

# **BID DOCUMENTS**

***FOR THE  
CONSTRUCTION OF***

**UMPQUA STREET SEWER REPLACEMENT**



**ROSEBURG URBAN SANITARY AUTHORITY  
ROSEBURG, OREGON**

**JANUARY 2024**

*For information regarding this project contact:*  
Ryon Kershner (541) 672-1551  
Roseburg Urban Sanitary Authority



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**ROSEBURG URBAN SANITARY AUTHORITY  
ROSEBURG, OREGON**

**BID SCHEDULE  
AND  
SPECIAL PROVISIONS**

For the Construction of

**UMPQUA STREET  
SEWER REPLACEMENT**

PROFESSIONAL OF RECORD CERTIFICATION



EXPIRES: 12/31-2024

Date Signed January 31, 2024

I certify the Special Provisions contained within this document are applicable to the design of the subject project for Sanitary Sewer mainline replacement. The Special Provisions for this project were prepared by me or under my supervision.

**PREPARED BY:**  
i.e. Engineering, Inc.  
809 SE Pine St.  
Roseburg, OR 97470  
(541) 673-0166

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## INVITATION TO BID

The Roseburg Urban Sanitary Authority will receive sealed bids marked "**Bid for UMPQUA STREET SEWER REPLACEMENT**" until the hour of **2:00 p.m.** on **Wednesday, February 28, 2024**, at which time they will be publicly opened and read. When required, bidders must submit a list of their first-tier subcontractors providing labor, or labor and materials, no later than 4:00 p.m. that same day. Bids shall be addressed and delivered to Jim Baird, Manager, Roseburg Urban Sanitary Authority, 1297 NE Grandview Drive, Roseburg, Oregon 97470. Any and all bids received after the 2:00 p.m. deadline for submission will not be considered and returned unopened to the bidder. Any bid for which the list of first-tier subcontractors, when required, has not been submitted by 4:00 p.m. that same day, shall be considered nonresponsive and returned to the bidder. All bids must be identified with the bidder's "Construction Contractors Board" or the "State Landscape Contractors Board" license number as required by Oregon Laws on the outside of the sealed bid envelope.

The proposed work generally for the two combined locations consists of furnishing all labor, equipment, materials and supervision for the construction of 1134± lineal feet of 8-inch sewer pipe, installing 6 sanitary sewer manholes, removing 1 existing sanitary sewer manhole, abandon 7 sewer manholes and 1325± lineal feet of existing sewer line, removing and replacing 510± lineal feet of service lines including cleanouts; resurfacing trenches, furnishing, placing and maintaining of traffic control devices; and other incidental work as called for by the specifications and plans. The Contractor shall complete all Work to be done under the Contract before the elapse of 75 Calendar Days starting on July 15, 2024 and ending on September 27, 2024.

A copy of the Contract Documents must be obtained from Roseburg Urban Sanitary Authority, 1297 N.E. Grandview, Roseburg, OR 97470 (phone 541/672-1551), upon payment of a \$25.00 nonrefundable fee. Bids must be accompanied by a certified check, cashier's check, irrevocable letter of credit or Bid Bond in an amount equal to not less than ten percent (10%) of the total amount of the bid.

Plans may also be viewed at the following location(s):

Douglas Plan Center, 3076 Diamond Lake Blvd., Roseburg, OR 97470, Ph: 541/440-9030

Daily Journal of Commerce, 921 SW Washington, Suite 210, Portland, OR 97205, Ph: 503/274-0624

Bidders shall state as part of the bid that the provisions of ORS 279C.800 to 279C.870 (Prevailing Wage Rates) shall be complied with. Bidders must also certify as part of the bid that the requirements of ORS 279C.505(2) (Employee Drug Testing Program) shall be complied with. Bidders must be pre-qualified in accordance with the laws of Oregon and the Information to Bidders, at least ten days prior to the date of bid opening. Each bid must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279A.120. Bidders are not required to be licensed under ORS 468A.720 (Asbestos Abatement). Unless exempt under ORS 279C.800 to 279C.870, the successful bidder must file a \$30,000 Public Works Bond with the Construction Contractors Board prior to beginning work on the project, and certify that all sub-contractors have also filed such bond.

Roseburg Urban Sanitary Authority may reject any bid not in compliance with all public bidding procedures and requirements, may waive any irregularities, and may reject for good cause any or all bids upon a finding it is the public interest to do so.

Dated this 31<sup>th</sup> day of January, 2024.

**ROSEBURG URBAN SANITARY AUTHORITY**  
**Roseburg, Oregon**

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## **INFORMATION TO BIDDERS**

### **1. FORM OF BID**

All bids must be made upon the blank Bid Form attached hereto and must give a price for each item and an aggregate amount or a lump sum price as required in the Bid Form.

Roseburg Urban Sanitary Authority reserves the right to reject any or all bids or to accept the bid deemed in its best interest. Without limiting the generality of the foregoing, RUSA may reject any bid which is incomplete, obscure or irregular; which omits any one or more items in the price sheet; in which unit prices are obviously unbalanced; or which is accompanied by an insufficient or irregular Bid Bond and as published in the Modified General Conditions, Section 00120.

The bidder shall sign the Bid Form in the blank space provided therefore. All bids must contain the bidder's tax identification number. Bids made by a corporation, general or limited partnership, or L.L.C., shall contain the name and address of such organization, together with names and addresses of officers, partners or managing members. If the bid is made by a corporation, it must be signed by one of the corporate officers with the authority to sign for the corporation; if made by a partnership, by one of the partners.

All bids must be submitted at the time and place, and in the manner prescribed in the Invitation to Bid.

### **2. CHANGES TO PLANS, SPECIFICATIONS, OR QUANTITIES BEFORE BID OPENING**

The Agency reserves the right to issue Addenda making changes or corrections to the Plans, Specifications, or quantities. The Agency will provide Addenda by mail, fax, email or other electronic method only to those on the list of Holders of Bidding Plans. Bids shall incorporate all Addenda. Bids may be rejected if opened and found by the Agency to not be based on all Addenda issued. See section 00120.30.

### **3. BID DOCUMENTS**

The Contract Bid Documents for this Project consist of, but are not necessarily limited to, the Invitation to Bid, Information to Bidders, Bidder's Checklist, Bid Form including Certificate of Residency, Oregon Standard Specifications for Construction Volume 1 Modified, First-Tier Subcontractor Disclosure Form, Drug Testing Program Certification Form, Bid Bond Form and by reference, 2021 Oregon Standard Specifications for Construction Volume 2, Supplemental Standard Specifications, the Project Special Provisions, Construction plans and other Supplemental Agreements. Any person contemplating the submission of a bid and being in doubt as to the meaning or intent of said Documents should request of the Agency in writing, an interpretation thereof. Any interpretation of said Contract Documents shall be made only in writing by RUSA.

### **4. ESTIMATE OF QUANTITIES**

The estimate of quantities of work to be done as stated in the Bid Form, although stated with as much accuracy as possible, is approximate only and is assumed solely for the purpose of comparing bids. The quantities on which payments will be made to the Contractor are to be determined by measurement of the work actually performed and paid at the unit price bid, regardless of the amount of increase or decrease in the estimated quantities as specified in the Contract Documents. The Agency reserves the right to increase or diminish the amount of any class of work as may be deemed necessary in accordance with the Modified General Conditions.

5. **CONSTRUCTION CONTRACTORS' BOARD - STATE LANDSCAPE CONTRACTORS' BOARD**

All contractors bidding on public contracts must be licensed with the Construction Contractors' Board or the State Landscape Contractors Board as required by ORS 671.530. Bids must be identified with the Contractors' Board license number on the outside of the bid envelope and as required within. No bids will be considered without this information.

6. **DISCLOSURE OF FIRST-TIER SUBCONTRACTORS**

When a public improvement contract value is greater than \$100,000, all bidders are required to disclose information about first-tier subcontractors, providing labor or labor and materials, when the contract amount of such first-tier subcontractor is equal to or greater than:

- 1) 5% of the project bid, or \$15,000.00, whichever is greater; or
- 2) \$350,000 regardless of the percentage of the total bid.

Bidders must disclose the following information about such subcontracts, on the First-Tier Subcontractor Disclosure Form provided and included herein, within two hours of the bid submission deadline:

- 1) The subcontractor's name;
- 2) The subcontract dollar value; and
- 3) The category of work to be performed by the subcontractor.

Any bidder not using subcontractors subject to the above disclosure form, must write "NONE" on the Disclosure Form and sign and submit the form. Roseburg Urban Sanitary Authority will reject a bid if the bidder fails to submit the Disclosure Form before the deadline.

7. **DRUG TESTING PROGRAM**

ORS 279C.505(2) requires public improvement contracts to include a provision requiring contractors to demonstrate that they have an employee drug and alcohol testing program in place. All bidders are required to certify, on the Drug Testing Program Certification Form provided by the RUSA and included herein, that they have such program in place. This certification will become part of the Contract if awarded and contractor will be required to maintain such program throughout the performance of the Contract. Failure to maintain a program shall constitute a material breach of the Contract.

8. **PROMPT PAY POLICY - TIMELY PROGRESS PAYMENTS**

ORS 279C.570 and 279C.580 require prompt payment to contractors and subcontractors and provides for settlement of compensation disputes between the parties. Roseburg Urban Sanitary Authority is required to automatically calculate and pay interest on invoices from the contractor when payments become overdue. The interest commences 30 days after receipt of the invoice from the contractor, or 15 days after the payment is approved by RUSA, whichever is earlier. The rate of interest charged to RUSA on the amount due shall equal three times the discount rate on 90-day commercial paper, but shall not exceed 30 percent.

RUSA is also required to ensure that the contractor includes a clause in each subcontract that obligates the contractor to pay first-tier subcontractors for satisfactory performance under its contract. Contractors must pay subcontractors within 10 days of receiving progress payments from the Agency. Contracts between primary contractors and subcontractors must also contain an interest penalty clause that obligates the contractor, if payment is not made to the subcontractor within 30 days after receipt of payment from the Agency, to pay the first-tier subcontractor an interest penalty on amounts due in the case of each payment

not made in accordance with the subcontract payment clause. The contractor is also required to ensure that first-tier subcontractors include these requirements in each of its subcontracts with lower-tier subcontractors or suppliers.

If requested in writing by a first-tier subcontractor, within ten calendar days after receiving the request, the contractor must provide the first-tier subcontractor, a copy of that portion of any invoice or request for payment submitted to the Agency, or pay document provided by the Agency to the contractor, specifically related to any labor or materials supplied by the first-tier subcontractor.

**9. PRE-QUALIFICATION OF BIDDERS**

Bidders shall pre-qualify under ORS 279C.430 and 279C.435, and shall submit the information requested as specified in Section 00120.00 of the Modified General Conditions. A current prequalification from the Oregon Department of Transportation for similar work will be acceptable. This information shall be submitted at least ten (10) working days prior to the date of bid opening. All bidders and its subcontractors at the time of bid submittal shall hold such licenses as required by State Statutes and Federal and Local Laws and Regulations and have a current, valid license issued by the Oregon Construction Contractors Board as required by ORS 701.055.

**10. BID BOND**

All Bids shall be accompanied by a Bid guaranty in the amount of 10% of the total amount of the Bid. See Section 00120.40(e) for acceptable Bid Guaranty.

**11. CONDITIONS OF WORK**

Bidders must make their own determination of the nature of the work proposed under this Contract, the local conditions which can be encountered in this area, and all other matters which can in any way affect the work proposed under this Contract. It shall also be the bidder's responsibility to be thoroughly familiar with the Contract Documents. Failure to make the examination necessary for this determination or to examine any form, instrument or document of the Contract shall not release the bidder from the obligations of this Contract.

**12. BID OPENING; REJECTIONS; DISQUALIFICATIONS; RECIPROCAL PREFERENCE**

Bids will be opened and the total price for each Bid will be read publicly at the time and place as indicated in the Invitation to Bid. Bidders and other interested parties are invited to be present. Bids will be compared on the basis of the total amount of each Bid. The total amount of the Bid will be the total sum computed from quantities listed in the Bid Schedule and unit prices entered by the Bidder. In case of conflict between the unit price and the corresponding extended amount, the unit price shall govern, and the Agency may make arithmetic corrections on extension amounts.

A Bid will be considered irregular and will be rejected if the irregularity is deemed by the Agency to render the Bid non-responsive. See Section 00120.70.

A Bid of a qualified Bidder will be rejected if more than one Bid is submitted for the same Work by an Entity under the same or different name(s); if there is evidence of collusion among Bidders; and any of the grounds for disqualification cited in ORS 279C.440. A Bidder will be disqualified if the Bidder has not been prequalified as required by 00120.00; been declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860; not been registered (licensed) by the Oregon Construction Contractors Board before submitting a Bid. The Bidder's registration number and expiration date shall be shown in the Bid form; or been

determined by the CCB under ORS 701.227 not to be qualified to hold or participate in a public contract for a public improvement.

Bidders shall complete the certificate of residency included in the Bid Schedule. Failure to complete the form will be cause to reject the Bid. A Resident Bidder means a Bidder who has Paid unemployment taxes or income taxes in the State of Oregon during any of the 12 calendar months immediately preceding submission of the Bid; A business address in the State of Oregon: and Certified in the Bid that the Bidder qualifies as a Resident Bidder.

