

PART V
SPECIAL PROVISIONS

SPECIAL PROVISIONS

INTRODUCTION

The following Special Provisions shall be used in conjunction with the 2010 Standard Specifications for Road, Bridge, and Municipal Construction.

These Special Provisions are made a part of this contract and supersede any conflicting provisions of the 2010 Standard Specifications for Road, Bridge and Municipal Construction, and the foregoing Amendments to the Standard Specifications.

Two types of Special Provisions are included in this contract; General and Project Specific. Special Provisions types are differentiated as follows:

(date)
(*****)

WSDOT General Special Provision
Notes a revision to a General Special Provision
and also notes a Project Specific Special Provision.

HEADINGS

Headings to parts, sections, forms, articles, and sub-articles are inserted for convenience or reference only and shall not affect the interpretation of the contract documents.

SPECIAL PROVISIONS' STRUCTURE

The specifications noted herein modify the Standard Specifications. Sections of the Standard Specifications that are not modified or replaced as addressed in these Special Provisions shall remain as described in the Standard Specifications.

Supplement: Text supplements, slightly modifies or adds clarification to the identified section of the Standard Specifications

New: Item/specification is unique to this project and will not be found in the Standard Specifications

Replacement: A replacement of the entire identified section or subsection of the Standard Specifications

Modification: A replacement of the identified sentence or paragraph of the Standard Specifications

CONTRACT DOCUMENTS

Also incorporated into the Contract Documents by reference are:

- *Manual on Uniform Traffic Control Devices for Streets and Highways*, currently adopted edition, with Washington State modifications, if any
- *Standard Plans for Road, Bridge and Municipal Construction*, WSDOT/APWA, current edition
- City of Arlington's *Design and Construction Standard and Specifications*, current edition.

DIVISION 1

GENERAL REQUIREMENTS

(March 13, 1995)

1-00 DESCRIPTION OF WORK

New

The contract provides for the improvements of Airport Boulevard/51st Avenue NE and other work, all in accordance with the attached Contract Plans, these Contract Provisions and the Standard Specifications.

This project includes construction of approximately 7,250 lineal feet of new or improved roadway. It includes a new 3 lane section with bike lanes, curb and gutter with adjacent rain gardens, and a 5 foot sidewalk on both sides of the road. Additional improvements will consist of installing new drainage facilities, channelization, new 12" water main, extension of the existing sanitary sewer, sanitary sewer stub-outs, asphalt concrete paving, landscaping, channelization, and other work.

1-01 DEFINITIONS AND TERMS

(September 12, 2008 APWA GSP)

1-01.3 Definitions

Supplement

This Section is supplemented with the following:

All references in the Standard Specifications to the terms "State", "Department of Transportation", "Washington State Transportation Commission", "Commission", "Secretary of Transportation", "Secretary", "Headquarters", and "State Treasurer" shall be revised to read "Contracting Agency".

All references to "State Materials Laboratory" shall be revised to read "Contracting Agency designated location".

The venue of all causes of action arising from the advertisement, award, execution, and performance of the contract shall be in the Superior Court of the County where the Contracting Agency's headquarters are located.

Additive

A supplemental unit of work or group of bid items, identified separately in the proposal, which may, at the discretion of the Contracting Agency, be awarded in addition to the base bid.

Alternate

One of two or more units of work or groups of bid items, identified separately in the proposal, from which the Contracting Agency may make a choice between different methods or material of construction for performing the same work.

Contract Documents

See definition for "Contract".

Contract Time

The period of time established by the terms and conditions of the contract within which the work must be physically completed.

Dates

Bid Opening Date

The date on which the Contracting Agency publicly opens and reads the bids.

Award Date

The date of the formal decision of the Contracting Agency to accept the lowest responsible and responsive bidder for the work.

Contract Execution Date

The date the Contracting Agency officially binds the agency to the contract.

Notice to Proceed Date

The date stated in the Notice to Proceed on which the contract time begins.

Substantial Completion Date

The day the Engineer determines the Contracting Agency has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, and only minor incidental work, replacement of temporary substitute facilities, or correction or repair remains for the physical completion of the total contract.

Physical Completion Date

The day all of the work is physically completed on the project. All documentation required by the contract and required by law does not necessarily need to be furnished by the Contractor by this date.

Completion Date

The day all the work specified in the contract is completed and all the obligations of the Contractor under the contract are fulfilled by the Contractor. All documentation required by the contract and required by law must be furnished by the Contractor before establishment of this date.

Final Acceptance Date

The date on which the Contracting Agency accepts the work as complete.

Notice of Award

The written notice from the Contracting Agency to the successful bidder signifying the Contracting Agency's acceptance of the bid.

Notice to Proceed

The written notice from the Contracting Agency or Engineer to the Contractor authorizing and directing the Contractor to proceed with the work and establishing the date on which the contract time begins.

Traffic

Both vehicular and non-vehicular traffic, such as pedestrians, bicyclists, wheelchairs, and equestrian traffic.

1-02 BID PROCEDURES AND CONDITIONS

(March 13, 1995)

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

Section 1-02.4 is supplemented with the following:

The soils information used for study and design of this project is available for review by the bidder at the following address:

City of Arlington
Public Works Department
238 N. Olympic Avenue
Arlington, WA 98223

(*****)

1-02.12 Public Opening of Proposal

Section 1-02.12 is supplemented with the following:

Date of Opening Bids

Sealed bids are to be received at the following location prior to the time specified:

At the City of Arlington, Finance Department, Attn: Cristy Brubaker, 238 N. Olympic Avenue, Arlington, WA 98223, until _____ of the bid opening date.

The bid opening date and time can be found in the Call for Bids (Advertisement for Bids), for this project.

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1-02.16 Addenda and Interpretation of Documents

New Section

No interpretation of meaning of the Plans, Specifications, or other prebid documents will be made to any Bidder orally. Every request for such interpretation shall be submitted in writing, addressed to Eric Scott, P.E., Senior Engineer, 238 N. Olympic Avenue, Arlington, WA 98223, and to be given consideration, shall be received at least five days prior to the date fixed for opening Bids. Any and all such interpretations and any supplemental instructions will be in the form of written Addenda to the Specifications which, if issued, will be mailed or otherwise delivered to each prospective Bidder. Failure of any Bidder to receive any such Addendum shall not relieve such Bidder from any obligation under his Bid as submitted. All Addenda so issued shall be acknowledged in the Bidding Document and shall become a part of the Contract Documents.

