
Appendix H. Special Provisions

Commentary on Special Provisions

102 Bid Procedures and Conditions

Section 102.4 Examination of Plans, Specifications, and Site of Work

The Standard Specifications section has been supplemented significantly to account for DOT&PF's position on geotechnical site investigations. Significant variations in project approach are expected in this area due to project type and specific site conditions. The generic document is based on the precept that DOT&PF will conduct a preliminary investigation as described in Guidebook Section 1.3 and 3.5.2. This section of the Special Provisions describes the allocation of risk associated with specific Department decisions on this issue. The Department preliminary investigation, Special Provisions Section 1-02.4 (supplemental boring program) and Section 1-04.7, combine to define the basis for changed conditions and to reduce proposal preparation costs for Proposers. The intention of this complete program is to reduce overall project costs to the Department by balancing the significant project unknowns, allowing the Proposers to determine actual project costs and include lower risk contingencies.

The supplemental boring program may be approached differently on different projects. The Project Manager may determine the risks associated with geotechnical unknowns are manageable and can be defined from the Department investigation, and a supplemental program does not add significant benefit.

After completing the Department geotechnical investigation the Region Materials Section must anticipate the additional needs of Proposers and design a supplemental program if deemed valuable or beneficial to the project. Offering a supplemental program to Proposers will yield a request for more information, as any additional information will help Proposers refine feature costs. The Project Team should consider the following issues in designing a supplemental boring program:

1. The conceivable project feature variations and the need for additional data for each
2. The cost of the program to the Department
3. The cost of additional boring by individual Proposers
4. Loss of Proposers due to boring costs or level of inherent risk
5. The cost to the Department for risk contingencies
6. How to combine or mitigate requests from Proposers and minimize the total number of holes in a specific project vicinity
7. Ability to perform necessary work in the rigid timeframe, scheduling of additional crews, scheduling outside contractor if needed

103 Award and Execution of Contract

Section 103.3 Execution of Contract

This section has been supplemented with provisions describing how the Design-Builder must preserve their proposal price documentation. The Design-Builder must put all supporting information into escrow for use by the Department and Design-Builder in settling contract disputes. The documentation could also be useful in resolving schedule disputes during construction and in resolving disputes regarding the price of change orders, whether informally or before a Dispute Resolution Board. The provision for an affidavit, which is in the DOT&PF specification, was not included because the provision language (and the Design-Builder's signature on the contract) constitutes a representation that the information is correct and complete. The provision allows for supplementation if DOT&PF determines that the information is incomplete; otherwise, the burden is on the contractor to assure that it is. The documentation provides for the Design-Builder to remain the owner of the documentation. By allowing the Design-Builder to remain owner of the data, the Department will not have access to it in any future litigation, should it become necessary. However, the proposal documentation is expected to have minimal future value as the Design and Construction Documents replace it.

The generic Proposal General Requirements Section 3.8 links the Proposers to this section of the Special Provisions. Both sections may require modification if other requirements are necessary. It is expected that little refinement to the language will be necessary.

104 Scope of the work

Section 104.4 Changes

The significant modification made in this section is description of the Technical Proposal as part of the contract. By including the Technical Proposal, significant changes made to the concepts represented during final design require a change to the contract. The Department's selection of the Design-Builder is based significantly on the presentation of the project in the Technical Proposal. Changes made to the proposed concepts by the Design-Builder during final design must be evaluated carefully to determine if a loss of value has occurred or the change is outside the requirements of the Contract Provisions. Changes to the design may be necessary to meet the Contract Provisions if the Design-Builder misinterpreted the provisions during proposal preparation. The cost associated with correcting the discrepancy is allocated to the Design-Builder, as it is his responsibility to interpret design requirements of the Scope of Work. A contract change order should be issued if a change is allowed, even a no-cost change, to maintain the basis of the contract.

Section 104.5 Procedure and Protest by the Design-Builder

DOT&PF General Special Provisions for these sections have been re-written to clarify the terms used. A number of appendices are included with these provisions which have also been re-written. The generic forms are included in Appendix \$\$\$?\$\$\$ of the Guidebook.

Section 104.7 Differing Site Conditions (Changed Conditions)

The modifications to the Standard Specifications in this section relate primarily to geotechnical considerations. The provisions of this section must be closely coordinated with Special Provisions Section 102.4 and Scope of Work Section 415.

Without special dispensation, any federal aid job must contain a differing site condition provision. The Project Manager must evaluate the assignment of the unknown conditions risk. A decision must be made concerning which party is assuming the responsibility of determining what the risk is and how it would be managed. DOT&PF may share the risk of geotechnical unknowns. If it does, then a changed condition clause will be required.

Complete allocation of geotechnical risk to the Design-Builder in making the determination of how much site investigation is required may allow elimination of a differing site condition clause for geotechnical issues. However, the Department's cost for complete allocation and the difficulty in separating project oversight responsibilities may make complete allocation prohibitive.

106 Control of Material

Changes to this section consist of minor changes to the GSPs to adapt terminology. A review of the provisions is necessary to ensure coherence with the QC/QA Program provision in the Scope of Work Section 1100.

107 Legal Relations and Responsibilities to the Public

Section 107.11 Equal Employment Opportunity Responsibilities

The EEO and DBE provisions of the GSPs were re-written to accommodate terminology and the selection process of design-build contracting. The RFP Proposal General Requirements Section 3.6 describes the required submittals during the selection process. Primarily, the Proposers need only provide an affidavit of commitment and not the explicit definition of the DBE commitments for the project. As the exact project definition and the quantities and associated costs of the work divisions may not be determined in the proposal, an exact determination of the DBE commitment is unknown. The Department is requesting a commitment by the Design-Builder to meet the specified goal or conduct the good faith effort described in this section's provisions.

Minor changes have been made throughout the GSP on record at the time of the pilot projects. At the time these provisions were written, revisions to the EEO and DBE sections were under consideration. Carefully review with the DOT&PF Office of Equal Opportunity to ensure the design-build modifications are transferred to the current GSP provision for this Standard Specification section.

Section 107.17 Utilities and Similar Facilities

This section primarily lists the affected utilities in and around the project site. This section should be closely coordinated with Scope of Work Section 430. The requirements or agreement terms for each utility should be placed in either the Special Provisions or the Scope of Work. The pilot projects utilized the Scope of Work to communicate special utility requirements to the

Design-Builder designers. As the requirements affect design as well as construction of the project, the best communication tool is considered the Scope of Work.

Section 107.18 Public Liability and Property Damage Insurance

Design-build contracting creates a unique (but recently more common) dilemma for the insurance and surety industry. The dilemma stems from the shift of traditional DOT&PF tasks to the Design-Builder in order to realize the benefit in the design-build contracting method. The various risks associated with the shifted tasks necessitates modifying indemnification and/or other insurance requirements currently used in the Standard Specifications and the General Special Provisions. DOT&PF must understand the implications of combining design and construction into one contract with respect to insurance and performance bond requirements.

The surety and insurance industries are responding quickly to the nuances of design-build contracting by providing new products. The Department risk managers should review the Special Provisions in light of each project's unique issues related to performance bonding, professional liability insurance, and long-term warranties. The following discussion provides the background to the provisions contained in the generic Special Provisions.

Pilot Project Insurance/Bonding Efforts

Under traditional design-bid-build methods, DOT&PF, as the owner, either designs the project or specifically contracts for the design and employs rigorous review processes prior to its acceptance. This ensures a high degree of DOT&PF control over the project design process, and minimizes, from DOT&PF's perspective, design errors and omissions (E&O). This method also minimizes any issues relating to scope or design functionality for the builder, since DOT&PF prescribes to the builder the means and methods of the project through the detailed plans and specifications. In this traditional process, the Standard Specifications requires the builder to be paid for any changes to these documents.

Where a single entity Design-Builder self-performs or subcontracts design work for a design-build contract, they become single point responsible to DOT&PF for both the design and construction functions, absent any other provisions. Thus, the Design-Builder will be required to warrant the sufficiency of the design and delivery of the constructed product. They are responsible for both scope problems (i.e., duties owed to the trade contractors relying upon the plans and specifications), and performance requirements [i.e., duties owed to the owner (DOT&PF) of the facility]. The Design-Builder also assumes responsibility for any damages suffered because of either construction or design E&O deficiencies (direct, arising from the contractor's own in-house design team, or indirect because of subcontracting the design to a design firm).

Most Comprehensive/Commercial General Liability (CGL) insurance policies exclude coverage for bodily injury or property damages arising out of professional services by or for the insured. If these damages are not insured by some other means, the Design-Builder would be liable for damages resulting from design errors absent other specific E&O insurance provisions.

Professional liability carriers will not include performance (completion of the work) guarantees or liquidated damages in their policies. Typically, this is something covered by the performance bond, if performance by a certain date is guaranteed by the contract. The surety industry has evolved considerably over the past 5 years regarding the bonding of design-build projects.

Contractors regularly performing design-build projects can obtain the design performance coverage with minimal or no surcharge over the conventional bond rates if the project involves systems that the contractor designs on a repeat basis. In the case of projects where the contractor may be assuming a unique, challenging or “state-of-the-art” design approach, a 10-25 percent surcharge to conventional rates might be expected.

Underwriters providing insurance coverage for design-build projects understand that regardless of whether design services are provided by an in-house design staff, joint-venture partners, or subcontracted, the Design-Builder will not be able to divorce itself from design responsibility and related exposures to professional liability. These related exposures might include allegations of negligence relating to design preparation, site surveys, material selection, increased construction costs and construction observation leading to claims for economic loss, property damage, and bodily injury from participating parties and third parties. However, very often the surety views design-build work as a reduction in the overall risk to the contractor when compared to design-bid-build work, because the Design-Builder is in control of the design/engineering/scheduling process from the time of contract execution.

Performance bonds are not the appropriate risk financing tool for E&O. Bond premiums are a relatively small fee for underwriting contractors and providing certain guarantees to third parties. Bond premiums are also extremely inadequate to assume losses and defense costs associated with professional liability exposures. Further, long-term design liabilities would most assuredly not be afforded the protection of a performance bond and would ultimately fall upon the Design-Builder.

Insurance is loss sharing and relatively large premiums reflect a policy’s share of expected future losses from that class of business. The Design-Build Subcommittee, Surety Association of America, has previously indicated that only 85 percent of total claims on E&O policies are reported within 5 years of project completion, 13 percent are reported between 5 to 10 years, and 2 percent are reported after 10 years. Since professional liability is a significant loss exposure with long-term liability, insurers generally provide effective coverage only on a “claims-made” basis. “Claims made” policies cover claims made during the year the policy is in force for any incidents that occurred and were claimed during the coverage period or previously occurred and claimed during the coverage period). An “extended reporting period” (tail coverage purchased for the policy) can be added to the policy extending the reporting period beyond the coverage period. “Claims made” policies do not cover claims reported after the policy period and extended reporting period have expired even if the loss actually occurred during the policy period. The surety looks to the professional liability coverage of the contractor’s design team for primary protection against design E&O exposure. The surety is interested in the Design-Builder purchasing adequate limits and tail coverage to mitigate the risk. In addition, excess coverage is now becoming available to contractors, which includes professional liability coverage in the excess limits, on an occurrence basis.

Some states are enacting a statute of repose (and limitations) for actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property. Any cause of action that has not accrued within 6 years after such substantial completion of construction, or within 6 years after such termination of services, whichever is later, shall be barred. As such, an insurance coverage tail for both E&O and completed operations consistent with that length could be considered reasonable.

The issues raised in the preceding discussion require specific considerations in recommending appropriate insurance coverage. The considerations generally include:

- a) Which is the better risk financing tool for the professional liability issues, the Performance Bond or E&O professional liability insurance?
- b) Who should provide Commercial General Liability (CGL) insurance, the Design-Builder and/or subcontractors and suppliers at all levels?
- c) Who should provide E&O professional liability insurance coverage, the Design-Builder and/or all tiers?
- d) What insurance limits should be for the CGL and E&O?
- e) What length should the completed operations tail for the CGL and the claims made tail for the E&O professional liability insurance coverage be?
- f) What are the estimated contract price and the overall risk exposure of the design-build project?

Since DOT&PF's design-build method of contracting includes both the project design and construction for a completed functional facility, the Design-Builder, as the single point of responsibility, assumes damages for these liabilities. Many indemnification and insurance requirements could exist between the Design-Builder and subcontractors, suppliers, and outside design consultants.

From DOT&PF's standpoint, such liabilities that might result from design relationships are best afforded coverage through a project-specific Design-Builder design liability policy with limits for each claim and an aggregate per policy period, with tail coverage beginning after final payment, to provide coverage of defense and indemnity payments for:

- Wrongful acts arising out of the performance of professional services rendered by their in-house design staff who are legally qualified architects, engineers, land surveyors, landscape architects, and construction managers, and
- The contractor's vicarious liability for those design services provided by subcontracted Architects and Engineers.

To ensure that the appropriate risk financing tool is used for the risk, an E&O insurance policy is delineated in the contract specifications by specifically excluding errors and omissions in design, and warranty of design from the performance bond guarantee. A clear distinction is made between performance of design and construction services and the liabilities of design, allowing the penal sum of the performance bond to be based on the performance (completion of the work) of design and construction only. This would give DOT&PF its usual surety guarantees for contract performance and also protect the surety from design negligence, errors, and omissions. Further delineation can be made in requiring primary E&O coverage under project-specific policies with prepaid coverage tails that properly mirror the long-tail nature of the exposures.

Project CGL insurance inclusive of claims for damages normally associated with such coverage, and to include completed operations coverage after final payment, should be provided with limits per occurrence and in aggregate per policy period.