**13. EXECUTION OF CONTRACT, BONDS AND DAMAGES FOR FAILURE TO EXECUTE**

The Agency will consider submitted Bids after a check is performed for correct extensions of unit prices and totals. The Agency reserves the right to waive minor informalities and irregularities, and to reject any or all Bids for irregularities under 00120.70 or for good cause after finding that it is in the public interest to do so (IRS279C.395). See Section 00130 for further requirements for the Award and Execution of Contract.

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

**14. ASBESTOS CONTAINING MATERIAL**

Materials containing asbestos may be present in the sanitary sewer system such as main line piping and private building sewers. All appropriate Federal, State, County and Municipal rules, regulations and guidelines must be followed when working with asbestos-containing material. Nonfriable material must be handled, transported and disposed of in a way that prevents it from becoming friable and releasing asbestos fibers. If AC pipe is shattered, damaged or badly weathered, it is considered to be friable and will likely release asbestos fibers. Comply with 29 CFR 1910, 29 CFR 1926.1101, 40 CFR 61, 40 CFR 763, OAR 340 248, ORS 468A and handle asbestos containing pipe according to the DEQ Publications "Asbestos Advisory for those who work with AC Water Pipe" and "How to Remove Asbestos (AC) Water Pipe – A Guide for Meeting DEQ Rules". Any and all permits and fees that are required by the DEQ, Douglas, County and any other regulatory agency must be obtained and paid for by the Contractor prior to disposing of the asbestos containing material. For information about asbestos rules, contact the DEQ Western Region office in Medford, Oregon.

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## BIDDER'S CHECK LIST

Bidder's attention is called to the following forms and conditions, which must be executed in full as required with the bid and completed in accordance with the provisions of the Modified General Conditions:

- A. **BIDDERS MUST OBTAIN PLANS AND SPECIFICATIONS FROM RUSA:** To be considered a responsive bidder, the bidder must purchase plans from RUSA for \$25. RUSA will place the bidder on the "Holders of Bidding Plans" list.
- B. **BID FORM(S):** Each bidder shall complete the bid form(s) in accordance with Section 00120.40, Preparation of Bids.
- C. **BID GUARANTY:** All bids shall be accompanied by a Bid guaranty and conform to Section 00120.40(e). If a Surety bond is submitted, bidder must use the standard Bid Bond form included. The amount of a certified check, cashier's check, irrevocable letter of credit or Bid Bond shall not be less than 10% of the total Bid amount.
- D. **FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM:** When required by law, this form must be submitted by the bid submission deadline, at which time bids will be opened and read, or within two working hours of such submission deadline. If no subcontractors for labor or for labor and materials will be used, the bidder must write "NONE" on the disclosure form, sign and submit the form as required. Failure to submit this form within two hours of the bid submission deadline will result in the bid becoming non-responsive and such bid will be returned to the bidder.
- E. **DRUG TESTING PROGRAM CERTIFICATION FORM:** This form must be submitted with the bid to demonstrate that bidder has an employee drug and alcohol testing program in place and will continue to keep the program in place throughout the duration of performing the Contract awarded.
- F. **PUBLIC WORKS BOND PRE-BID NOTICE & CERTIFICATION FORM:** This form must be submitted with the bid to demonstrate contractor's awareness of and intended compliance with the requirement to file a Public Works Bond with the Construction Contractors Board prior to beginning work on the project if awarded the bid.

The following forms are to be executed after the Contract is awarded, prior to beginning work on the project:

- A. **CONSTRUCTION CONTRACT:** This agreement is to be executed by the successful bidder.
- B. **PERFORMANCE BOND AND PAYMENT BOND:** Both a Performance Bond and a Payment Bond are to be executed by the successful bidder and bidder's Surety Company and submitted at the time the Contract is executed.
- C. **PUBLIC WORKS WAGE CERTIFICATION FORM:** This form is to be completed in accordance with state law and submitted with the first and last request for payment.
- D. **CERTIFICATE OF INSURANCE:** This certificate is to be executed by the successful bidder and bidder's insurance company and submitted at the time the Contract is executed.
- E. **PUBLIC WORKS BOND FILING CERTIFICATION:** This form is to be executed by the successful bidder and submitted at the time the Contract is executed to certify if Contractor has filed the required Public Works Bond or elected not to file the Bond due to qualifying under ORS 200.055.

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## BID FORM

Roseburg Urban Sanitary Authority  
1297 NE Grandview Drive  
Roseburg, Oregon 97470

The undersigned bidder has carefully examined the Contract Documents for the construction of the

### UMPQUA STREET SEWER REPLACEMENT - Project No. 151-36

referred to in the Invitation to Bid dated the 31<sup>st</sup> day of January, 2024 inviting bids on such Project and also the site of the Project. Bidder will provide all necessary labor, equipment, tools, apparatus and other means of construction, do all the work and furnish all the materials called for by said Contract Documents in the manner prescribed therein to provide a complete Project.

The undersigned bidder understands that the quantities of work as shown herein are approximate only, unless noted otherwise, and are subject to increase or decrease. The bidder offers to perform the work, at the unit price stated in the following schedule, whether the quantities are increased or decreased.

### BID SCHEDULE

#### UMPQUA STREET SEWER REPLACEMENT ROSEBURG, OR JANUARY 31, 2024

Item No.	Item	Unit	Quantity	Unit Cost	Total Cost
1	MOBILIZATION	LS	1		
2	TEMPORARY WORK ZONE TRAFFIC CONTROL, COMPLETE	LS	1		
3	CONSTRUCTION SURVEY WORK	LS	1		
4	SURFACE REMOVAL OF CONCRETE WALKS, DRIVEWAYS, CURBS & GUTTER	SY	68		
5	SURFACE REMOVAL (EXCLUDE CONCRETE WALKS, DRIVEWAYS, CURBS & GUTTER)	SY	940		
6	1'-0" AGGREGATE FOR PRIVATE ROAD BASE AND EXTRA EMBANKMENT OUTSIDE OF 36" TRENCH	TON	255		
7	LEVEL 2, 1/2" DENSE GRADED ACP MIXTURE FOR VARIABLE WIDTH TRENCH RESURFACING AND ACCESS ROAD	TON	285		
8	REMOVE CONE & FILL ABANDONED MANHOLE IN-PLACE WITH SLURRY	EA	7		
9	REMOVE MANHOLE	EA	1		
10	FILLING ABANDONED PIPE IN PLACE	LF	1325		
11	SANITARY SEWER SERVICE PIPE 0'-10' INCLUDING ALL FITTINGS AND APPURTENANCES	LF	510		
12	8" SS PIPE 0'-10' INCLUDING ALL FITTINGS AND APPURTENANCES	LF	854		



13	8" SS PIPE 10'-15' INCLUDING ALL FITTINGS AND APPURTENANCES	EA	280
14	CONCRETE SANITARY SEWER MANHOLES	EA	4
15	CONCRETE SANITARY SEWER MANHOLES WITH OUTSIDE DROP	EA	2
16	8" SANITARY SEWER SERVICE TEE	EA	19
17	ADDITIONAL COST FOR 20' SECTION OF 4" OR 6" C900 PVC SERVICE LINE INCLUDING ADAPTERS	EA	3
18	TEMP TIE IN	LS	1
19	FINAL TIE IN	LS	1
20	MONOLITHIC CURBS, SIDEWALKS & GUTTERS (BASE ROCK INCIDENTAL)	SF	612
21	INLET PROTECTIN	EA	4

TOTAL \_\_\_\_\_

### Declarations and Statements

**1** That the only persons or parties interested in this bid are those named herein, that the bid is in all respects fair and without fraud, and that it is made without any connection or collusion with any person making another bid on this Contract.

**2** That the bidder, and any subcontractor upon which the bidder is relying, have carefully examined and had an opportunity to comment on, the Contract Documents for the construction of the proposed improvements including a full set of the plans and specifications, including all addenda thereto; that bidder has personally inspected the contemplated construction area or areas; that bidder is satisfied as to the adequacy and completeness of the plans and specifications, the feasibility of the work described therein, quantities of materials, items of equipment and conditions of work involved, including the fact that the description of work and materials as included herein are approximate only; and that this bid is made according to the provisions and under the terms of the Specifications which are hereto attached and hereby made a part of this bid.

**3** All of the Specifications and Plans which are listed herein have been examined by the undersigned bidder and the terms and conditions thereof are hereby accepted.

**4** It is understood that the Plans may be supplemented by additional Drawings and Specifications in explanation and elaboration of the Plans and it is agreed that such Supplemental Drawings, when not in conflict with those referred to

in Paragraph 3 above, will have the same force and effect as if completed and attached hereto, and that when received, will be considered a part of the Contract Documents.

**5** It is understood that all work will be performed under the price schedule outlined herein and that all services, materials, labor and equipment and all work necessary to complete the Project in accordance with the Plans and Specifications shall be furnished for the prices named in the bid. If there is a change in the scope of work or work which cannot be properly classified under the price schedule then bidder agrees to do this work as "extra work". The undersigned bidder agrees to do any extra work and furnish materials, and to accept as full compensation therefore, such prices as may be agreed upon in writing by RUSA and the Contractor before extra work begins (Sections 00196, 00197). Each party binds itself to agree to reasonable prices.

**6** The bidder agrees that if this bid is accepted, the bidder will, within the time specified in Section 00130 execute the Construction Contract with RUSA in the form of Contract specified, and will, at the time of execution of the Contract, deliver to RUSA the Performance Bond and Payment Bond required herein, and will furnish all the materials necessary to complete the Project in the manner, in the time and according to methods as specified in the Specifications and required by Roseburg Urban Sanitary Authority

**7** The Bid Guaranty in a form as specified in 00120 shall be payable to RUSA to the extent of 10% of the amount of the bid in case this bid is accepted and the undersigned shall fail or refuse to execute the Contract and furnish a Payment Bond and a Performance Bond as required by the Specifications within the time limit named therein after notification that said bid is accepted, all in accordance with the provisions of this bid and the Plans and Specifications which are a part hereof.

**8** All items for the Contract for which forms are provided herein have been completed in full by the showing of prices for each and every item thereof, and for the showing of other information indicated by the Bid Form.

**9** Bidder agrees to begin work after the execution of the Contract proposed herein and receipt of the Notice to Proceed. The Contractor shall complete all Work to be done under the Contract before the elapse of 75 Calendar Days starting on July 15, 2024 and ending on September 27, 2024.

See Special Provisions Section 00180.50 for other restrictions and additional information.

**10** In the event the bidder is awarded the Contract and fails to complete the Project within the time limit or extended time agreed upon, as more specifically set forth in the Special Provisions, liquidated damages shall be paid to or withheld by RUSA pursuant to Paragraph 4 of the Construction Contract (Time of Performance - Liquidated Damages) at the rate of \$500.00 per day, until the Project has been completed as provided in the Specifications.

**11** The undersigned bidder hereby states, as part of this bid, that the applicable provisions of Oregon's Prevailing Wage Law (ORS 279C.800 to 279C.870).

**12** The undersigned bidder and bidder's subcontractors shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers.

**13** The undersigned bidder hereby states, as part of this bid, that bidder shall comply with ORS 279C.505(2) which requires bidder to have an employee drug testing program in place.

**14** The undersigned bidder and bidders' subcontractors shall comply with ORS 279C.570 and 279C.580, which require timely progress payments for public improvement projects and provide interest penalties for late payment.

**15** The undersigned bidder hereby states, as part of this bid, which bidder and bidder's subcontractors shall comply with the provisions of the Modified General Conditions, Volume 1.

**16** If the bidder is awarded the Contract for this work, the name and address of the Surety who will provide the Payment Bond and Performance Bond will be: \_\_\_\_\_

**17** The name and address of the bidder who is submitting this bid is: \_\_\_\_\_, which is the address to which all communications pertinent to the bid and the Contract shall be sent.

**18** The names of the principal officers of the corporation submitting this bid or of the partnership, or of all parties interested in this bid as principals are as follows: \_\_\_\_\_

**19** The undersigned bidder acknowledges that Addenda No. \_\_\_\_\_ through \_\_\_\_\_ have been delivered to bidder and have been examined as part of the Contract Documents.

**20** In the prosecution of this work, the bidder proposes to use the subcontractors listed on the First-Tier Subcontractor Disclosure Form presented within two working hours of the bid submission deadline as set forth in the Invitation to Bid. Any bidder not using subcontractors subject to the above referenced Disclosure Form shall indicate "NONE" on the Disclosure Form and sign and submit the form as required.

**21 Declaration of Residency:**

I "am" or "am not" (circle one) a "resident bidder"\* as defined by ORS 279A.120, a contractor that has paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder" pursuant to ORS 279A.120.

**22** The bidder's Construction Contractors Board License Number or Landscape Contractors Board License Number is: \_\_\_\_\_.

**23** Bidder's Tax Identification Number: \_\_\_\_\_.

**24** Public Works Bond: If the bid is accepted, prior to beginning work on the project, the bidder will file with the Construction Contractors Board, a Public Works Bond in the amount of \$30,000 with a corporate surety authorized to do business in the State of Oregon; and before permitting a subcontractor to begin work on the project, the bidder will verify that the subcontractor has also filed the aforementioned bond. If the bidder, as a certified disadvantaged, minority, women or emerging small business enterprise, elects not to file the Public Works Bond, bidder will file written verification of such certification with the Construction Contractors Board and provide the Board and Roseburg Urban Sanitary Authority with notice of such election.