1-05 CONTROL OF WORK

1-05.3 Plans and Working Drawings

(*****)

1-05.3(1) Record Drawings

New Section

The Contractor shall be required to maintain two sets of Drawings and Specifications for the Contract on site during the construction. The Contractor's superintendent or authorized representative shall update the documents with record information on a daily basis. Record information shall include, but not be limited to, the final location of all new materials incorporated into the work and all existing improvements encountered, such as water lines, storm lines, sewer lines, underground power, telephone, and gas lines with such dimension, depths, nature of composition, and locations shown so as to be able to identify and locate the improvement in the field from the Control Centerline Stationing or other permanent structure which is to remain. The Record Drawings shall be made accessible to the Engineer at all times, and one set shall be submitted to the Engineer monthly along with the Contractor's request for progress payments. Upon completion of his review of the Drawings, the Engineer shall return the set of Record Drawings to the Contractor for his continued use. Upon completion of all the work for each phase for the Contract, one or both of the sets of Record Drawings and Specifications shall be delivered to the Engineer, and at his discretion, he may return same for the Contractor's continued use, or he may return new unused sets of documents for the Contractor's use.

Payment

All costs associated with maintaining and submitting Record Drawings shall be considered incidental to the construction and shall be included by the Contractor in other bid items of the proposal.

1-05.4 Conformity With and Deviations from Plans and Stakes

Supplement

Section 1-05.4 is supplemented with the following:

(*****)

Contractor Surveying - Roadway

Copies of the Contracting Agency provided primary survey control data are available for the bidder's inspection at the office of the Project Engineer.

The Contractor shall be responsible for setting, maintaining, and resetting all alignment stakes, slope stakes, and grades necessary for the construction of the roadbed, drainage, surfacing, paving, channelization and pavement marking, and signing. Except for the survey control data to be furnished by the Contracting Agency, calculations, surveying, and measuring required for setting and maintaining the necessary lines and grades shall be the Contractor's responsibility.

Detailed survey records shall be maintained, including a description of the work performed on each shift, the methods utilized, and the control points used. The record shall be adequate to allow the survey to be reproduced. A copy of each day's record shall be provided to the Engineer within three working days after the end of the shift.

The meaning of words and terms used in this provision shall be as listed in "Definitions of Surveying and Associated Terms" current edition, published by the American Congress on Surveying and Mapping and the American Society of Civil Engineers.

The survey work shall include but not be limited to the following:

1. Verify the primary horizontal and vertical control furnished by the Contracting Agency, and expand into secondary control by adding stakes and hubs as well as additional survey control needed for the project. Provide descriptions of secondary control to the Contracting Agency. The description shall include coordinates and elevations of all secondary control points.
2. Establish, the centerlines of all alignments, by placing hubs, stakes, or marks on centerline or on offsets to centerline at all curve points (PCs, PTs, and PIs) and at points on the alignments spaced no further than 50 feet.
3. Establish clearing limits, placing stakes at all angle points and at intermediate points not more than 50 feet apart. The clearing and grubbing limits shall be the toe of a fill or the top of a cut unless otherwise shown in the Plans or as defined by Section 2-01, Clearing, Grubbing, and Roadside Cleanup, of these specifications.
4. Establish grading limits, placing slope stakes at centerline increments not more than 50 feet apart. Establish offset reference to all slope stakes. If Global Positioning Satellite (GPS) Machine Controls are used to provide grade control, then slope stakes may be omitted at the discretion of the Contractor.
5. Establish the horizontal and vertical location of all drainage features, placing offset stakes, at a horizontal interval not greater than 25 feet.
6. Establish roadbed and surfacing elevations by placing stakes at the top of subgrade and at the top of each course of surfacing. Subgrade and surfacing stakes shall be set at horizontal intervals not greater than 50 feet in tangent sections, 25 feet in curve sections with a radius less than 300 feet, and at 10-foot intervals in intersection radii with a radius less than 10 feet. Transversely, stakes shall be placed at all locations where the roadway slope changes and at additional points such that the transverse spacing of stakes is not more than 12 feet. If GPS

Machine Controls are used to provide grade control, then roadbed and surfacing stakes may be omitted at the discretion of the Contractor.

7. Establish intermediate elevation benchmarks as needed to check work throughout the project.
8. Provide references for paving pins at 25-foot intervals or provide simultaneous surveying to establish location and elevation of paving pins as they are being placed.
9. For all other types of construction included in this provision, (including but not limited to channelization and pavement marking, and signing) provide staking and layout as necessary to adequately locate, construct, and check the specific construction activity.
10. The Contractor shall collect additional topographic survey data as needed in order to match into existing roadways such that the transition from the new pavement to the existing pavement is smooth and that the pavement and ditches, if any, drain properly. If changes to the profiles or roadway sections shown in the contract plans are needed to achieve proper smoothness and drainage where matching into existing features, the Contractor shall submit these changes to the Project Engineer for review and approval 10 days prior to the beginning of work.

The Contractor shall provide the Contracting Agency copies of any calculations and staking data when requested by the Engineer.

To facilitate the establishment of these lines and elevations, the Contracting Agency will provide the Contractor with primary survey control information consisting of descriptions of two primary control points used for the horizontal and vertical control, and descriptions of two additional primary control points for every additional three miles of project length. Primary control points will be described by reference to the project alignment and the coordinate system and elevation datum utilized by the project. In addition, the Contracting Agency will supply horizontal coordinates for the beginning and ending points and for each Point of Intersection (PI) on each alignment included in the project.

The Contractor shall ensure a surveying accuracy within the following tolerances:

	<u>Vertical</u>	<u>Horizontal</u>
Slope stakes	±0.10 feet	±0.10 feet
Subgrade grade stakes set 0.04 feet below grade	±0.01 feet	±0.5 feet (parallel to alignment) ±0.1 feet (normal to alignment)
Stationing on roadway	N/A	±0.1 feet
Alignment on roadway	N/A	±0.04 feet
Surfacing grade stakes	±0.01 feet	±0.5 feet (parallel to alignment) ±0.1 feet (normal to alignment)
Roadway paving pins for surfacing or paving	±0.01 feet	±0.2 feet (parallel to alignment) ±0.1 feet (normal to alignment)

The Contracting Agency may spot-check the Contractor's surveying. These spot-checks will not change the requirements for normal checking by the Contractor.

When staking roadway alignment and stationing, the Contractor shall perform independent checks from different secondary control to ensure that the points staked are within the specified survey accuracy tolerances.

The Contractor shall calculate coordinates for the alignment. The Contracting Agency will verify these coordinates prior to issuing approval to the Contractor for commencing with the work. The Contracting Agency will require up to seven calendar days from the date the data is received.

