General Aggregate Limits	\$1,000,000.00
(other than products – commercial operations)	
Products – Commercial Operations Limit	\$1,000,000.00
Personal and Advertising Injury Limit	\$1,000,000.00
Fire Damage Limit (any one fire)	\$50,000.00
Medical Expense Limit (any one person)	\$5,000.00

- b. If the contract is for underground utility work, then the Contractor shall provide proof of insurance for that above in the form of Explosion, Collapse and Underground (XCU) coverage.

- c. Employers Liability on an occurrence basis in an amount not less than \$1,000,000.00 per occurrence.
- 2. For contracts over \$100,000.00 but less than \$5,000,000.00 the contractor shall obtain the coverage limits as listed for contracts below \$100,000.00 and General Aggregate and Products – Commercial Operations Limit of not less than \$2,000,000.00.
- 3. Coverage for Comprehensive General Bodily Injury Liability Insurance for a contract over \$5,000,000.00 is:

Each Occurrence	\$2,500,000.00
General Aggregate Limits	\$5,000,000.00
(other than products – commercial operations)	
Products – Commercial Operations limit	\$5,000,000.00
Personal and Advertising Injury Limit	\$2,500,000.00
Fire Damage Limit (any one fire)	\$50,000.00
Medical Expense Limit (any one Person)	\$5,000.00

- 4. For all Contracts – Automobile Liability: in the event that services delivered pursuant to this contract involve the use of vehicles or the transportation of clients, automobile liability insurance shall be required. If Contractor-owned personal vehicles are used, a Business Automobile Policy covering at a minimum Code 2 “owned autos only” must be secured. If Contractor employee’s vehicles are used, the Contractor must also include under the Business Automobile Policy Code 9, coverage for non-owned autos. The minimum limits for automobile liability is: \$1,000,000.00 per occurrence, using a combined single limit for bodily injury and property damage.
- 5. For Contracts for Hazardous Substance Removal (Asbestos Abatement, PCB Abatement, etc.)
  - a. In addition to providing insurance coverage for the project as outlined above, the Contractor shall provide Environmental Impairment Liability insurance for the hazardous substance removal as follows:

<u>EACH OCCURRENCE</u>	<u>AGGREGATE</u>
\$500,000.00	\$1,000,000.00

or \$1,000,000.00 each occurrence/aggregate bodily injury and property damage combined single limit.

- 1) Insurance certificate must state that the insurer is covering hazardous substance removal.
  - 2) Should this insurance be secured on a "claims made" basis, the coverage must be continuously maintained for one year following the project's "final completion" through official completion of the project, plus one year following.
- b. For Contracts where hazardous substance removal is a subcomponent of contracted work, the general contractor shall provide to the Owner a certificate of insurance for coverage as defined in 5a. above. The state of Washington must be listed as an additional insured. This certificate of insurance must be provided to the Owner prior to commencing work.

#### 2.04 Replaces Section 2.04 PAYMENT AND PERFORMANCE BONDS

Payment and performance bonds for all open Work Orders, Change Orders and state sales tax, shall be furnished for the Work, and shall be in a form acceptable to the Owner. No payment or performance bond is required if the Contract Sum is \$35,000 or less and Contractor agrees that Owner may, in lieu of the bond, retain 50% of the Contract Sum for the period allowed by RCW 39.08.010.

**AIA Payment Bond and Performance Bond forms A312** are required by the Owner for the work of this contract. These forms must be obtained from the Contractor's bonding company. The Payment Bond shall cover payment to laborers and mechanics, including payments to Employee Benefit Funds, and payments to subcontractors, material suppliers, and persons who shall supply such person or persons, or subcontractors with materials and supplies.

#### 2.06 Replaces Section 2.06 BUILDER'S RISK

- A. Contractor shall purchase and maintain property insurance in the amount of the Open Contract Sum including all Work Orders and Change Orders for the Work on a replacement cost basis until Substantial Completion. The insurance shall cover the interest of Owner, Contractor, and any Subcontractors, as their interests may appear. For projects not involving New Building Construction, 'Installation Floater' is an acceptable substitute for the Builder's Risk Insurance."
- B. Contractor property insurance shall be placed on an "all risk" basis and insure against the perils of fire and extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for A/E's services and expenses required as a result of an insured loss.

- C. Owner and Contractor waive all subrogation rights against each other, any Subcontractors, A/E, A/E's sub-consultants, separate contractors described in section 5.20, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

3.02 Replaces Section 3.02 – CONSTRUCTION SCHEDULE

3.02 PROGRESS SCHEDULE

- A. Contractor shall submit with each Work Order Proposal a Progress Schedule for the Work. The Schedule shall indicate proposed Work Order start date, on-site date, constraining dates indicated by Owner on Work Order Request, constraining dates in the Contractors work that might affect Owner, such as utility shutdowns and access or use limitations of the site, key dates of interest such as start or complete of subcontractors efforts, and Substantial and Final Completion dates. Any mutually-agreed adjustments to this Schedule will be incorporated by Work Order authorized start date.
- B. The Progress Schedule shall be submitted in a form acceptable to the Owner and be capable of being transmitted electronically.
- C. Contractor shall utilize and comply with the Progress Schedule. On a monthly basis, or as otherwise agreed by Owner and Contractor, Contractor shall submit an updated Progress Schedule at its own expense to Owner indicating actual progress. If, in the opinion of Owner, Contractor is not in conformance with the Progress Schedule for reasons other than acts of Force Majeure as identified in section 3.05, Contractor shall take such steps as are necessary to bring the actual completion dates of its work activities into conformance with the Progress Schedule, or revise the Progress Schedule to reconcile with the actual progress of the Work.
- D. Contractor shall promptly notify Owner in writing of any actual or anticipated event which is delaying or could delay achievement of any milestone on the Progress Schedule. Contractor shall indicate the expected duration of the delay-and the action being or to be taken to correct the problem. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Contract Time.

3.03 Replaces Section 3.03 OWNER'S RIGHT TO SUSPEND THE WORK CONVENIENCE

- A. Owner may, at its sole discretion, order Contractor, in writing, to suspend all or any part of any Work Order for up to 90 days, or for such longer period as mutually agreed.

- B. Upon receipt of a written notice suspending the Work Order work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period up to 90 days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Owner shall either:
  - 1. Cancel the written notice suspending the Work Order Work; or
  - 2. Terminate the Work Order Work covered by the notice as provided in the termination provisions of part 9.
- C. If a written notice suspending the Work Order Work is cancelled or the period of the notice or any extension thereof expires, Contractor shall resume Work.
- D. Contractor shall be entitled to an equitable adjustment in the Work Order Contract Time, or Work Order Contract Time, Sum, or both, for increases in the time or cost of performance directly attributable to such suspension, provided Contractor complies with all requirements set forth in part 7.

3.07 Replaces section 3.07 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION

A. Liquidated Damages

- 1. Timely performance and completion of the Work Order Work is essential to Owner and time limits stated in the Work Order are of the essence. Owner may incur serious and substantial damages if Substantial Completion of the Work does not occur within the Work Order Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, provisions for liquidated damages may be included in a Work Order at the option of the Owner.
- 2. The liquidated damage amounts set forth in the Work Order will be assessed not as a penalty, but as liquidated damages for breach of the Work Order. This amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticability of fixing and ascertaining the actual damages the Owner would in such event sustain. This amount shall be construed as the actual amount of damages sustained by the Owner, and may be retained by the Owner and deducted from periodic payments to the Contractor.
- 3. Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Work Order.

B. Actual Damages

Actual damages will be assessed for failure to achieve Final Completion of a Work Order within the time provided. Actual damages will be calculated on the basis of direct architectural, administrative, and other related costs attributable to the Project from the date

when Final Completion should have been achieved, based on the date Substantial Completion is actually achieved, to the date Final Completion is actually achieved. Owner may offset these costs against any payment due Contractor.

PART 4 – Replaces Part 4 SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS

4.005 NEW SECTION TITLE: DESIGN REQUIREMENTS AND DESIGN DOCUMENTATION

Design Requirements are to be included in a Work Order Request and are intended to document Owner requirements for basic physical objectives to be achieved by accomplishing the work and any specific required design features. The Design Requirements shall include sufficient information on location, dimensions, quantities, physical interfaces with existing structures and systems, and desired functional characteristics, so that the Contractor can proceed with a Work Order Proposal. If the Owner does not also provide Design Documentation such as sketches, lists, Specifications, and Drawings, the Contractor can proceed with preparation of an appropriate level of detail of Design Documentation, as necessary for preparing the Work Order Proposal, with the approval of the Owner. The Contractor-prepared Design Documentation is subject to the review and approval of the Owner as part of the Work Order Proposal negotiation. Any additional Design Documentation prepared by the Contractor during the course of the Work is also subject to Owner review and approval.

4.005.1 Design Documentation requirements will be defined in the Work Order Request and will be tailored to be appropriate for the complexity and size of the requested Work.

4.005.2 Owner approved design work over and above that required by Paragraph 4.03 shall be indicated on the Work Order Proposal as separate line items. If Owner and Contractor agree, the design work may be covered by a separate Work Order.