**Signatures**

**If sole Proprietor or Partnership:**

In witness hereto, the undersigned as set his/her hand this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Signature of Bidder

\_\_\_\_\_

Title:

\_\_\_\_\_

**If Corporation:**

In witness whereof, the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this \_\_\_ day of \_\_\_\_\_, 2024.

**Name of Corporation:**

\_\_\_\_\_

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

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

\_\_\_\_\_

Attest:

\_\_\_\_\_

Secretary

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**ROSEBURG URBAN SANITARY AUTHORITY**

**STANDARD BID BOND FORM**

We, \_\_\_\_\_, "as Principal,"  
(Name of Principal)  
and \_\_\_\_\_, an \_\_\_\_\_ Corporation,  
(Name of Surety)

authorized to transact Surety business in Oregon, as "Surety," hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns to pay unto the Roseburg Urban Sanitary Authority ("Obligee") the sum of ( \_\_\_\_\_ )

\_\_\_\_\_ dollars.

WHEREAS, the condition of the obligation of this bond is that Principal has submitted its proposal or bid to an agency of the Obligee in response to Obligee's procurement document (No. \_\_\_\_\_) for the project identified as: Umpqua Street Sewer Replacement, No. 151-36, which proposal or bid is made a part of this bond by reference, and Principal is required to furnish bid security in an amount equal to ten percent (10%) of the total amount of the bid pursuant to the procurement document and ORS 279C.365(4) for competitive bidding or 279C.400(5) for competitive proposals.

NOW, THEREFORE, if the proposal or bid submitted by Principal is accepted, and if a contract pursuant to the proposal or bid is awarded to Principal, and if Principal enters into and executes such contract within the time specified in the procurement document and executes and delivers to Obligee its good and sufficient performance bond, payment bond and public works bond as required by Obligee within the time fixed by Obligee, then this obligation shall be void; otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, we have caused this instrument to be executed and sealed by our duly authorized legal representatives this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

PRINCIPAL: \_\_\_\_\_ SURETY: \_\_\_\_\_

By \_\_\_\_\_ Signature BY ATTORNEY-IN-FACT:

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

Attest: \_\_\_\_\_ Corporation Secretary Signature

Address \_\_\_\_\_

City State Zip

Phone Fax

[BLANK]

**FIRST TIER SUBCONTRACTOR DISCLOSURE FORM**

PROJECT NAME: UMPQUA STREET SEWER REPLACEMENT

BID#: 151-36

BID CLOSING: DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.

List below the name of each subcontractor that will be furnishing labor or labor and materials, and is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED)

NAME OF SUBCONTRACTOR	DOLLAR VALUE	CATEGORY OF WORK
1. _____	\$ _____	_____
2. _____	\$ _____	_____
3. _____	\$ _____	_____
4. _____	\$ _____	_____
5. _____	\$ _____	_____
6. _____	\$ _____	_____

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

Form submitted by (bidder name): \_\_\_\_\_

Contact name: \_\_\_\_\_ Phone: \_\_\_\_\_

**Form Received in the RUSA's Office:**

Time: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_



[BLANK]

**DRUG TESTING PROGRAM CERTIFICATION FORM**

**BIDDER'S NAME:** \_\_\_\_\_

**PROJECT NAME & NUMBER:** UMPQUA STREET SEWER REPLACEMENT, 151-36

ORS 279C.505 (2) provides that every public improvement contract contain a condition that the Contractor shall demonstrate that an employee drug testing program is in place. The Agency's award of the Contract for which this certificate is required is conditioned, in part, upon the Bidder's demonstration of compliance with the provisions of ORS 279C.505(2). If the Bidder named above is awarded the Contract, this certificate shall become a part of, and shall constitute a continuing representation and warranty under, the Contract.

To induce the Agency to award the Contract to the Bidder, the undersigned, as the duly authorized representative of the Bidder, hereby represents and warrants, on behalf of the above named Bidder:

1. That Bidder has and enforces, and at all times during the term of the Contract will have and enforce, a written employee drug testing policy that at a minimum, requires compliance with the Oregon Department of Transportation Commercial Driver's License drug testing regulations;
2. A copy of the Bidder's current written employee drug testing policy will be available for inspection by the Agency at any time upon the Agency's request; and
3. The Bidder understands and agrees that its representations and warranties herein will become a continuing part of the Contract and that breach of any of the foregoing will be sufficient grounds for disqualification under 279C.440(2)(d).

The Agency shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Bidder/Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Bidder/Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to, selection of which employees to test and the manner of such testing. The Agency shall not be liable for Bidder/Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy, or for any damage or injury caused by Bidder/Contractor's employees acting under the influence of drugs while performing work covered by the Contract. These are Bidder/Contractor's sole responsibilities.

In Witness whereof, the Bidder has caused this document to be executed by its duly authorized representative on the date shown below.

**Signature:** \_\_\_\_\_

**Printed Name, Title:** \_\_\_\_\_

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

[BLANK]

**PUBLIC WORKS BOND  
PRE-BID NOTICE AND CERTIFICATION**

I, the undersigned contractor, hereby certify that if awarded the contract for which I am submitting this bid, prior to beginning work on such Project, unless exempt under ORS 279C.800 to 279C.870, I will file with the Construction Contractors Board, a Public Works Bond in the amount of \$30,000 with a corporate surety authorized to do business in the State of Oregon. I further certify that before permitting a subcontractor to start work on the Project upon which I am submitting this bid, I will verify that the subcontractor has also filed such Public Works Bond or has elected not to file such bond as allowed by state law. The Public Works Bond shall provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond shall be a continuing obligation and remain continuously in effect.

If, as a contractor, I qualify as a disadvantaged, minority, women or emerging small business enterprise certified under ORS 200.055 and I have elected not to file the aforementioned Public Works Bond, I hereby certify that I will file written verification of such certification with the Construction Contractors Board. I also certify that before beginning any work on the Project, I will provide the Roseburg Urban Sanitary Authority and the Construction Contractors Board written notice that I have elected not to file the Public Works Bond. If so certified under ORS 200.055, I understand that my election not to file the Public Works Bond will expire one year from the date it was filed and that a claim for unpaid wages may be filed against the payment bond I submitted on the Project.

I further certify that I understand the Public Works Bond described above is in addition to any other bond that I am required to provide, or that may be required of a subcontractor, for this Project.

**Project Name:** UMPQUA STREET SEWER REPLACEMENT

**Project Number:** 151-36

**Contractor's Printed Name:** \_\_\_\_\_

**Contractor's Signature:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

[BLANK]

## CONSTRUCTION CONTRACT

This Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between \_\_\_\_\_, hereinafter called the "Contractor", and the Roseburg Urban Sanitary Authority, a public authority of the State of Oregon, hereinafter called "RUSA".

### WITNESSETH

That the Contractor and RUSA, for the consideration hereinafter described agree as follows:

**1. WORK TO BE PERFORMED.** The Contractor agrees to do all the work and furnish all necessary labor, materials, tools and equipment for the completion of the **UMPQUA STREET SEWER REPLACEMENT, 151-36** in accordance with the bid made by the Contractor on the \_\_\_\_\_ day of \_\_\_\_\_, all in full compliance with the Contract Documents referred to herein, and guarantees all materials and workmanship for one year after acceptance of the project.

**2. CONTRACT DOCUMENTS.** The Contract Documents include the RUSA's Invitation to Bid, Information to Bidders, the Bid Form signed by the Contractor, this Construction Contract, First-Tier Subcontractor Disclosure Form, Drug Testing Program Certification Form, Performance Bond, Payment Bond, Public Works Bond Filing Certification form (when required), Modified General Conditions-Volume 1, 2024 Oregon Standard Specifications for Construction-Volume 2, Special Provisions, Standard Drawings and Plans, and other Supplemental Agreements all as required for the full execution and satisfactory completion of the work. All of the Contract Documents are incorporated herein by this reference and made a part of this Contract.

**3. PAYMENT.** In consideration of the faithful performance of the work herein embraced, RUSA agrees to pay the Contractor \$ \_\_\_\_\_ as payment in full per the provisions of the Contract Documents.

**4. TIME OF PERFORMANCE - LIQUIDATED DAMAGES.** The Contractor shall commence work under this Contract upon receiving notification to proceed from the RUSA. The Contractor shall complete all Work to be done under the Contract before the elapse of 75 Calendar Days starting on July 15, 2024 and ending on September 27, 2024. If the Contractor fails to complete the Project within the time hereinbefore mentioned, or in the extended time agreed upon, liquidated damages shall be paid to or withheld by the RUSA at the rate of \$500.00 per day until the Project is completed. It has been agreed that the damages arising from a delay in completion would be difficult to ascertain with any degree of accuracy, even after the Project is completed. It has also been agreed that the amount of liquidated damages specified herein is a reasonable forecast of just compensation for the harm that will be caused by a delay in completion of the Project. Any such sum which the Contractor may be obligated to pay under the terms of this Paragraph is paid as liquidated damages, and not as a penalty.

**5. COMPLIANCE WITH LAW.** The Contractor shall comply with all local, state and federal laws, ordinances and regulations applicable to contracts covering municipal contracts, and shall make prompt payment of all amounts that may be due from said Contractor in the way of taxes, other governmental charges or lawful deductions, and shall make prompt payment of all labor and materials and shall save the RUSA harmless from any damages or claims whatsoever in the performance of the Contract. Contractor and all subcontractors agree to comply with the Roseburg Municipal Code Regulations relating to business registration.

**6. NOTICE.** Any notice required or permitted by this Contract must be delivered and served personally, or alternatively, deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the parties as shown below:

**RUSA:**  
Roseburg Urban Sanitary Authority  
ATTN: Jim Baird  
1297 NE Grandview Dr.  
Roseburg OR 97470

**CONTRACTOR:**  
\_\_\_\_\_

Such notice, if mailed within the State of Oregon, shall be deemed delivered upon the second day following the date postmarked. If mailed outside the State of Oregon, notice shall be deemed delivered upon the fifth day following the date postmarked.

**7. GOVERNING LAW; VENUE LOCATION.** Oregon law shall be applied to all actions relating to the Contract, and the venue in any such action shall lie in the Circuit Court of Douglas County, Oregon.

**IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.**

**RUSA**

**CONTRACTOR**

\_\_\_\_\_  
**Jim Baird**  
**Manager**

\_\_\_\_\_  
(Authorized Signature)  
**Name/Title:** \_\_\_\_\_

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

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

\_\_\_\_\_  
**Tax Identification Number**

**ATTEST:**  
\_\_\_\_\_  
\_\_\_\_\_

**Roseburg Urban Sanitary Authority  
STANDARD PERFORMANCE BOND**

Bond No.: \_\_\_\_\_

Solicitation: \_\_\_\_\_

Project Name: UMPQUA STREET SEWER REPLACEMENT, 151-36

\_\_\_\_\_ (Surety#1) Bond Amount No. 1: \$\_\_\_\_\_

\_\_\_\_\_ (Surety #2) \*Bond Amount No. 2:\$\_\_\_\_\_

*\*If using multiple sureties*

Total Penal Sum of Bond \$\_\_\_\_\_

We, \_\_\_\_\_ as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns, firmly by these presents to pay to the Roseburg Urban Sanitary Authority the sum of (Total Penal Sum of Bond) \_\_\_\_\_ (Provided that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety), and

WHEREAS, the Principal has entered into a contract with the Roseburg Urban Sanitary Authority, the plans, specifications, terms and conditions of which are contained in the above-referenced Solicitation;

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Performance Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and all authorized modifications of the Contract which increase the amount of the work, the amount of the Contract, or constitute an authorized extension of the time for performance, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things undertaken by Contractor to be performed under the Contract, upon the terms set forth therein, and within the time prescribed therein, or as extended as provided in the Contract, with or without notice to the Sureties, and shall indemnify and save harmless Roseburg Urban Sanitary Authority and members thereof, its officers, employees and agents, against any direct or indirect damages or claim of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Principal or its subcontractors, and shall in all respects perform said Contract according to law, then this obligation is to be void; otherwise, it shall remain in full force and effect.

Nonpayment of the bond premium will not invalidate this bond nor shall Roseburg Urban Sanitary Authority be obligated for the payment of any premiums.