Contract work to be performed using contractor-provided stakes shall not begin until the stakes are approved by the Contracting Agency. Such approval shall not relieve the Contractor of responsibility for the accuracy of the stakes.

Stakes shall be marked in accordance with Standard Plan A10.10-00. When stakes are needed that are not described in the Plans, then those stakes shall be marked, at no additional cost to the Contracting Agency as ordered by the Engineer.

Payment

Payment will be made in accordance with Section 1-04.1 for the following bid item when included in the proposal:

"Roadway Surveying", lump sum

The lump sum contract price for "Roadway Surveying" shall be full pay for all labor, equipment, materials, and supervision utilized to perform the work specified, including any resurveying, checking, correction of errors, replacement of missing or damaged stakes, and coordination efforts.

1-05.14 Cooperation with Other Contractors

Supplement

(March 13, 1995)

Cooperation with Other Contractors

Section 1-05.14 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:

Private utility companies will be installing conduit, power poles, illumination, vaults & pedestals to serve adjacent property. Contractor to coordinate with utility company to allow utility conduits crossing the road to be installed prior to roadway paving. All other work will occur within the 10' utility easement as shown on the typical sections.

City of Arlington will be installing irrigation for the landscaping areas shown in Phase 1A Plans. Contractor shall schedule the preparation and planting of these landscape areas to allow the City to install the irrigation system prior to planting and hydroseeding.

1-06 CONTROL OF MATERIALS

Buy America

Supplement

Section 1-06 is supplemented with the following:

(August 6, 2007)

The major quantities of steel and iron construction material that is permanently incorporated into the project shall consist of American-made materials only. Buy America does not apply to temporary steel items, e.g., temporary steel piling, temporary bridges, steel scaffolding and falsework.

The Contractor 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 contract cost or \$2,500.00, whichever is greater.

American-made material is defined as material having all manufacturing processes occurring domestically. To further define the coverage, a domestic product is a manufactured steel material that was produced in one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States.

If domestically produced steel billets or iron ingots are exported outside of the area of coverage, as defined above, for manufacturing process then the resulting product does not conform to the Buy America requirements. Additionally, products manufactured domestically from foreign source steel billets or iron ingots do not conform to the Buy America requirements because the initial melting and mixing of alloys to create the material occurred in a foreign country.

Manufacturing begins with the initial melting and mixing, and continues through the coating stage. Any process which modifies the chemical content, the physical size or shape, or the final finish is considered a manufacturing process. The processes include rolling, extruding, machining, bending, grinding, drilling, welding, and coating. The action of applying a coating to steel or iron is deemed a manufacturing process. Coating includes epoxy coating, galvanizing, aluminizing, painting, and any other coating that protects or enhances the value of steel or iron. Any process from the original reduction from ore to the finished product constitutes a manufacturing process for iron.

Due to the nationwide waiver, Buy America does not apply to raw materials (iron ore and alloys), scrap (recycled steel or iron), and pig iron or processed, pelletized, and reduced iron ore.

The following are considered to be steel manufacturing processes:

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

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

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1-06.1 Approval of Materials Prior to Use

Supplement

Section 1-06.1 is supplemented with the following:

Within 10 days after execution of the Contract, the Contractor shall submit to the Engineer the intended items for use from the Qualified Products List and the completed "Request for Approval of Material." All approvals must be received by the Contractor before materials will be allowed on the job site.

1-07 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

1-07.1 Laws to be Observed

Supplement

Section 1-07.1 is supplemented with the following:

(March 25, 2009)

American Recovery and Reinvestment Act of 2009 (ARRA) Employment Report

The Contractor shall submit monthly reports of the number of employees actively working on this project for the Contractor and all Subcontractors of every tier. The reports shall include all employees actively working on this project at the jobsite, in the project office, in the home office, or teleworking from a home or other alternative office location; and all engineering personnel, inspectors, sampling and testing technicians, and lab technicians actively performing work directly in support of this project (excluding suppliers) during the reporting month.

The report shall be prepared using Form FHWA-1589 and submitted monthly to the Project Engineer. The initial report shall be submitted to the Project Engineer within 30-days of execution. Subsequent reports shall be submitted to the Project Engineer no later than 10-days after the end of each report month.

Failure by the Contractor to submit ARRA Employment Reports for the Contractor and all Subcontractors of every tier shall be reason for withholding all progress payments until reports are received. The cost of preparing and submitting ARRA Employment Reports is incidental to the Contract. The Contractor shall include all related costs in the unit Bid prices of the Contract.

(April 3, 2006)

Confined Space

Confined spaces are known to exist at the following locations:

Existing sanitary sewer manholes located within limits of the project.

The Contractor shall be fully responsible for the safety and health of all on-site workers and compliant with Washington Administrative Code (WAC 296-809).

The Contractor shall prepare and implement a confined space program for each of the confined spaces identified above. The Contractor's Confined Space program shall be sent to the contracting agency at least 30 days prior to the contractor beginning work in or adjacent to the confined space. No work shall be performed in or adjacent to the confined space until the plan is submitted to the Engineer as required. The Contractor shall communicate with the Project Engineer to ensure a coordinated effort for providing and maintaining a safe worksite for both the Contracting Agency's and Contractor's workers when working in or near a confined space.

All costs to prepare and implement the confined space program shall be included in the bid prices for the various items associated with the confined space work.

1-07.2 State Taxes

Supplement

(***)**

The work on this contract is to be performed upon lands whose ownership obligates the Contractor to pay State sales tax on portions of the project work and obligates the Contractor to collect State sales tax from the Contracting Agency on other portions of the project as follows:

1. The provisions of Section 1-07.2(1) apply to all of the remaining portions of the project not included in 2 below.
2. The provisions of Section 1-07.2(2) apply to the following listed portions of the project:
 - Construction of water mains, valves, fire hydrants and other items directly related to the waterline.
 - Construction of sanitary sewer pipe and stubouts.

For bidding purposes the Contracting Agency has noted the plan quantities which are affected by Section 1-07.2(1) from those quantities affected by Section 1-07.2(2). These approximate quantities are shown on the Bid Schedule; however, any tax payments shall be based on actual quantities used.

1-07.6 Permits and Licenses

Supplement

Section 1-07.6 is supplemented with the following:

(March 13, 1995)

No hydraulic permits are required for this project unless the Contractor's operations use, divert, obstruct, or change the natural flow or bed of any river or stream, or utilize any of the waters of the State or materials from gravel or sand bars, or from stream beds.