4.01 DISCREPANCIES AND CONTRACT DOCUMENT REVIEW

- A. The intent of the Design Documentation is to describe a complete Project to be constructed in accordance with the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, permits, and supplies, and perform the Work required in accordance with the Design Documentation, and other provisions of the Contract Documents.
- B. The Contract Documents are complementary. What is required by one part of the Contract Documents shall be binding as if required by all. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.
- C. Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner. If, during the performance of the Work, Contractor finds a conflict, error, inconsistency, or omission in the Contract Documents, it shall

promptly and before proceeding with the Work affected thereby, report such conflict, error, inconsistency, or omission to the Owner in writing.

- D. Contractor shall do no Work without applicable Drawings, Specifications, or other agreed types of Design Documentation or written modifications, or Shop Drawings where required, unless agreed otherwise in writing by Owner. If Contractor performs any construction activity, and it knows or reasonably should have known that any of the Contract Documents contain a conflict, error, inconsistency, or omission, Contractor shall be responsible for the performance and shall bear the cost for its correction.
- E. Contractor shall provide any work or materials the provision of which is clearly implied and is within the scope of the Contract Documents even if the Contract Documents do not mention them specifically.
- F. Questions regarding interpretation of the requirements of the Contract Documents shall be referred to the Owner.

#### 4.02 PROJECT RECORD

- A. Contractor shall legibly mark in ink on a separate set of the Design Documentation all actual construction, including depths of foundations, horizontal and vertical locations of internal and underground utilities and appurtenances referenced to permanent visible and accessible surface improvements, field changes of dimensions and details, actual suppliers, manufacturers and trade names, models of installed equipment, and Change Order proposals. This separate set of Drawings and Specifications shall be the "Project Record."
- B. The Project Record shall be maintained on the project site throughout the construction and shall be clearly labeled "PROJECT RECORD". The Project Record shall be updated at least weekly noting all changes and shall be available to Owner at all times.
- C. Contractor shall submit the completed and finalized Project Record to A/E prior to Final Acceptance.

#### 4.03 SHOP DRAWINGS

- A. "Shop Drawings" means any documents and other information required to be submitted to the Owner by Contractor pursuant to the Work Order or Contract Documents, showing in detail: the proposed fabrication and assembly of structural elements; and the installation (i.e. form, fit, and attachment details) of materials and equipment. Shop Drawings, if required include, but are not limited to, drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work on a particular Work Order or as required by the Contract Documents. For materials and equipment to be incorporated into the Work, Contractor submittal shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples

at its own expense. Owner may duplicate, use, and disclose Shop Drawings provided in accordance with the Contract Documents.

- B. Contractor shall coordinate all Shop Drawings, and review them for accuracy, completeness, and compliance with the Contract Documents and shall indicate its approval thereon as evidence of such coordination and review. Where required by law, Shop Drawings shall be stamped by an appropriate professional licensed by the state of Washington. Shop Drawings submitted to Owner without evidence of Contractor's approval shall be returned for resubmission. Contractor shall review, approve, and submit Shop Drawings with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or separate contractors. Contractor's submittal schedule shall allow a reasonable time for Owner review. Owner will review, approve, or take other appropriate action on the Shop Drawings. Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings until the respective submittal has been reviewed and the Owner has approved or taken other appropriate action. Owner shall respond to Shop Drawing submittals with reasonable promptness. Any Work by Contractor shall be in accordance with reviewed Shop Drawings. Submittals made by Contractor which are not required by the Work Order or Contract Documents may be returned without action.
- C. Approval, or other appropriate action with regard to Shop Drawings by Owner, shall not relieve Contractor of responsibility for any errors or omissions in such Shop Drawings, nor from responsibility for compliance with the requirements of the Contract Documents. Unless specified in the Contract Documents, review by Owner shall not constitute an approval of the safety precautions employed by Contractor during construction, or constitute an approval of Contractor's means or methods of construction. If Contractor fails to obtain approval before installation and the item or work is subsequently rejected, Contractor shall be responsible for all costs of correction.
- D. If Shop Drawings show variations from the requirements of the Contract Documents, Contractor shall describe such variations in writing, separate from the Shop Drawings, at the time it submits the Shop Drawings containing such variations. If Owner approves any such variation, an appropriate Change Order will be issued. If the variation is minor and does not involve an adjustment in the Contract Sum or Work Order, a Change Order need not be issued; however, the modification shall be recorded upon the Project Record.
- E. Unless otherwise provided in Division I, Contractor shall submit to Owner for approval 5 copies of all Shop Drawings. Unless otherwise indicated, 3 sets of all Shop Drawings shall be retained by Owner-and 2 sets shall be returned to Contractor.

#### 4.04 ORGANIZATION OF SPECIFICATIONS

Specifications are prepared in sections which conform generally with trade practices. These sections are for Owner and Contractor convenience and shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by any trade.

#### 4.05 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS

- A. The Drawings, Specifications, and other documents provided by Owner are instruments of service through which the Work to be executed by Contractor is described. Neither Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications, and other documents provided by Owner; the Owner shall be deemed the author of them and will, along with any rights of Owner, retain all common law, statutory, and other reserved rights, in addition to the copyright. All copies of these documents, except Contractor's set, shall be returned or suitably accounted for to Owner, on request, upon completion of the Work.
- B. The Drawings, Specifications, and other documents provided by the Owner, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents provided by Owner appropriate to and for use in the execution of their Work.
- C. Contractor and all Subcontractors grant a non-exclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all Shop Drawings, together with the information and diagrams contained therein, prepared by Contractor or any Subcontractor. In providing Shop Drawings, Contractor and all Subcontractors warrant that they have authority to grant to Owner a license to use the Shop Drawings, and that such license is not in violation of any copyright or other intellectual property right. Contractor agrees to defend and indemnify Owner pursuant to the indemnity provisions in section 5.23 from any violations of copyright or other intellectual property rights arising out of Owner's use of the Shop Drawings hereunder, or to secure for Owner, at Contractor's own cost, licenses in conformity with this section.
- D. The Shop Drawings and other submittals prepared by Contractor, Subcontractors of any tier, or its or their equipment or material suppliers, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor of any tier, or material or equipment supplier, on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. The Contractor, Subcontractors of any tier, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Shop Drawings and other submittals appropriate to and for use in the execution of their Work under the Contract Documents.

#### PART 5.04 Replaces Paragraph A – PREVAILING WAGES

- A. The Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with

RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate.

The Contractor shall strictly adhere to the rules and regulations applicable to Job Order Contracting administered by the Department of Labor and Industries (L&I), Prevailing Wage Division. Contractors may contact L&I Prevailing Wage Support at (360) 902-5335 or e-mail [pw1@lni.wa.gov](mailto:pw1@lni.wa.gov).

PART 5.20 Replaces Paragraph B – SUBCONTRACTORS AND SUPPLIERS

- B. Prior to submitting the first Application for Payment, Contractor shall furnish in writing to Owner on Owner provided form(s) the names, addresses, telephone numbers, and Tax Identification Numbers (TIN) of all subcontractors, as well as suppliers providing materials in excess of \$2,500.00. Contractor shall utilize subcontractors and suppliers, which are experienced and qualified, and meet the requirements of the Contract Documents, if any. Contractor shall not utilize any subcontractor or supplier to whom the Owner has a reasonable objection, and shall obtain Owner's written consent before making any substitutions or additions.

Every month for the duration of your contract, submit the following payment information through the DES Diversity Compliance program (B2Gnow) at:

<https://des.diversitycompliance.com/>:

- Payments received by the prime contractor from the Agency
- Payments paid to each subcontractor, including all lower tier subcontractors
- Payments paid to each supplier

For B2Gnow account login or account creation details, please refer to the "A. *INSTRUCTIONS TO JOB ORDER CONTRACT BIDDERS – 8. WASHINGTON STATE DIVERSE BUSINESS GOALS*" and

<http://www.des.wa.gov/services/facilities/Construction/Forms/Pages/Forms.aspx>

Part 6.02 Replaces Part 6.02 SCHEDULE OF VALUES

The Priced Item List and Non-priced Item List, with actual expenditures and commitments indicated (attachments to the approved Work Order) satisfy the requirement for a Schedule of Values. Payment for Work shall be made only for and in accordance with those items included in the Priced Item List and Non-priced Item List.

Part 6.03A Replaces Part 6.03A under APPLICATION FOR PAYMENT

- A. At monthly intervals, unless determined otherwise by Owner, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the Contract Documents and the approved Priced Item List and Non-priced Item List. Each application shall be supported by such substantiating data as Owner may require.