This bond is given and received under authority of ORS Chapters 279A, 279B and 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

PRINCIPAL: \_\_\_\_\_

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

Signature

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

Attest: \_\_\_\_\_

Corporation Secretary

SURETY: \_\_\_\_\_

*[Add signatures for each surety if using multiple bonds]*

BY ATTORNEY-IN-FACT:

*[Power-of-Attorney must accompany each surety bond]*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

**Roseburg Urban Sanitary Authority  
PAYMENT BOND**

Bond No.: \_\_\_\_\_  
Solicitation: \_\_\_\_\_  
Project Name: UMPQUA STREET SEWER REPLACEMENT, 151-36

\_\_\_\_\_ (Surety#1) Bond Amount No. 1: \$ \_\_\_\_\_

\_\_\_\_\_ (Surety #2) \*Bond Amount No. 2:\$ \_\_\_\_\_

*\*If using multiple sureties*

Total Penal Sum of Bond \$ \_\_\_\_\_

We, \_\_\_\_\_ as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns, firmly by these presents to pay to the Roseburg Urban Sanitary Authority the sum of (Total Penal Sum of Bond)

\_\_\_\_\_  
(Provided that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety), and

WHEREAS, the Principal has entered into a contract with the Roseburg Urban Sanitary Authority, the plans, specifications, terms and conditions of which are contained in the above-referenced Solicitation;

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Payment Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and schedule of Contract prices which are set forth in the Contract and any attachments, and all authorized modifications of the Contract which increase the amount of the work, or the cost of the Contract, or constitute authorized extensions of time for performance of the Contract, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things by it undertaken to be performed under said Contract and any duly authorized modifications that are made, upon the terms set forth therein, and within the time prescribed therein, or as extended therein as provided by the Contract, with or without notice to the Sureties, and shall indemnify and save harmless the Roseburg Urban Sanitary Authority and members thereof, its officers, employees and agents, against any direct or indirect damages or claim of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Contractor or its subcontractors, and shall promptly pay all persons supplying labor, materials or both to the Principal or its subcontractors for prosecution of the work provided in the Contract; and shall promptly pay all contribution due according to workers compensation requirements and the State Unemployment compensation Fund from the Principal or its subcontractors in connection with the performance of the Contract; and shall pay over to the Oregon Department of Revenue all sums required to be deducted and retained from the wages of employees of the Principal and its subcontractors pursuant to ORS 316.167, and shall permit no lien nor claim to be filed or prosecuted against Roseburg Urban Sanitary Authority on account of any labor or materials furnished; and do all things required of the Principal by the laws of this State, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Nonpayment of the bond premium will not invalidate this bond nor shall the Roseburg Urban Sanitary Authority be obligated for the payment of any premiums.

This bond is given and received under authority of ORS Chapters 279A, 279B and 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

PRINCIPAL: \_\_\_\_\_

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

Signature

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

Attest: \_\_\_\_\_

Corporation Secretary

SURETY: \_\_\_\_\_

*[Add signatures for each surety if using multiple bonds]*

BY ATTORNEY-IN-FACT:

*[Power-of-Attorney must accompany each surety bond]*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone Fax

**PUBLIC WORKS BOND FILING CERTIFICATION**

Pursuant to ORS 279C.800 to 279C.870, I, undersigned contractor, do hereby certify that, prior to beginning work on the Project for which I have been awarded the bid by the Roseburg Urban Sanitary Authority:

1. I have filed with the Construction Contractors Board ("Board"), a Public Works Bond in the amount of \$30,000 with a corporate surety authorized to do business in the State of Oregon.  **Yes**  **No (Check one)**

2. I have elected not to file a Public Works Bond with the Board because I am a disadvantaged, minority, women or emerging small business enterprise certified under ORS 200.055. I have provided the Board written verification of such certification and written notification of my election not to file the Public Works Bond. I understand that my election not to file the Public Works Bond will expire one year from the date it was filed and that a claim for unpaid wages may be filed against the payment bond I submitted on the Project.  **Yes**  **No (Check one)**

3. I have verified any subcontractor involved in the Project has, prior to beginning any work on this Project, either filed the Public Works Bond with the Board or has elected not to file the Public Works Bond because the subcontractor is a disadvantaged, minority, women or emerging small business enterprise certified under ORS 200.055.  **Yes**  **No (Check one)**

(a) I have verified that any subcontractor involved in this Project that has elected not to file the Public Works Bond has provided the Board written verification of its certification under ORS 200.055 and written notification of its election not to file the Public Works Bond.  **Yes**  **No (Check one)**

I understand the Public Works Bond described above is in addition to any other bond that I am required to provide, or that may be required by a subcontractor, for this Project.

**Project Name:** UMPQUA STREET SEWER REPLACEMENT

**Project Number:** 151-36

**Contractor's Printed Name:** \_\_\_\_\_

**Contractor's Signature:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

[BLANK]

**BUREAU OF LABOR AND INDUSTRIES  
PREVAILING WAGE RATES  
FOR  
PUBLIC WORKS CONTRACTS IN OREGON**

Prevailing Wage Rates are the minimum wages that must be paid to all workers employed in the construction, reconstruction, major renovation or painting of all public works, unless specifically exempted by state law. Effective May 15, 2006, the Bureau of Labor and Industries (BOLI) deleted the requirement that the applicable Prevailing Wage Rates be physically included in all bid specifications and contracts for projects subject to the Prevailing Wage Rate law. Instead of including the entire Prevailing Wage Rate publication in the bid specifications and contract, public entities must now simply make reference to the specific prevailing wage rate publication where the prevailing wage rates are found *or* provide a link to the specific prevailing wage rate publication where the prevailing wage rates are found.

In January and July of each year, the Commissioner of the Bureau of Labor and Industries publishes the Prevailing Wage Rates that are required to be paid to workers on public works contracts in the state of Oregon. Quarterly updates are published in April and October of each year. Oregon Bureau of Labor and Industries Prevailing Wage Rates applicable to the subject project/contract are available on BOLI's website at [www.oregon.gov/boli/](http://www.oregon.gov/boli/). The prevailing wages to be applied throughout the duration of this project are those in effect for BOLI Prevailing Wage Rate Region 6, (Douglas County Oregon), upon the date the project is first advertised.

For specific information or questions regarding the Prevailing Wage Rate Law, you may log on to the above referenced website or contact the nearest Oregon Bureau of Labor and Industries office listed below.

**BOLI Office Locations**

Eugene	1400 Executive Parkway, Eugene, OR 97401	541/686-7623
Medford	700 E. Main, Suite 105, Medford, OR 97504	541/776-6270
Portland	800 NE Oregon St., #32, Portland, OR 97232	503/731-4074
Salem	3865 Wolverine St. NE, Bldg. E-1, Salem, OR 97305	503/378-3292

**THIS PROJECT IS SUBJECT TO THE PREVAILING WAGE RATES EFFECTIVE**

**January 1, 2024**

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# **OREGON STANDARD SPECIFICATIONS FOR CONSTRUCTION**

**Modified General Conditions**

**2024**

**Roseburg Urban Sanitary Authority**

**Roseburg, Oregon**



Oregon Standard Specifications for Construction 2024 contains Part 00100, the general conditions. Parts 00200 through 03000, the Technical Specifications, which describe the prosecution of the work are modified by Roseburg Urban Sanitary Authority and called “Special Provisions” and are contained within this booklet. These general conditions contained in these provisions have been modified for the use of Roseburg Urban Sanitary Authority. The Oregon Standard Specifications for Construction are joint specifications from the Oregon Department of Transportation and the American Public Works Association, Oregon Chapter.

by:  
i.e. Engineering, Inc.  
Roseburg, Oregon

January, 2024

*Modifications to Document*

No.    Date                      Section

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## PART 00100 - GENERAL CONDITIONS

### Section 00110 - Organization, Conventions, Abbreviations, and Definitions

**NOTE:** Volume 1 of the 2024 “Oregon Standard Specifications for Construction”, Joint specifications of the Oregon Department of Transportation and the Oregon Chapter of the American Public Works Association is hereby referenced in general and is modified by these provisions for general use of the Roseburg Urban Sanitary Authority (RUSA), Roseburg, Oregon. Any reference to Agency is implied to refer to RUSA. These provisions control in the event of any conflict.

#### 00110.00 Organization of Specifications

- The "2024 Oregon Standard Specifications for Construction", which contain Part 00100 "General Conditions", which deal with the solicitation process and contractual relationships and Parts 00200 through 03000 which contain the detailed "Technical Specifications" involved in prosecution of the Work, organized by subject matter; and
- The Special Provisions.

In addition, throughout the Specifications:

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

#### 00110.05 Conventions Used Throughout the Specifications Include:

(a) **Grammar** - The “2024 Oregon Standard Specifications for Construction”, Part 00100 “General Conditions”, is written in the indicative mood, in which the subject is expressed. Parts 00200 through 03000 of the detailed “Technical Specifications”, are generally written in the imperative mood, in which the subject is implied. Therefore, throughout Parts 00200 through 03000, and on the Plans:

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

- Certain Subsections labeled “Payment” contain statements to the effect that “payment will be made at the Contract amounts for the following items” (followed by a list of items). In such cases the Agency shall pay for only those Pay Items listed in the Schedule of Items.
- (b) **Capitalization of Terms** - Capitalized terms, other than titles, abbreviations, and grammatical usage, indicate that they have been given a defined meaning in the Standard Specifications. Refer to Section 00110.20 “Definitions”. Defined terms will always be capitalized in Part 00100; in Parts 00200 through 03000, defined terms will generally not be capitalized, with the notable exception of “the Contractor”, “the Agency”, and “the Engineer”.
- (c) **Punctuation** - In this publication the “outside method” of punctuation is employed for placement of the comma and the period with respect to quotation marks. Only punctuation that is part of the quoted matter is placed within quotation marks.
- (d) **References to Laws, Acts, Regulations, Rules, Ordinances, Statutes, Orders, and Permits** - References are made in the text of the Specifications to “laws”, “acts”, “rules”, “statutes”, “regulations”, “ordinances”, etc. (collectively referred to for purposes of this Subsection as “Law”), and to “orders” and “permits” (issued by a governmental authority, whether local, State, or federal, and collectively referred to for purposes of this Subsection as “Permits”). Reference is also made to “applicable laws and regulations”. The following conventions apply in interpreting these terms, as used in the Specifications.
- **Statutes and Rules** - Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) referenced in the Specifications are accessible on line, including through the Oregon Legislative Counsel Committee website (see 00110.05(e)) and through the Oregon Secretary of State Archives Division website (see 00110.05(e)).
  - **Law** - In each case, unless otherwise expressly stated therein, the Law is to be understood to be the current version in effect. This also applies where a specific Law is referenced or cited, regardless of whether the text of the Law has been included in the Specifications or not, and regardless of whether the text of the Law has been summarized or paraphrased. In each case, the current version of the Law is applicable under any contract. The reader is therefore cautioned to check the actual text of the Law to confirm that the text included in the Specifications has not been modified or superseded.
  - **Permits** - Orders and permits issued by a government agency may be modified during the course of performing the Work under a Contract. Therefore, wherever the term “order” or “permit” is used in the Specifications, it is intended to refer to the then-current version. That version may be embodied in a modified, superseding order or permit, or it may consist of all terms and conditions of prior orders or permits that have not been superseded, as well as the additional terms added by amendment or supplement. In certain cases, the orders and/or permits are identified by name in the Specifications; in other cases, the terms are used in the generic sense. The reader is cautioned to check the text(s) of each order and permit identified either by name or by generic reference.
  - **Applicable Laws and Regulations** - Where the phrase “applicable laws and regulations” appears, it is to be understood as including all applicable laws, acts, regulations, administrative rules, ordinances, statutes, and orders and permits issued by a governmental or regulatory authority.
- (e) **References to Websites** – For Specifications that reference this Subsection, the Agency will identify the website addresses in the Special Provisions.

#### 00110.10 Abbreviations

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

AAR	- Association of American Railroads
AASHTO	- American Association of State Highway and Transportation Officials
ABC	- Associated Builders and Contractors, Inc.
AC	- Asphalt Concrete
ACI	- American Concrete Institute
ACWS	- Asphalt Concrete Wearing Surface
AGC	- Associated General Contractors of America
AIA	- American Institute of Architects
AISC	- American Institute of Steel Construction
AISI	- American Iron and Steel Institute
AITC	- American Institute of Timber Construction
ANSI	- American National Standards Institute
APA	- American Plywood Association
APWA	- American Public Works Association
ARA	- American Railway Association
AREA	- American Railway Engineering Association
ASCE	- American Society of Civil Engineers
ASME	- American Society of Mechanical Engineers
ASTM	- American Society for Testing and Materials
ATPB	- Asphalt-Treated Permeable Base
AWG	- American Wire Gauge
AWPA	- American Wood Preservers Association
AWS	- American Welding Society
AWWA	- American Water Works Association
CAGT	- Certified Aggregate Technician
CAT-I	- Certified Asphalt Technician I
CAT-II	- Certified Asphalt Technician II
CBM	- Certified Ballast Manufacturers
CCO	- Contract Change Order
CCT	- Concrete Control Technician
CDT	- Certified Density Technician
CEBT	- Certified Embankment and Base Technician
CMDT	- Certified Mixture Design Technician
CPF	- Composite Pay Factor