(August 3, 2009)

The Contracting Agency has obtained the below-listed permit(s) for this project. A copy of the permit(s) is attached as an appendix for informational purposes. All contacts with the permitting agency concerning the below-listed permit(s) shall be through the Engineer. The Contractor shall obtain additional permits as necessary. All costs to obtain and comply with additional permits shall be included in the applicable bid items for the work involved.

The City of Arlington will file the NOI to be covered under the Construction Stormwater General Permit. Following the award of contract, the Contractor shall obtain a complete transfer of permit coverage for the entire construction site.

All costs associates with completing transfer of coverage of the Construction Stormwater General Permit shall be included in the unit prices for the applicable items of work covered by the permit.

City of Arlington Grading Permits

The Contracting Agency has obtained a City of Arlington Grading permit for this project (Permit Number CIP20090002). All contacts with the City of Arlington concerning this permit shall be through the Public Works Director.

1-07.7 Load Limits

Section 1-07.7 is supplemented with the following:

(March 13, 1995)

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

1-07.9 Wages

1-07.9(1) General

Supplement

Section 1-07.9(1) is supplemented with the following:

(February 11, 2008)

The Federal wage rates incorporated in this contact have been established by the Secretary of Labor under United States Department of Labor General Decision No. WA080001.

(April 2, 2007)

Application of Wage Rates for the Occupation Of Landscape Construction

State prevailing wage rates for public works contracts are included in this contract and show a separate listing for the occupation:

Landscape Construction, which includes several different occupation descriptions such as: Irrigation and Landscape Plumbers, Irrigation and Landscape Power Equipment Operators, and Landscaping or Planting Laborers.

In addition, federal wage rates that are included in this contract may also include occupation descriptions in Federal Occupational groups for work also specifically identified with landscaping such as:

Laborers with the occupation description, Landscaping or Planting, or

Power Equipment Operators with the occupation description, Mulch Seeding Operator.

If Federal wage rates include one or more rates specified as applicable to landscaping work, then Federal wage rates for all occupation descriptions, specific or general, must be considered and compared with corresponding State wage rates. The higher wage rate, either State or Federal, becomes the minimum wage rate for the work performed in that occupation.

Contractors are responsible for determining the appropriate crafts necessary to perform the contract work. If a classification considered necessary for performance of the work is missing from the Federal Wage Determination applicable to the contract, the Contractor shall initiate a request for approval of a proposed wage and benefit rate. The Contractor shall prepare and submit Standard Form 1444, Request for Authorization of Additional Classification and Wage Rate available at <http://www.wdol.gov/docs/sf1444.pdf>, and submit the completed form to the Project Engineer's office. The presence of a classification wage on the Washington State Prevailing Wage Rates For Public Works Contracts does not exempt the use of form 1444 for the purpose of determining a federal classification wage rate.

1-07.11 Requirements for Nondiscrimination

Supplement

Section 1-07.11 is supplemented with the following:

(March 6, 2000)

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

1. The Contractor'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 Contractor's aggregate work force in each construction craft and in each trade on all construction work in the covered area, are as follows:

Women - Statewide

<u>Timetable</u>	<u>Goal</u>
Until further notice	6.9%

Minorities - by Standard Metropolitan Statistical Area (SMSA)

Spokane, WA:

SMSA Counties:

Spokane, WA 2.8
WA Spokane.

Non-SMSA Counties 3.0

WA Adams; WA Asotin; WA Columbia; WA Ferry; WA Garfield; WA Lincoln, WA Pend Oreille; WA Stevens; WA Whitman.

Richland, WA	
SMSA Counties:	
Richland Kennewick, WA	5.4
WA Benton; WA Franklin.	
Non-SMSA Counties	3.6
WA Walla Walla.	
Yakima, WA:	
SMSA Counties:	
Yakima, WA	9.7
WA Yakima.	
Non-SMSA Counties	7.2
WA Chelan; WA Douglas; WA Grant; WA Kittitas; WA Okanogan.	
Seattle, WA:	
SMSA Counties:	
Seattle Everett, WA	7.2
WA King; WA Snohomish.	
Tacoma, WA	6.2
WA Pierce.	
Non-SMSA Counties	6.1
WA Clallam; WA Grays Harbor; WA Island; WA Jefferson; WA Kitsap; WA Lewis; WA Mason; WA Pacific; WA San Juan; WA Skagit; WA Thurston; WA Whatcom.	
Portland, OR:	
SMSA Counties:	
Portland, OR-WA	4.5
WA Clark.	
Non-SMSA Counties	3.8
WA Cowlitz; WA Klickitat; WA Skamania; WA Wahkiakum.	

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

The Contractor'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 Contractor 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 Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor'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 Contractor shall provide written notification to the Engineer within 10 working days of award of any construction subcontract in excess of \$10,000 or more that are Federally funded, at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
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 Contractor, 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 Contractor 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. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith effort to achieve the Plan goals and timetables.
4. The Contractor 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 Contractor 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 Contractor 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 Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the

Contractor'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 Contractor during the training period, and the Contractor 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 Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its action. The Contractor 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 Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor'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 Contractor 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 Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor'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 Contractor's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor 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 Contractor'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 Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor 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 Contractor'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 Contractor 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 Contractor'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 Contractor'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 Contractor's EEO policies and affirmative action obligations.
8. Contractors 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 Contractor 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 Contractor 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 Contractor'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 Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor 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 Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor 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 Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, 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 Contractor 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 Contractor 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 Contractors 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).

(January 4, 2010)

Disadvantaged Business Enterprise Condition of Award Participation

The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 apply to this contract. This goal is considered a condition of award.

DBE Goals

The Contracting Agency has established a goal in the amount of:

*** Sixteen percent (16%) of the contract total for DBE goals ***

DBE Eligibility

Selection of DBEs

DBEs proposed by the bidder shall be listed as DBEs on the current list of firms certified by the Office of Minority and Women's Business Enterprises (OMWBE.) In absence of being listed, the Contractor may provide written proof from OMWBE documenting that their proposed DBEs are currently certified. A list of firms certified by OMWBE is available from that office and on line through their website (<http://www.omwbe.wa.gov/biznetwas/mainmenu.asp>) or by telephone at (360) 704-1181. It shall be the responsibility of the bidder to confirm with OMWBE that the certification of any proposed DBE firm is current and that the firm is certified in the North American Industry Classification System (NAICS) code for the work being proposed. In establishing the certification status of any subcontractor or supplier, the bidder may rely upon the website list or upon any written commitments from OMWBE provided that information is obtained no earlier than 24 hours prior to the time set for bid submittals.