PART 7 Replaces PART 7 CHANGES

7.01 CHANGES IN THE JOB ORDER CONTRACT WORK OR TIME

- A. Owner may, at any time and without notice to Contractor's surety, order additions, deletions, revisions, or other changes in the Work defined by a specific Work Order or of the Job Order Contract. These changes shall be incorporated into the Project Documents or Contract Documents through the execution of Change Orders. If any change ordered by Owner causes an increase or decrease in the Work Order or Contract Sum or Time, an equitable adjustment shall be made and such adjustment(s) shall be incorporated into a Change Order or additional Work Order, at the option of the Owner. Further, the Contractor can request an equitable adjustment as defined in 7.02 if the cost of Contractor's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in a Work Order Sum in accordance with the following procedure. No change in a Work Order Sum shall be allowed to the extent that Contractor's changed cost of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible; the change is concurrently caused by Contractor and Owner; or the change is caused by an act of Force Majeure as defined in Section 3.05.
- B. If Owner desires to order a change in the Work, it may request a written Change Order or additional Work Order proposal from Contractor. Contractor shall submit a Change Order or Work Order proposal within 14 days of the request from Owner, or within such other period as mutually agreed. Contractor's proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Work Order Sum or Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.
- B.1 The COP shall be comprised of a Change Order form as the top sheet, and the price established and supporting information provided of the same type required to be included for a Work Order Proposal, as described in Part 10.11.01-.07
- C. Upon receipt of the Change Order or Work) proposal, or a request for equitable adjustment in the Work Order Sum or Time, or both, as provided in sections 7.02 and 7.03, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor, and provide written authorization to proceed with the Change Order or Work Order. Pending agreement on the terms of the Change Order or Work Order, Owner may direct Contractor to proceed immediately with the Work proposed. Contractor shall not proceed with any change in the Work until it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Project and Contract Documents.
- D. The Change Order or additional Work Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity,

related to any Work either covered or affected by the Change Order or Work Order, or related to the events giving rise to the request for equitable adjustment.

- E. If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract or Work Order Sum or Time, Contractor may at any time in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within 30 days of Contractor's request. Owner may also provide Contractor with a final offer at any time. If Contractor rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file a Claim as provided in part 8.

#### Add Paragraph F – CHANGE IN THE WORK

- F. 1. The Field Authorization (FA) is executed as a directive to proceed with work when the processing time for an approved change order would impact the project.
- 2. A scope of work must be defined, a maximum not to exceed cost agreed upon, and any estimated modification to the contract completion time determined. The method of final cost verification must be noted and supporting cost data must be submitted in accordance with the requirements of Part 7 of the General Conditions and, Part 10.11.01-.07 as applicable. Upon satisfactory submittal and approval of supporting cost data, the completed FA will be processed into a change order. No payment will be made to the Contractor for FA work until that FA is converted to a Change Order.

#### 7.02– CHANGE IN THE CONTRACT SUM

##### A. General Application

- 1. The Contract Sum shall only be changed by a Change Order. A Work Order Sum can be changed by Change Order or by issuing an additional Work Order. Contractor shall include any request for a change in the Contract or Work Order Sum in its Change Order proposal.
- 2. If the cost of Contractor's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Work Order Sum in accordance with the following procedure. No change in the Work Order Sum shall be allowed to the extent: Contractor's changed cost of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible; the change is concurrently caused by Contractor and Owner; or the change is caused by an act of Force Majeure as defined in Section 3.05.
  - a. A request for an equitable adjustment in the Work Order Sum shall be based on written notice delivered to Owner within 7 days of the occurrence of the event giving rise to the request. For purposes of this part, "occurrence" means when Contractor knew, or in its diligent prosecution of the Work should have known, of

the event giving rise to the request. If Contractor believes it is entitled to an adjustment in the Work Order Sum, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such records and, if requested shall promptly furnish copies of such records to Owner.

- b. Contractor shall not be entitled to any adjustment in the Work Order Sum for any occurrence of events or costs that occurred more than 7 days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Work Order Sum; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Work Order Sum requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
  - c. Within 30 days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph a. above with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Project and Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Contractor shall demonstrate the impact on the Progress Schedule. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
  - d. Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
  - e. Any requests by Contractor for an equitable adjustment in the Contract Sum and in the Contract Time that arise out of the same event(s) shall be submitted together.
3. The value of any Work covered by a Change Order, or of any request for an equitable adjustment in the Work Order Sum, shall be determined by applying the Unit Cost Manual method for costing Work Orders as defined in the RFP Section E: Special Conditions for Job Order Contracts, Section 1.

### 7.03 CHANGE IN THE CONTRACT TIME

- A. The Contract Time shall only be changed by a Change Order. A Work Order Time can be changed by Change Order or by issuing an additional Work Order. Contractor shall include any request for a change in the Contract or Work Order Time in its Change Order proposal.
  
- B. If the time of Contractor's performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract or Work Order Time in accordance with the following procedure. No adjustment in the Contract or Work Order Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.
  - 1. A request for an equitable adjustment in the Contract Time shall be based on written notice delivered within 7 days of the occurrence of the event giving rise to the request. If Contractor believes it is entitled to adjustment of Contract or Work Order Time, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such record and if requested, shall promptly furnish copies of such record to Owner.
  
  - 2. Contractor shall not be entitled to an adjustment in the Contract or Work Order Time for any events that occurred more than 7 days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract or Work Order Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract or Work Order Time requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
  
  - 3. Within 30 days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph 7.03B.2 with additional supporting data. Such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract or Project Documents provide entitlement to an equitable adjustment in Contract or Work Order Time for such act, event, or condition; and supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

4. Pending final resolution of any request in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
- C. Any change in the Contract or Work Order Time covered by a Change Order, or based on a request for an equitable adjustment in the Contract or Work Order Time, shall be limited to the change in the critical path of Contractor's schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Any Change Order proposal or request for an adjustment in the Contract or Work Order Time shall demonstrate the impact on the critical path of the schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event: had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by re-sequencing of the Work or other reasonable alternatives.
- D. Contractor may request compensation for the cost of a change in Contract or Work Order Time in accordance with this paragraph, 7.03D, subject to the following conditions:
1. The change in Contract or Work Order Time shall solely be caused by the fault or negligence of Owner or A/E;
  2. Compensation under this paragraph is limited to changes in Contract or Work Order Time for which Contractor is not entitled to be compensated under section 7.02;
  3. Contractor shall follow the procedure set forth in paragraph 7.03B;
  4. Contractor shall establish the extent of the change in Contract or Work Order Time in accordance with paragraph 7.03C; and
  5. The daily cost of any change in Contract or Work Order Time shall be limited to the items below, less funds that may have been paid pursuant to a change in the Contract or Work Order Sum that contributed to this change in Time:
    - A. cost of nonproductive field supervision or labor extended because of the delay;
    - B. cost of weekly meetings/similar indirect activities extended because of the delay;
    - C. cost of temporary facilities or equipment rental extended because of the delay;
    - D. cost of insurance extended because of the delay;
    - E. general and administrative overhead in an amount to be agreed upon, but not to exceed 3% of Contract or Work Order Sum divided by the Contract or Work Order Time for each day of the delay.

#### 10.11.01 NEW SECTION – PREPARATION AND AUTHORIZATION OF A WORK ORDER

Work Order Requests, Work Order Proposals, and Work Orders shall be prepared using the attached specimen forms or equivalent forms and programs agreed between Owner and Contractor. The forms in the agreed programs shall be capable of being transmitted electronically.

### 10.11.02 WORK ORDER REQUEST

The Owner initiates a Work Order by issuing a Work Order Request to the Contractor. The Request will include Owner Requirements consisting of: an overall statement of work and objectives; desired start date, substantial completion date, and any other dates that might affect or constrain the Contractor or that are required by the Owner; any specific Owner design requirements such as dimensions, quantities, materials, finishes, component types or brands (see Part 4 – Specifications, Drawings, and Other Documents); and any liquidated damages (see 3.07). The Contractor and the Owner will then, as soon as possible, jointly conduct an on-site review of the requested Owner Requirements and Work, to clarify the requirements and Work. At the time of the on-site review the Contractor may begin preparing a Work Order Proposal based on verbal description of Owner Requirements and Work, but before the Work Order Proposal is accepted and authorized by the Owner, the Request must be documented by the Owner on a Work Order Request form, at least to the extent that the accepted Work Order Proposal is referenced on a Work Order Request, for the record.

### 10.11.03 WORK ORDER PROPOSAL

In response to a Work Order Request, the Contractor submits a Work Order Proposal. The Proposal shall contain the following:

As appropriate for the nature and amount of the requested Work, and to the extent that this information is not provided by the Owner with the Work Order Request, and with the agreement of the Owner, some or all of the following: drawings, sketches, specifications, narrative descriptions of design requirements, references to other applicable design and specification information. Preparation by the Contractor of this design information can be, with pre-approval of the Owner, included as a Job Order Proposal statement of work item.

A Statement of Work, in listing format, on attached Form; this Statement of Work should contain all the Owner-provided statement of work items and such other work items that the Contractor requires completing all the Work associated with each item on Statement of Work, a Priced Item List based on the Unit Price Book. Each item on the Priced Item List will include the Unit Price Book number, quantity, unit price, Coefficient, price (quantity times x unit price x city cost index for the item's division x Coefficient), and whether or not the item will be subcontracted.

Also associated with each item of the Statement of Work, the Work Order Proposal shall contain a Non-priced Item List; the list shall identify, as applicable: item name, type of material, manufacturer name, part number, type of work, quantity, unit price for labor hour, labor hours, (if applicable), item price for material, and whether the item will be subcontracted.

The priced and non-priced item lists shall also contain provision for indicating for each item, upon application for payment, the percent complete, and price (expenditures and committed) to date based on the percent complete. This provision is intended to allow usage of the priced and non-priced item lists as a Schedule of Values, as described in 6.02.