Section 107.23 Public Convenience and Safety

This section contains significant project-specific requirements regarding public convenience restrictions. Two pilot project examples are contained in the generic Special Provisions for use in formulating the requirements for each new project.

108 Prosecution and Progress

Section 108.9 Liquidated Damages

This section of the Special Provisions has been modified to allow flexibility in the liquidated damages calculation. The definition of “T” has been modified to account for the Design-Builder’s proposed time. In addition, substantial damages were added to the pilot project Special Provisions that are included in the Generic Special Provisions as examples.

This section was revised based on using a milestone in lieu of working days. An alternative to the milestone approach would be to use a working days approach. Rewording of this section, and others relating to the project schedule, would be required.

109 Measurement of Quantities

Measurement and payment procedures require significant modification in design-build contracting due to the lump sum nature of the submitted price. A Schedule of Values is requested of the Design-Builder to delineate how the proposed price will be distributed into the major work components. Guidebook Section 5.2.2.6 discusses Department expectations related to project cost tracking and cost accounting requirements for progress payments in design-build contracting.

SPECIAL PROVISIONS

The following Special Provisions are made a part of this contract and supersede any conflicting provisions of the [1998] Standard Specifications for Road, Bridge and Municipal Construction (Metric), and the foregoing Revisions to the Standard Specifications.

BID PROCEDURES AND CONDITIONS

Examination of Plans, Specifications, and Site of Work

General

Section 102.4(1) is supplemented with the following:

5. Has performed additional geotechnical investigations, or requested additional geotechnical investigations from DOT&PF if provided for in the contract provisions.

The Proposer is solely responsible for all site conditions discoverable from a reasonable site examination. A reasonable site investigation includes all geotechnical investigation that the Proposer determines is necessary to properly design, price, and construct the Work. Proposal submission will be considered conclusive evidence that the Proposer has determined that it has performed a reasonable site investigation.

The actual locations, shape, and other geometrics of the project features will be determined by the Proposers within certain constraints set forth in the RFP and Contract. Therefore, it is the responsibility of each Proposer to conduct additional geotechnical investigation before submitting a Proposal as it deems necessary to familiarize itself completely with all pertinent existing subsurface conditions and thus allow the Proposer to properly design, price, and construct the Project.

It is the Proposer's responsibility to make interpretations and draw conclusions with respect to the character of the geotechnical materials encountered and their impact upon its work.

Subsurface Information

Section 102.4(2) is supplemented with the following:

The preliminary geotechnical investigation conducted by DOT&PF shall not be interpreted as being thorough and/or complete. The Proposer shall determine the need for and acquire any supplementary geotechnical information required to determine a reasonable cost for the project Work.

Proposers are responsible for reviewing and analyzing the geotechnical information provided with the RFP. Soil samples and rock cores obtained to develop the project Baseline Geotechnical Report which were not consumed by testing are available for viewing.

Soil conditions and groundwater conditions are only known at the boring locations at the time of the boring. Bedrock data is only known at the locations of rock cores

obtained at boring locations. Interpretation and interpolation between boring locations shall be at the sole risk of the Proposer.

Supplemental Boring Program

Section 102.4 is supplemented with the following:

In order to aid the Proposers in partially fulfilling these responsibilities, DOT&PF plans to provide an opportunity for each Proposer to obtain additional geotechnical information at DOT&PF's expense pursuant to Section 102.4(2) below. The Department makes no representation as to whether said Supplemental Boring Program will be sufficient for the Proposer to discharge its responsibilities set forth in the preceding paragraph. Each Proposer must make this determination independently based upon its own independent judgment and experience.

Because the geotechnical information necessary for each Proposer varies with each Proposer's design, it is recognized that the subsurface information provided with the RFP may not provide all the geotechnical information that the Proposer may determine is necessary. Therefore, DOT&PF will provide at its own cost additional geotechnical investigation as directed by the Proposers, subject to the limitations as provided herein, to be known as the "Supplemental Boring Program".

The Proposer is responsible for submitting to the Contract Representative, in writing, a Boring Program detailing the location (by station and offset) and highest bottom elevation of their requested borings by **\$\$\$?\$\$\$**. Late submittals will not be accepted. Failure to submit such a Boring Program by said date will constitute a conclusive presumption that the Proposer has determined that it does not require any additional geotechnical data to properly design, construct and price the work or that the Proposer intends to obtain such data at its expense. Each Proposer may submit up to **[two (2)]** boring locations. DOT&PF will make every effort to locate the borings where requested. The borings will be performed at the locations requested, except that proposed boring locations within six (6) meters of another will be averaged to one proposed location. If a Proposer's boring is averaged with another Proposer's boring, neither Proposer will be allowed an additional boring. Soon after **\$\$\$?\$\$\$**, the locations of all borings will be distributed to all Proposers in writing. Whether or not the Proposer's requested borings were located exactly where requested, the requirements of Section 1-2.4(1) will still apply.

The Supplemental Boring Program will be performed by DOT&PF in-house staff or an independent, qualified, drilling contractor. The borings will be inspected by a qualified inspector working for DOT&PF and boring locations and elevations will be established by survey personnel provided by DOT&PF. At the option of the Proposer, the Proposer may have a maximum of one on-site person to witness the drilling, sampling, testing and coring. All such on-site persons shall not interfere with the operation of the drillers and inspector, and shall coordinate transportation to the drilling site with DOT&PF.

The Department's drill crew or drilling contractor will be prepared to conduct the following sampling and testing procedures in the 1999 Supplemental Boring Program: split-spoon samples and Standard Penetration Tests at 1.5 meter intervals and every change in stratum, minimum NQ-size rock cores, minimum 3 meter rock cores with RQD; field vane shear tests in soft clays; electronic cone penetrometer

testing, conventional laboratory classification testing on disturbed soil samples; conventional laboratory tests on rock samples. The Proposer is responsible for including in its Boring Program submittal: the frequency and depth of field vane tests, the locations of split spoon samples and SPT tests, and the length and diameter of rock cores. Furthermore, the Proposer is responsible for including in its Boring Program submittal the depth of disturbed samples, undisturbed samples, and rock cores that they wish to obtain, and the corresponding tests to be conducted.

The state will perform the test borings in the order of its choice. Mobilization will take place on or about ~~\$\$\$?\$\$\$~~. The Supplemental Boring Program Report, containing the final boring logs and laboratory test results, will be shared with all Proposers on or about ~~\$\$\$?\$\$\$~~. Soil and rock samples that are not consumed by testing will be stored for inspection by the Proposers at the DOT&PF Materials Laboratory. To examine these samples, refer to Section 103.4(2). Furthermore, all of the samples not consumed by testing, including disturbed samples, undisturbed samples, and rock cores, will be turned over to the Design-Builder immediately after the contract is awarded.

Additional Geotechnical Investigation and Analysis

If the Proposer determines, before or after the award of the contract, that additional geotechnical or subsurface investigation is necessary to properly design and construct the Work, it is the responsibility of the Proposer to perform such investigation and analysis at its expense. Such investigation may take place at any time before or after submission of the Proposal. All subsurface investigations, including sampling and laboratory testing, shall be performed in accordance with the 1988 AASHTO Manual on Subsurface Investigations, AASHTO standards, and ASTM standards.

AWARD AND EXECUTION OF CONTRACT

Execution Of Contract

Section 103.3 is supplemented with the following:

Escrowed Bid Documents

The purpose of this specification is to preserve the Proposer's bid documents for use by DOT&PF in the resolution of any claim or dispute between DOT&PF and Design-Builder either during or after construction.

Prior to execution of this Contract, Design-Builder shall have delivered into escrow one copy of all documentary information used in preparation of its Bid for the Project (the "Escrowed Bid Documents" or "EBD"). Concurrently with approval of each Change Order, if requested by DOT&PF, one copy of all documentary information used in preparation of the Change Order shall be added to the Escrowed Bid Documents. The EBD will be held in escrow until all of the following have occurred: (a) 180 days have elapsed from the date of the final contract voucher certification, (b) all disputes regarding this Contract have been settled, and (c) final payment on this Contract has been made by DOT&PF and accepted by Design-Builder.

The EBD shall be available during business hours for joint review by representatives of Design-Builder and DOT&PF in connection with the resolution of disputes and as described in Section 104.5_{below}. The EBD are, and shall always remain, the property of Design-Builder, subject to DOT&PF's right to review the EBD as

provided herein. Copies of the EBD shall be provided to the courts of the State of Alaska and other dispute resolvers upon request by DOT&PF. Design-Builder shall have the right to seek a protective order governing the disclosure of the EBD to parties other than DOT&PF.

Design-Builder represents and warrants that the EBD delivered into escrow prior to execution hereof constitute all of the information used in the preparation of its Bid and agrees that no other Bid preparation information will be considered in resolving disputes or claims related thereto, including in any judicial proceeding to resolve such disputes or claims. Design-Builder also agrees that the EBD are not part of this Contract and that nothing in the EBD shall change or modify this Contract.

Design-Builder represents and warrants that:

- (a) the EBD clearly itemize the estimated costs of performing the Work required by the Contract Provisions, all Work is separated into sub-items as required to present a complete and detailed estimate of all costs, and crews, equipment, quantities and rates of production are detailed;
- (b) estimates of costs are divided into Design-Builder's usual cost categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate, plant and equipment and indirect costs are detailed in Design-Builder's usual format, and Design-Builder's allocation of plant and equipment, indirect costs, contingencies, markup and other items such as overhead and profit to each direct cost item shall be clearly identified;
- (c) the EBD include all assumptions, quantity takeoffs, rates of production and progress calculations, quotes from Subcontractors and suppliers, memoranda, narratives and all other information used by Design-Builder to arrive at the Contract Price or Change Order.

It is not intended that Design-Builder perform any significant extra work in the preparation of the EBD prior to delivery thereof into escrow. However, Design-Builder represents and warrants that the EBD provided prior to execution of this Contract were personally examined prior to delivery to escrow by authorized officers of Design-Builder and that they meet the requirements of herein and are adequate to enable a complete understanding and interpretation of how Design-Builder arrived at its Bid Price. Design-Builder also represents and warrants that the EBD provided in connection with Change Orders will be personally examined prior to delivery to escrow by authorized officers of Design-Builder that they will meet the requirements herein and will be adequate to enable a complete understanding and interpretation of how Design-Builder arrived at its Change Order.

Prior to execution of this Contract representatives of DOT&PF and Design-Builder shall jointly review the EBD to determine whether it is complete, and shall organize the EBD and label each page so that it is obvious that the page is a part of the EBD and so as to enable a person reviewing a page out of context to determine where it can be found within the EBD. The representatives shall also compile an index listing each document included in the EBD and briefly describing the document and its location in the EBD, which shall be kept with the EBD. In the event that, following the initial organization, DOT&PF determines that the EBD is incomplete, DOT&PF may request Design-Builder to supply data to make the EBD complete. Design-

Builder shall provide all such data within three business days of the request, and at that time it will be date stamped, labeled to identify it as supplementary EBD information, and added to the EBD. Design-Builder shall have no right to add documents to the EBD except upon DOT&PF's request. At DOT&PF's option, which may be exercised at any time, the EBD associated with any Change Order shall be reviewed, organized and indexed in the same manner as set forth in Section 1-03.3.

The EBD shall at all times be treated as proprietary and confidential information and shall be used only for purposes described in Section 1-3.3.

Failure or refusal to provide bid documentation shall delay execution of the Contract.

The cost of the escrow will be borne by DOT&PF. DOT&PF will provide escrow instructions to the banking institution consistent with this specification.

Subcontractor Bid Documents

Design-Builder shall require each Subcontractor whose Subcontract price equals or exceeds ~~\$\$\$?\$\$\$~~ to submit to Design-Builder a copy of all documentary information used in preparing its sub-bid, immediately prior to executing the Subcontract, to be held by the same escrow depository which is holding the EBD and which shall be accessible by Design-Builder and its successors and assigns (DOT&PF), the courts of the State of Alaska and other dispute resolvers, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor stating that its EBD constitute all the documentary information used in preparation of its sub-bid. Each Subcontract with a Subcontractor whose Subcontract price is less than ~~\$\$\$?\$\$\$~~ shall require the Subcontractor to preserve all documentary information used in preparing its sub-bid and to provide such documentation to Design-Builder and/or DOT&PF in connection with any claim exceeding \$250,000 made by such Subcontractor.

Remedies for Refusal or Failure to Provide Bid Documentation

Failure or refusal to provide bid documentation shall cause the Final Proposal to be deemed non-responsive.

Confidentiality of Bid Documentation

The bid documentation and affidavit in escrow are and will remain the property of the Design-Builder. DOT&PF has no interest in or right to the bid documentation and affidavit other than to verify the contents and legibility of the bid documentation unless litigation ensues between DOT&PF and Design-Builder over claims brought by the Design-Builder arising out of this contract. In the event of such litigation, the bid documentation and affidavit may become the property of DOT&PF for use in the litigation as may be appropriate subject to the provisions of any court order limiting or restricting the use or dissemination of the bid documentation and affidavit as provided in the Section 103.3.

SCOPE OF WORK

Changes

Section 104.4 is deleted in its entirety and replaced by the following:

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

1. Deleting any part of the work,
2. Increasing or decreasing quantities,
3. Altering specifications, designs, or both,
4. Adding new work,
5. Altering facilities, equipment, materials, services, or sites, provided by DOT&PF.