CRSI	- Concrete Reinforcing Steel Institute
CFR	- Code of Federal Regulations
CS	- Commercial Standard, Commodity Standards Division, U.S. Department of Commerce
D1.1	- Structural Welding Code - Steel, American Welding Society, current edition
D1.5	- Bridge Welding Code, American Welding Society, current edition
DBE	- Disadvantaged Business Enterprise
DEQ	- Department of Environmental Quality, State of Oregon
DOGAMI	- Department of Geology and Mineral Industries, State of Oregon
DSL	- Division of State Lands, State of Oregon
EAC	- Emulsified Asphalt Concrete
EPA	- U.S. Environmental Protection Agency
ESCP	- Erosion and Sediment Control Plan
FHWA	- Federal Highway Administration, U.S. Department of Transportation
FSS	- Federal Specifications and Standards, General Services Administration
GSA	- General Services Administration
HMAC	- Hot Mixed Asphalt Concrete
ICEA	- Insulated Cable Engineers Association (formerly IPCEA)
IES	- Illuminating Engineering Society
IMSA	- International Municipal Signal Association
ISO	- International Standards Organization
ITE	- Institute of Transportation Engineers
JMF	- Job Mix Formula
MFTP	- Manual of Field Test Procedures (ODOT)
MIL	- Military Specifications
MSC	- Minor Structure Concrete
MUTCD	- Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, U.S. Department of Transportation
NEC	- National Electrical Code
NEMA	- National Electrical Manufacturer's Association
NESC	- National Electrical Safety Code
NIST	- National Institute of Standards and Technology
NPDES	- National Pollutant Discharge Elimination System
NPS	- Nominal Pipe Size (dimensionless)
OAR	- Oregon Administrative Rules
ODA	- Oregon Department of Agriculture



ODOT	- Oregon Department of Transportation
ORS	- Oregon Revised Statutes
OR-OSHA	- Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services
OSHA	- Occupational Safety and Health Administration, U.S. Department of Labor
PCA	- Portland Cement Association
PCI	- Precast/Prestressed Concrete Institute
PCP	- Pollution Control Plan
PF	- Pay Factor of a constituent
PLS	- Professional Land Surveyor
PMBB	- Plant Mixed Bituminous Base
PTI	- Post-Tensioning Institute
PUC	- Public Utility Commission, State of Oregon
QA	- Quality Assurance
QC	- Quality Control
QCT	- Quality Control Technician
QL	- Quality Level
QPL	- Qualified Products List
RAP	- Reclaimed Asphalt Concrete Pavement
REA	- Rural Electrification Administration, U.S. Department of Agriculture
RMA	- Radio Manufacturers Association or Rubber Manufacturers Association
RUSA	- Roseburg Urban Sanitary Authority
SAE	- Society of Automotive Engineers
SI	- International System of Units (Système Internationale)
SRCM	- Soil and Rock Classification Manual (ODOT)
SSPC	- Society for Protective Coatings
T	- Tolerances, AASHTO Test Method
TM	- Test Method (ODOT)
TV	- Target Value
UBC	- Uniform Building Code (as adopted by the State of Oregon)
UL	- Underwriters Laboratory, Inc.
UPC	- Uniform Plumbing Code (as adopted by the State of Oregon)
USC	- United States Code
WAQTC	- Western Alliance for Quality Transportation Construction
WCLIB	- West Coast Lumber Inspection Bureau

WWPA - Western Wood Products Association

### 00110.20 Definitions

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

**3D Engineered Model** – The Agency-prepared electronic file(s) that identify nothing, easting, and elevation to represent the Work to be performed. The 3D Engineered Model may include the surface model(s) or other designed Work elements and is an electronic representation of the line, grade and Cross Section applicable to the Project.

**3D Construction Model** - Supplemental unstamped 3D model, not furnished by the Agency, that the Contractor is required to submit to the Engineer.

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

**Actual Strength Test Value (ASTV)** - The ASTV at 28 Days is the average compressive strength of the three cylinders tested. All specimens that show definite evidence, other than low strength, of improper sampling, molding, handling, curing, or testing shall be discarded. The average strength of the remaining cylinders shall then be considered the test result.

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

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

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

**Agency** - The city, county, or State agency or special district or political subdivision, as applicable, which has entered into a Contract with the Contractor. For the purpose of this document, Agency is considered to be the Roseburg Urban Sanitary Authority.

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

**Aggregate** - Rock of specified quality and gradation.

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

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

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

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

**Bid Bond** - The Surety bond for Bid guarantee.

**Bid Booklet** - The bound paper version included in the Solicitation Documents that contain the information identified in 00120.10.

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

**Bid Documents** - See under Solicitation Document.

**Bid Opening** - The date and time Bids are opened.

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

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

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

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

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

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

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

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

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

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

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

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

**Class of Work** - A designation referring to the type of Work in which Bidders must be prequalified. Classes of Work are limited to those listed in ODOT's Contractor's Prequalification Application.

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

**Clear Zone** - The total roadside border area, starting at the edge of the Traveled Way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a nonrecoverable slope, and/or a clear run-out area. The desired width is dependent upon the traffic volumes and speeds and on the roadside geometry.

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

**Coarse Aggregate** - Crushed Rock or crushed Gravel retained on a ¼ inch sieve, with allowable undersize.

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

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

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

**Contract Administration Engineer** - The Agency representative presiding over Agency-level claims review under 00199.40.

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

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

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

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

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

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

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

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

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

**Emulsified Asphalt** - Emulsified asphalt cement.

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

**Engineer** - The Chief Engineer of the Agency acting either directly or through authorized representatives. If the Agency has not designated a Chief Engineer, this term denotes the person responsible for administering its public works program.

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

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

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

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

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

**Final Acceptance** - Written confirmation by the Agency that the Project has been completed according to the Contract, with the exception of latent defects and Warranty obligations, if any, and has been accepted.

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

**Fine Aggregate** - Crushed Rock, crushed Gravel, or Sand that passes a ¼ inch sieve, with allowable oversize.

**First Notification** - Written acknowledgment by the Engineer of the date on which workers employed by the Contractor or a Subcontractor have begun performance of the Contract, including Aggregate source development or erection of a plant, but not including installation of covered temporary signs according to Section 00222.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Special Services** - Force Account Work services that the Contractor and Engineer agree cannot be satisfactorily performed by the Contractor's and Subcontractors' forces, e.g., fabrication and machining work that is most effectively performed away from the Project Site, or rental of operated Equipment as defined in 00180.20©.

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

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

**Standard Specifications** - "Oregon Standard Specifications for Construction", Volume 1, Part 00100, "General Conditions", and "Oregon Standard Specifications for Construction", Volume 2, Parts 00200 through 03000, "Technical Specifications", current edition, published by the Oregon Department of Transportation.

**State** - The State of Oregon.

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

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

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

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

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

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

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

**Supplemental Specifications** - "Supplemental Oregon Standard Specifications for Construction". Supplemental Specifications are applicable to the particular Contract, and supplement and modify the Standard Specifications with regard to the Work to be done under that Contract.

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

**Surety** - The Entity that issues the bond.

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

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

**Topsoil** - Soil ready for use in a planting bed.

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

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

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

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

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

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

**Wetlands** - Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, vegetation typically adapted for life in saturated Soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

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



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

## **Section 00120 - Bidding Requirements and Procedures**

### **00120.00 Prequalification of Bidders**

Roseburg Urban Sanitary Authority will prequalify Bidders based on the Bidders valid prequalification with the Oregon Department of Transportation, Oregon Department of Administrative Services, City of Roseburg or other acceptable agency. In lieu of ODOT prequalification, the Bidder may submit an individual prequalification for the current project by submitting said application for on standard forms furnished by ODOT's Procurement Office - Construction, 455 Airport Road SE, Building K, Salem, Oregon 97301-5348 (telephone 503-986-6916), or other approved form. Bidders shall return the completed application to Roseburg Urban Sanitary Authority, Roseburg, Oregon at least 5 Calendar Days before the opening of Bids. Contracts will only be awarded to Bidders who, at the time of Bid Opening, are prequalified in the Class or Classes of Work specified in the Special Provisions, except that a Bidder whose prequalification has been revoked or revised as provided in ORS 279C.430(4) may also be eligible for Award under that statute if the Project was advertised prior to the revocation or revision.

All bidders and its subcontractors at time of bid submittal shall hold such licenses as required by State Statutes and Federal and Local Laws and Regulations and have a current, valid license issued by the Oregon Construction Contractors Board as required by ORS 701.055.

### **00120.01 General Bidding Requirements**

Each Bidder shall be registered as a "Holder of Bidding Plans". Bidder shall obtain plans and specifications from RUSA to be registered. Each Bid must be submitted on the prescribed Bid Form and delivered as specified in the Advertisement for Bid. The Bid Form must contain Signatures of personnel authorized to submit Bids, modify Bids, or withdraw Bids.

### **00120.05 Requests for Solicitation Documents**

Informational Plans and Specifications (not for bidding) may be obtained from the Engineer at a fee.

**(a) Informational Plans and Special Provisions** - Informational Project Plans and Special Provisions are available on the OregonBuys and Daily Journal of Commerce.

**(b) Bidding Plans, Special Provisions, and Bid Booklets** - Bidders may only submit paper Bids.

**(1) Paper Bids** - To be considered a responsive bidder, the bidder must purchase plans from RUSA for \$25. RUSA will place the bidder on the "Holders of Bidding Plans" list.

**(2) Electronic Bids** - Electronic Bids are not accepted by RUSA.

### **00120.10 Bid Booklet**

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

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

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

- Description and location of the proposed Project
- Time, date, and location for opening Bids
- Project completion time
- Class of Project (i.e., Federal-aid or State)
- Class of Work
- Identification of applicable Special Provisions
- Bid statement
- Certificate of non-collusion
- Certificate of residency
- Certificate of noninvolvement in any debarment or suspension (for Federal-aid Projects)
- Certificate regarding lobbying activities (for Federal-aid Projects)
- Certificate of residency (for State Projects)
- Certificate of compliance with Oregon tax laws
- Certificate of nondiscrimination regarding ORS 279A.110 and certificate regarding policy and practice against sexual harassment, sexual assault and discrimination against employees who are members of a protected class as required by ORS 279A.112 (House Bill 3060, 2017)
- Bid Schedule
- Identification of Bidder(s) and Sureties
- Limiting statements (See 00120.50.)
- Bid signature page
- Bid Bond form
- First-tier Subcontractor disclosure form

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

**00120.15 Examination of Work Site and Solicitation Documents; Consideration of Conditions to be Encountered**

Before submitting a Bid, Bidders shall carefully examine the site of the proposed Work, the Bid Booklet, Plans, and Specifications. Bidders shall also contact Utility owners to verify all Utilities' anticipated involvement on the Project Site. Bidders are also encouraged to review any subsurface investigation material referenced in 00120.25 that may be available. Submission of a Bid will constitute confirmation that the Bidder has examined the Project Site and Solicitation Documents, finds the Plans and Specifications to be sufficiently detailed and accurate to enable Bidder to properly perform the Work, and understands the conditions to be encountered in performing the Work and all requirements of the Contract.

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

Any clarification of Plans and Specifications needed by the Bidder shall be requested in writing through the Engineer. Requests shall be made in sufficient time for the Agency's reply to reach all Bidders before Bid Closing. Oral explanations or interpretations given before receiving Bids for a Project will not be binding. To be binding, interpretation of the Plans and Specifications by the Agency must be made by written Addendum furnished to all Holders of Bidding Plans according to 00120.30. Notification of erroneous or incomplete Plans or Specifications shall also be submitted to the Engineer. Such notification shall also be made in sufficient time for the Agency to make any necessary modifications and issue Addenda to Bidders prior to Bid Closing.

#### **00120.16 Material, Equipment, and Method Substitutions**

When the Contract specifies certain Materials, Equipment, and/or methods, the Bidder shall include those Materials, Equipment, and/or methods in the Bid unless the Engineer has issued an Addendum granting approval to substitute. Unless the Engineer has approved substitutions of Materials, Equipment, products, and/or methods prior to opening of Bids, the Bidder shall furnish the items specified in the Contract.

Substitution after Award is specified in 00180.31(b), 00180.31(c), and 00180.31(d). The procedure for requesting approval is as follows:

- (a) **Written Request** - Unless specified as the subject of an exemption per ORS 279C.345, if a Bidder proposes to use Materials, Equipment and/or methods other than those specified, the Bidder shall send a written request to the Engineer, at least 7 Calendar Days prior to Bid Opening, including complete descriptive and technical information on the proposed Materials, Equipment and/or methods.
- (b) **Functional Similarity** - Materials and Equipment proposed for substitution shall be similar in design, and equal or better in quality and function to those specified.
- (c) **Manufacturer's Information** - If manufacturers' brochures or information is needed, the Bidder shall submit three copies of each with all pertinent information clearly marked.
- (d) **Differences** - The Bidder shall specifically note all differences between the specified Materials, Equipment and/or methods and the proposed substitutes.
- (e) **Cost** - Where a substitute will result in alteration of the design or space requirements, or any other modifications to the Plans, the Bidder shall include in the substitution request all items of cost for the revised design and construction.
- (f) **Notification of Holders of Bidding Plans** - If the Engineer approves any proposed substitution, such approval, and any modifications necessitated to the design and construction by the substitution, will be acknowledged by Addenda. Unless the Engineer has approved substitutions of Materials, Equipment, and/or methods prior to opening of Bids, the Bidder shall furnish the items specified in the Contract. Substitution after Award is specified in 00180.31(b), 00180.31(c), and 00180.31(d).

#### **00120.25 Subsurface Investigations**

If the Agency or its consultant has conducted subsurface or geologic investigations of the proposed Project Site, the results of the investigations may be included in written reports. If reports have been prepared, copies will be available at the Engineer's office. If the Agency has retained subsurface samples, they will also be available for inspection. Bidders and the Contractor may make arrangements for viewing the samples through the Engineer's office. The availability of subsurface information from the Agency is solely for the convenience of the Bidder and shall not relieve the Bidder or the Contractor of any risk, duty to make examinations and investigations as required by 00120.15, or other responsibility under the Contract Documents. It is mutually agreed to by all parties that:

- The written report(s) are reference documents and not part of the Contract Documents.