Permits and other fees imposed by local jurisdictions shall be listed separately on a Work Order proposal as a reimbursable item and shall not be covered as part of the coefficient.

Progress Schedule, as described in 3.02

#### 10.11.04 WORK ORDER

Upon receipt of the Work Order Proposal, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable revisions to the Work Order Proposal with Contractor, at which time the Work Order Proposal becomes a Work Order. Owner's signed approval constitutes authorized Notice to Proceed with the Work Order. Contractor shall not proceed with any Work until it has obtained Owner's authorization. A Work Order shall be treated as a Contract as to applicability of requirements for Contract indicated in this document.

#### 10.11.05 WORK ORDER CHECKLIST

The JOC will return the following checklist items to the Client Representative and/or DES Project Manager with your JOC Work Order proposal and Work Order Modifications. This documentation will assist DES in the review of scope and quantity validation.

- Narrative report of scope interpretation
- Proposal/Summary of work
- Schedule of Values/Project Cost summarized
- Documentation of all items not found in RS Means (i.e. material quotes, unique items, subcontractor proposals)
- Drawings or sketches depicting scope of work (dimensions should be included)
- Photos of existing conditions
- Photos of work area and surrounding site
- Shop drawings (if applicable)
- Submittals (if applicable)
- Designate any long-lead material items
- Project schedule

#### 10.11.06 USE OF UNIT PRICE BOOK

The unit price for each item to be used from the Unit Price Book is the "Bare Costs" column. Therefore **Division 1, Items in 01-11, 01-21-16, and 01-31**, should not be included on the Priced Item List. The price (unit price x quantity x city cost index x Coefficient) is the total amount to be paid to the Contractor for the item for self-performed items or subcontractor-performed items. Cost for building permits, inspection fees, utility hookup fees, and other jurisdictional fees should be included on the Work Order Proposals as separate line items, and not multiplied by the coefficient and city cost index, and actual cost indicated upon application for reimbursable payment.

#### 10.11.07 COEFFICIENT

A separate Coefficient should be used for normal-work-hours priced items and non-normal-work-hours priced items. The coefficient, when multiplied by a priced item price, quantity, and city cost index, will represent the total compensation to the Contractor for that item, including

any apportionment to the individual item of any administrative and other indirect costs, overhead, and profit desired by the Contractor for a Work Order.

--END of JOC Supplemental Conditions--

## E. SPECIAL CONDITIONS FOR JOB ORDER CONTRACTS

### 1. DEFINITION OF THE WORK ORDER PROJECT COSTS

The Work Order Project Cost is defined as the product of the appropriate JOC coefficient multiplied by the Contractor's estimate (the total of RS-Means unit price and non-priced items included in the project scope) for the work, plus the Washington State Sales Tax. The agreed to Work Order Cost must be within the Owner's budget.

### 2. DEFINITION OF THE JOC FEE: The JOC Coefficient includes the following Contractor's expenses, overhead and profit:

A. All expenses of the Contractor for participation in and support of the construction of the project. The fee will include, but not be limited to:

1. Staff and consultant costs and benefits to include costs by the Contractor's firm for taxes, all B&O taxes for the cost of the work, contributions, assessments, and benefits required by law or collective bargaining agreements. For personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, are considered to be provided within wages and salaries paid.
2. All travel expenses.
3. Solicitation of Subcontractors. The Contractor's firm shall manage the printing and distribution of bid packages.
4. All reproduction, phone, and facsimile, charges, postage, and so forth.
5. All office support of the Contractor's firm for this project including direct costs, indirect costs, company overhead, and so forth.
6. Legal Expenses incurred in the administration of the contract and subcontracts.
7. The "Partnering" process between the Owner and Job Order Contractor that is required throughout the project.

### B. Bonds and Insurance

1. Performance & Payment Bond: The Contractor shall include within its coefficient the cost for providing a payment & performance bond, including WSST. Upon award of the Contract the Contractor shall be required to provide a **master** Payment and Performance Bond in the amount of four million dollars \$ 4,000,000.00 and a Certificate of Insurance.

2. **General Liability Insurance:** For the duration of the project, the Contractor shall carry liability coverage in accordance with the Supplemental Conditions.
3. **Builder's All Risk Insurance:** The Contractor shall carry Builder's all-risk insurance, covering perils such as fire, flood, earthquake, and other natural disaster. The coverage shall be accordance with the General Conditions and shall at least cover the Work included in the open Work Orders.

#### C. Survey, Building Lines, Testing Quality Control

1. **Survey:** When applicable to a specific Work Order, a site survey and topographical map will be provided by the Owner; the Contractor will establish a site bench mark, site corners, the location of on-site improvements, and off-site access and utilities. The Contractor shall establish survey markers, site controls, and building lines on the site, from the general survey, as required for a specific Work Order.
2. **Testing:** The Owner shall pay for separate quality assurance testing. Such testing will be coordinated by the Contractor.

#### 3. CONTRACTOR STAFFING:

The Contractor shall provide for sufficient and appropriately skilled staff and support to implement the quality control program described in Section 4 below. In addition, the project manager or superintendent shall be available to perform weekly site inspections with the Owner for the duration of each Work Order Project.

#### 4. JOC QUALITY CONTROL

##### A. General

The Contractor is responsible for quality control and shall establish and maintain an effective quality control system. The Quality Control (QC) system shall consist of plans, procedures, and organization necessary to provide materials, equipment, workmanship, fabrication, construction and operations, both on-site and off-site, that complies with Contract and Work Order requirements and are keyed with the construction schedule. The Contractor shall review and certify as correct, complete, and in compliance with project document requirements all shop drawings and lists of materials, fixtures and equipment as required by technical specifications.

Quality Control is the sole responsibility of the Contractor.

#### 5. WASHINGTON STATE SALES TAX (WSST)

Washington Sales Tax is due on the amount of each Work Order. WSST is to be paid to

the Washington State Department of Revenue by the Contractor.

6. SUBMITTAL OF REQUESTED INFORMATION

Per RCW 39.10.460, the Contractor, at any time, upon request by a public body, shall submit the following information:

- A. A list of work orders issued;
- B. The cost of each work order;
- C. A list of the subcontractors hired under each work order;
- D. A copy of the intent to pay prevailing wages and the affidavit of wages paid for each work order subcontract; and
- E. Any other information requested including, but not limited to, cost of each subcontract value per work order.

--END of JOC Special Conditions--

## F. Basic Contract (Sample)

Contract No. 2017-083 G  
Project Description: Job Order Contract  
Location: Western WA Region

### STATE OF WASHINGTON PUBLIC WORKS JOB ORDER CONTRACT (JOC)

**THIS CONTRACT**, made and entered into this day \_\_\_\_ of \_\_\_\_\_, 2016, shall be the agreed basis performing the work by and between, the State of Washington, Department of Enterprise Services Engineering & Architectural Services, hereinafter referred to as the Owner, and *Contractor's Firm Name, Address, Phone Number* hereinafter referred to as the Job Order Contractor.

The parties to this contract agree to:

#### **FIRST: CONTENTS OF CONTRACT**

The Job Order Contractor accepts the relationship of trust and confidence established by this Contract. The Job Order Contractor further agrees to cooperate with all interested parties and utilize the Job Order Contractor's best skills, efforts, and judgment in furthering the interests of the Owner.

The contract documents shall include this contract, the "Project Manual for JOC," –Addenda # \_\_\_\_\_ dated \_\_\_\_\_, and the Job Order Contractor's written response to the RFP dated date.

#### **SECOND: SUBSTANTIAL, AND FINAL COMPLETION**

The work as agreed to in this Contract shall commence upon the receipt of the Owner's Notice to Proceed.

The Job Order Contract shall be completed twenty-four months from the Owner's Notice to Proceed date, unless modified and approved by the Owner and the Job Order Contractor.

**THIRD:** The Job Order Contractor agrees that, from the compensation otherwise to be paid, the Owner may retain a specific monetary sum for each calendar day thereafter that the work for each job order remains uncompleted. The sum is agreed upon as the liquidated damages that the Owner will sustain in case of failure of the Job Order Contractor to complete the work prior to the date of substantial completion for the specific work order. This sum is not to be construed as a penalty in any sense.

**FOURTH: CONTRACT COST and BID COEFFICIENTS**

- (A) First Year not-to-exceed Contract = \$ 6,000,000
- (B) Not to exceed Contract over the first two years = \$ 12,000,000
- (C) If extended one year, not to exceed Contract over three years = \$ 18,000,000
- (D) Minimum Committed Contract Amount = \$ 50,000

**(E) Enter Coefficients to be applied to Unit Cost Manual in the boxes below:**

- a. **Standard Coefficient (normal working hours)** =
- b. **Non-Standard Coefficient (non-standard working hours)** =

**IN WITNESS WHEREOF:** The Department of Enterprise Services has caused this Contract to be subscribed in its behalf, and the Job Order Contractor has signed this Contract the day and year written below.