The Technical Proposal is a part of the complete contract and the concepts contained therein shall not be materially changed unless authorized by the Engineer. Interpretation and correct application of Contract Provisions are the responsibility of the Design-Builder. Changes in the design by the Design-Builder to meet contract requirements or correct defects or deficiencies, that do not materially change the Technical Proposal, are the responsibility of the Design-Builder and are not considered Changes in the Work and no adjustment will be allowed to contract price or time. Changes in Work to meet contract requirements, that materially change the concepts in the Technical Proposal, shall be reviewed by DOT&PF. The Engineer will issue a written change order for any change unless the remainder of this section provides otherwise.

If the Engineer determines that the change increased or decreased the Design-Builder's costs or time to do any of the work including unchanged work, the Engineer will make an equitable adjustment to the contract. The equitable adjustment will be by agreement with the Design-Builder. However, if the parties are unable to agree, the Engineer will determine the amount of the equitable adjustment in accordance with Section 109.4 and adjust the time as the Engineer deems appropriate. Extensions of time will be evaluated in accordance with Section 108.8. The Engineer's decision concerning equitable adjustment and extension of time shall be final as provided in Section 105.1.

Contractor shall maintain concurrent time and materials records for all work performed which it believes constitutes extra work (including non-construction work), pending issuance of a Change Order or resolution of any dispute in accordance with Section 104.5 of the Special Provisions.

The Design-Builder shall proceed with the work upon receiving:

1. A written change order approved by the Engineer, or
2. An oral order from the Project Engineer before actually receiving the written change order.

The Design-Builder shall obtain written consent of the surety or sureties if: (1) changed work increases the total cost of the project by more than 25 percent of the original total contract price, or (2) the Engineer requests such consent.

Procedure And Protest By The Design-Builder

Section 104.5 is deleted in its entirety and replaced by the following:

The Design-Builder accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is not protested as provided in this section shall be full payment and final settlement of all claims for contract time and for direct, indirect, and consequential costs, including costs of delays, related to any work either covered or affected by the change. By not protesting as this section provides, the Design-Builder also waives any additional entitlement and accepts from the Engineer any written or oral order (including directions, instructions, interpretations, and determinations).

If in disagreement with anything required in a change order, another written order, or oral order from the Engineer, including any direction, instruction, interpretation, or determination by the Engineer, the Design-Builder shall immediately give a signed written notice of protest to the Project Engineer or the Project Engineer's field inspectors before doing the work. If this notice does not result in resolution of the protest within seven calendar days, the Design-Builder or DOT&PF may pursue the Disputes Resolution procedures provided in this section.

In spite of any protest, dispute, or claim the Design-Builder shall proceed promptly and diligently with the work as the Engineer orders. The Design-Builder shall also proceed without delay to perform the work or to conform to the decision or order of the Engineer while waiting for written responses from the Engineer or recommendations from the Disputes Review Board.

Throughout any protested work, the Design-Builder shall keep complete records of extra costs and time incurred. The Design-Builder shall permit the Engineer access to these and any other records needed for evaluating the protest.

Disputes Resolution

In order to assist in the resolution of disputes or claims arising out of the work of this project, DOT&PF has provided for the establishment of a Disputes Review Board, hereinafter called the "BOARD". The BOARD has been added to the disputes resolution process to be brought into play when normal DOT&PF-Design-Builder dispute resolution is unsuccessful and prior to a formal adoption of position or filing of litigation by either party.

A. Disputes

Disputes, as used in this Section, will include disagreements, claims, counterclaims, matters in question, and differences of opinion between DOT&PF and Design-Builder:

1. On matters related to the work and to change order work, including:
 - a. Interpretation of the Contract.
 - b. Costs.

- c. Time for performance.
2. And on other subjects mutually agreed by DOT&PF and Design-Builder to be of concern of the BOARD.

B. Resolution Procedure

The following procedure shall be used for dispute resolution:

1. If seven calendar days have expired since the Design-Builder provided the signed written notice of protest provided above and the Design-Builder continues to object to any decision or order of the Engineer, the Design-Builder shall request, in writing, written instructions from the Engineer.
2. The Engineer shall respond, in writing, to the Design-Builder's written request within 15 calendar days.
3. Within 30 calendar days after receipt of the Engineer's written instructions, the Design-Builder shall, if the Design-Builder still objects to such instructions, supplement the written protest to the Engineer with a written statement providing the following:
 - a. The date of the protested order,
 - b. The nature and circumstances which caused the protest,
 - c. The contract provisions that support the protest,
 - d. The estimated dollar cost, if any, of the protested work and how that estimate was determined, and
 - e. An analysis of the progress schedule showing the schedule change or disruption if the Design-Builder is asserting a schedule change or disruption.
4. The Engineer will consider the supplemented written protest and make a decision on the basis of the pertinent contract provisions and facts and circumstances involved in the dispute. The decision will be furnished in writing to the Design-Builder within 60 calendar days. This decision shall be final and conclusive on the subject unless a written appeal is filed by the Design-Builder. Should the Design-Builder appeal the Engineer's decision, the matter can be referred to the BOARD by either DOT&PF or the Design-Builder.
5. The Design-Builder's appeal for review must be instituted within 30 calendar days of the date of receipt of the Engineer's decision.
6. The Design-Builder and DOT&PF shall each be afforded an opportunity to be heard by the BOARD and to offer evidence. Either party furnishing any written evidence or documentation to the BOARD must furnish copies of such information to the other party a minimum of 15 calendar days prior to the date the BOARD sets to convene the hearing for the dispute. Either party shall produce such additional evidence as the BOARD may deem necessary to an understanding and determination of the dispute and furnish copies to the other party.

7. The BOARD's recommendations toward resolution of a dispute will be given in writing to both DOT&PF and the Design-Builder. The recommendations will be based on the contract provisions and the actual costs and/or time incurred.
8. Within 30 calendar days of receiving the BOARD's recommendations, both DOT&PF and the Design-Builder shall respond to the other in writing signifying that the dispute is either resolved or remains unresolved.
9. Although both parties should place weight upon the BOARD's recommendations, the recommendations are not binding. Either party may appeal a recommendation of the BOARD to them for reconsideration. However, reconsiderations shall only be allowed when there is new evidence to present.
10. If DOT&PF and the Design-Builder are able to resolve their dispute with the aid of the BOARD's recommendations, DOT&PF will promptly process any contract changes.
11. In the event the BOARD's recommendations do not resolve the dispute, all BOARD records, and written recommendations, including any minority reports, will be admissible as evidence in any subsequent litigation.

C. Litigation

1. Submittal of dispute to the BOARD shall be a condition precedent to filing for litigation in a court of law unless DOT&PF and the Design-Builder have agreed to defaulting to Section 1-09.11(2), Claims.
2. Claims, counterclaims, disputes, and other matters in question between DOT&PF and Design-Builder that are not resolved will be decided in the Superior Court of Alaska, which shall have exclusive jurisdiction and venue over all matters in questions between DOT&PF and the Design-Builder.
3. The Contract shall be interpreted and construed in accordance with the laws of the State of Alaska.

D. Purpose and Function of the BOARD

The BOARD will be an advisory body created to assist in the resolution of claims, disputes, or controversy between the Design-Builder and DOT&PF in order to prevent construction delay and possible litigation.

The BOARD will consider disputes referred to it, and furnish recommendations to DOT&PF and Design-Builder to assist in the resolution of the differences between them. The BOARD will make nonbinding findings and recommendations and provide special expertise to assist and facilitate the resolution of disputes.

E. BOARD Members

The BOARD shall consist of one member selected by DOT&PF and one member selected by the Design-Builder, with these two members to select the third member. The first two members shall be mutually acceptable to

both DOT&PF and the Design-Builder. If one or both of the two members selected are not acceptable to DOT&PF or Design-Builder, another selection shall be made.

DOT&PF and Design-Builder shall each select their member and negotiate an agreement with their respective BOARD members within the first 60 calendar days after award of the contract. These negotiated agreements shall include a clause that requires the respective selected members to immediately pursue selection of the third member in accordance with Section IIA of the DISPUTES REVIEW BOARD THREE PARTY AGREEMENT in the Appendix of these Special Provisions.

In the event of an impasse in selection of the third member, , the third member shall be appointed jointly by the DOT&PF Project Engineer and a representative of the Design-Builder.. An impasse shall be considered to have been reached if the two members appointed by DOT&PF and the Design-Builder for the BOARD have been unable to appoint the third member in a period of 60 calendar days after the approval of the last of such two members.

In case a member of the BOARD needs to be replaced, the replacement member will be appointed in the same manner as the replaced member was appointed. The appointment of a replacement BOARD member will begin promptly upon determination of the need for replacement and shall be completed within 30 calendar days. The Three Party Agreement will be amended to reflect the change of a BOARD member.

Service of a BOARD member may be terminated at any time with not less than 30 calendar days notice as follows:

1. DOT&PF may terminate service of the DOT&PF appointed member.
2. The Design-Builder may terminate service of the Design-Builder appointed member.
3. The third member's services may be terminated only by agreement of the other two members.
4. By resignation of the member.
5. Termination of a member will be followed by appointment of a substitute as specified above.

No member shall have a financial interest in the contract, except for payments for services on the BOARD. No member shall have been employed by either party within a period of two years prior to award of this contract; except that, service as a member of other Disputes Review Boards on other contracts will not preclude a member from serving on the BOARD for this contract.

The BOARD members will be especially knowledgeable in the field of construction of the type covered by the Contract and shall discharge their responsibilities impartially and independently considering the facts and

conditions related to the matters under consideration and the provisions of the Contract.

F. BOARD Operation

The BOARD will formulate its own rules of operation. In order to keep abreast of the construction development, the members shall regularly visit the project, keep a current file, and regularly meet with the other members of the BOARD and with representatives of DOT&PF and the Design-Builder.

The frequency of these visits shall be as agreed between DOT&PF, the Design-Builder, and the BOARD.

For further description of work, responsibilities and duties of the BOARD, and DOT&PF's and Design-Builder's obligations and responsibilities with respect to each other and to the BOARD, see the DISPUTES REVIEW BOARD THREE PARTY AGREEMENT in Appendix G of these Special Provisions.

G. Service Agreements and Compensation

Service agreements with BOARD members appointed by DOT&PF and Design-Builder shall be negotiated by DOT&PF and Design-Builder, respectively. The service agreement with the third member shall be negotiated with the other two members.

All the service agreements, shall be executed in forms mutually acceptable to DOT&PF and Design-Builder.

Compensation for the BOARD members, and the expenses of operation of the BOARD, shall be shared by DOT&PF and Design-Builder in accordance with the following:

1. DOT&PF shall compensate directly the wages and travel expense for their selected member.
2. The Design-Builder shall compensate directly the wages and travel expense for their selected member.
3. DOT&PF and Design-Builder shall share equally in the third member's wages and travel, and all of the expenses of the BOARD. These equally shared expenses shall be billed to and paid by DOT&PF. The Design-Builder's share will be deducted from monies due the Design-Builder.
4. DOT&PF, through the Engineer, will provide administrative services, such as conference facilities and secretarial services, to the BOARD and DOT&PF will bear the costs for this service.

H. Three Party Agreement

The Design-Builder, DOT&PF, and all three members of the BOARD shall execute the DISPUTES REVIEW BOARD THREE PARTY AGREEMENT within 30 calendar days of the final selection of the third member. The form

of the Three Party Agreement is included in Appendix C of these Special Provisions.

I. Guidelines

DISPUTES REVIEW BOARD GUIDELINES for the BOARD's operation are included in Appendix C of these Special Provisions.

These guidelines express in general terms the policy for the creation and operation of the BOARD and are intended to supplement the Three Party Agreement, the Special Provisions, and the Specifications to the extent that no conflict with such provisions is created.

The Engineer will evaluate all protests provided the procedures in this section are followed. If the Engineer determines that a protest is valid, the Engineer will adjust payment for work or time by an equitable adjustment in accordance with Section 1-09.4. Extension of time will be evaluated in accordance with Section 1-08.8. No adjustment will be made for an invalid protest.

By failing to follow the procedures of this section and Section 1-09.11, the Design-Builder completely waives any claim for protested work.

Differing Site Conditions (Changed Conditions)

Section 104.7 is deleted in its entirety and replaced the following:

"Differing Site Conditions" shall mean (a) subsurface or latent physical conditions encountered at the Site differing materially from those indicated in the Baseline Geotechnical Report and supplementary geotechnical investigations performed by the Design-Builder and which are not discoverable from a reasonable investigation and analysis of the site including subsurface conditions, (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of work provided for in the Contract and the work site characteristics, provided in all cases that Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Date.

Harmful/Hazardous Materials shall not be considered to be Differing Site Conditions if they are in a category for which unit prices were provided in the Proposal Documents. Harmful/Hazardous Materials in other categories may be considered to be Differing Site Conditions only if the work effort associated with remediation has a material adverse cost or delay impact.

Upon written notification, the Engineer will investigate the conditions and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the Design-Builder of his/her determination whether or not an adjustment of the contract is warranted.

No contract adjustment which results in a benefit to the Design-Builder will be allowed unless the Design-Builder has provided the required written notice.

The equitable adjustment will be by agreement with the Design-Builder. However, if the parties are unable to agree, the Engineer will determine the amount of the

equitable adjustment in accordance with Section 109.4. Extensions of time will be evaluated in accordance with Section 108.8.

If the Engineer determines that different site conditions do not exist and no adjustment in costs or time is warranted, such determination shall be final as provided in Section 105.1.

If there is a decrease in the costs or time required to perform the work, failure of the Design-Builder to notify the Engineer of the differing site conditions shall not affect DOT&PF's right to make an adjustment in the costs or time.

No claim by the Design-Builder shall be allowed unless the Design-Builder has followed the procedures provided in Section 104.5 and 109.11.