Proposed firms not meeting the specified requirements at the time fixed for the opening of bids will not be credited by the Contracting Agency for the purpose of meeting the goals. The amounts committed to a non-certified firm will not be counted in the evaluation of the bidder's DBE submittal.

In the event that a DBE firm listed is certified at the time of the submission of the bid, but the listed DBE firm is subsequently determined to be ineligible prior to execution of the contract, then the contract execution will proceed and the Contractor will be required to substitute a certified DBE firm for the same amount or to make a good faith effort to do so.

Counting DBE Participation Toward Meeting the Goal and Substitution Requirements

When a DBE firm participates in a contract, only the value of the work actually performed by the DBE will be counted towards the DBE goal.

1. Count the entire amount of the portion of the contract that is performed by the DBE's own forces. Include 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 affiliates, unless the Prime Contractor is also a DBE). Work performed by a DBE, utilizing resources of the Prime Contractor or its affiliates will not be counted toward DBE goals. In very rare situations, a DBE firm may utilize equipment and/or personnel from a non-DBE firm other than the Prime Contractor or its affiliates. Should this situation arise, the arrangement must be short-term and must have prior written approval from the Contracting Agency. The arrangement must not erode a DBE firm's ability to perform a Commercially Useful Function (See discussion of CUF, below).
2. Count 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.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE goal only if the DBE's lower tier Subcontractor is also a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goal. The DBE firm may further subcontract to lower tier DBE subcontractors to the extent specified by section 1-08.1.
4. When a non-DBE subcontractor further subcontracts to a lower-tier subcontractor or supplier who is a certified DBE, then that portion of the work further subcontracted may be counted toward the DBE goal, so long as it is a distinct clearly defined portion of the work of the subcontract that the DBE is performing in a commercially useful function with its own forces.

5. Continue to count the work subcontracted to a decertified DBE firm after decertification, provided the prime contractor had a subcontract in force before the decertification and the prime contractor's actions did not influence the DBE's decertification.

DBE Prime Contractor

A DBE prime Contractor may only count the work performed with its own forces and the work performed by DBE Subcontractors and DBE suppliers. In the event that the DBE Prime contractor becomes decertified during the contract, for reasons other than graduation from the program, the portion of the work performed after the decertification will not count toward the goal. If this work is part of the Condition of Award the prime will be required to meet the Condition of award and may do so by increasing the dollars and work to another DBE firm in an amount equal to that which can not be counted, utilize the dollars committed/paid to a non-COA DBE who is already on the project, or make a good faith effort to do so. If the reason for decertification is for graduation, the work of the decertified DBE prime contractor may continue to be counted toward the goal.

Joint Venture

When a DBE performs as a participant in a joint venture, only that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces will count toward COA DBE goal. In the event that the DBE Joint Venture contractor becomes decertified during the contract, for reasons other than graduation from the program, the portion of the work performed after the decertification will not count toward the DBE goal. If this work is part of the Condition of Award the Joint Venture will be required to meet the Condition of award and may do so by increasing the dollars and work to another DBE firm in an amount equal to that which can not be counted, utilize the dollars committed/paid to a non-COA DBE who is already on the project, or make a good faith effort to do so. If the reason for decertification is for graduation the work of the decertified DBE Joint Venture contractor may continue to be counted toward the goal.

Changes in the Quantity of Work

Owner initiated Change Orders

In the event the Contracting Agency reduces quantities or deletes work items that impact a DBE's work and insufficient work remains on the contract, the Contracting Agency may relieve the prime contractor from attainment of that portion of the goal.

Original Quantity Under runs

In the event that work committed to a DBE firm as part of the COA, under runs the original planned quantities and that work is completed according to the contract, the contractor shall not be required to substitute work for the portion of the COA not achieved.

Contractor-Initiated Proposals—General

1. Reductions or Deletions

Any reduction or deletion of Condition of Award DBE work that is proposed by the Contractor under this provision shall not be permitted without the express prior written consent of the Contracting Agency, including concurrence by WSDOT/OEO, which shall have the discretion to deny approval.

The Contractor must notify and obtain written approval from the contracting agency prior to replacing a DBE or making any change in the participation. Approval for replacement will be granted only if it is demonstrated that the DBE is unable or unwilling to perform. The Contractor must make every good faith effort to find another certified DBE subcontractor to substitute for the original DBE. The good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the original DBE, to the extent needed to meet the contract goal.

Any deviation from the DBE condition-of-award letter or contract specifications must be approved by Change Order issued by the Contracting Agency. The Contractor shall notify

affected DBEs in writing of any changes in the scope of work which result in a reduction in the dollar amount of condition-of-award to the contract.

In addition to the above requirements for reductions in the Condition of Award, additional requirements apply to the two cases of Contractor-Initiated work substitution proposals. Where the contract allows alternate work methods which serve to delete or create underruns in condition of award DBE work, and the Contractor selects that alternate method or, where the Contractor proposes a substitute work method or material that serves to diminish or delete work committed to a DBE and replace it with other work, then the Contractor must demonstrate one of the following:

- a. That the replacement work will be performed by the same DBE (as long as the DBE is certified in the respective item of work) in a modification of the Condition of Award agreement; or
- b. That the DBE is aware that its work will be deleted or will experience underruns and has agreed in writing to the change. If this occurs, the Contractor shall substitute other work of equivalent value to a certified DBE or provide documentation of good faith efforts to do so; or
- c. That the DBE is not capable of performing the replacement work or has declined to perform the work at a reasonably competitive price. If this occurs, the Contractor shall substitute other work of equivalent value to a certified DBE or provide documentation of good faith efforts to do so.

2. Additions

As stated above, any change in the condition of award will be evidenced by a change order. Where the revision includes work committed to a new DBE subcontractor, not previously involved in the project, then a Request to Sublet shall be submitted in accordance with Section 1-08.1.

If the commitment of work is in the form of additional tasks assigned to an existing subcontractor, then a new Request to Sublet shall not be required. However, the Contractor must document efforts to assure that the existing DBE subcontractor is capable of performing the additional work and has agreed (in writing) to the change.

Commercially Useful Function

Payments to a DBE firm will count toward DBE goals only if the DBE is performing a commercially useful function on the contract.