**CONTRACTOR**  
*(Job Order Contractor firm Name)* \_\_\_\_\_

**OWNER**  
Department of Enterprise Services, Engineering & Architectural Services

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

William J. Frare, P.E.  
Title: Assistant Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Washington State Contractor's License No: \_\_\_\_\_

Federal Tax Identification No.: \_\_\_\_\_

UBI Number: \_\_\_\_\_

[Return to Table of Contents](#)

**SECTION IV**

**DIVERSE BUSINESS INCLUSION PLAN**

## Selection Procedure Phase I

# **Sample Diverse Business Inclusion Plan**

The purpose of this section is to document Enterprise Services' commitment to recruiting voluntary Washington State Certified Minority-Owned Business, Certified Women-Owned Business, Small Business and Washington State Certified Veteran-Owned Business participation on Job Order Contract projects. Job Order Contract projects are expected to contribute to the [state diverse business goals](#).

As part of the selection process, the Job Order Contractor is required to submit a comprehensive **Inclusion Plan** (with Phase I of the proposal) for Washington State Minority-Owned Business, Washington State Certified Women-Owned Business, as well as Washington State Small Business, self-certified by Washington's Electronic Business Solution (WEBS,) and Washington State Certified Veteran-Owned Business, certified by DVA, recruitment that will aid in an equitable spread of subcontracting opportunities to these diverse subcontracting firms.

The Job Order Contractors' past performance in achieving the above mentioned inclusion goals will be evaluated and weighted in Phase I of the selection process. See the end of this section for the scorecard used to evaluate the inclusion plans proposed with Phase I.

**The overall minimum voluntary goals for this project are identified in the advertisement. DES has established goals of twelve percent (12%) Washington State certified Minority Business participation, eight percent (8%) Washington State Certified Women-Owned Business participation, five percent (5%) Washington State certified Veteran-Owned Business participation, (reference RCW 43.60A.200), and five percent (5%) Washington State Small Business participation (reference RCW 39.26.010 (21)) for this project. The percentage is calculated from the construction cost, without sales tax.**

**It is suggested that the Job Order Contractor take the following actions as a method to increase the opportunities for participation by Minority and Women-Owned Businesses:**

1. Provide the Office of Minority and Women Business Enterprises (OMWBE) a list of specialties, construction trades and material suppliers that may be required for the Job Order Contract. OMWBE will then provide the Contractor a listing of all applicable certified firms. The Contractor will then contact each firm to ascertain the firm's interest, availability and bonding capacity. This may be accomplished by mailing, telephone or with a written follow-up via fax or email of the information to each firm. From this information the Contractor may be able to establish bid packages that will accommodate the use of MBE/WBE firms.
2. Prepare and submit for approval, by DES and OMWBE, the Contractor's plan for achieving maximum levels of overall MBE/WBE participation while involving as many certified businesses as is possible/practical.

3. Ensure that available MBE/WBE's are notified of and encouraged to submit bids on proposal opportunities. The Job Order Contractor's sub-contractors will likewise maximize outreach to MBE/WBE firms. OMWBE is available to assist in identifying certified firms for the various bid packages.
4. Pre-bid conferences and job walks can allow for advantageous opportunities for the Contractor to invite diverse business firms to provide bid packages for subcontracting scopes, material or equipment suppliers

### **Diversity Detailed Reporting**

1. The state of Washington encourages participation in all of its contracts by Veteran-owned businesses (defined in RCW 43.60.010) and located at: <http://www.dva.wa.gov/program/certified-veteran-and-servicemember-owned-businesses> and Small, Mini, and Micro businesses (defined in RCW 39.26.010) which have registered in WEBS at: <https://fortress.wa.gov/ga/webs/>.
2. In order to report payment detail, the Contractor must create an account with the DES Diversity Compliance program (B2Gnow) or verify if an account has already been created on behalf of the Contractor: <https://des.diversitycompliance.com>. B2Gnow is designed to streamline and automate compliance reporting requirements, empowering vendors to maintain accurate contact information and submit contract payment details online.
3. For account login or account creation details, please refer to the Quick Reference Guides located on pages 4 - 6 or go to B2Gnow home page by clicking on the URL listed above and clicking on the "Help/First Time Users" link.
4. Every month for the duration of your contract, submit the following payment information through B2Gnow:
  - a. Payments received by the prime contractor from the Agency
  - b. Payments paid to each subcontractor, including lower tier subcontractors
  - c. Payments paid to each supplier

Each contractor and subcontractor shall register and submit monthly payment data into the DES Diversity Compliance program (B2Gnow).

**It is suggested that the Job Order Contractor take the following actions as a method to increase the opportunities for participation by Washington State Certified Veteran-Owned Businesses:**

1. Twice each year provide the Washington State Department of Veterans Affairs (DVA) a list of specialties, construction trades and material suppliers that may be required for the Job Order Contract. DVA will then provide the Contractor a listing of all applicable certified firms. The Contractor will then contact each firm to ascertain the firm's interest, availability and bonding capacity. This may be accomplished by mailing, with a follow-up by fax or email of the information to each firm. From this

information the Contractor will be able to establish bid packages that will accommodate the use of Washington State certified veteran firms.

2. Prepare and submit for approval by DES and DVA, the plan for achieving maximum levels of overall Washington State certified Veteran-Owned firm participation while currently involving as many certified businesses as is practical.
3. Ensure that available Washington State certified Veteran-Owned firms are individually notified of opportunities to bid and encouraged to do so. The Job Order Contractor's sub-contractors will likewise maximize outreach to Washington State Certified Veteran-Owned firm. DVA is available to assist in identifying certified firms for the various bid packages.
4. During pre-bid conferences for Work Order bid packages, Contractor shall allow potential bidders, sub-contractors and material suppliers the opportunity to become familiar with, and ask questions about, the project and meet and network.

Each contractor and subcontractor shall register and submit monthly payment data into the DES Diversity Compliance program (B2Gnow).

### **Diverse Business Inclusion Plan Instructions**

1. This form is required on select projects as directed by the Department of Enterprise Services. Projects with Federal funding may not require this form. For projects where this form is required by the state, the "Bidder" shall complete and submit this Diverse Business Inclusion Plan as part of the response.
2. All "Bidders" must complete this form, including "Bidders" who may qualify as a DIVERSE Business.
3. All subcontract work proposed for a DIVERSE Business is to be a commercially useful function, and substantive to the contract scope.
4. Intent to self-perform does not relieve the "Bidder" from completing this form and establishing DIVERSE Business inclusion goals.
5. The Plan will be evaluated based upon the strength of the good faith efforts to include DIVERSE Businesses.
6. DIVERSE Business includes Small Business, Micro-business, and Mini-business as defined in RCW 39.26.010, and Veteran-owned business as defined in RCW 43.60A.010.
  - a. State allows OMWBE Certification

- b. State publishes a list of known OMWBE Certified subcontractors at website: [http://www.omwbe.wa.gov/certification/certification\\_directory.shtml](http://www.omwbe.wa.gov/certification/certification_directory.shtml)
  - c. State publishes a list of known Veteran Certified subcontractors at website: <http://www.dva.wa.gov/BusinessRegistry/Search.aspx>
  - d. Small, Mini, and Micro businesses (defined in RCW 39.26.010) which have registered in WEBS at <https://fortress.wa.gov/ga/webs/>.
  - e. RCW 39.26.010 (21) "Small business" means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that:
    - (a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either:
      - (i) Fifty or fewer employees; or
      - (ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or
    - (b) Is certified with the office of women and minority business enterprises under chapter [39.19](#) RCW.
  - f. RCW 39.26.010 (18) "Mini-business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Is owned and operated independently from all other businesses; and (b) has a gross revenue of less than three million dollars, but one million dollars or more annually as reported on its federal tax return or on its return filed with the department of revenue.
  - g. RCW 39.26.010 (17) "Microbusiness" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Is owned and operated independently from all other businesses; and (b) has a gross revenue of less than one million dollars annually as reported on its federal tax return or on its return filed with the department of revenue.
7. Scoring (reference Section II.B.2) will be based on the likelihood of a successful, good faith and responsible effort.
- A robust Plan shows clear commitments for utilization of DIVERSE Businesses and reflects responsible, sincere good faith efforts.
  - The plan shows, through selection of possible subcontractors, the ability to work with the state databases managed by the Department of Enterprise Services (WEBS), the Department of Veterans Affairs and the Office of Minority and Women’s Business Enterprise. Subcontractors identified are for the purposes of showing intent as well as the ability to utilize the State databases; the contractor may not be held to those listed diverse businesses, but all substitutions or terminations of listed DIVERSE firm(s) will require prior agency approval.
  - A robust Diverse Business Inclusion Plan shows diverse employment opportunities and policies.
  - Mentoring or training programs may be an additional strength evidencing good faith efforts.
  - A robust Diverse Business Inclusion Plan describes successful past performance as a predictor of the “Prime Bidder’s” likelihood for successfully accomplishing the proposed Diverse Business Inclusion Plan.

8. The State reserves the right to discuss the Diverse Business Inclusion Plan with the highest ranked proposer before incorporating the Diverse Business Inclusion Plan into the contract. The Diverse Business Inclusion Plan may be amended by mutual consent.

The Inclusion Plan will be used to evaluate the Bidder's performance of the contract; contract performance shall require continuous good faith effort to achieve the goals.