Burden of Proof

Design-Builder shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each request for a Change Order under this Section 104.7 shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by Design-Builder with respect to the condition of the Site, justifying the basis for such assumptions and explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by Design-Builder to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs. For Differing Site Conditions involving Utilities, Design-Builder shall describe the nature of the investigations undertaken under Section 102.4(1) hereof and explain why it could not have been expected to discover such Utility in the course of its investigations

Cooperation With Other Contractors

Section 105.14 is supplemented with the following:

Other Contracts Or Other Work

It is anticipated that the following work adjacent to or within the limits of this project will be performed by others during the course of this project and will require coordination of the work:

DOT&PF
\$\$\$?\$\$\$

Local Agency
\$\$\$?\$\$\$

[The following provisions were utilized by the pilot project and are provided as example]

“The Design-Builder shall coordinate a monthly meeting with the Project Manager for the Fourth Plain project whenever the construction of that project is occurring concurrently with the construction of the SR 500, Thurston Way Interchange project. The Design-Builder shall invite the County and DOT&PF Project Engineers for each project to these meetings.

The Design-Builder shall coordinate a monthly meeting with the Project Engineer for the SR 500, 112th Ave. I/C project whenever the construction of that project is occurring concurrently with the construction of the SR 500, Thurston Way Interchange project. The Design-Builder shall invite the DOT&PF Project Engineer for each project to these meetings.

These monthly meetings shall be utilized to share information on the planned construction work for the respective projects, as well as look for ways to coordinate the reduction in impacts to the traveling public.”

CONTROL OF MATERIALS

Acceptance of Material

Section 106.2 is supplemented with the following:

Steel Reinforcing Bar

Section 106.2 is supplemented with the following:

Steel reinforcing bar manufacturers have changed the size designation stamped on their bars. The actual size of the bar remains the same, only the size designation has changed. The table below shows the new size designation for reinforcing steel referenced in the Standard Specifications and the Standard Plans.

Std. Specification Designation	Bar Diameter	New Size Designation
#3	(9.5 mm)	#10
#4	(12.7 mm)	#13
#5	(15.9 mm)	#16
#6	(19.1 mm)	#19
#7	(22.2 mm)	#22
#8	(25.4 mm)	#25
#9	(28.7 mm)	#29
#10	(32.3 mm)	#32
#11	(35.8 mm)	#36
#14	(43.0 mm)	#43
#18	(57.3 mm)	#57

Rebar stamped with either size designation may be used.

Foreign Made Materials

Section 106 is supplemented with the following:

The major quantities of steel and iron construction material that is permanently incorporated into the project shall consist of American-made materials only.

The Design-Builder may utilize minor amounts of foreign steel and iron in this project provided the cost of the foreign material used does not exceed one-tenth of one percent of the total construction cost or \$2,500.00, whichever is greater.

American-made material is defined as material having all manufacturing processes occur in the United States. The action of applying a coating to steel or iron is deemed a manufacturing process. Coating includes epoxy coating, galvanizing, aluminizing, painting, and any other coating that protects or enhances the value of steel or iron. Any process from the original reduction from ore to the finished product constitutes a manufacturing process for iron. The following are considered to be steel manufacturing processes:

1. Production of steel by any of the following processes:
 - a. Open hearth furnace.
 - b. Basic oxygen.
 - c. Electric furnace.
 - d. Direct reduction.
2. Rolling, heat treating, and any other similar processing.
3. Fabrication of the products.
 - a. Spinning wire into cable or strand.
 - b. Corrugating and rolling into culverts.
 - c. Shop fabrication.

A certification of materials origin will be required for any items comprised of, or containing, steel or iron construction materials prior to such items being incorporated into the permanent work. The certification shall be on DOT Form 350-109 provided by the Engineer, or such other form the Design-Builder chooses, provided it contains the same information as DOT Form 350-109.

LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

Laws To Be Observed

Section 107.1 is supplemented with the following:

Prevention Of Environmental Pollution And Preservation Of Public Natural Resources
The Design-Builder shall comply with the following environmental provisions which are made a part of the Contract Provisions. A copy of the environmental provisions are available to the Design-Builder at the Project Engineer's office.

If the Design-Builder's operations involve work outside the areas covered by the following environmental provisions, the Design-Builder shall advise the Engineer and request a list of all additional environmental provisions covering the area involved. A copy of all additional environmental provisions is also available to the Design-Builder at the Project Engineer's office.

[The following information was provided by a pilot project and is presented as example]

"Northwest Air Pollution Authority Regulations to be observed during the execution of the contract are NWAPA 300, 301, 322, 451.1, 501, 530, 535, and 550.

*Northwest Air Pollution Authority Letter Concerning Recycled Asphalt**City of Bellingham Ordinance No. 8218 - Zoning Code**An ordinance dealing with moving of structures, inspection, excavation, water discharge, etc.”***State Taxes**

Section 107.2 is supplemented with the following:

The work on this contract is to be performed upon state lands.

Spill Prevention, Control and Countermeasures

Section 107 is supplemented with the following:

Description

This work shall consist of preparing a Spill Prevention, Control, and Countermeasures (SPCC) Plan and preparing for implementation of the plan.

SPCC Plan Requirements

The Contractor shall be responsible for the preparation of an SPCC plan to be used for the duration of the project. The plan shall be submitted to the Project Engineer prior to the commencement of any construction activities. A copy of the plan with any updates will be maintained at the work site by the Contractor.

The SPCC plan shall identify construction planning elements and recognize potential spill sources at the site. The Plan shall outline responsive actions in the event of a spill or release and shall identify notification and reporting procedures. The Plan shall also outline Contractor management elements such as personnel responsibilities, project site security, site inspections and training.

The Plan will outline what measures shall be taken by the Contractor to prevent the release or spread of the following:

- A. An on site review has been completed and the following site(s) and materials have been identified and located and are described in the Contract Provisions:

Hazardous Material*

*** 1 ***
*** 3 ***
*** 5 ***
*** 7 ***
*** 9 ***

Approximate Location

*** 2 ***
*** 4 ***
*** 6 ***
*** 8 ***
*** 10 ***

- B. Any hazardous material* found on site and encountered during construction but not identified in Contract Provisions.
- C. Any hazardous materials* that the Contractor stores, uses, or generates on the construction site during construction activities. These items include, but are not limited to, gasoline, oils and chemicals.

*Hazardous material, as referred to within this specification, is defined in RCW

70.105.010 under "hazardous substance".

The SPCC plan shall also address, at a minimum, the following project-specific information:

- 1) Introduction
- 2) SPCC Plan Elements
- 3) Site Information
- 4) Management Approval
- 5) Site Description
- 6) Planning and Recognition
- 7) Spill Prevention and Containment
- 8) Spill Response
- 9) Reporting
- 10) Program Management
- 11) Attachments:
 - a - Emergency Action Plan
 - b - Site Plan
 - c - Inspection and Incident Report Forms

Implementation Requirements

In the event that hazardous material is encountered during the course of the work, regardless of whether or not the material is shown in the Plans, the implementation of the Design-Builder's SPCC Plan shall be included in the scope of the contract and shall be carried out by the Design-Builder.

The Design-Builder shall maintain, at the job site, the applicable equipment and material designated in the SPCC Plan.

Payment

If the Contracting Agency is responsible for the cost of response, containment and any cleanup then payment shall be made through existing contract items or an Equitable Adjustment in accordance with Section 109.4.

If due to the Design-Builder's operations or negligence, nothing in this section shall be construed as relieving the Design-Builder of responsibility for damage and all cost of response, containment and any cleanup shall be borne by the Design-Builder.

Load Limits

The last sentence of the first paragraph of Section 107.7(1) is revised to read:

At the Engineer's request, the Design-Builder shall provide any facts needed to demonstrate that the equipment's weight on the project meets the requirements of 1-07.7(1 and 2).

Section 107.7 is supplemented with the following:

Except for the load limit restrictions specified in Section 107.7(2), the Design-Builder may operate vehicles which exceed the legal gross weight limitations without special permits or payment of additional fees provided such vehicles are employed in the construction and within the limits of this project.

Subparagraph 1 of the second paragraph of Section 107.7(1) is deleted.

If the sources of materials provided by the Design-Builder necessitates hauling over roads other than State Highways, the Design-Builder shall, at the Design-Builder's expense, make all arrangements for the use of the haul routes.

Equal Employment Opportunity Responsibilities

Section 107.11 is supplemented with the following:

Requirement For Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Design-Builder's attention is called to the Equal Opportunity Clause and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth herein.
2. The goals and timetables for minority and female participation set by the Office of Federal Contract Compliance Programs, expressed in percentage terms for the Design-Builder's aggregate work force in each construction craft and in each trade on all construction work in the covered area, are as follows:

<u>Women - Statewide</u>	<u>Timetable</u>	<u>Goal</u>
	Until further notice	6.9 percent

INSERT CURRENT ALASKA INFORMATION

These goals are applicable to each nonexempt Design-Builder's total on-site construction workforce, regardless of whether or not part of that workforce is performing work on a Federal, federally assisted or nonfederally related project, contract or subcontract until further notice. Compliance with these goals and time tables is enforced by the Office of Federal Contract Compliance Programs.

The Design-Builder's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, in each construction craft and in each trade, and the Design-Builder shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of

minority or female employees or trainees from Design-Builder to Design-Builder or from project to project for the sole purpose of meeting the Design-Builder's goal shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Design-Builder shall provide written notification to the Engineer within 10 business days of award of any construction subcontract in excess of \$10,000 or more that are Federally funded, at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the Covered Area is as designated herein.

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:
 - a. Covered Area means the geographical area described in the solicitation from which this contract resulted;
 - b. Director means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. Employer Identification Number means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
 - d. Minority includes:
 - (1) Black, a person having origins in any of the Black Racial Groups of Africa.
 - (2) Hispanic, a fluent Spanish speaking, Spanish surnamed person of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish origin.
 - (3) Asian or Pacific Islander, a person having origins in any of the original peoples of the Pacific rim or the Pacific Islands, the Hawaiian Islands and Samoa.
 - (4) American Indian or Alaskan Native, a person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
2. Whenever the Design-Builder, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female

participation and which is set forth in the solicitations from which this contract resulted.

3. If the Design-Builder is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Design-Builders must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Design-Builder or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Design-Builders or Subcontractors toward a goal in an approved Plan does not excuse any covered Design-Builder's or Subcontractor's failure to take good faith effort to achieve the Plan goals and timetables.
4. The Design-Builder shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of this Special Provision. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Design-Builder should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. The Design-Builder is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Design-Builder has a collective bargaining agreement, to refer either minorities or women shall excuse the Design-Builder's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Design-Builder during the training period, and the Design-Builder must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Design-Builder shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Design-Builder's compliance with these specifications shall be based upon its effort to achieve maximum results from its action. The Design-Builder shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the

Design-Builder's employees are assigned to work. The Design-Builder, where possible, will assign two or more women to each construction project. The Design-Builder shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Design-Builder's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Design-Builder or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Design-Builder by the union or, if referred, not employed by the Design-Builder, this shall be documented in the file with the reason therefor, along with whatever additional actions the Design-Builder may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Design-Builder has a collective bargaining agreement has not referred to the Design-Builder a minority person or woman sent by the Design-Builder, or when the Design-Builder has other information that the union referral process has impeded the Design-Builder's efforts to meet its obligations.
- e. Develop on-the-job training opportunity and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Design-Builder's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The Design-Builder shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Design-Builder's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Design-Builder in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items

with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- h. Disseminate the Design-Builder's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Design-Builder's EEO policy with other Design-Builders and Subcontractors with whom the Design-Builder does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Design-Builder's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Design-Builder shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Design-Builder's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Design-Builder's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Design-Builder's EEO policies and affirmative action obligations.

8. Design-Builders are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Design-Builder is a member and participant, may be asserted as fulfilling any one or more of the obligations under 7a through 7p of this Special Provision provided that the Design-Builder actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensure that the concrete benefits of the program are reflected in the Design-Builder's minority and female work-force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrate the effectiveness of actions taken on behalf of the Design-Builder. The obligation to comply, however, is the Design-Builder's and failure of such a group to fulfill an obligation shall not be a defense for the Design-Builder's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Design-Builder, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Design-Builder may be in violation of the Executive Order if a particular group is employed in substantially disparate manner (for example, even though the Design-Builder has achieved its goals for women generally, the Design-Builder may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Design-Builder shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Design-Builder shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Design-Builder shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspensions, terminations and cancellations of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Design-Builder who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Design-Builder, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of this Special Provision, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Design-Builder fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Design-Builder shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include,

for each employee, their name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, the Design-Builders will not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Disadvantaged Business Enterprise Participation (DBE)

Policy And DBE Obligation

- (1) *Policy:* It is the policy of the U.S. Department of Transportation that Disadvantaged Businesses as defined in 49 CFR part 26 shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently the Disadvantaged Business Enterprise (DBE) requirements of 49 CFR part 26 apply to this contract.
- (2) *DBE Obligation:* The recipient or its Design-Builder shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The recipient or its Design/Builder shall carry out applicable requirements of 49 CFR part 26 in the award and administration of USDOT-assisted contracts. Failure by the recipient or its Design/Builder to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the DOT&PF deems appropriate. The DBE Policy Statement and DBE Obligation cited above shall be made a part of all subcontracts and agreements entered into as a result of this contract.

Definitions

When referred to in this contract, the terms Disadvantaged Business Enterprise (DBE), will be construed to have the following meaning:

Disadvantaged business means a small business concern: (a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Small business concern means a small business as defined pursuant to section 3 of the Small Business Act (15 U.S.C. 632) and relevant regulations promulgated pursuant thereto (see 13 CFR part 121), except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual(s) which has

annual average gross receipts in excess of \$16,600,000 over the business's previous three fiscal years.

Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. DOT&PF shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. DOT&PF also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged.

- (a) *Black Americans*, which includes persons having origins in any of the Black racial groups of Africa;
- (b) *Hispanic Americans*, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (c) *Native Americans*, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (d) *Asian-Pacific Americans*, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
- (e) *Asian-Indian Americans*, which includes persons whose origins are from India, Pakistan, and Bangladesh.

Women shall be presumed to be socially and economically disadvantaged individuals.

DBE Eligibility

Disadvantaged Business Enterprises used on this project shall be shown as a DBE for federal purposes on the current list of firms accepted as certified by the **Office of Minority and Women's Business Enterprises (OMWBE)** or who can produce written proof from **OMWBE** showing they were accepted as certified as such prior to the date fixed for opening bids. Such certifications are made pursuant to authority granted by, **chapter 39.19 RCW, title 326 WAC**, 49 CFR, or any other applicable laws.

A consolidated list of firms accepted as certified by **OMWBE** is available at nominal cost from that office.

In addition to firms accepted as certified by **OMWBE** and appearing on the above referenced list, DOT&PF will accept any firm determined by the Federal Small Business Administration to be owned and controlled by socially and economically disadvantaged individuals under section 8(a) of the Small Business Act, 13 CFR part 121, provided that **OMWBE** must have received a completed **OMWBE** DBE application form from such firms together with written proof of a current SBA 8(a) certification prior to the date fixed for opening bids

and further provided that such firms do not exceed the size limits as contained herein under Definitions.

Firms not meeting the above requirements at the time fixed for the opening of bids will not be accepted by DOT&PF for the purpose of meeting the goals as stated below.

In the event the highest scoring best and final Proposer proposes to use a firm that is certified at the time of the submission of the bid, and that firm is determined to be ineligible prior to execution of the contract, the apparent highest scoring Proposer will be required to substitute another certified firm to meet the goal, at no additional cost to DOT&PF.

If, at the time of bid opening, a certified business is projected to perform work classified in a standard industrial classification (SIC) code not listed for the business in either the directory of certified businesses published by **OMWBE**, or the records of that office, DOT&PF's determination, prior to award, that the business will perform a commercially useful function shall prevail over the listed SIC code(s) in determining whether the DBE participation goals established for the contract are met. The presence or absence of SIC codes shall not be a basis for protest of an award.

Firms with only MBE or WBE certification are ineligible for goal attainment and utilization of such firms for goal attainment will be rejected and may result in the Proposer's proposal being declared non-responsive.

Joint Venture Approval

Under authority of 49 CFR, money spent on contracts awarded to joint ventures can be counted toward goal attainment when the procedure outlined in this specification is followed.

- a. Contents of joint venture agreement. The joint venture agreement must be in writing and signed under penalty of perjury by all of the joint venturers. Each joint venture agreement shall specify the contribution made by each joint venturer; the control each will exercise; the potential for profit or loss and the distribution thereof. Each of these elements must be allocated in proportion to their contribution. The joint venture agreement must also identify the commercially useful function the joint venture will perform and the part of the work each joint venturer will do. The agreement must also specify which participant(s) are DBEs and give documentation of DBE certification.
- b. Requests for approval. Any joint venture may request approval by DOT&PF. The request must be in writing, must include a written joint venture agreement and must contain a statement that gives DOT&PF authority to audit the joint venture. A prospective Proposer will not be given a bid proposal unless the Proposer has submitted the joint venture agreement at least seven calendar days before the date of opening bids for a specified project. The agreement shall conform to the requirements of subsection (a) of this section. DOT&PF will approve a joint venture which submits an agreement that contains each of these specified elements.

- c. Time of request. A request for approval of a joint venture must be submitted and approved before the time fixed for bid opening.
- d. Effect of approval. A joint venture is approved for only one specific contract.
- e. Investigation. DOT&PF may request additional information from an enterprise seeking approval as a joint venture. Failure to provide the requested information may result in the denial of the request for approval.
- f. Complaints. Complaints regarding the opposition of validity of an approved joint venture shall be written and shall be made to DOT&PF. DOT&PF shall fully investigate each complaint and issue a written report of its findings. The report will be provided to the complainant and to the joint venture.

DBE Goals

In order to comply with the requirements of 49 CFR Part 26 , DOT&PF has established a goal in the amount of:

Thirteen percent of the contract amount

DOT&PF expects that the Proposer shall make every effort, through negotiations and/or written solicitations with the DBE firms, to meet the above specified goal.

Counting DBE Participation Toward Meeting The Goal

DBE participation shall be counted toward meeting the project goal in accordance with the following criteria:

- a. Only the value of the work actually performed by the DBE toward a DBE contract goal may be counted. The entire amount of that portion of a construction contract that is performed by the DBE's own forces will be counted. The cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate), may be included.
- b. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals will be counted, provided DOT&PF determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE subcontractor. Work that a DBE subcontracts with a non-DBE firm does not count toward DBE goals.

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- d. A portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the DBE partner in the joint venture will be counted toward the DBE goal.
 - c. As described below, expenditures for materials and supplies obtained from approved DBE manufacturers and regular dealers are counted toward the DBE goal, provided that the DBE assumes the actual and contractual responsibility for the provision of the materials and supplies.
 - (1) **Manufacturers.** A Design-Builder may count toward its DBE goal 100 percent of its expenditures for materials and supplies required under a contract and obtained from a DBE manufacturer only if the Office of Equal Opportunity (EEO), Department of Transportation (DOT&PF) approves the description of the DBE's responsibilities for manufacturing the supplies in advance of the bid opening. To obtain approval, the Proposer or manufacturing firm must submit a written request which must be received prior to firms participation describing the manufacturing process the DBE will perform. Once a firm's manufacturing process has been approved in writing it is not necessary to resubmit the firm for approval unless the manufacturing process has substantially changed. If DOT&PF approval of the manufacturing process is not obtained prior to the firms participation, the expenditure to the proposed DBE manufacturer cannot be counted. Counting of the DBE amount may be allowed as a regular dealer or as a service provider where the requirements as described below are met.

For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Design-Builder.

- (2) **Regular Dealers.** A Design-Builder may count toward its DBE goal 60 percent of its expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer only if the Office of Equal Opportunity (EEO), Department of Transportation (DOT&PF) approves the DBE regular dealer prior to the firms participation. To obtain approval, the Proposer or regular dealer firm must submit a written request to DOT&PF OEO prior to firms participation. . Included in this request shall be a full description of the project, type of business operated by the DBE, and the manner in which the DBE will be utilized as a regular dealer on this specific contract. A firm's regular dealer status must be approved in writing for each contract. DBE firms that are approved as Regular Dealers for a contract will be listed on the DOT&PF Internet Home Page. In addition, Proposers may request confirmation that a DBE firm has been approved as a Regular Dealer for a contract in writing from the Manager of the External Civil Rights Branch, Office of Equal Opportunity, Washington State Department of Transportation, PO Box 47314, Olympia, WA 98504-7314, or by phone at (360) 705-7085. If

approval of regular dealer status is not obtained prior to the firms participation, the expenditure to the DBE regular dealer cannot be counted at 60 percent towards the contract goal. Partial counting of the DBE amount may be allowed as a service provider as described below. Use of a regular dealer that has not been approved prior to the firms participation, will result in the firm receiving only the net fees associated with that item of work.

For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as regular dealers within the meaning of this section.

- d. Service Providers: A Design-Builder may count toward its DBE goal the following expenditures to DBE firms:
- (1) The fees or commissions charged for providing a BONA FIDE service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract, provided that the fee or commission is determined by DOT&PF to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by DOT&PF to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by DOT&PF to be reasonable and not excessive as compared with fees customarily allowed for similar services.

If any of the aforementioned manufacturer or supply services are commercially unnecessary, such as the case when a firm acts only as a passive conduit in the supply process or duplicates a service provided by others in the same chain of supply from manufacturer to purchaser, no credit will be granted toward the DBE goal.

Proposer Meeting DBE Goal:

If the Proposer indicates it commits to meeting the DBE goal for the project, the "DBE Commitment Affidavit" must be submitted as described in the Technical Proposal General Requirement Section. A "DBE Commitment Affidavit" is furnished in Appendix ~~\$\$\$?\$\$\$~~ of the RFP. Submittals shall be in a sealed parcel and shall be clearly marked to identify the project and the Proposer. The parcels will be retained, unopened, until after the Price Proposals have been opened.

The affidavit must be complete in every detail and must be signed by an officer of the Design-Builder(s). The Design-Builder(s) must indicate the anticipated type of work that the DBE's will perform and the range of estimated dollar values of the work items. The work may be design related and/or construction related.

DOT&PF and the Design-Builder recognize that the actual quantities of work may vary substantially from what is now anticipated because the design has not been completed. It is the Design-Builder's duty to assure that the goal will be met and to document how the goal is met using DBE Utilization Certification DOT Form 272-056A or 272-056. In the event work committed to a DBE does not materialize as anticipated, the Proposer will commit to increasing the work to listed DBE's or to add additional DBE's as needed to meet the contract goal.

The Proposer must determine DBE credit in accordance with the above section entitled "Counting DBE participation Towards Meeting Goals." The Civil Rights Office will review the affidavit.

Only those DBE firms certified by the Alaska State Office of Minority and Women's Business Enterprises and approved by DOT&PF shall be considered. It shall be the Design-Builder's responsibility to ascertain the certification status of designated DBE's.

Failure to submit the required information by the stated time and in the manner herein specified shall be cause for the Proposer to be found in noncompliance to this part. .

Selection of Successful Proposer

The successful Proposer shall be selected on the basis of having submitted the highest scoring proposal that commits to meet the DBE goal as indicated in the DBE Commitment Affidavit. Should the highest scoring and otherwise responsive Proposer fail to commit to the goal, responsiveness shall be determined on the basis of good faith efforts taken to attain the goal. DOT&PF has established the following objective measurement of good faith.

Good faith shall be determined in light of the DBE participation attained by all Proposers and by comparing the DBE participation to the average DBE participation by all Proposers. For purposes of computing the average DBE participation, only that amount of the DBE goal attainment which does not exceed the established goal shall be used. Should the highest scoring Proposer's DBE participation be lower than the average, the proposal shall be considered non-responsive and shall be rejected. If the highest scoring

proposal is rejected, the next highest scoring proposal shall be examined under the foregoing criteria until the contract is awarded or all proposals rejected.

DBE Contract Compliance

DOT&PF will notify the successful Proposer of the award of the contract in writing and include a request for a schedule of DBE participation during performance of the contract. The breakdown of DBE information for design related Work shall be submitted by the Design-Builder at the Pre-Contract Meeting as described in the Scope of Work Section 1027. The schedule of DBE participation for construction related Work shall be submitted by the Design-Builder at the Pre-Construction Conference as described in the Scope of Work Section 1080.

Work committed to DBEs by the Design-Builder must be performed by the designated DBE or a DOT&PF-approved substitute. DBE contract work items shall not be performed by the Design-Builder in lieu of subcontracting, without approval of DOT&PF.

Only expenditures to DBEs that perform a commercially useful function in the work of a contract will be counted toward the DBE goal. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE is performing a commercially useful function, DOT&PF may evaluate the amount of work subcontracted, industry practices, and other relevant factors.

To ensure all obligations under contracts awarded to DBEs are met, DOT&PF shall review the Design-Builder's DBE involvement efforts during the performance of the contract. The Design-Builder shall bring to the attention of DOT&PF any situation in which regularly scheduled progress payments are not made to DBE subcontractors.

After execution and throughout the life of the contract, where DBE work is diminished or deleted by a Design-Builder proposed change order, or where the DBE becomes ineligible or is unable or unwilling to perform, other work of equivalent value shall be substituted by the Design-Builder. Substitution shall be to the same DBE, or to another certified DBE to perform equivalent value work, at no additional cost to DOT&PF. Documentation of the Design-Builder's "good faith efforts" to provide a substitution may be accepted in lieu of an actual substitution of another firm.

In the event the DBE expects to share the resources of the prime contractor in the form of facilities, financial assistance, equipment or personnel, a written plan describing the facilities, financial assistance, equipment or personnel to be shared shall be submitted by the Design-Builder to the Engineer for approval by DOT&PF External Civil Rights Branch before the DBE commences work to ensure that no violation to the performance of the commercially useful function occurs. If the DBE is sharing resources with other than the prime contractor, the above information shall be provided as requested by the Engineer.

This information will be used by DOT&PF External Civil Rights Branch to determine compliance with the commercially useful function requirements.

Penalties for Noncompliance

In accordance with **WAC 468-16-180**, DOT&PF may suspend the qualification of the Design-Builder and its constituents for up to six months for the continual failure to comply with DBE requirements.

In accordance with **WAC 468-16-190**, DOT&PF may revoke the qualification of the Design-Builder and its constituents for up to two years if the Design-Builder or its constituents have been suspended two or more times within a two-year period.

If DOT&PF contemplates suspension or revocation of the Design-Builder's and its constituents qualifications, the Design-Builder may request, in writing, that a hearing be held as provided under **WAC 468-16-200**.

If a person, firm, corporation, or business does not comply with any provision of this contract required under **Chapter 39.19 RCW**, DOT&PF may withhold payment, debar the Design-Builder and its constituents, suspend or terminate the contract, and subject the Design-Builder to civil penalties of up to ten percent of the amount of the contract for each violation. Willful repeated violations, exceeding a single violation, may disqualify the Design-Builder and its constituents from further participation in state contracts for a period of up to three years. When the Design-Builder has been notified that it is to be assessed a penalty, the Design-Builder may request, in writing, that a hearing be held as provided under **XXXXX**.