1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (if applicable) and paying for the material itself.
2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

Trucking

Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is listed on a particular contract.
2. The DBE must itself own and, with its own workforce, operate at least one fully licensed, insured, and operational truck used on the contract.
3. The DBE receives credit only for the total value of the transportation services it provides on the contract using trucks it owns or leases, licenses, insures, and operates with drivers it employs.
4. For purposes of this paragraph a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
5. The DBE may lease trucks from another DBE firm and may enter an agreement with an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE or employs a DBE owner-operator receives credit for the total value of the transportation services the lessee DBE provides on the contract.
6. The DBE may also lease trucks from a non-DBE firm and may enter an agreement with an owner-operator who is a non-DBE. The DBE who leases trucks from a non-DBE or employs a non-DBE owner-operator is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
7. In any lease or owner-operator situation, as described in paragraphs 5 & 6 above, the following rules shall apply:
 - A written lease/rental agreement on all trucks leased or rented, showing the true ownership and the terms of the rental must be submitted and approved by the Contracting Agency prior to the beginning of the work. The agreement must show the lessor's name, trucks to be leased, and agreed upon amount or method of payment (hour, ton, or per load). All lease agreements shall be for a long-term relationship, rather than for the individual project. Does not apply to owner-operator arrangements.
 - Only the vehicle, (not the operator) is leased or rented. Does not apply to owner-operator arrangements.
8. In order for DBE project goals to be credited, DBE trucking firms must be covered by a subcontract or a written agreement approved by the Contracting Agency prior to performing their portion of the work.

Expenditures paid to other DBEs

Expenditures paid to other DBEs for materials or supplies may be counted toward DBE goals as provided in the following:

Manufacturer

1. Counting
If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.
2. Definition

To be a manufacturer, the firm operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

3. In order to receive credit as a DBE manufacturer, the firm must have received an "on-site" review and been approved by WSDOT-OEO to operate as a DBE Manufacturing firm prior to bid opening on any USDOT federally-assisted contract. Use of a DBE manufacturer that has not received an on-site review and approval by WSDOT-OEO prior to bid opening will result in the bid being declared non-responsive. To schedule a review, the manufacturing firm must submit a written request to WSDOT/OEO and may not receive credit towards DBE participation until the completion of the review. 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. Information on approved manufacturers (per contract) may be obtained from WSDOT-OEO.

Regular Dealer

1. Counting
If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will count toward DBE goals.
2. Definition
 - a) To be a regular dealer, the firm must own, operate or maintain a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. It must also be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - b) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, as provided elsewhere in this specification, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - c) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
3. Regular dealer status is granted on a contract-by-contract basis. To obtain regular dealer status, a formal written request must be made by the interested supplier (potential regular dealer) to WSDOT/OEO. OEO must be in receipt of this request at least seven (7) calendar days prior to bid opening. Included in the request shall be a full description of the project, type of business operated by the DBE, and the manner the DBE will operate as a regular dealer on the specific contract. Rules applicable to regular dealer status are contained in 49 CFR Part 26.55.e.2. Once the request is reviewed by WSDOT-OEO, the DBE supplier requesting it will be notified in writing whether regular dealer status was approved. DBE firms that are approved as regular dealers for a contract (whenever possible) will be listed on the WSDOT Internet Homepage at: www.wsdot.wa.gov/biz/contaa/ prior to the time of bid opening. In addition, bidders may request confirmation of the DBE supplier's approval to operate as a regular dealer on a specific contract by writing the Office of Equal Opportunity, Washington State Department of Transportation, P.O. Box 47314, Olympia, WA 98504-7314 or by phone at (360) 705-7085. Use of a supplier that has not received approval as a regular dealer prior to bid opening will result in the bid being declared nonresponsive. (unless the contribution of the regular dealer was not necessary to meet the project goal).

Materials or Supplies Purchased from a DBE

With respect to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site may be counted toward the goal. No part of the cost of the materials and supplies themselves may be applied toward DBE goals.

DBE Utilization Certification

To be eligible for award of the contract, the bidder must properly complete and submit a DBE Utilization Certification which has been made a part of the bidder's formal bid proposal. The Certification will be used by the Contracting Agency in determining whether the bidder's bid proposal satisfies the DBE contract requirements.

For each DBE described in the Certification, the bidder shall state the project role and work item in which that DBE will participate. A general description of the work to be performed by the DBE shall be included. If a DBE will perform a partial item of work, the bidder shall also include a dollar amount for each partial item of work. The bidder shall also include a dollar amount for each DBE listed in the Certification that will be applied towards meeting or exceeding the assigned DBE contract goal.

In the event of arithmetic errors in completing the Certification, the amount listed to be applied towards the goal for each DBE shall govern and the DBE total shall be adjusted accordingly. The information and commitments demonstrated in the Certification shall become a condition of any subsequent award of a contract to that bidder and the Certification itself shall become a part of the subsequent contract.

The Contracting Agency shall consider as non-responsive and shall reject any bid proposal submitted that does not contain a DBE Certification or contains a DBE Certification that fails to demonstrate that the bidder will meet the DBE participation requirements in one of the manners permitted by the contract as described below.

Selection of Successful Bidder/Good Faith Efforts

The successful bidder shall be selected on the basis of having submitted the lowest responsive bid, which demonstrates good faith effort to achieve the goal. Good faith efforts must be provided with the bid proposal. The first step in demonstrating good faith efforts is to document, through the DBE Utilization Certification, that the bidder has obtained enough DBE participation to meet or exceed the assigned DBE goal. If the bidder is unable to meet the goal as demonstrated above, the bidder shall supply documentation in addition to the DBE Utilization Certification of their good faith efforts to meet the DBE assigned contract goal. The additional documentation, if required, must be provided with the bid proposal.

Based upon all of the relevant documentation submitted with the bid, the Contracting Agency shall determine whether the bidder has made a sufficient good faith effort to seek DBE participation. The Contracting Agency will make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. The quality, quantity, and intensity of the different kinds of efforts that the bidder has made will be considered. A determination will be made whether the efforts employed by the bidder were those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts will not be considered to be good faith efforts to meet the DBE contract requirements.