### **Washington Electronic Business Solution (WEBS)**

9. A DIVERSE Business does not need to be registered within the State WEBS system <http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/WEBSRegistration.aspx> to be considered a DIVERSE Business at the time of the bid. **However**, the Diverse Business must register in the State system and if eligible, Washington State certified as a Minority-Owned business, Woman-Owned business, or Veteran-Owned business no later than project closeout. The state publishes a list of known OMWBE Certified subcontractors in the following website: [http://www.omwbe.wa.gov/certification/certification\\_directory.shtml](http://www.omwbe.wa.gov/certification/certification_directory.shtml) The state publishes a list of known Veteran Certified subcontractors in the following website: <http://www.dva.wa.gov/BusinessRegistry/Search.aspx>

### **Proposed Subcontracting DIVERSE Business Goals**

10. The goals are intended to be a serious commitment that the "Bidder" can reasonably and realistically achieve, given reasonable good faith efforts.
11. The goals describe intent by the Bidder and will be used to evaluate the goal attainment performance. Contractor performance will be evaluated monthly by the state as part of the state performance evaluation, and shall measure the good faith efforts towards achieving the aspirational goals given as the contract commitment. Such performance in this contract may be used to measure contractor responsibility and may be considered for the third year option of the contract and contractor "past performance" evaluation criteria.
12. The proposed subcontracting goals are what the "Bidder" intends to achieve.
13. Proposed DIVERSE Business Subcontracting goals represent the percentage of the total contract value that the "Bidder" intends to actually subcontract to DIVERSE Business subcontractors. This should take into account all variables that may influence the ability to reach their aspirational goal. The percentage applies to the entire contract cost.

### **Diverse Expert**

14. The "Bidder" shall offer a person that will manage their DIVERSE responsibilities for the project. A stand-alone DIVERSE expert would be expected on projects when required by the Department of Enterprise Services. A list of DIVERSE Experts is at: ([http://www.omwbe.wa.gov/certification/certification\\_mwbe.shtml](http://www.omwbe.wa.gov/certification/certification_mwbe.shtml) ) and the state Office of Minority and Women Business Enterprise ([http://www.omwbe.wa.gov/certification/certification\\_directory.shtml](http://www.omwbe.wa.gov/certification/certification_directory.shtml)).

A DIVERSE Expert does not need to be on the State lists, but is designated as a subject matter expert who may be a current staff member.

### **Diverse Sub-contractor Team**

15. The DIVERSE Sub-contracting Team (listed subcontractors) lists DIVERSE Businesses you intend to use if awarded this Contract. This does not need, and is not expected, to equal your total aspirational goal. You may have some Diverse Businesses you can commit to at time of your response, but you may also have other opportunities for subcontracting that arise during the course of the contract. A tracking list of subcontractors use by the prime vendor and be reported quarterly and by the close of the contract be demonstrated; and those good faith firms be designated.
16. A DIVERSE Commitment does not require a signed contract in place with the DIVERSE, or any form of a signed agreement. Instead, this is assurance from the “Bidder” that given the opportunity, they intend to notify DIVERSE of bid opportunities throughout this Contract period.



3. List your firm’s *past performance* regarding Diverse Business inclusion in subcontracting and/or material or equipment suppliers’ efforts.

<b>Past Diverse Business Participation</b>	<b>Percentage</b>	<b>Contract Value</b>
Certified Minority Business Enterprise Participation* (MBE)	%	\$
State Small Business Participation	%	\$
Certified Veteran-Owned Business Participation*	%	\$
Certified Women-Owned Business Enterprise Participation* (WBE)	%	\$

\*All certification categories are Washington State Certified Businesses

4. Show us your firm’s Small and Diverse Business proposed goals for this JOC Contract. Show as a percentage of the contract value.

<b>Anticipated Diverse Business Participation</b>	<b>Percentage</b>	<b>Contract Value</b>
Certified Minority Business Enterprise Participation* (MBE)	%	\$
State Small Business Participation	%	\$
Certified Veteran-Owned Business Participation*	%	\$
Certified Women Business Enterprise Participation* (WBE)	%	\$

\*All certification categories are Washington State Certified Businesses

5. Provide the name of your firm’s Diverse Expert for this JOC Contract. Describe their duties for this Contract.

6. Describe your firm’s plan for unbundling jobs into smaller work packages (if applicable) to allow for greater participation (and new business opportunities) for this contract to promote maximum participation by MBE/WBE/Veteran-Owned and Small Businesses.

7. Describe your firm’s Small and Diverse Business program elements, i.e., apprenticeship, educational workshops, special events, bonding and surety, early/prompt payment, dispute resolution, evaluation of new vendors, quality training, mentoring, financing assistance, etc.

8. Provide the Names and Title of individual(s) within your firm’s organization who will have the authority and responsibility to implement, monitor and report to customers on your firm’s inclusion plan progress. Define their roles. Provide the name(s) of the person who oversees this program.

9. Describe how your Plan will reach (or communicate with) Small and Diverse Business sub-contractors and suppliers. Provide examples of your firm’s approach and methodology to outreach: Construction Website, subcontracting website, Journal of Commerce, OMWBE website, advertising, etc.

10. Explain your firm's strategy for assisting firms with registration in the Washington Electronic Business Solution (**WEBS**) <https://fortress.wa.gov/ga/webs/home.html>; Veteran certifications at Department of Veteran's Affairs (**DVA**) <http://www.dva.wa.gov/program/veteran-owned-business-certification>; and, Minority/Women-Owned Business certification at the Office of Minority and Women's Business Enterprises (**OMWBE**) <http://omwbe.wa.gov/certification/>. Describe how you assist subcontractors that are not registered in or familiar with these tools.
11. List scopes or areas of work that you have successfully subcontracted to Diverse Business Enterprises in the past.
12. Please describe your firm's participation plan(s) for outreach events to provide community education and opportunities for subcontractors to participate in, e.g.; tradeshow, workshop, seminars, OMWBE webinars, sponsorship, teaming with public or non-profits event organizers, etc.
13. Please describe your firm's internal training regarding diverse business inclusion strategies.
14. Describe your firm's overall small and diverse business participation results over the previous three (3) years. Include the number of firms mentored and any technical support provided.
15. Please include your firm's letter from the highest delegated person of authority that information provided is true and verified.

## Phase I (Sample) JOC Scorecard for Inclusion Plan

### *JOC Inclusion Plan Standard*

### **SCORECARD**

TODAYS DATE		Contact		Title			
NAME OF COMPANY							
ADDRESS							
P.O. BOX				STATE			
CITY				ZIP			
E-mail			Phone	Fax			
Government /Pubic Entity (i.e. City, County, Agency, College, Schools, etc. (complete below))							
Project/Contract Info:							
<i>Check all boxes that apply &gt;</i>							
		State funded program		Federal funded program			
					<b>POINTS</b>	<b>POINTS AWARDED</b> <small>(To filled by the Public Entity)</small>	
1.	<b>POLICY STATEMENT:</b>		completed		5-20		
a.	Statement acknowledging opportunities to grow Diverse businesses to work with public entity to help achieve their goal.						
b.	<b>Past Performance Statement with Small Businesses</b> <ul style="list-style-type: none"> <li>➤ Diverse Businesses, i.e. certified* Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprises (DBE), Small Business Enterprise (SBE), ** Veteran Owned Business, Service Disabled Veteran Owned Businesses;</li> <li>➤ Small Business Administration: 8(a), Federal Hub Zone, Small Disadvantaged Business (SDB)</li> </ul>				1		
<small>(*OMWBE certified) (**WA State Dept. of Veteran Affairs)</small>							
c.	Show us your project Diverse Business Goals in potential dollars and/or percentage. Provide explanation where applicable				1-15*	*Points given commensurate to overall goal commitment.	
		<input checked="" type="checkbox"/> Prime JOC Contractor (Awardee) 10% <input type="checkbox"/> State Small business ___% <input type="checkbox"/> Certified MBE ___% <input type="checkbox"/> Certified WBE ___% <input type="checkbox"/> Certified SBE ___% <input type="checkbox"/> Certified veteran owned business ___%		<input type="checkbox"/> Mini business enterprise___% <input type="checkbox"/> Micro business enterprises			