- The subsurface investigations made by the Agency are for the purpose of obtaining data for planning and design of the Project.
- The data concerning borings is intended to represent with reasonable accuracy conditions and materials found in specific borings at the time the borings were made.
- If Bidders use this information in preparing a Bid, it is used at their own risk, and Bidders are responsible for all conclusions, deductions, and inferences drawn from this information.

**00120.30 Changes to Plans, Specifications, or Quantities before Opening of Bids**

The Agency reserves the right to issue Addenda making changes or corrections to the Plans, Specifications, or quantities. The Agency will provide Addenda by mail, fax, email or other electronic method only to those on the list of Holders of Bidding Plans. Bids shall incorporate all Addenda. Bids may be rejected if opened and found by the Agency to not be based on all Addenda issued. It will be the bidder’s responsibility to assure that the bidder has all issued Addenda for the project. The Agency will not be responsible for any missed addenda sent as listed in this section.

**00120.40 Preparation of Bids:**

**(a) General:**

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

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

- (2) Electronic Bids** – Electronic Bids are not accepted by RUSA

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

<b>Subsection</b>	<b>Requirements</b>
00120.80	Reciprocal Preference for Oregon Resident Bidders
00130.80	Project Site Restrictions
00150.55	Cooperation with Other Contractors
00150.75	Protection and Maintenance of Work during Construction
00160.20(a)	Buy America
00160.20(b)	Buy Oregon
00170.07	Record Requirements
00180.20	Subcontracting Limitations
00180.21	Subcontracting
00195.00(a)	Cost of Insurance and Bonds

00195.50(a)(1) Progress Estimates

00199.30 Claims Procedure

**(c) Bid Schedule Entries:**

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

**(2) Electronic Bid Schedule Entries** – Electronic Bid Schedules are not accepted by RUSA

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

**(e) Bid Guaranty** - All Bids shall be accompanied by a Bid guaranty in the amount of 10% of the total amount of the Bid. Acceptable Surety companies are limited to those authorized to do business in the State of Oregon. Forfeiture of Bid guaranties is covered by 00130.60, and return of guaranties is covered by 00130.70.

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

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

**(f) Disclosure of First-Tier Subcontractors** - Without regard to the amount of a Bidder’s Bid, if the Agency’s cost range for a public improvement Project in the "Notice to Contractors", or in other advertisement or Solicitation Documents, exceeds \$100,000, the Bidder shall, within 2 working hours of the time Bids are due to be submitted, submit to the Agency, on a form provided by the Agency, a disclosure identifying any first-tier Subcontractors that will furnish labor or labor and Materials, and whose contract value is equal to or greater than:

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

For each Subcontractor listed, Bidders shall state:

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

If no subcontracts subject to the above disclosure requirements are anticipated, a Bidder shall so indicate by entering “NONE” or by filling in the appropriate check box. For each Subcontractor listed, Bidders shall provide all requested information. Failure to submit a form or submission of a form that does not include the information required by ORS 279C.370 for each Subcontractor listed, specifically the name of each

Subcontractor, the dollar amount of each subcontract and the category of Work that each Subcontractor will perform, will result in the rejection of the Bid. The Agency is not required to determine the accuracy or the completeness of the Subcontractor disclosure. See ORS 279C.370 and OAR 731-007-0260.

The Subcontractor Disclosure Form may be submitted for a paper Bid (see 00120.05(b)(1)) by:

- Filling out the Subcontractor Disclosure Form included in the Bid Booklet and submitting it together with the Bid at the time and place designated for receipt of Bids;
- Printing it from the Bid Booklet on the ODOT eBIDS website, filling it out and submitting it separately to Roseburg Urban Sanitary Authority at the address or FAX number given in the Bid Booklet; or
- By e-mail, using the form and address provided on the Agency's web site named in the paper Bid Booklet.

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

E-mail submissions must be fully compatible with Word for Windows®. The Agency is not responsible for partial, failed, illegible or partially legible facsimile (FAX) transmissions or e-mail submittals, and such forms may be rejected as incomplete.

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

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

#### **00120.45 Submittal of Bids**

**(a) Paper Bids** - Paper Bids may be submitted by mail, parcel delivery service, or hand delivery to the offices and addresses, and at the times given in the Bid Booklet. Bidders shall submit paper Bids in a sealed envelope marked with the word "Bid", the name of the Project, and the words "To Be Opened Only by Authorized Personnel" on the outside. If submitting Bids by mail or by parcel delivery service, the Bidder shall place the sealed envelope containing the paper Bid inside a separate sealed envelope or package.

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

#### **00120.60 Revision or Withdrawal of Bids**

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

- Changes are prepared according to the instructions identified in the Bid Booklet;
- Changes are received at the same offices, addresses, and times identified in the paper Bid Booklet for submitting Bids; and
- The changes are submitted in writing or by scanning and submitting via email transmission to the email given in the paper Bid booklet, signed by an individual authorized to sign the Bid.

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

- The written withdrawal request is submitted on the Bidder's letterhead, either in person or by scanning and submitting via email transmission to the email given in the paper Bid booklet: and
- The request is signed by an individual who is authorized to sign the Bid, and proof of authorization to sign the Bid accompanies the withdrawal request; and

- The request is received at the same offices, addresses, and times identified in the paper Bid Booklet for submitting Bids.

#### **00120.65 Opening and Comparing Bids**

Bids will be opened and the total price for each Bid will be read publicly at the time and place indicated in the Notice to Contractors and the Bid Booklet. Bidders and other interested parties are invited to be present.

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

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

#### **00120.70 Rejection of Nonresponsive Bids**

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

- The Bid Section documents provided are not properly used or contain unauthorized alterations.
- The Bid is incomplete or incorrectly completed.
- The Bid contains improper additions, deletions, alternate Bids, or conditions.
- The Bid or Bid modifications are not signed by a person authorized to submit Bids or modify Bids, as required by 00120.01.
- The Bid is submitted on documents not obtained directly from the Agency's Plans office as identified in the Advertisement, or is submitted by a Bidder who has not been identified by the Agency as a Holder of Bidding Plans, as required by 00120.05.
- A member of a joint venture and the joint venture submit Bids for the same Project. Both Bids may be rejected.
- The Bid has entries not typed or in ink, or has signatures or initials not in ink (save for changes received by email as provided by 00120.60).
- Each change or correction is not individually initialed.
- White-out tape or white-out liquid is used to correct item entries.
- The price per unit cannot be determined.
- The Bid guaranty is insufficient or improper.
- The original Bid Bond form is not used or is altered.
- The Oregon Construction Contractors Board registration number and expiration date are not shown on the Bid if required in the Solicitation Document.
- A disclosure of first-tier Subcontractors, if required under 00120.40(f), is not received within 2 working hours of the time Bids are due to be submitted, or the disclosure form is not complete.
- The Bidder has not complied with the DBE requirements of the solicitation.
- The Bid does not acknowledge all issued Addenda.
- The Bid contains entries that are not greater than zero.
- The Bid contains entries with more than two decimals to the right of the decimal point.



- The Bid entries are not expressed in U.S. dollars and cents.
- The Bidder has liquidated and delinquent debt owed to the State or any department or agency of the State.
- The Agency determines that any Pay Item is significantly unbalanced to the potential detriment of the Agency.

#### **00120.80 Reciprocal Preference for Oregon Resident Bidders**

This Subsection applies only to Contracts for Projects financed without federal funds.

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

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

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

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

In determining the lowest Bid, the Agency will, for the purpose of awarding the Contract, add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides (ORS 279A.120). The percentage preference applied in each state will be published on or before January 1 of each year by the Oregon Department of Administrative Services. The Agency may rely on these percentages without incurring liability to any Bidder (ORS 279A.120).

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

#### **00120.90 Disqualification of Bidders**

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

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

A Bidder will be disqualified if the Bidder has:

- Not been prequalified as required by 00120.00;
- Been declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860;
- Not been registered (licensed) by the Oregon Construction Contractors Board (CCB) or been licensed by the State Landscape Contractors Board before submitting a Bid (ORS 279C.365(1)(k), ORS 701.055, and ORS 671.530). The Bidder's registration number and expiration date shall be shown in the Bid form, if requested. Failure to furnish the registration number, if requested, will render the Bid non-responsive and subject to rejection. (Not required on Federal-aid projects); or

- Been determined by the CCB under ORS 701.227 not to be qualified to hold or participate in a public contract for a public improvement.

**00120.91 Rejection of Bid on Grounds of Nonresponsibility of Bidder**

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

## **Section 00130 - Award and Execution of Contract**

### **00130.00 Consideration of Bids**

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

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

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

### **00130.10 Award of Contract**

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

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

- An unexpired certificate issued by the Oregon Department of Administrative Services (under ORS 279A.167) upon completion of the curriculum and assessment that the Bidder understands the prohibitions set forth in ORS 652.220 and in other laws or rules that prohibit discrimination in compensation or wage payment. The certificate is only required if the Bidder employs 50 or more full-time workers and submitted a Bid for a procurement with an estimated contract price that exceeds \$500,000.

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

The Agency will provide Notice of Intent to Award in writing and or by email to contractors on the Holder of Bidding Plans list. The Notice may also be posted on the Agency's web site.

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

- Three working days after the Notice of Intent to Award has been posted as specified in the advertised solicitation or Addendum thereto; or
- The Agency has provided a written response to each timely protest, denying the protest and affirming the Award.

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

Notice of Award and Contract booklets ready for execution will be sent within 30 Calendar Days of the opening of Bids or within the number of Calendar Days specified in the Special Provisions or a written mutual agreement.

#### **00130.15 Right to Protest Award**

Adversely affected or aggrieved Bidders, limited to the three apparent lowest Bidders and any other Bidder directly in line for Contract Award, may submit to the Roseburg Urban Sanitary Authority Office a written protest of the Agency's intent to Award within 3 working days following posting of the Notice of Intent to Award. The protest shall specify the grounds upon which it is based.

The Agency may not consider late protests.

#### **00130.20 Cancellation of Award**

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

#### **00130.30 Contract Booklet**

The Contract booklet may include but is not limited to:

- Supplemental Specifications, if any
- Special Provisions
- Addenda
- Schedule of Items
- Contract
- Performance Bond
- Payment Bond

- Certification of workers' compensation coverage

#### **00130.40 Contract Submittals**

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

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

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

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

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

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

- (c) **Workers' Compensation** - To certify compliance with the workers' compensation insurance coverage required by 00170.61(a) and 00170.70(d), the successful Bidder shall submit a "Certification of Workers' Compensation Coverage" from the insurance carrier.

(d) **Registration Requirements:**

(1) ORS 701.055 and ORS 671.530 require that Bidders be registered with the Oregon Construction Contractors Board or licensed by the State Landscape Contractors Board prior to submission of a Bid on a Project not involving federal funds. Registration with the Construction Contractors Board or licensing by the State Landscape Contractors Board is not a prerequisite to bidding on Federal-aid Projects; however, the Agency will not execute a Contract until the Contractor is so registered or licensed.

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

(e) **Tax Identification Number**

The successful Bidder shall furnish the Agency the Bidder's Federal Tax Identification Number.

#### **00130.50 Execution of Contract and Bonds**

- (a) **By the Bidder** - The successful Bidder shall deliver the required number of Contract booklets with the properly executed Contract, Performance Bond, Payment Bond, certification of workers' compensation coverage, and the required certificates of insurance, to the RUSA Office within 15 Calendar Days after the date on which the Contract booklets are sent or otherwise conveyed to the Bidder under 00130.10. The

Bidder shall return the originals of all documents received from the Agency and named in this Subsection, with original signatures. Certificates of insurance shall also be originals. Certificates of insurance for coverages that are permitted by the Agency under 00170.70(a) to be obtained by appropriate subcontractors shall be delivered by the Contractor to the Agency together with the Contractor's request under 00180.21 for approval of the subcontract with that subcontractor. No copies of these documents will be accepted by the Agency.

Proper execution requires that:

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

**(b) By the Agency** - Within 7 Calendar Days after the Agency has received and verified the properly executed documents specified in 00130.50(a), the Agency will execute the Contract. The Agency will then send a fully-executed original Contract booklet to the successful Bidder, who then officially becomes the Contractor.

**00130.60 Failure to Execute Contract and Bonds**

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

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

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

**00130.70 Release of Bid Guaranties**

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

**00130.80 Project Site Restriction**

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

The Contractor will not automatically be entitled to extra compensation because the commencement of Work is delayed by failure of the Agency to send the Contract for execution. However, if more than 30 Calendar Days elapse between the date the Bid is opened and the date the Agency sends the Contract to be executed, the Agency will consider granting an adjustment of time for completion of the Work to offset any actual delay to Contract completion resulting directly from delay in commencement.