Further Information

If further information is desired concerning Disadvantaged Business Enterprise participation, inquiry may be directed to:

External Civil Rights Branch
Office of Equal Opportunity
Alaska State Department of Transportation
3132 Channel Drive
Juneau, AK 99801
or telephone - (xxx) xxx-xxxx.
Fax (xxx) xxx-xxxx

Special Training Provisions

Section 107.11(7) A is supplemented with the following:

The minimum number of trainees to be trained under this contract shall be **\$\$\$?\$\$\$** and the total number of training hours shall be **\$\$\$?\$\$\$**. The Design-Builder shall complete a training program form (DOT Form 272-049) and submit it to the Engineer at the preconstruction meeting. In accordance with this Section, the Design-Builder may call DOT&PF's **On-the-Job Training Supportive Services Consultant at 1 (800) 963-3277 or (206) 721-5981 in Western Washington, and 1 (800) 481-8774 or (509) 625-6699 in Eastern Washington, for assistance in filling a trainee position with a minority or woman.**

Federal Agency Inspection

Section 107.12 is supplemented with the following:

Required Federal Aid Provisions

The Required Contract Provisions Federal Aid Construction Contracts (FHWA 1273) and the amendments thereto supersede any conflicting provisions of the Standard Specifications and are made a part of this contract; provided, however, that if any of the provisions of FHWA 1273, as amended, are less restrictive than Alaska State Law, then the Alaska State Law shall prevail.

The provisions of FHWA 1273, as amended, included in this contract require that the Design-Builder insert the FHWA 1273 and amendments thereto in each subcontract, together with the wage rates which are part of the FHWA 1273, as amended. Also, a clause shall be included in each subcontract requiring the subcontractors to insert the FHWA 1273 and amendments thereto in any lower tier subcontracts, together with the wage rates. The Design-Builder shall also ensure that this section, REQUIRED FEDERAL AID PROVISIONS, is inserted in each subcontract for subcontractors and lower tier subcontractors. For this purpose, upon request to the Project Engineer, the Design-Builder will be provided with extra copies of the FHWA 1273, the amendments thereto, the applicable wage rates, and this Special Provision.

Protection And Restoration Of Property

Section 107.16 is supplemented with the following:

Archaeological And Historical Objects

It is national and state policy to preserve, for public use, historical and prehistorical objects such as ruins, sites, buildings, artifacts, fossils, or other objects of antiquity that may have significance from a historical or scientific standpoint.

Archaeological or historical objects, which may be encountered by the Design-Builder, shall not be further disturbed. The Design-Builder shall immediately notify the Engineer of any such finds.

The Engineer will contact the archaeologist who will determine if the material is to be salvaged. The Design-Builder may be required to stop work in the vicinity of the discovery until such determination is made. If the archaeologist determines that the material is to be salvaged, the Engineer may require the Design-Builder to stop work in the vicinity of the discovery until the salvage is accomplished.

Loss of time suffered by the Design-Builder due to resulting delays will be adjusted in accordance with Section 108.8.

Utilities And Similar Facilities

Section 107.17 is supplemented with the following:

Locations and dimensions included in the Request for Proposal for existing facilities are in accordance with available information obtained without uncovering, measuring, or other verification.

Public and private utilities, or their contractors, will furnish all work necessary to adjust, relocate, replace, or construct their facilities unless otherwise provided for in the RFP or these Special Provisions. Such adjustment, relocation, replacement, or construction will be done during the prosecution of the work for this project.

The Design-Builder shall call the Utility Location Request Center (One Call Center), for field location, not less than two nor more than ten business days before the scheduled date for commencement of excavation which may affect underground utility facilities, unless otherwise agreed upon by the parties involved. A business day is defined as any day other than Saturday, Sunday, or a legal local, State, or Federal holiday. The telephone number for the One Call Center for this project may be obtained from the Engineer. If no one-number locator service is available, notice shall be provided individually to those owners known to or suspected of having underground facilities within the area of proposed excavation.

The Design-Builder is alerted to the existence of [Chapter 19.122 RCW](#), a law relating to underground utilities. Any cost to the Design-Builder incurred as a result of this law shall be at the Design-Builder's expense.

No excavation shall begin until all known facilities, in the vicinity of the excavation area, have been located and marked.

The following contact names, addresses and telephone numbers of utility companies known or suspected of having facilities within the project limits are supplied for the Design-Builder's convenience:

\$\$\$?\$\$\$

Public Liability And Property Damage Insurance

The first sentence of the first paragraph of Section 107.18 is revised to read:

The Design-Builder shall obtain and keep in force during the term of the contract and until 30 days after the Physical Completion date, unless otherwise indicated below, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to [Chapter 48.05, RCW](#).

Commercial General Liability Insurance

Item No. 2 of the first paragraph of Section 107.18 is revised to read:

2. Commercial General Liability Insurance written under ISO form CG0001 or its equivalent with minimum limits of **[\$2,000,000]** per occurrence and **[\$5,000,000]** in the aggregate for each policy year. Products and completed operations coverage shall be provided for a period of six years after final payment.

Professional Liability Insurance

The first paragraph of Section 107.18 is supplemented with the following:

4. Errors and Omissions Professional Liability Insurance with limits of at least **[\$5,000,000]** each claim and **[\$10,000,000]** in the aggregate per policy period, with a six year pre-paid tail after final payment, to provide coverage

for cost over - runs, time delays and liquidated damages and including costs of correcting defects and deficiencies arising from or associated with design negligence, error or omission, and for defense and indemnity payments for:

- a. Wrongful acts arising out of the performance of professional services rendered by the Design Builder's design staff who are legally qualified architects, engineers, land surveyors, landscape architects and construction managers, and
- b. The Design Builder's vicarious liability for those design services provided by subcontractors of all tiers.

Order of Work

The Design-Builder shall construct the following as a first order of work.

1. \$\$\$?\$\$\$.
2. \$\$\$?\$\$\$.

Public Convenience And Safety

Construction Under Traffic

The second paragraph of Section 107.23(1) is revised to read:

To disrupt public traffic as little as possible, the Design-Builder shall permit traffic to pass through the work with the least possible inconvenience or delay. The Design-Builder shall maintain existing roads and streets within the project limits, keeping them open, and in good, clean, safe condition at all times. Deficiencies not caused by the Design-Builder's operations shall be repaired by the Design-Builder when directed by the Engineer, at DOT&PF's expense. The Design-Builder shall also maintain roads and streets adjacent to the project limits when affected by the Design-Builder's operations. Snow and ice control will be performed by DOT&PF on all projects. Cleanup of snow and ice control debris will be at DOT&PF's expense. The Design-Builder shall perform the following:

1. Remove or repair any condition resulting from the work that might impede traffic or create a hazard,
2. Cleanup any debris including gravel and dead animals which might impede traffic or create a hazard,
3. Keep existing traffic signal and highway lighting systems in operation as the work proceeds. Transmit any changes to the existing systems to DOT&PF.
4. Maintain the striping on the roadway. The Design-Builder shall be responsible for scheduling when to renew striping. DOT&PF will maintain the existing striping until the Design-Builder begins the construction work for the project. **[or]**
4. *Maintain the striping on the roadway at DOT&PF's expense. The Design-Builder shall be responsible for scheduling when to renew striping, subject*

to the approval of the Engineer. When the scope of the project does not require work on the roadway, DOT&PF will be responsible for maintaining the striping;

5. Maintain existing permanent signing. Repair of signs will be at DOT&PF's expense, except those damaged due to the Design-Builder's operations; and
6. Keep drainage structures clean to allow for free flow of water. Notify and coordinate a field review of the drainage system, one week prior to any construction shut down, with DOT&PF Maintenance staff.

Section 107.23(1) is supplemented with the following:

The construction safety zone for this project is **11 meters** from the outside edge of the traveled way.

During nonworking hours equipment or materials shall not be within the safety zone unless it is protected by permanent guard rail or temporary concrete barrier. The use of temporary concrete barrier shall be permitted only if the Engineer approves the installation and location.

During the actual hours of work, unless protected as described above, only materials absolutely necessary to construction shall be within the safety zone and only construction vehicles absolutely necessary to construction shall be allowed within the safety zone or allowed to stop or park on the shoulder of the roadway.

The Design-Builder's nonessential vehicles and employees private vehicles shall not be permitted to park within the safety zone at any time unless protected as described above.

Deviation from the above requirements shall not occur unless the Design-Builder has requested the deviation in writing and the Engineer has provided written approval.

Construction vehicles using a closed traffic lane shall travel only in the normal direction of traffic flow unless expressly allowed in an approved traffic control plan. Construction vehicles shall be equipped with flashing or rotating amber lights.

Work over an open lane of traffic will not be allowed, unless a plan for the protection of the traveling public from debris falling onto the traveled way is approved by the Engineer. This protection shall remain in place during construction and meet minimum vertical clearance for the highway.

Controlled Access

No special access or egress will be allowed the Contractor other than normal legal movements or as shown in the Plans.

Hours of Darkness

The Contractor shall, at no additional cost to the Contracting Agency, make all arrangements for operations during hours of darkness. Flagger stations shall be illuminated using a minimum 150 watt floodlight.

Lane, Ramp, and Roadway Closures

[The following lane closure delineations from the SR 500, Thurston Way pilot project is provided as an example]

Lane Closures

“The following time periods specify the hours that two lanes of traffic in each direction shall be provided:

Westbound SR 500:

Monday through Friday

6:00 a.m. to 10:00 p.m.

Saturday and Sunday

10:00 a.m. to 8:00 p.m.

Eastbound SR 500:

Monday through Friday

6:00 a.m. to 10:00 p.m.

Saturday and Sunday

11:00 a.m. to 8:00 p.m.

Southbound Thurston Way:

Monday through Thursday

11:00 a.m. to 8:00 p.m.

Friday

11:00 a.m. to 10:00 p.m.

Saturday and Sunday

11:00 a.m. to 8:00 p.m.

Northbound Thurston Way:

Monday through Thursday

11:00 a.m. to 8:00 p.m.

Friday

11:00 a.m. to 10:00 p.m.

Saturday and Sunday

11:00 a.m. to 8:00 p.m.

Ramp Closures

Ramp closures at the Andresen Rd. interchange and the completed Thurston Way interchange will be allowed between the hours of 10:00 p.m. and 6:00 a.m.

Thurston Way Closures

Total closures of Thurston Way will be allowed for four hour periods between the hours of 10:00 p.m. and 6:00 a.m.”

Staging

During the development of the project, staging of the traffic will be required. The temporary geometrics that shall be allowed is as follows:

- A. Temporary lane widths = 3.3 meter*
- B. Temporary shoulder widths = 0.6 meter*
- C. A reduction to one left turn lane in each direction on SR 500*

The Design-Builder shall stage their work so that the existing lane configuration is in place during the holiday season from November 1 through January 1.

[The following lane closure delineations from the SR 5, Pavement Rehabilitation pilot project is provided as an example]

Lane Closures

Single lane closure on northbound and southbound SR 5 will be permitted as follows:

<i>Sunday to Monday</i>	<i>8:00 p.m. to 7:00 a.m.</i>
<i>Monday to Tuesday</i>	<i>8:00 p.m. to 7:00 a.m.</i>
<i>Tuesday to Wednesday</i>	<i>8:00 p.m. to 7:00 a.m.</i>
<i>Wednesday to Thursday</i>	<i>8:00 p.m. to 7:00 a.m.</i>
<i>Thursday to Friday</i>	<i>8:00 p.m. to 7:00 a.m.</i>

24 hour Lane Closures

The Design Builder will be allowed to close no more than one lane on northbound and one lane on southbound SR 5 during any one 24 hour period. In addition, 24 hour lane closures will only be allowed between the hours of 7:00 a.m. Monday through 7:00 a.m. Friday. Each 24 hour lane closure shall be charged against the number of 24 hour lane closures submitted by the Design Builder in the Final Proposal. The chargeable time will be assessed per direction. Liquidated Damages will be assessed for failure to complete work and open all lanes to traffic by the specified time. Liquidated Damages will also be assessed for any 24 hour lane closures in excess of the total number of 24 hour lane closures submitted by the Design Builder in the Final Proposal.

SR 5 Total Roadway Closure (RR Bridge Demolition)

The Design Builder will be allowed to close all lanes of northbound or southbound SR 5 for RR Bridge Demolition. The Design Builder will be allowed a maximum of two closures per direction. Only one direction shall be closed at a time. The allowable hours of closure are from 11:00 p.m. to 5:00 a.m. Monday to Thursday. Signed detour routes shall be provided. . Liquidated Damages will be assessed for failure to complete work and open all lanes to traffic by the specified time.

City, County and Crossroad Closures

Lane closures will be permitted as follows:

Alabama St. Over SR 5 (one lane closed)

<i>Sunday to Monday</i>	<i>8:00 p.m. to 7:00 a.m.</i>
<i>Monday to Tuesday</i>	<i>8:00 p.m. to 7:00 a.m.</i>
<i>Tuesday to Wednesday</i>	<i>8:00 p.m. to 7:00 a.m.</i>
<i>Wednesday to Thursday</i>	<i>8:00 p.m. to 7:00 a.m.</i>
<i>Thursday to Friday</i>	<i>8:00 p.m. to 7:00 a.m.</i>

Lincoln St.

For construction of the retaining wall, the Design Builder will be allowed to close Lincoln St. between Iowa St. and Kentucky St. to through traffic. However, local access shall be allowed.