	<input type="checkbox"/> Certified service disabled veteran business ___%			
d.	Supporting Diverse Suppliers/Vendors Statement (approaches and methodology) <input type="checkbox"/> i.e. Supporting local tradeshow to support Diverse Business events, e.g. Regional Contracting Forum, presentations to Tabor 100, ethnic chambers, etc.		1	
e.	Provide information on Diverse Business programs, i.e. apprenticeship, mentor, workshops, special events, bonding and surety, financing program, early payment, etc.		3	
2.	<b>RESPONSIBILITY AND ACCOUNTABILITY</b>	<b>completed</b>	5	
a.	Provide the Names and Title of individual(s) within the Contractor's organization who will have the authority and responsibility to implement, monitor and report to customer. What are their roles? Provide the name(s) of the person who oversees this program. What are their duties and responsibilities?		2	
b.	Do you have Policy and Procedures in place? If so, can you include and explain how it works to support the JOC program. Give examples like dispute resolution, training, prompt payment, change management, evaluating new vendors, quality, LEED, etc.		3	
3.	<b>OUTREACH STRATEGIES</b>	<b>completed</b>	5	
a.	Provide Communication Plan How are you reaching sub-contractors, on a timely manner?; Describe success. What is your approach and methodology example: Construction Website, subcontracting website, Journal of Commerce, OMWBE website, Advertising, etc.		2	
b.	Sourcing OMWBE and other Diversity Websites, organizations to encourage becoming certified, and Source potential small business vendors; educating. Forecasting JOC requirements; maintaining certification list of goods and services, Provide explanation how you build capacity		2	
c.	Provide a List of pre-approved vendors, sub-contractors. Identify any diverse businesses included in list of pre-approved vendors, sub-contractors.		1	
4.	<b>STAFF TRAINING &amp; COMMUNICATIONS</b>	<b>completed</b>	5	
a.	Internal Training: Describe how your firm plans to track employees with responsibility for procurement and contracting regarding the appropriate implementation measures for each of the outreach strategies		3	

b.	Describe how your firm has implemented contract training with subcontractors; the firm uses educational institutions for programs defined by OMWBE; and other training to educate its sub tier;	2	
5.	<b>ANNUAL INCLUSION GOALS</b>   <b>completed</b>	6-13	
a.	In detail, describe your firms Diversity Goal and what percentage does your firm track (e.g. Diverse Business subcontracting goal is 40% overall for your company, and MBE goal is 13%, WBE goal is 5%, Veteran goal is 3%, Service Disabled Veteran is 1%, Small/Mini/Micro Business goal is 18% of our company's sub-contracting spend. Our past performance from 2015 increase small business spend by increased by 5%, our certified MBE goal increased by 1%, WBE goal increased by 2%, Veteran goal remained the same, Service Disabled Veteran goal increased by .5%, Small/Mini/Micro Business increased by 3.5%. In addition we had 5 WBENC firms, and 2 NMSDC, and 2 TERO Native American firms.	1-8	
b.	Reports and acknowledges annual goal for years, 2013, 2014, 2015 company's diversity spend. Example with an average of 27% small business spend for the last 3 years, MBE 5%, WBE 8.5%, Veteran 2.6%, .4% SD Veteran, S/M/MB 9%. Firm also reports mentoring 5 firms, apprenticeship with 4 veteran employees, and 1 TERO employee in 2014 and 2015.	4	
c.	Supplier Diversity Administer acknowledges with letter from the highest delegated person of authority that information provided is true and verified. (sign off report)	1	
6.	<b>ANNUAL REVIEW PERFORMANCE</b>   <b>completed</b>	2	
a.	Provide verification letter of acknowledgement that JOC Outreach/Participation plan will be made available to OMWBE website, DES CPARB website, and/or company website; and can be shared with other public entities	1	
b.	Acknowledges that it will Have attained a letter that designates that Outreach /Participation Plan has been obtained and that plan has been acknowledged per 39.10.450 RCW.	1	
<i>Maximum Total Score</i>		50	

End of Scorecard

## **Phase II**

### **JOC Inclusion Plan**

Be prepared to provide a comprehensive overview of your firms Diverse Business inclusion program including all elements described in Phase I scoring. Your presentation and materials should include but not be limited to information on:

- Past small and diverse business performance.
- Current goal commitments for this contract.
- Outreach program and plan to support diverse business regional, multi-agency events.
- Personnel dedicated to diverse business inclusion.
- Program elements including communication plan, capacity building, certification, and support for subcontractors, outreach plans, internal training, subcontractor mentoring, etc.

**SECTION V**

**SAMPLE FORMS**

**Sample Basic Contract**

Contract No.                    2017-083 G  
Project Description:        Job Order Contract  
Location:                        Western WA Region

**STATE OF WASHINGTON PUBLIC WORKS  
JOB ORDER CONTRACT (JOC)**

**THIS CONTRACT**, made and entered into this day \_\_\_\_ of \_\_\_\_\_, 2016, shall be the agreed basis performing the work by and between, the State of Washington, Department of Enterprise Services Engineering & Architectural Services, hereinafter referred to as the Owner, and *Contractor's Firm Name, Address, Phone Number* hereinafter referred to as the Job Order Contractor.

The parties to this contract agree to:

**FIRST: CONTENTS OF CONTRACT**

The Job Order Contractor accepts the relationship of trust and confidence established by this Contract. The Job Order Contractor further agrees to cooperate with all interested parties and utilize the Job Order Contractor's best skills, efforts, and judgment in furthering the interests of the Owner.

The contract documents shall include this contract, the "Project Manual for JOC," –Addenda # \_\_\_\_\_ dated \_\_\_\_\_, and the Job Order Contractor's written response to the RFP dated date.

**SECOND: SUBSTANTIAL, AND FINAL COMPLETION**

The work as agreed to in this Contract shall commence upon the receipt of the Owner's Notice to Proceed.

The Job Order Contract shall be completed twenty-four months from the Owner's Notice to Proceed date, unless modified and approved by the Owner and the Job Order Contractor.

**THIRD:** The Job Order Contractor agrees that, from the compensation otherwise to be paid, the Owner may retain a specific monetary sum for each calendar day thereafter that the work for each job order remains uncompleted. The sum is agreed upon as the liquidated damages that the Owner will sustain in case of failure of the Job Order Contractor to complete the work prior to the date of substantial completion for the specific work order. This sum is not to be construed as a penalty in any sense.

**FOURTH: CONTRACT COST and BID COEFFICIENTS**

- (A) First Year not-to-exceed Contract = \$ 6,000,000
- (B) Not to exceed Contract over the first two years = \$ 12,000,000
- (C) If extended one year, not to exceed Contract over three years = \$ 18,000,000
- (D) Minimum Committed Contract Amount = \$ 50,000

**(E) Enter Coefficients to be applied to Unit Cost Manual in the boxes below:**

- c. Standard Coefficient (normal working hours) =
- d. Non-Standard Coefficient (non-standard working hours) =

**IN WITNESS WHEREOF:** The Department of Enterprise Services has caused this Contract to be subscribed in its behalf, and the Job Order Contractor has signed this Contract the day and year written below.

CONTRACTOR  
(Job Order Contractor firm Name)

OWNER  
Department of Enterprise Services, Engineering & Architectural Services

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

William J. Frare, P.E.  
Title: Assistant Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Washington State Contractor's License No: \_\_\_\_\_

Federal Tax Identification No.: \_\_\_\_\_

UBI Number: \_\_\_\_\_

[Return to Table of Contents](#)

Sample

Date

**RETAINAGE INVESTMENT**

**Contractor** \_\_\_\_\_

**Contract No.**                   **2017-083 G**

**Description**                   Western Washington Job Order Contract

**Agency**                         Department Enterprise Services  
Engineering and Architectural Services

**Pursuant to RCW 60.28, you are required to exercise your option, IN WRITING, on whether or not moneys reserved from the amounts due you on the above contract shall be placed in escrow. You are therefore directed to complete and return this form with the signed copy of the above contract to Enterprise Services.**

Should you desire to have the retained moneys invested, it will then be necessary that you enter into an escrow agreement with a bank, trust or savings and loan company and the Department of Enterprise Services, P.O. Box 41476, Olympia, Washington 98504.

This form will be transmitted to the Department of Enterprise Services for further action in preparing the escrow agreement.

**CONTRACTOR'S OPTION**

\_\_\_\_\_ I do not request retainage on the above contract be invested.

\_\_\_\_\_ I hereby request retainage on the above contract be invested.

\_\_\_\_\_/Date\_\_\_\_\_

\_\_\_\_\_  
Title

**Sample Contract Transmittal**

Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Contract No. 2017-083 G  
Western WA Job Order Contract  
Department of Enterprise Services

The Instructions for Bidders require that the signed contract, payment and performance bond, and certificate of insurance be returned to the Department of Enterprise Services within fifteen (15) days after your receipt of these documents.

Find enclosed:

1. The Job Order Contract for your signature.
2. The Certificate of Insurance and memo for your insurance agent to complete.
4. The Retainage Investment form for your signature.

Please return or have these documents to this office for verification and signature by our Contracting Officer. Copies of the contract will be distributed when executed. **NOTE:** Transmittal of the contract for signature and the request for insurance and bond does not obligate the State to proceed with award. The contract is not binding upon the State of Washington until it has been duly signed by the State's contracting officer.

Sincerely,

Marlene Anglemyer  
JOC Program Coordinator

RO: ma

Enclosures

**Sample Bond and Insurance Notification Form**

Date

**TO:** Insurance Agent for  
*Job Order Contractor Firm*

**RE:** Contract No. 2017-083 G  
Western WA Job Order Contract  
Department of Enterprise Services

*Job Order Contractor Firm* has been awarded a construction contract with the State of Washington for the above-referenced project.

The bid documents for this contract require that the *Job Order Contractor Firm* provide the State of Washington with a signed contract, bond and insurance within fifteen (15) days of receipt. It is therefore essential that you provide the contractor with the bonds and insurance as soon as possible. Please refer to the attached *Insurance and Bonding Requirements*.

**Please note that the payment and performance bonds shall be written on the AIA Form A312 for the amount of four million dollars (\$ 4,000,000.00) and that Builder's Risk or Installation Floater insurance coverage is required in the amount of the open work orders. Include the contract number and project name on all documents.**

We would like a preview a scanned copy of these documents before finalizing. My email address is: [marlene.anglemyer@des.wa.gov](mailto:marlene.anglemyer@des.wa.gov).