**00130.90 Notice to Proceed**

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

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

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

## **Section 00140 - Scope of Work**

### **00140.00 Purpose of Contract**

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

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

### **00140.10 Typical Sections**

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

### **00140.20 Thickness**

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

### **00140.30 Agency-Required Changes in the Work**

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

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

- Specifications and design
- Grade and alignment
- Cross Sections and thicknesses of Courses of Materials
- 3D Engineered Model
- Method or manner of performance of Work
- Project Limits

or may result in:

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



Upon receipt of a Change Order, the Contractor shall perform the Work as modified by the Change Order. If the Change Order increases the Contract Amount, the Contractor shall notify its Surety of the increase and shall provide the Agency with a copy of any resulting modification to bond documents. The Contractor's performance of Work according to Change Orders shall neither invalidate the Contract nor release the Surety. Payment for changes in the Work will be made according to 00195.20. Contract Time adjustments, if any, will be made according to 00180.80.

#### **00140.40 Differing Site Conditions**

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

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

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

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

#### **00140.50 Environmental Pollution Changes**

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

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

#### **00140.60 Extra Work**

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

- Standard Specifications
- Other Plans and Specifications issued by the Engineer
- Supplemental Specifications, if any

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

#### **00140.65 Disputed Work**

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

#### **00140.70 Cost Reduction Proposals**

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

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

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

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

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

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

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

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

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

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

- Statement that the Change Order is made according to 00140.70;
- Revised Plans and Specifications that reflect all modifications necessary to implement the approved cost reduction measures;
- Any conditions upon which the Agency's approval is subject;
- Estimated net savings in construction costs attributable to the approved cost reduction measures; and
- A payment provision according to which the Contractor will be paid 50% of the estimated net savings amount as full and adequate consideration for performance of the Work of the Change Order.

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

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

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

**00140.80 Use of Publicly Owned Equipment**

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

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

**00140.90 Final Trimming and Cleanup**

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

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

These Materials and debris become the property of the Contractor. The Contractor shall dispose of these Materials and debris immediately.

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

**Section 00150 - Control of Work**

**00150.00 Authority of the Engineer**

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

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

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

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

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

**00150.01 Project Manager's Authority and Duties**

The Engineer may designate a Project Manager as its representative on the Project with authority to enforce the provisions of the Contract.

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

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

**00150.02 Inspector's Authority and Duties**

To the extent delegated under 00150.01, Inspectors are authorized to represent the Engineer and Project Manager to perform the following:

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

Inspectors are not authorized to:

- Accept Work or Materials.
- Alter or waive provisions of the Contract.

- Give instructions or advice inconsistent with the Contract Documents.

**00150.10 Coordination of Contract Documents**

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

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

- Contract Change Orders;
- Special Provisions;
- Stamped Agency-prepared drawings specifically applicable to the Project and bearing the Project title;
- Reviewed and accepted, stamped Working Drawings;
- 3D Engineered Models and supplemental Agency-prepared line, grade and Cross Section data applicable to the Project;
- Standard Drawings;
- Approved Unstamped Working Drawings and 3D Construction Models;
- Standard Specifications; and
- All other contract documents not listed above.

Notes on a drawing shall take precedence over drawing details.

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

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

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

**00150.15 Construction Stakes, Lines, and Grades**

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

(b) **Agency Responsibilities** - The Engineer will:

- Lay out and set construction stakes and marks to establish the lines, grades, Slopes, Cross Sections, and curve super-elevations for roadwork;
- Provide one set of construction stakes for line and grade for each additional phase of the Work;
- Set bench marks and stakes for centerline of Bridges and bents;
- Calculate and provide finish deck grades;
- Deduct from payments due the Contractor all costs incurred to replace stakes and marks negligently or intentionally damaged, removed, or destroyed by the Contractor; and

- Provide information on manhole locations.

Information provided on control points and proposed manhole locations shall be provided in comma delimited text format and shall include Point Number, Northing, Easting, Elevation, & Description.

Control points displayed on construction sheets apply only to the area of work shown on the same sheet.

**(c) Contractor Responsibilities** - The Contractor shall:

- Inform the Engineer of staking requirements at least 5 Calendar Days before the staking needs to begin;
- Contact Engineer to request the survey information that will be provided as stated above; and
- Be responsible for additional control points & construction stakes that may be required.

#### **00150.20 Inspection**

**(a) Inspection by the Engineer** - The Engineer may test Materials furnished and inspect Work performed by the Contractor to ensure Contract compliance.

If the Contractor performs Work without the Engineer's inspection or uses Materials that the Engineer has not approved, the Engineer may order affected portions of the Work removed at the Contractor's expense. The foregoing sentence shall not apply if the Engineer fails to inspect the Work within a specific period of time required in the Contract, or in the absence of a specific period of time, within a reasonable period of time after receiving the Contractor's timely written request for inspection or testing.

At the Engineer's direction, any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore these portions of Work to the standard required by the Contract. If the Engineer rejects Work due to Materials or workmanship, or if the Contractor performed such Work without providing sufficient advance request for inspection to the Engineer, the Contractor shall bear all costs of uncovering and restoring the Work. If the Engineer accepts the uncovered Work, and the Contractor performed the Work only after providing the Engineer with sufficient advance notice, the costs of uncovering and restoring the Work will be paid for by the Agency according to 00195.20.

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

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

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

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

#### **00150.25 Acceptability of Materials and Work**

The Contractor shall furnish Materials and shall perform Work in Close Conformance to the Plans and Specifications. If the Engineer determines that the Materials furnished or the Work performed are not in Close Conformance with the Plans and Specifications, the Engineer may:

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

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

### **00150.30 Delivery of Notices**

Written notices to the Contractor by the Engineer or the Agency will be delivered:

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

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

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

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

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

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

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

For purposes of this Subsection, the time zone is Pacific Standard Time (PST) to determine time of receipt of notices and other documents. For purposes of this Subsection, non-business days are Saturdays, Sundays and legal holidays as defined by ORS 187.010 and 187.020.

Claims must be submitted on paper documents according to Section 00199.



**00150.35 Plans, 3D Engineered Models, Working Drawings, and 3D Construction Models**

- (a) **Plans and 3D Engineered Models** - The Agency-prepared Plans and 3D Engineered Models will show details of lines, grades, Cross Sections, and Typical Section of the Roadway, and locations and design details of Structures.
- (b) **Working Drawings and 3d Construction Models** - The Contractor shall supplement the Agency-prepared Plans and 3D Engineered Models with stamped Working Drawings, unstamped Working Drawings, or 3D Construction Models that show all information necessary to complete the Work. The applicable Section or Subsection of the Standard Specifications will indicate the supplemental information required and whether the drawings are to be stamped or unstamped. Stamped Working Drawings, unstamped Working Drawings, and 3D Construction Models are defined as follows:
  - (1) **Stamped Working Drawings** - Working Drawings, calculations, and other data which are prepared by or under the direction of a Professional Engineer licensed in the State of Oregon, and which bear the engineer's signature, seal, and expiration date.
  - (2) **Unstamped Working Drawings** - Working Drawings, calculations, and other data that do not bear an engineering seal.
  - (3) **3D Construction Models** - See 00110.20
- (c) **Number, Size and Format of Working Drawings and 3D Construction Models** – The Contractor shall submit Working Drawings and 3D Construction Models according to one of the following methods:
  - (1) **Paper Submittal** - The Contractor shall submit to the Engineer seven copies of Working Drawings for steel Structures and six copies of Working Drawings for other Structures to the Engineer. The submitted copies shall be clear and readable. Drawing dimensions shall be 8 ½ inches by 11 inches, 11 inches by 17 inches, or 22 inches by 36 inches in size. One copy of the submitted Working Drawings will be returned to the Contractor after processing. The Contractor shall submit such additional number of copies to the Engineer for processing that the Contractor would like to have returned.  
  
The Contractor shall not submit 3D Construction Model data in paper format.
- (d) **Processing Working Drawings and 3D Construction Models** - The Engineer will process Working Drawings and 3D Construction Models as follows:
  - (1) **Stamped Working Drawings** - Stamped Working Drawings will be designated as "accepted", "accepted with comments", or "returned for correction" by the Engineer. If stamped Working Drawings are returned for correction by the Engineer, the Contractor shall address all comments and resubmit the stamped Working Drawings.
  - (2) **Unstamped Working Drawings** - - Unstamped Working Drawings will be designated as "approved", "approved as noted", or "returned for correction" by the Engineer. If unstamped Working Drawings are returned for correction by the Engineer, the Contractor shall address all comments and resubmit the unstamped Working Drawings.
  - (3) **3D Construction Models** - 3D Construction Models will be designated as "approved", "approved as noted", or "returned for correction" by the Engineer. If 3D Construction Models are returned for correction by the Engineer, the Contractor shall address all comments and resubmit the 3D Construction Models.

The Contractor shall not fabricate or construct any structural components until the stamped or unstamped Working Drawings are returned by the Engineer with written designation of "accepted", "accepted with comments", "approved", or "approved as noted", as applicable for the Working Drawings.

The Contractor shall not begin construction activities that will utilize a 3D Construction Model until the Engineer has processed the model and designated it as "approved" or "approved as noted".

The Engineer's processing of the Working Drawings and 3D Construction Model does not amend any contractual obligations of the parties.

The Engineer will process and return Working Drawings and 3D Construction Models within 21 Calendar Days (65 Calendar Days if Railroad approval is required) after receipt by the Engineer. If the Engineer fails to return such drawings within this period of time, the Engineer will consider granting a Contract Time extension according to 00180.80. If the Contractor is required to resubmit Working Drawings or 3D Construction models to the Engineer, the Engineer will process and return the Working Drawings or 3D Construction Models within 21 Calendar Days (65 Calendar Days if Railroad approval is required) after receipt of the resubmitted Working Drawings or 3D Construction Models by the Engineer.

**00150.37 Equipment Lists and Other Submittals**

The Contractor shall submit Equipment lists, and other required submittals for approval by the Engineer. The Engineer will respond to requests for approval within 21 Calendar Days (65 Calendar Days if Railroad approval is required) after receipt by the Engineer unless otherwise specified in the Section of the Specifications requiring such approval.

**00150.40 Cooperation and Superintendence by the Contractor**

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

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

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

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

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

**00150.50 Cooperation with Utilities**

- (a) **General** - Unless otherwise specified in the Special Provisions, existing Utilities requiring adjustment may be adjusted by the Utility before, during, or after Project construction. "Adjustment of Utilities" shall mean the alteration, improvement, connection, disconnection, relocation, or removal of existing Utility lines, facilities, or systems in temporary or permanent manner.
- (b) **Agency Responsibilities** - Before Bids are received, the Agency will make preliminary arrangements for planned Adjustment of Utilities. The Agency will list in the Special Provisions the estimated completion dates or times for adjustment work by the Utility owner, and will include a general statement describing any relocation. The Plans will not normally show the anticipated new location of Utilities that have been or will be adjusted.
- (c) **Contractor's Responsibilities** - The Contractor shall:
  - Follow applicable rules adopted by the Oregon Utility Notification Center;
  - Contact Utility owners during Bid preparation and after the Contract is awarded to verify all Utilities' involvement on the Project Site;

- Coordinate Project construction with the Utilities' planned adjustments, take all precautions necessary to prevent disruption of Utility service, and perform its Work in the manner that results in the least inconvenience to the Utility owners;
- Include all Utility adjustment work, whether to be performed by the Contractor or the Utilities, on the Contractor's Project Work schedule submitted under 00180.41;
- Protect from damage or disturbance any Utility that remains within the area in which Work is being performed. Maintain and re-establish location marks according to OAR 952-001-0090(2)(a). Coordinate re-establishment of the location marks with the associated Utility;
- Not disturb an existing Utility if it requires an unanticipated adjustment, but shall protect it from damage or disturbance and promptly notify the Engineer;
- Backfill any exposed Utilities as recommended and approved by the Utility representative. Obtain Utility locate warning tape from the Utility and replace damaged or removed warning tape. Utility locate warning tape may not be present at all existing Utilities;
- Stake, place warning tape, and maintain no work limits around critical Utility facilities as shown or directed by the Engineer and the Utility;
- In addition to the notification required in OAR 952-001-0090(5), notify the Engineer and the Utility as soon as the Contractor discovers any previously unknown Utility conflicts or issues. Contrary to the OAR, stop excavating until directed by the Engineer and allow the Utility a minimum of two weeks to relocate or resolve the previously unknown Utility issues; and
- Report to the Engineer any Utility owner who fails to cooperate or fails to follow the planned Utility adjustment.

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

**(d) Delays** - If the Contractor complies with Subsection C above, and if Utility adjustments are completed later than the date specified in the Special Provisions, thus causing Project completion to be delayed (provide notification under 00180.60), additional Contract Time will be considered under 00180.80, and additional compensation, if applicable, will be considered under 00195.40.

**(e) Notification** – Unless otherwise specified in the Special Provisions, the Project is located within the area served by the Oregon Utility Notification Center, which operates a Utilities notification system for notifying owners of Utilities about Work being performed in the vicinity of their facilities. The Contractor shall notify owners of Utilities prior to the performance of Work in the vicinity of their facilities. The Utilities notification system telephone number is 1-800-332-2344.

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

**00150.55 Cooperation with Other Contractors**

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

If such work takes place within or next to the Project Site, the Contractor shall have the following obligations:

- The Contractor shall coordinate Work with other contractors or forces.