Iowa St. Under SR 5

For bridge widening work on SR 5, the Design Builder will be allowed to continuously close one lane in each direction on Iowa St. provided that at least one lane in each direction are open at all times. Each 24 hour lane closure shall be charged against the number of 24 hour lane closure submitted by the Design Builder in his Final Proposal.

Lakeway Drive Under SR 5

For bridge foundation work, the Design Builder will be allowed to continuously close one lane of traffic to work on one side of Lakeway drive at a time. Work on both sides of Lakeway Drive shall not occur at the same time. Pedestrian traffic shall be directed to the other side. Each 24 hour lane closure shall be charged against the number of 24 hour lane closure submitted by the Design Builder in his Final Proposal.

Ramp Closures

Ramp closures will be permitted as follows:

Sunday to Monday	9:00 p.m. to 6:00 a.m.
Monday to Tuesday	9:00 p.m. to 6:00 a.m.
Tuesday to Wednesday	9:00 p.m. to 6:00 a.m.
Wednesday to Thursday	9:00 p.m. to 6:00 a.m.
Thursday to Friday	9:00 p.m. to 6:00 a.m.

Ramp closures shall be limited to a maximum of 5 nightly closures per ramp. Detour routes shall be provided by the Design Builder. No two consecutive on-ramps and exits shall be closed at the same time. The Design Builder shall complete all ramp work within the specified closure time above prior to opening to traffic. Liquidated Damages will be assessed for failure to complete work and open the ramp to traffic by the specified time. Liquidated Damages will also be assessed for additional nighttime ramp closure in excess of the number of nights for each ramp as submitted by the Design Builder in the Final Proposal.

Minimum construction lane width shall be no less than 3.6 meters.”

Night Work

Night work may be required for the project. The Design-Builder shall obtain any required noise variance or exemption for such work.

Signs and Traffic Control Devices

All signs and traffic control devices for lane, ramp and roadway closures shall only be installed during the hours specified above. The construction signs, if placed earlier than the specified hours of closure, shall be turned or covered so as not to be visible to motorists.

Advance Notification

The Design-Builder shall submit lane and sidewalk closure requests in writing to the Engineer a minimum of five calendar days in advance of the proposed closures. Roadway and ramp closure requests shall be submitted in writing a minimum of 10 calendar days in advance of the proposed closure.

Hour Adjustment

If the Engineer determines that the permitted closure hours adversely affect traffic, the Engineer may adjust the hours accordingly. The Engineer will notify the Design-Builder in writing of any change in the closure hours.

Other Closure Restrictions

Lane, ramp, or roadway closures will not be allowed during the following time periods:

Holidays - from noon the day prior to a holiday or holiday weekend through noon the day following a holiday or holiday weekend. Holidays that occur on Friday, Saturday, Sunday, or Monday are considered a holiday weekend.

Pedestrian Routes

The Contractor shall keep all sidewalks, crosswalks, and other pedestrian routes and access points open and clear at all times unless permitted otherwise by the Engineer in an approved traffic control plan.

Public Notification

The Contractor shall furnish and install information signs that provide advance notification of ramp and road closures a minimum of five calendar days prior to closure. The signs shall have a black legend on a white reflective background. Sign locations, messages, letter sizes, and sign sizes are shown in the Plans. Also, the Design-Builder shall notify Alaska State Patrol; local fire departments, police departments and city engineering, CTRAN and the affected school districts in writing a minimum of five business days prior to implementation. The Design-Builder shall furnish copies of these notifications to the Engineer.

Mast Arm Erection and Traffic Block Allowance

During erection of mast arm assemblies, the Design-Builder may, with the authorization of the Engineer, block all traffic for maximum a duration of five minutes between the hours of 10:00 p.m. and 6:00 a.m. These five-minute blockages shall be separated by an interval long enough to allow the delayed vehicles to clear.

Construction and Maintenance of Detours

This section 107.23(2) is revised as follows:

Delete the second paragraph beginning "Unit contract prices..."

Delete the second sentence of the third paragraph.

PROSECUTION AND PROGRESS

Subcontracting

Section 108.1 is supplemented with the following:

Prior to any subcontractor or lower tier subcontractor beginning work, the Design-Builder shall submit to the Engineer a certification (DOT&PF Form 420-004) that a written agreement between the Design-Builder and the subcontractor or between the subcontractor and any lower tier subcontractor has been executed. This certification shall also guarantee that these subcontract agreements include all the documents required by the Special Provision **FEDERAL AGENCY INSPECTION**.

A subcontractor or lower tier subcontractor will not be permitted to perform any work under the contract until the following documents have been completed and submitted to the Engineer:

1. Request to Sublet Work (Form 421-012), and
2. Design-Builder and Subcontractor or Lower Tier Subcontractor Certification for Federal-aid Projects (Form 420-004).

The Design-Builder's records pertaining to the requirements of this Special Provision shall be open to inspection or audit by representatives of DOT&PF during the life of the contract and for a period of not less than three years after the date of acceptance of the contract. The Design-Builder shall retain these records for that period. The Design-Builder shall also guarantee that these records of all subcontractors and lower tier subcontractors shall be available and open to similar inspection or audit for the same time period.

Time For Completion

Section 108.5 is supplemented with the following:

This project shall be physically completed on **\$\$\$?\$\$\$**.

Suspension Of Work

Section 108.6 is revised to read as follows:

The Engineer may order suspension of all or any part of the work if: The Design-Builder does not comply with the contract or the Engineer's orders.

When ordered by the Engineer to suspend or resume work, the Design-Builder shall do so immediately.

If the work is suspended for the reason above, the contract time for physical completion will not be extended. The lost work time shall not relieve the Design-Builder from any contract responsibilities.

If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Design-Builder believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Design-Builder shall submit to the Engineer in writing a request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment. Upon receipt, the Engineer will evaluate the Design-Builder's request. If the Engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Design-Builder, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. No contract adjustment will be allowed unless the Design-Builder has submitted the request for adjustment within the time prescribed. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract. The Design-Builder will be notified of the Engineer's determination whether or not an adjustment of the contract is warranted. Any disagreement with the Engineer's determination shall be pursued as provided in Section 1-04.5.

If the Engineer has not provided the Design-Builder with a written order to suspend or delay the work and if the Design-Builder believes that the performance of the work is suspended, delayed, or interrupted for an unreasonable period of time and such suspension, delay or interruption is the responsibility of DOT&PF, the Design-Builder shall immediately submit a written notice of protest to the Engineer as provided in Section 1-04.5. If the Engineer agrees an adjustment is warranted considering all evaluation criteria stated above, the Engineer will make an adjustment (excluding profit) and modify the contract accordingly. However no adjustment shall be allowed for any costs incurred more than 10 calendar days before the date the Engineer receives the Design-Builder's written notice of protest.

No contract adjustment will be allowed unless all or any part of the work is suspended, delayed, or interrupted for an unreasonable period of time by an act of DOT&PF in the administration of the contract, or by failure to act within the time specified in the contract (or if no time is specified, within a reasonable time).

The Engineer will determine if an equitable adjustment in cost or time is due as provided in this section. The equitable adjustment for increase in costs, if due, shall be subject to the limitations provided in Section 1-09.4, provided that no profit of any kind will be allowed on any increase in cost necessarily caused by the suspension, delay, or interruption.

If the Design-Builder contends damages have been suffered as a result of any suspension, delay, or interruption, the Design-Builder shall keep full and complete records of the costs and additional time of such suspension, delay, or interruption and shall permit the Engineer to have access to those records and any other records as may be deemed necessary by the Engineer to assist in evaluating the Design-Builder's request for adjustment in cost or time and evaluating any protest.

Requests for extensions of time will be evaluated in accordance with Section 1-08.8.

The Engineer's determination as to whether or not an adjustment should be made will be final as provided in Section 105.1.

No claim by the Design-Builder under this clause shall be allowed unless the Design-Builder has followed the procedures provided in this section and in Sections 104.5 and 109.11.

Liquidated Damages

The definition of T is revised to read: T = the time indicated in the Design-Builders Final Proposal schedule or Special Provision Section 108.5 whichever occurs first.

Section 108.9 is supplemented as follows:

The closure of mainline lanes and ramps will result in substantial traffic impacts. These closures will cause delays to the traveling public, increase fuel consumption, vehicle operating cost, pollution, and other inconveniences and harm far in excess of those resulting from delay of most projects.

Accordingly, the Contractor agrees:

1. To pay \$500.00 liquidated damages per 15 minutes for each 15 minute period prorated to the nearest 5 minutes that each lane is closed on mainline beyond the scheduled opening time specified in the Subsection **Public Convenience and Safety** of the Special Provision **LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC**.
2. To pay \$20,000.00 liquidated damages per day, prorated to the nearest hour, for additional 24 hour lane closure in excess of the total number of days submitted by the Design Builder in the Final Proposal.
3. To pay \$150.00 liquidated damages per 15 minutes for each 15 minute period prorated to the nearest 5 minutes that a ramp is closed beyond the scheduled opening time specified in the Subsection **Public Convenience and Safety** of the Special Provision **LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC**.
4. To pay \$2,000.00 liquidated damages per day, non-prorated, for additional nighttime ramp closure in excess of the number of nights for each ramp as submitted by the Design Builder in his Final Proposal.
5. To authorize the Engineer to deduct these liquidated damages from any money due or coming due to the Contractor.

MEASUREMENT AND PAYMENT

Payments

The first three paragraphs of Section 109.9 are revised to read.

The Design-Builder shall submit, at least ten business days prior to submission of its first application for partial payment, a schedule of values ("Schedule of Values") for the contracted work. This schedule will provide a breakdown of values for the contracted work aggregating the contract price, and will be the basis for partial payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the work. The sum of all values listed for each element shall be equal to the lump sum price proposed for each element. Subdivide the work into component parts in sufficient detail to serve as the basis for progress payments and price adjustments, positive and negative. Prices will include a pro rata amount of overhead and profit applicable to each item. The Department may reject or approve a Schedule of Values if it fails to provide reasonable detail, any prices are excessively unbalanced, or fails to account for the entire contract fixed price.

The Schedule of Values shall be used as the basis for reviewing Design-Builder's application for payment. The Schedule of Values shall include, as a minimum, the following components of work:

- A. Mobilization
- B. Preparation
- C. Grading
- D. Drainage
- E. Storm Sewer
- F. Sanitary Sewer
- G. Waterlines
- H. Structure

- I. Surfacing
- J. Liquid Asphalt
- K. Bituminous Surface Treatment
- L. Asphalt Treated Base
- M. Cement Concrete Pavement
- N. Asphalt Concrete Pavement
- O. Irrigation and Water Distribution
- P. Erosion Control and Planting
- Q. Traffic
- R. Other Items
- S. Building
- T. Superstructure
- U. Engineering Design
 - 1. Surveying
 - 2. Plans, Specifications and Estimate
- V. QC/QA for Construction
 - 1. Inspection
 - 2. Testing
- W. Drainage Treatment Facilities
- X. Public Relations

The total for components A through T shall be based on DOT&PF's Standard Bid Items.

DOT&PF will make partial payment on the contract monthly as work progresses. Payments will be based upon estimates of work completed and the Schedule of Values. All payments shall be approved by the Engineer. In instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, DOT&PF will so notify the Design-Builder within 15 days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. Corrections to the application for payment shall be incorporated in the following month's application for payment.

The Design-Builder shall submit to the Engineer an application for each payment and if required, receipts or other vouchers showing payments for materials and labor including payments to Subcontractors. Design-Builder shall include, in its application for payment, a schedule of the percentages of the various parts of the work completed, based on the Schedule of Values which shall aggregate to the payment application total.

TEMPORARY TRAFFIC CONTROL

Traffic Control Management

General

Section 110.2(1) is supplemented with the following:

The Traffic Control Manager and Traffic Control Supervisor shall be certified by one of the following:

American Traffic Safety Services Association

5440 Jefferson Davis Hwy.
Fredericksburg, VA 22407
1-800-272-8772
Certification Ext. 127
Recertification Ext. 134

Sverdrup Civil, Inc.
c/o Traffic Control Supervisors Seminar
600 108th Ave. NE
Bellevue, WA 98004
(425) 452-8000

The Northwest Laborers-Employers Training Trust
27055 Ohio Ave.
Kingston, WA 98346
(360) 297-3035

Traffic Control Plans

The Design-Builder shall prepare final traffic control plans per the requirements of the Scope of Work. All flaggers are to be shown on the final traffic control plan except for emergency situations.

Conformance To Established Standards

Section 110.2(3) is supplemented with the following:

Flashing stop/slow paddles (FSSP) shall meet the requirements of the MUTCD, SHRP, Traffic Control Guidelines Book, and these specifications. The paddles shall incorporate on the stop face, two symmetrically positioned flashing white lights. The lights shall be visible from a minimum of 650 meters in average daytime conditions. The lamps shall flash in alternating sequence. The following (FSSP) meet these requirements:

Copper Country Safety Sales, Inc.
3422 West Wilshire Drive #19
Phoenix, AZ 85009
(602) 269-0026
1--800-578-6193

Detronics Model TES-336
4003 Bloomington Road
Rural Route 4
Stouffville, Ontario L4A7X5
(905) 640-1216

Flagging, Signs, And All Other Traffic Control Devices

Rolling Slowdown or Rolling Blockade

For work operations which necessitate short-term roadway closures of 15 minutes or less, the Contractor shall implement a rolling slowdown. Rolling slowdowns will be permitted from ~~\$\$\$?\$\$\$~~ to ~~\$\$\$?\$\$\$~~ on any night of the week except Friday and Saturday nights, subject to approval of the Engineer.