The following is a list of types of actions, which will be considered as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

1. Attendance by the bidder at any pre-solicitation or pre-bid meetings that were scheduled by the Contracting Agency to inform DBEs of contracting and subcontracting or material supply opportunities available on the project;

2. Contacting local Tribes, Tribal Employment Rights Offices (TERO) concerning the subcontracting or supply opportunities in sufficient time to allow the enterprises to participate effectively;
3. Selection by the bidder of specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs even if the bidder preferred to perform these work items as the prime contractor;
4. Advertising by the bidder in general circulation, trade association minority and trade oriented, women focus publications, concerning the subcontracting or supply opportunities;
5. Providing written notice from the bidder to a reasonable number of specific DBEs, identified from the OMWBE Directory of Certified Firms for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively;
6. Follow-up by the bidder of initial solicitations of interest by contacting the DBEs to determine with certainty whether they were interested. Documentation of this kind of action may include the information outlined below:
 - a. The names, addresses, telephone numbers of DBEs who were contacted, the dates of initial contact, and whether initial solicitations of interest were followed-up by contacting the DBEs to determine with certainty whether the DBEs were interested;
 - b. A description of the information provided to the DBEs regarding the plans, specifications, and estimated quantities for portions of the work to be performed;
 - c. Documentation of each DBE contacted but rejected and the reason(s) for that rejection;
7. Providing, to interested DBEs, adequate information about the plans, specifications, and requirements for the selected subcontracting or material supply work;
8. Negotiating in good faith with the DBE firms, and not, without justifiable reason, rejecting as unsatisfactory, bids that are prepared by any DBE;
9. Advertising and making efforts to obtain DBE participation that were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of the Contracting Agency;
10. Making any other efforts to obtain DBE participation that were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of the Contracting Agency;
11. Using the services of minority community organizations, minority contractor groups, local, state, and federal minority business assistance offices and other organizations identified by WSDOT and advocates for disadvantaged, minority, and women businesses that provide assistance in the recruitment and placement of disadvantaged, minority, and women business enterprises; and
12. Using DBE Supportive Services by contacting the Office of Minority and Women's Business Enterprises DBE Supportive Services Offices:

Seattle: (206) 553-7356
 Tacoma: (253) 680-7393

If, after review of the documentation provided in the bidder's proposal, the Contracting Agency determines that a good faith effort was made to secure DBE participation, the assigned DBE goal will not be reduced to the bidder's partial commitment. However, the bidder will be formally advised in the award letter that the partial commitment will satisfy the terms of the contract and there will be no adverse effect on the Contractor as a result of the reduced attainment.

Should the low and otherwise responsive bidder fail to meet the DBE participation requirements in one of the manners provided in the proposed contract, its bid proposal will be rejected as non-responsive and the next lowest responsive bid accepted unless the Contracting Agency chooses to reject all bids.

Administrative Reconsideration

1. A bidder has the right to reconsideration in the event its bid has been found to be nonresponsive due to a failure to make adequate good faith efforts to meet the DBE goal requirements of this specification. The bidder must request reconsideration within five working days of notification of being nonresponsive or forfeit the right to reconsideration.
2. The Contracting Agency's decision on reconsideration of the bidders good faith efforts shall be made by an official who did not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so.
3. The bidder shall have the opportunity to meet in person with the official for the purpose of setting forth the bidder's position as to why the documents provided with its bid proposal supported adequate good faith efforts to meet the DBE contract requirements. The bidder's support for its position must be based on its bid submittal. The bidder may provide further explanation/clarification of the information and materials in the submittal, but no new materials or information will be considered by the official in reaching a decision on reconsideration.
4. The official shall send the bidder a written decision on reconsideration, explaining the basis for the finding as to whether the bidder's bid submittal supported adequate good faith efforts to meet the DBE contract requirements.

The Contracting Agency has been advised that the United States Department of Transportation will not accept appeals concerning results of the reconsideration process.

Procedures Between Award and Execution

After award of the contract, the successful bidder shall provide the additional information described below. A failure to comply shall result in the forfeiture of the bidder's proposal bond or deposit.

The Contracting Agency will notify the successful bidder of the award of the contract in writing and will include a request for a further breakdown of the DBE information. After award and prior to execution of the contract, the bidder shall submit the following items:

- (1) Additional information for all successful DBE's as shown on the DBE Utilization Certification:
 - Correct business name, federal employee identification number (if available), and mailing address.
 - List of all bid items assigned to each successful DBE firm, including unit prices and extensions.
 - Description of partial items (if any) to be sublet to each successful DBE firm specifying the distinct elements of work under each item to be performed by the DBE and including the dollar value of the DBE portion.

Total amounts shown for each DBE shall not be less than the amount shown on the Utilization Certification. This submittal, showing the DBE work item breakdown, when accepted by the Contracting Agency and resulting in contract execution, shall become a part of the contract. A breakdown that does not conform to the DBE Utilization Certification or that demonstrates a lesser amount of DBE participation than that included in the Certification will be returned for correction. The contract will not be executed by the Contracting Agency until a satisfactory breakdown has been submitted.

- (2) A list of all firms who submitted a bid or quote in an attempt to participate in this project whether they were successful or not. Include the correct business name, federal employer identification number (optional) and a mailing address.

The firms identified by the Contractor may be contacted to solicit general information as follows:

1. age of the firm
2. average of its gross annual receipts over the past three years

Procedures After Execution

Reporting

The Contractor shall submit a "Quarterly Report of Amounts Credited as DBE Participation" (actual payments) on a quarterly basis for any calendar quarter in which DBE work is accomplished or upon completion of the project, as appropriate. The quarterly reports are due on January 20th, April 20th, July 20th, and October 20th of each year. The dollars reported will be in accordance with the "**Counting DBE Participation**" section of this specification.

In the event that the payments to a DBE have been made by an entity other than the Prime Contractor (as in the case of a lower-tier subcontractor or supplier), then the Prime Contractor shall obtain the quarterly report, including the signed affidavit, from the paying entity and submit the report to the Contracting Agency.

Damages for Noncompliance

When a Contractor violates the DBE provisions of the contract, the Contracting Agency may incur damages. These damages consist of additional administrative costs including, but not limited to, the inspection, supervision, engineering, compliance, and legal staff time and expenses necessary for investigating, reporting, and correcting violations as well as loss of federal funding. Damages attributable to a Contractor's violations of the DBE provisions may be deducted from progress payments due to the Contractor or from retainage withheld by the Contracting Agency as allowed by RCW 60.28.021. Before any money is withheld, the Contractor will be provided with a notice of the basis of the violations and an opportunity to respond.

The Contracting Agency's decision to recover damages for a DBE violation does not limit its ability to suspend or revoke the Contractor's pre-qualification status or seek other remedies as allowed by federal or state law. In appropriate circumstances, the Contracting Agency may also refer the Contractor to state or federal authorities for additional sanctions.

Required Disadvantaged Business Enterprise Provisions

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts, which contain funding assistance from the United States Department of Transportation. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Contracting Agency deems appropriate.