Should you have questions, please contact me. Thank you for your assistance.

Sincerely,

Marlene Anglemyer  
JOC Program Coordinator

Attachments



3. List your firm’s *past performance* regarding Diverse Business inclusion in subcontracting and/or material or equipment suppliers’ efforts.

<b>Past Diverse Business Participation</b>	<b>Percentage</b>	<b>Contract Value</b>	
Certified Minority Business Enterprise Participation* (MBE)	%	\$	
State Small Business Participation	%	\$	
Certified Veteran-Owned Business Participation*	%	\$	
Certified Women-Owned Business Enterprise Participation* (WBE)	%	\$	

\*All certification categories are Washington State Certified Businesses

4. Show us your firm’s Small and Diverse Business proposed goals for this JOC Contract. Show as a percentage of the contract value.

<b>Anticipated Diverse Business Participation</b>	<b>Percentage</b>	<b>Contract Value</b>
Certified Minority Business Enterprise Participation* (MBE)	%	\$
State Small Business Participation	%	\$
Certified Veteran-Owned Business Participation*	%	\$
Certified Women Business Enterprise Participation* (WBE)	%	\$

\*All certification categories are Washington State Certified Businesses

5. Provide the name of your firm’s Diverse Expert for this JOC Contract. Describe their duties for this Contract.
6. Describe your firm’s plan for unbundling jobs into smaller work packages (if applicable) to allow for greater participation (and new business opportunities) for this contract to promote maximum participation by MBE/WBE/Veteran-Owned and Small Businesses.
7. Describe your firm’s Small and Diverse Business program elements, i.e., apprenticeship, educational workshops, special events, bonding and surety, early/prompt payment, evaluation of new vendors, quality training, mentoring, financing assistance, etc.
8. Provide the Names and Title of individual(s) within your firm’s organization who will have the authority and responsibility to implement, monitor and report to customers on your firm’s inclusion plan progress. Define their roles. Provide the name(s) of the person who oversees this program.
9. Describe how your Plan will reach (or communicate with) Small and Diverse Business sub-contractors and suppliers. Provide examples of your firm’s approach and methodology to outreach: Construction Website, subcontracting website, Journal of Commerce, OMWBE website, advertising, etc.

10. Explain your firm's strategy for assisting firms with registration in the Washington Electronic Business Solution (**WEBS**) <https://fortress.wa.gov/ga/webs/home.html>; Veteran certifications at Department of Veteran's Affairs (**DVA**) <http://www.dva.wa.gov/program/veteran-owned-business-certification>; and, Minority/Women-Owned Business certification at the Office of Minority and Women's Business Enterprises (**OMWBE**) <http://omwbe.wa.gov/certification/>. Describe how you assist subcontractors that are not registered in or familiar with these tools.
11. List scopes or areas of work that you have successfully subcontracted to Diverse Business Enterprises in the past.
12. Please describe your firm's participation plan(s) for outreach events to provide community education and opportunities for subcontractors to participate in, e.g.; tradeshow, workshop, seminars, OMWBE webinars, sponsorship, teaming with public or non-profits event organizers, etc.
13. Please describe your firm's internal training regarding diverse business inclusion strategies.
14. Describe your firm's overall small and diverse business participation results over the previous three (3) years. Include the number of firms mentored and any technical support provided.
15. Please include your firm's letter from the highest delegated person of authority that information provided is true and verified.

**Phase I**  
**(Sample) JOC Scorecard for Inclusion Plan**

*JOC Inclusion Plan Standard*

**SCORECARD**

TODAYS DATE		Contact		Title	
NAME OF COMPANY					
ADDRESS					
P.O. BOX				STATE	
CITY				ZIP	
E-mail			Phone	Fax	
Government /Pubic Entity (i.e. City, County, Agency, College, Schools, etc. (complete below))					
Project/Contract Info:					
<i>Check all boxes that apply &gt;</i>					
		State funded program		Federal funded program	
					<b>POINTS</b>
					<b>POINTS AWARDED</b> (To filled by the Public Entity)
1.	<b>POLICY STATEMENT:</b>		completed	5-20	
a.	Statement acknowledging opportunities to grow Diverse businesses to work with public entity to help achieve their goal.				
b.	<b>Past Performance Statement with Small Businesses</b> <ul style="list-style-type: none"> <li>➤ Diverse Businesses, i.e. certified* Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprises (DBE), Small Business Enterprise (SBE), ** Veteran Owned Business, Service Disabled Veteran Owned Businesses;</li> <li>➤ Small Business Administration: 8(a), Federal Hub Zone, Small Disadvantaged Business (SDB)</li> </ul>			1	
<small>(*OMWBE certified) (**WA State Dept. of Veteran Affairs)</small>					
c.	Show us your project Diverse Business Goals in potential dollars and/or percentage. Provide explanation where applicable			1-15*	*Points given commensurate to overall goal commitment.
<input checked="" type="checkbox"/> Prime JOC Contractor (Awardee) 10% <input type="checkbox"/> State Small business ___% <input type="checkbox"/> Certified MBE ___% <input type="checkbox"/> Certified WBE ___% <input type="checkbox"/> Certified SBE ___% <input type="checkbox"/> Certified veteran owned business ___% <input type="checkbox"/> Certified service disabled veteran business ___%		<input type="checkbox"/> Mini business enterprise ___% <input type="checkbox"/> Micro business enterprises			

d.	Supporting Diverse Suppliers/Vendors Statement (approaches and methodology) <input type="checkbox"/> i.e. Supporting local tradeshows to support Diverse Business events, e.g. Regional Contracting Forum, presentations to Tabor 100, ethnic chambers, etc.	1	
e.	Provide information on Diverse Business programs, i.e. apprenticeship, mentor, workshops, special events, bonding and surety, financing program, early payment, etc.	3	
2.	<b>RESPONSIBILITY AND ACCOUNTABILITY</b>	<b>completed</b>	5
a.	Provide the Names and Title of individual(s) within the Contractor's organization who will have the authority and responsibility to implement, monitor and report to customer. What are their roles? Provide the name(s) of the person who oversees this program. What are their duties and responsibilities?	2	
b.	Do you have Policy and Procedures in place? If so, can you include and explain how it works to support the JOC program. Give examples like dispute resolution, training, prompt payment, change management, evaluating new vendors, quality, LEED, etc.	3	
3.	<b>OUTREACH STRATEGIES</b>	<b>completed</b>	5
a.	Provide Communication Plan How are you reaching sub-contractors, on a timely manner?; Describe success. What is your approach and mythology example: Construction Website, subcontracting website, Journal of Commerce, OMWBE website, Advertising, etc.	2	
b.	Sourcing OMWBE and other Diversity Websites, organizations to encourage becoming certified, and Source potential small business vendors; educating. Forecasting JOC requirements; maintaining certification list of goods and services, Provide explanation how you build capacity	2	
c.	Provide a List of pre-approved vendors, sub-contractors. Identify any diverse businesses included in list of pre-approved vendors, sub-contractors.	1	
4.	<b>STAFF TRAINING &amp; COMMUNICATIONS</b>	<b>completed</b>	5
a.	Internal Training: Describe how your firm plans to track employees with responsibility for procurement and contracting regarding the appropriate implementation measures for each of the outreach strategies	3	
b.	Describe how your firm has implemented contract training with subcontractors; the firm uses educational institutions for programs defined by OMWBE; and other training to educate its sub tier;	2	

5.	<b>ANNUAL INCLUSION GOALS</b>	<b>completed</b>	6-13	
a.	In detail, describe your firms Diversity Goal and what percentage does your firm track (e.g. Diverse Business subcontracting goal is 40% overall for your company, and MBE goal is 13%, WBE goal is 5%, Veteran goal is 3%, Service Disabled Veteran is 1%, Small/Mini/Micro Business goal is 18% of our company's sub-contracting spend. Our past performance from 2015 increase small business spend by increased by 5%, our certified MBE goal increased by 1%, WBE goal increased by 2%, Veteran goal remained the same, Service Disabled Veteran goal increased by .5%, Small/Mini/Micro Business increased by 3.5%. In addition we had 5 WBENC firms, and 2 NMSDC, and 2 TERO Native American firms.		1-8	
b.	Reports and acknowledges annual goal for years, 2013, 2014, 2015 company's diversity spend. Example with an average of 27% small business spend for the last 3 years, MBE 5%, WBE 8.5%, Veteran 2.6%, .4% SD Veteran, S/M/MB 9%. Firm also reports mentoring 5 firms, apprenticeship with 4 veteran employees, and 1 TERO employee in 2014 and 2015.		4	
c.	Supplier Diversity Administer acknowledges with letter from the highest delegated person of authority that information provided is true and verified. (sign off report)		1	
6.	<b>ANNUAL REVIEW PERFORMANCE</b>	<b>completed</b>	2	
a.	Provide verification letter of acknowledgement that JOC Outreach/Participation plan will be made available to OMWBE website, DES CPARB website, and/or company website; and can be shared with other public entities		1	
b.	Acknowledges that it will Have attained a letter that designates that Outreach /Participation Plan has been obtained and that plan has been acknowledged per 39.10.450 RCW.		1	
<i>Maximum Total Score</i>			50	

End of Scorecard

# WESTERN REGION JOC MAP