A rolling slowdown is accomplished using a minimum of one Alaska State Patrol vehicle and a additional traffic control vehicle with flashing amber lights for each lane to be slowed down. The traffic control vehicles shall enter the roadway and form a moving blockade to reduce traffic speeds giving the Contractor a clear area in front of the moving blockade to accomplish the work without total stoppage of traffic.

The traffic control vehicles shall enter the roadway far enough upstream of the work operation site to allow a clear area in front of the traffic control vehicles that, when traveling at a fixed rate of speed, would accommodate the estimated time needed for closure. Another traffic control vehicle shall follow the slowest vehicle ahead of the blockade. When the last vehicle passes, the Contractor shall begin the work operation.

All ramps and entrances to the roadway between the moving blockade and work operation shall be temporarily closed using traffic control personnel as flaggers.

Radio communications between the work operation and the moving blockade are needed to adjust the speed of the blockade to accommodate the closure time needed.

Requests and plans for such slowdowns shall be submitted to the Engineer for review and approval two weeks prior to the rolling slowdown. The Engineer will arrange for WSP assistance.

The Contractor shall notify the Engineer a minimum of 24 hours in advance of a cancellation of work requiring WSP assistance. The Contractor shall bear all costs incurred by WSP troopers for failure to notify the Engineer of WSP cancellation as stated above. The Engineer will deduct these costs from any money due or coming due to the Contractor.

Traffic Control Labor

The last sentence of the second paragraph of Section 110.3(1) is revised to read:

The Contractor shall furnish the flashing stop/slow paddles for the flagging stations. The use of conventional flagging paddles will only be allowed in the case of an emergency, or temporary use while a failed FSSP is replaced or repaired.

Section 110.3(1) is supplemented with the following:

Flaggers shall be equipped with portable two-way radios, with a range suitable for the project. The radios shall be capable of having direct contact with project management (foremen, superintendents, etc.).

Construction Signs

Section 110.3(3) is revised to read:

All signs required by the traffic control plan(s) as well as any other appropriate signs prescribed by the Engineer shall be furnished by the Design-Builder. The Design-Builder shall provide the posts or supports and erect and maintain the signs in a clean, neat, and presentable condition until the necessity for them has ceased. All nonapplicable signs shall be removed or completely covered with metal, plywood, or a product specifically manufactured for sign covering during periods when they are not needed. When the need for these signs has ceased, the Design-Builder shall remove all signs, posts, and supports from the project and they shall remain the property of the Design-Builder.

All signs shall utilize materials, and be fabricated in accordance with, Section 9-28. All orange background signs shall be constructed of Type I or II, or fluorescent Type IV or VII reflective background sheeting, subject to the following requirements or as otherwise noted in the Plans.

1. Work zone signs fabricated with Type I or II sign sheeting may be used when available from existing sign inventories.
2. Work zone signs fabricated with Type IV or VII sheeting may also be used but shall not be intermixed with work zone signs fabricated with Type I or II sheeting, within a sign sequence.

All post mounted signs with Type IV or VII sheeting shall use a nylon washer between the twist fasteners (screw heads, bolts, or nuts) and the reflective sheeting.

Construction signs will be divided into two classes. Class A construction signs are those signs that remain in service throughout the construction or during a major phase of the work. They are mounted on posts, existing fixed structures, or substantial supports of a semi-permanent nature. Sign and support installation for Class A signs shall be in accordance with the Contract Plans or the Standard Plans. Class B construction signs are those signs that are placed and removed daily, or are used for short durations which may extend for one or more days. They are mounted on portable or temporary mountings. In the event of disputes, the Engineer will determine if a construction sign is considered as a Class A or B construction sign.

If it is necessary to add mass to signs for stability, only a bag of sand that will rupture on impact shall be used. The bag of sand shall: (1) be furnished by the Design-Builder, (2) have a maximum mass of 18 kilograms, and (3) be suspended no more than 0.3 meters from the ground.

Signs, posts, or supports that are lost, stolen, damaged, destroyed, or which the Engineer deems to be unacceptable while their use is required on the project, shall be replaced by the Design-Builder without additional compensation.

Unless otherwise specified, all warning signs used in construction shall be black on orange, and all diamond shaped signs shall be 1200 mm by 1200 mm in size.

Section 110.3(3) is supplemented with the following:

Wood Sign Posts

Use the below charts to determine post size for Class A construction signs.

One Post Installation

<u>Post Size</u>	<u>Min. Sign m²</u>	<u>Max. Sign m²</u>
4x4	-	1.44
4x6	1.53	1.80
6x6	1.89	2.25

Post Size	Min. Sign m ²	Max. Sign m ²
4x4	-	1.44
4x6	1.53	3.24
6x6	3.33	4.14
6x8	4.23	6.75 *

*The Design-Builder shall determine post size for signs greater than 6.75 square meters.

Warning Lights

Type A low-intensity flashing warning lights shall be used on all advance warning signs during the hours of darkness.

Temporary Traffic Control Devices

110.3(5) is supplemented with the following:

Temporary Concrete Barrier

The minimum allowable shy distance shall be 0.6 meters unless otherwise specified in the Plans or in an Engineer-approved traffic control plan. Shy distance is defined as the distance from the center of the edge stripe to the nearest edge of the concrete barrier. Exposed ends of temporary concrete barrier shall be protected using an Engineer-approved method or be located outside the clear zone and adequately flared at an 18:1 taper for a 113 kph speed, 17:1 taper for a 105 kph speed, 16:1 taper for a 97 kph speed, 14:1 taper for a 88 kph speed, and 10:1 taper for a 65 kph speed.

Traffic Cones

Traffic cones used on this contract shall be a minimum of 710 mm in height.

Section 110.3 is supplemented with the following:

Sequential Arrow Sign

The MUTCD requirements are supplemented with the following:

Sequential arrow signs furnished for this project shall be Type **\$\$\$?\$\$\$**.

The color of the light emitted shall be yellow.

The power source for the sign shall be capable of operating the lamps at their optimum light level for the entire period of operation. The power source will be subject to the approval of the Engineer prior to use.

A control panel, using solid-state circuitry, shall be enclosed in a ventilated, vandal-resistant box. A photoelectric control, with manual override, shall automatically dim the lights during hours of darkness. Arrow panels shall be capable of a minimum of 50 percent dimming from their rated lamp voltage.

Traffic Safety Drums

Traffic safety drums shall be manufactured specifically for traffic control purposes, and shall be fabricated from low density polyethylene that maintains its integrity upon impact.

The drums shall be of the following general specifications:

Overall Height	900 mm minimum
Overall Width	450 mm minimum in the direction(s) of traffic flow. If the front to back dimension is less than 450 mm, only those drums specifically approved by the Engineer will be permitted.
Shape	Rectangular, hexagonal, circular, or flat-sided semi-circular.
Color	The base color of the drum shall be fade resistant safety orange.
Reflective Stripes	The exterior vertical surface shall have at least two orange and two white circumferential stripes. Each stripe shall be 100 mm to 150 mm wide and shall be reflectorized. If there are nonreflectorized spaces between the horizontal orange and white stripes they shall be no more than 50 mm wide. Reflective stripes shall be 3-M flexible 3810, Reflexite PC 1000, 3-M Diamond Grade, or Stimsonite High Performance Grade.

The traffic safety drums shall be designed to accommodate at least one portable light unit. The method of attachment shall ensure that the light does not separate from the drum upon impact.

When recommended by the manufacturer, drums shall be treated to ensure proper adhesion of the reflective sheeting.

If approved by the Engineer, used drums with new reflective sheeting may be used, provided all drums used on the project are of essentially the same configuration.

The drums shall be designed to resist overturning by means of a lower unit that will separate from the drum when impacted by a vehicle. The lower unit shall be a maximum of 100 millimeters high and shall be designed to completely enclose the ballast. The lower unit, with ballast, shall have a minimum mass of 4.5 kilograms and maximum mass of 22 kilograms. The base shall be designed to resist movement or creeping from wind gusts or other external forces. The drums shall be designed to resist rolling if overturned.

Drums shall be regularly maintained to ensure that they are clean and that the drum and reflective material are in good condition. If the Engineer determines

that a drum has been damaged beyond use, or provides inadequate reflectivity, a new drum shall be furnished.

When no longer required, as determined by the Engineer, the drums shall remain the property of the Design-Builder and shall be removed from the project.

Traffic safety drums shall be used on all lane closures.

During the hours of darkness, all traffic safety drums used on lane closures shall be equipped with Type C steady burning warning lights. Replacement batteries for warning lights shall be included in the cost of furnishing the drums.

Two traffic safety drums shall be provided across the closed lane approximately every 150 meters.

Truck Mounted Impact Attenuator (TMA)

The TMA shall be mounted on a vehicle with a minimum mass of 6800 kilograms and a maximum mass in accordance with the manufacturer's recommendations. Ballast used to obtain the minimum weight requirement, or any other object that is placed on the vehicle shall be anchored such that it will be retained on the vehicle during an impact. The Design-Builder shall provide certification that the unit complies with NCHRP 230 or 350 requirements.

The Design-Builder shall have a spare TMA and operator (if necessary) available to replace a damaged or disabled TMA. Replacement shall be accomplished as soon as the damaged TMA has been removed. The Design-Builder shall immediately repair to the manufacturer's specifications, all damage to a TMA not deemed extensive enough to warrant replacement as determined by the Engineer.

The TMA shall have an adjustable height so that it can be placed at the correct elevation during usage and to a safe height for transporting. If needed, the Design-Builder shall install additional lights to provide fully visible brake lights at all times.

The TMA unit shall have a chevron pattern on the rear of the unit. The standard chevron pattern shall consist of 100 mm yellow stripes, alternating non-reflective black and reflective yellow sheeting, slanted at 45 degrees in an inverted "V" with the "V" at the center of the unit.

The TMA shall be positioned to separate and protect construction zone work activities from normal traffic flow.

The attenuator shall be in the full down-and-locked position. For stationary operations, the truck's parking brake shall be set.

The TMA shall be used during traffic control placement and removal, advancing with the workers during the set up and removal of the traffic control devices unless otherwise ordered by the Engineer.

Each vehicle with TMA shall be equipped with a sequential arrow sign Type B. The color of the light emitted shall be yellow. Power for the sign shall be supplied by the truck. The sequential arrow sign shall be used during traffic control placement and removal. The vehicle with TMA shall not be used if the sequential arrow sign is damaged or disabled.

Each vehicle equipped with TMA shall have a sign mounted on its back, facing oncoming traffic, stating "WORK CREW AHEAD". The sign shall be 750 mm high, 1200 mm wide, and shall have black lettering on an orange background. The "WORK CREW AHEAD" sign shall be removed or covered when not applicable.

A TMA shall be used for each closed lane. The TMA shall be positioned to provide maximum protection for people in the work zone.

The TMA shall be able to be driven with the attenuator in the down position and at the correct elevation for usage.

Type III Barricade

The barricades shall be constructed in accordance with the details shown in the MUTCD and the Standard Plans. The barricade width shall be 2.4 meters, maximum. If it is necessary to add mass to barricades for stability, only bags of sand that will rupture on impact shall be used. The bags of sand shall:

1. Be furnished by the Contractor.
2. Have a maximum mass 18 kilograms.
3. Be placed no more than 0.3 meter above the ground.

As may be indicated in the Signing Plan or Traffic Control Plan, the Contractor may be required to install signs, warning lights, or both, on barricades.

Portable Changeable Message Sign (PCMS)

The PCMS shall meet the requirements of the MUTCD and the following:

The PCMS shall employ one of the following technologies:

1. Back-lighted split-flap
2. Fiber optic/shutter
3. Light emitting diode
4. Light emitting diode/shutter
5. Flip disk

Regardless of the technology, the PCMS shall meet the following general requirements:

1. Be light emitting and must not rely solely on reflected light.
2. Have a display consisting of individually controlled pixels no larger than 63 mm by 63 mm. If the display is composed of individual character modules, the space between modules must

- be minimized so alphanumeric characters of any size specified below can be displayed at any location within the matrix.
3. When activated, the pixels shall display a yellow or orange image. When not activated, the pixels shall display a flat black image that matches the background of the sign face.
 4. Be capable of displaying alphanumeric characters that are a minimum of 450 mm in height. The width of alphanumeric characters shall be appropriate for the font. The PCMS shall be capable of displaying three lines of eight characters per line with a minimum of one pixel separation between each line.
 5. The PCMS message, using 450 mm characters, shall be legible by a person with 20/20 corrected vision from a distance of not less than 240 meters centered around an axis perpendicular to the sign face.
 6. The sign display shall be covered by a stable, impact resistant polycarbonate face. The sign face shall be non-glare from all angles and shall not degrade due to exposure to ultraviolet light.
 7. Be capable of simultaneously activating all pixels for the purpose of pixel diagnostics. Any sign that employs flip disk or shutter technology shall be programmable to activate the disks/shutters once a day to clean the electrical components. This feature shall not occur when the sign is displaying an active message.
 8. The light source shall be energized only when the sign is displaying an active message.
 9. Be equipped with a redundant light source such that the sign will continue to emit light if one of the light sources fails.

The PCMS panels and related equipment shall be permanently mounted on a trailer with all controls and power generating equipment.

The PCMS shall be operated by an easy to use controller that provides the following functions:

1. Select any preprogrammed message by entering a code.
2. Sequence the display of at least five messages.
3. Blank the sign.
4. Program new message, which may include moving arrows and chevrons.
5. Mirror the message currently being displayed or programmed.

Portable changeable message signs(s) shall be available, on site, for the life of the project.

The Design-Builder shall operate the PCMS in accordance with the approved traffic control plans or as directed by the Engineer. The PCMS shall not be used in lieu of sequential arrow signs.

Measurement

Section 110.4 is deleted.

Payment

Section 110.5 is deleted.