If the Contractor does not comply with any part of its contract as required under 49 CFR part 26, and/or any other applicable law or regulation regarding DBE, the Contracting Agency may withhold payment, suspend, or terminate the contract, and subject the Contractor to civil penalties of up to ten percent of the amount of the contract for each violation. In the case of WSDOT contracts, repeated violations, exceeding a single violation, may disqualify the Contractor from further participation in WSDOT contracts for a period of up to three years. An apparent low bidder must be in compliance with these contract provisions as a condition precedent to the granting of a notice of award by the Contracting Agency. The Contractor is entitled to request an adjudicative proceeding with respect to the Contracting Agency's determination of contract violation and assessed penalties by filing a written application within thirty days of receipt of notification. The adjudicative proceeding, if requested, will be conducted by an administrative law judge pursuant to the procedures set forth in RCW 34.05 and Chapter 10.08 of the Washington Administrative Code.

Payment

Compensation for all costs involved with complying with the conditions of this specification and any associated DBE requirements is included in payment for the associated contract items of work.

(March 13, 1995)

1-07.12 Federal Agency Inspection

Supplement

Section 1-07.12 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 Washington State Law, then the Washington State Law shall prevail.

The provisions of FHWA 1273, as amended, included in this contract require that the Contractor 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 there to in any lower subcontracts, together with the wage rates. The Contractor 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 Contractor will be provided with extra copies of the FHWA 1273, the amendments thereto, the applicable wage rates, and this Special Provisions.

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

Section 1-07.15(1) is supplemented with the following:

(August 3, 2009)

The Contractor shall address the following items in the SPCC Plan in addition to the requirements of Section 1-07.15(1):

Mixing, Transfers, & Storage

1. All oil, fuel or chemical storage tanks or containers shall be diked and located on impervious surfaces so as to prevent spill from escaping.
2. All liquid products shall be stored and mixed on impervious surfaces in a secure water tight environment and provide containment to handle the maximum volume of liquid products on site at any given time.
3. Proper security shall be maintained to prevent vandalism.
4. Drip pans or other protective devices shall be required for all transfer operations.

Spills

Paint and solvent spills shall be treated as oil spills and shall be prevented from reaching storm drains or other discharges. No cleaning solvents or chemicals used for tool or equipment cleaning may be discharged to the ground or water.

Maintenance of Equipment

Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc, shall be checked regularly for drips or leaks and shall be maintained and stored properly to prevent spills into State waters.

Disposal

Spilled waste, chemicals or petroleum products shall be transported off site for disposal at a facility approved by the Department of Ecology. The materials shall not be discharged to any sanitary sewer without approval of the local sewer authority.

Reporting and Cleanup

The Contractor's designated person for managing and implementing the SPCC Plan shall report hazardous material spills as follows:

Spills into State water (including ponds, ditches, seasonally dry streams, and wetlands) – Immediately call all of the following:

National Response Center	1-800-424-8802
WA State Div. of Emergency Management (24 hr)	1-800-258-5990
Ecology Northwest Regional Office	1-425-649-7000

Spill to Soil (Including encounters of pre-existing contamination):

Ecology Northwest Regional Office	1-425-649-7000
Report immediately if threatening to health or environment (i.e., explosive, flammable, toxic vapors, shallow groundwater, nearby creek), otherwise within 90 days	

Underground Storage Tank (confirmed release of material)

Ecology Northwest Regional Office	1-425-649-7000
Report within 24 hours	

(April 2, 2007)

1-07.17 Utilities and Similar Facilities**Supplement**

Section 1-07.17 is supplemented with the following:

Locations and dimensions shown in the Plans 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 Plans or these Special Provisions. Such adjustment, relocation, replacement, or construction will be done during the prosecution of the work for this project. It is anticipated that utility adjustment, relocation, replacement or construction within the project limits will be completed as follows:

Installing their facilities within the 10' utility easement as shown in the Typical Roadway Sections and installing cross conduits across the roadway. Contractor shall coordinate with these utility companies to allow all conduit crossings prior to roadway paving.

The Contractor shall attend a mandatory utility preconstruction meeting with the Engineer, all affected subcontractors, and all utility owners and their contractors prior to beginning onsite work.

The following addresses and telephone numbers of utility companies or their Contractors that will be adjusting, relocating, replacing or construction utilities within the project limits are supplied for the Contractor's use:

Val Anderson
Snohomish County PUD
210 E. Division Street
Arlington, WA 98223
(360) 425-7503

Wayne Wendell
Verizon
1800 41st Street
Everett, WA 98206
(425) 263-4023

Casey Brown
Comcast
1525 75th St. SW
Everett, WA 98203
(425) 754-0064

Roy Klein
Cascade Natural Gas
1520 S. 2nd Street
Mount Vernon, WA 98273
(360) 941-0499

Olympic Pipeline
Jim Fraley
Olympia, WA
(360) 705-4879

Jim Kelly
City of Arlington – Utilities
154 W. Cox
Arlington, WA 98223
(360) 403-3526

(*****)

OLYMPIC PIPE LINE – GENERAL CONSTRUCTION & RIGHT OF WAY REQUIREMENTS

Olympic Pipe Line Company (“OPLC”), which is operated by BP Pipelines (North America) Inc. (“BP”), is committed to environmental stewardship and maintaining the safety of its employees, contractors and the general public. The pipelines BP/OPLC operates transport various liquids at high pressure, and do so very safely each and every day. There are however, potential hazards associated with construction or excavation work around pipelines. As a result of these potential hazards, and in compliance with the requirements imposed upon BP/OPLC as an industry regulated by the U.S. Department of Transportation and Office of Pipeline Safety, the following list of general requirements for working on the Pipeline rights-of-way has been compiled.

General Safety Requirements

- Washington and Oregon Underground Utility Locating Services “One Call” must be contacted at least 48 hours (2 working days) before any construction and or excavation activities are initiated within the pipeline right of way so that OPLC may have a representative present to ensure that there are no conflicts with the pipeline. The **One Call number in Washington and Oregon is “811”** or, you may enter a ticket online at www.callbeforeyoudig.org. There is no cost to the third party contractor to use the One-Call Notification service. However, failure to utilize the One-Call service can be quite costly in terms of unnecessary risk for the contractor/excavator, their employees, innocent bystanders, personal property of other and the environment; as well as potential civil penalties and/or fines (Washington State RCW 19.122.030 and Oregon State OAR 952-001-0050.)
- To have the pipeline physically located and depth verified, please call OPLC's Field Project Office at **(425) 235-7767** or the Damage Prevention Office at **(360) 705-4879**.
- OPLC requires a representative/inspector on site when any work is being performed within ten feet (10') of the pipeline(s) or if the reach of mechanized equipment is capable of extending within ten feet (10') of the pipeline(s). Forty-eight (48) hours (2 working days) prior notice to OPLC is highly recommended for any work. Notice to OPLC does not relieve the contractor of any notification responsibility to the appropriate state One-Call System.