- The Contractor shall cooperate in good faith with all other contractors or forces.
- The Contractor shall perform the Work specified in the Contract in a way that will minimize interference and delay for all forces involved.
- The Contractor shall place and dispose of the Materials being used so as not to interfere with the operations of other forces.
- The Contractor shall join the Work with that of other forces in a manner acceptable to the Engineer or the Agency, and shall perform it in the accepted sequence with the work of the other force. The Engineer will resolve any disagreements under this Subsection that may arise among the Contractor and other work forces, or between the Contractor and the Agency. The Engineer's decision in these matters is final, as provided in 00150.00.

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

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

If the Contract gives notice of work to be performed by other forces that may affect the Contractor's Work under the Contract, the Contractor shall include any costs associated with coordination of the Work in the appropriate Pay Item or as a portion of a Pay Item. In an emergency, the contractor most immediately able to respond may repair a facility or Utility of another contractor in order to prevent further damage to the facility, Utility, or other Structure as a result of the emergency.

**00150.60 Construction Equipment Restrictions**

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

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

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

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

- (c) Responsibility for Damages** - The Contractor shall assume responsibility for damages caused by excessive Equipment speed or loads while performing the Work, both inside and outside the Project Site.

The Engineer's permission to cross Bridges and other Structures, according to 00150.60(a) will not relieve the Contractor from responsibility for load-caused damages.

**00150.70 Detrimental Operation**

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

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

**00150.75 Protection and Maintenance of Work During Construction**

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

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

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

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

**00150.80 Removal of Unacceptable and Unauthorized Work**

The Contractor shall correct or remove unacceptable Work, as directed by the Engineer in writing. The Contractor shall replace such work with Work and Materials conforming to the requirements of the Contract. For the purposes of this Subsection, "unauthorized work" shall include without limitation the following:

- Work that extends beyond lines shown on the Plans or otherwise established by the Engineer;
- Work that is contrary to the Engineer's instructions; and
- Work that is conducted without the Engineer's written authorization.
- A tolerance for vertical deviation from true grade line should be plus or minus 1/4 inch. Depressions for solids deposition will not be acceptable. Similarly, the horizontal tolerance for deviation from line should be plus or minus 3/8 inch.

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

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

**00150.90 Final Inspection:**

- (a) **On-site Construction Work** - The Engineer will inspect the Project at a time close to the completion of On-Site Work.

When all On-Site Work on the Project is completed, including but not limited to Change Order Work and Extra Work, the Engineer will issue a Notice of Substantial Completion as specified in 00180.50(g). Within 15 Calendar Days after the Engineer receives the Contractor's written notification that all punch list items, final trimming and cleanup according to 00140.90 have been completed, the Engineer will review the Project and notify the Contractor that all Work is complete, or will give the Contractor written instruction regarding incomplete or unsatisfactory Work.

- (b) **All Contract Work** - The Engineer will issue the Final Completion Notice when the Contractor has satisfactorily accomplished all of the following:

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

**00150.95 Final Acceptance**

After the Engineer completes Final Inspection of all Work and sends Final Completion Notice to the Contractor, the Agency will acknowledge Final Acceptance. The Agency will notify the Contractor in writing of the date of Final Acceptance within 7 Calendar Days after Final Acceptance, or as soon thereafter as is practicable.

**00150.96 Maintenance Warranties and Guarantees**

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

**00150.97 Responsibility for Materials and Workmanship**

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

- (b) Whether before or after the Agency's acceptance of the Work, the Contractor shall be responsible for:

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

## Section 00160 - Source of Materials

### 00160.00 Definitions

The following definitions apply to Section 00160:

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

### 00160.01 Notification of Source of Supply and Materials

- (a) **All Materials** - The Contractor shall notify the Engineer in writing of all proposed Materials sources of supply, including without limitation any steel or other fabricators within the following time frames:
- At least 15 Calendar Days before using or fabricating Materials, if source is within the State; or
  - At least 45 Calendar Days before using or fabricating Materials, if source is within the State.

The Contractor shall identify if the material source is a DBE or non-DBE. For DBE Suppliers, the Contractor shall identify an estimated value of the materials to be supplied. For each committed DBE Supplier, the Contractor shall submit a copy of the materials purchase order or supply agreement. For non-committed DBE suppliers, when the estimated value is over \$10,000, the Contractor shall submit a copy of the materials purchase order or supply agreement.

For this purpose, a committed DBE firm is one that was identified by the Contractor to meet an assigned DBE goal, including DBE firms substituting for DBE firms committed as a condition of Contract Award.

- (b) **Prospective Source Materials** - When given an option to use Prospective Sources of Materials to be incorporated into the Work, the Contractor shall notify the Engineer in writing of the option selected within 15 Calendar Days from date of Notice to Proceed. Otherwise, such Materials sources may become unavailable.
- (c) **Approval Required** - Before allowing production or delivery of Materials to begin from any source, the Contractor must obtain the Engineer's approval. Approval to use any source does not imply that Materials from that source will be accepted. If approved sources do not provide Materials that meet Specifications, the Materials will be rejected. The Contractor will then be responsible for locating other sources and obtaining the Engineer's approval.

### 00160.05 Qualified Products List (QPL)

The QPL is a listing of manufactured products available on the market (shelf items) that ODOT has evaluated and found suitable for a specified use in highway construction. The QPL is available from ODOT's Construction Section website (see 00110.05(e)).

The most current published PDF version of the QPL on ODOT's Construction Section website at the time of Advertisement is the version in effect for the Project. When the Contract specifies the use of the QPL, unless specified as the subject of an exemption per ORS 279C.345, the Agency may approve for use a conditionally qualified product, a product qualified for inclusion in a later edition of the QPL, or other equivalent product that meets the requirements of the QPL, following the Standard Guidelines for Product Review, if the Agency finds the product acceptable for use on the Project.

Use of listed products shall be restricted to the category of use for which they are listed. The Contractor shall install all products as recommended by the manufacturer. The Contractor shall replace qualified products not conforming to Specifications or not properly handled or installed at no additional cost to the Agency.



### **00160.10 Ordering, Producing, and Furnishing Materials**

The Contractor shall not place orders for or produce full quantities of Materials anticipated to be required to complete the Work until the Work has advanced to a stage that allows the quantities to be determined with reasonable accuracy. Upon request, the Engineer will notify the Contractor in writing of the quantities required. Quantity estimates by the Engineer before this notification are only approximate.

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

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

**(b) Approval of Quantity of Materials Ordered** - Materials quantities shown on the Plans, or indicated by quantities and Pay Items, are subject to change or elimination. Therefore, the Contractor is cautioned to order or produce Materials only after having received the approval of the Engineer. The Contractor is responsible for payment for excess Materials delivered to the Project Site or storage sites without advance authorization from the Engineer. Unless otherwise specified in the Contract, the Agency will not be responsible for:

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

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

### **00160.20 Preferences for Materials**

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

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

### **00160.30 Agency-Furnished Materials**

Unless otherwise specified in the Special Provisions, Materials listed as Agency-furnished will be available to the Contractor free of charge. The Contractor shall be responsible for all Materials furnished by the Agency and shall pay all demurrage and storage charges. The Contractor shall replace at its expense Agency-furnished Materials lost or damaged due to any cause.

The locations at which Agency-furnished Materials are available will be specified in the Special Provisions. All costs of handling, hauling, unloading, and placing Agency-furnished Material shall be considered included in the price paid for the Pay Item involving such Material.

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

**00160.60 Contractor-Furnished Materials and Sources**

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

## Section 00165 – Quality of Material

### 00165.00 General

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

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

### 00165.01 Rejected Materials

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

### 00165.02 Materials Conformance and Quality Compliance Documents

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

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

### 00165.03 Testing by Agency

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

### 00165.04 Costs of Testing

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

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

### 00165.10 Materials Acceptance Guides

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

- (a) **Field-Tested Materials** - Field-tested Materials will be accepted according to the (MFTP). The MFTP is published once per year and is available from the ODOT Construction Section; 800 Airport Road SE, Salem, Oregon 97301-4798 (telephone 503-986-3000). The MFTP is also available on the ODOT Construction Section website (see 00110.05(e)). The most current version of the MFTP on the date of Advertisement is the version in effect for the Project.
- (b) **Nonfield-Tested Materials** - Nonfield-tested Materials will be accepted according to the ODOT *Nonfield Tested Materials Acceptance Guide* (NTMAG), unless otherwise specified in the Contract.

The NTMAG is available at the ODOT Construction Section website (see 00110.05(e)). The most current version of the NTMAG on the date of Advertisement is the version in effect for the Project.

**00165.20 Materials Specifications and Test Method References**

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

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

Field-Tested Materials:

- Contract Change Orders;
- Special Provisions;
- ODOT *laboratory Manual of Test Procedures*;
- MFTP; and
- Standard Specifications.

Nonfield Tested Materials:

- Contract Change Orders;
- Special Provisions;
- ODOT *Laboratory Manual of Test Procedures*; and
- Standard Specifications.

Material test methods:

- ODOT;
- WAQTC;
- AASHTO;
- ASTM;
- Other recognized national organizations, such as ANSI, AWWA, IMSA, ISSA and UL; and
- Industry standards in the location where the Work is being performed.

Sampling and testing frequencies:

- Special Provisions;
- MFTP;
- Supplemental Specifications; and
- Standard Specifications.

If the Contractor identifies conflicting references or if no reference is made, the Contractor shall immediately request a clarification from the Engineer.

**00165.30 Field-Tested Materials**

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

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

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

**(c) Acceptance of Field-Tested Materials** - The Contractor's test results for field-tested Materials will be verified by the Agency according to the Quality Assurance program outlined in the MFTP. If the Agency's QA test results verify the Contractor's results, the Materials will be analyzed for acceptance according to one of the following methods before the Engineer will accept them for incorporation into the Work:

- Statistically, according to 00165.40, to determine "Pay Factors" for produced Aggregate;
- Statistically, according to 00165.40, to determine "Composite Pay Factors" for mixtures; or
- Other methods determined by the Engineer.

If the Agency's verification test results do not verify the Contractor's test result, the Agency may require additional testing to determine whether the Materials meet Specifications. The Contractor shall perform additional testing or provide samples to the Agency for testing as directed. If the Materials do not meet Specifications, the Contractor shall reimburse the Agency for the cost of the additional testing, which may be deducted from monies due or to become due the Contractor under the Contract. Incorporated Materials that do not meet Specifications will be evaluated according to 00165.01 and 00150.25. If the Materials meet Specifications the Agency will pay the cost for the additional testing.

### **00165.35 Nonfield-Tested Materials**

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

**(a) Test Results Certificate** - The Certificate shall:

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

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

- Verify that the Material meets the Specifications, and identify by number the specified test methods used, (ODOT, AASHTO, ASTM, UL, or other)

- Permit positive determination that Material delivered to the Project is the same Material covered by the certificate,
- Be delivered to the Engineer with the shipment of the Material, or be an identification plate or mark, decal, sticker, label, or tag attached to the container or Material.

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

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

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

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

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

#### **00165.70 Use of Materials without Acceptable Materials Conformance Documents**

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

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

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

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

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

#### **00165.75 Storage and Handling of Materials**

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

Stored Materials:

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

### **Measurement**

#### **00165.80 Measurement**

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

### **Payment**

#### **00165.90 Incidental Basis**

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

## **Section 00170 - Legal Relations and Responsibilities**

### **00170.00 General**

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

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

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

The characterization of provisions of the Contract as material provisions or the failure to comply with certain provisions as a material breach of the Contract shall in no way be construed to mean that any other provisions of the Contract are not material or that failure to comply with any other provisions is not a material breach of the Contract.

All rights and remedies available to the Agency under applicable Laws are incorporated herein by reference and are cumulative with all rights and remedies under the Contract.

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

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

It is the Agency's intention to make all payments due under the Contract if funds are legally available for such purpose. The Agency reasonably believes that at the time of entering into the Contract sufficient funds are available and authorized for expenditure to finance the cost of the Contract within the Agency's appropriation or limitation, or other funding sources. Agency's payment of amounts under the Contract is contingent on the Agency receiving adequate appropriations, limitations or other expenditure authority or funds to allow the Agency to continue to make payments under the Contract. In the event the Agency becomes aware that sufficient funds are not available and authorized, the Agency will provide prompt written notice to the Contractor, and the Agency may terminate the Contract as provided in 00180.90(c).



## Provisions and Requirements

### 00170.01 Other Agencies Affecting Agency Contracts

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

#### (a) Federal Agencies:

- Agriculture, Department of
  - Forest Service
  - Natural Resource Conservation Service
- Army, Department of the
  - Corps of Engineers
- Commerce, Department of
  - National Marine Fisheries Service
- Defense, Department of
- Energy, Department of
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- Geology Survey
- Health and Human Services, Department of
- Homeland Security, Department of
  - U.S. Coast Guard
- Housing and Urban Development, Department of
- Interior, Department of
  - Heritage, Conservation, and Recreation Service
  - Bureau of Indian Affairs
  - Bureau of Land Management
  - Bureau of Mines
  - Bureau of Reclamation
  - Geological Survey
  - Minerals Management Service
  - Office of Surface Mining, Reclamation, and Enforcement
- Minerals Management Service
- National Oceanic and Atmospheric Administration
- Solar Energy and Energy Conservation Bank
- U.S. Fish and Wildlife Service

Labor, Department of  
    Mine Safety and Health Administration  
    Occupational Safety and Health Administration  
Transportation, Department of  
    Federal Highway Administration  
Water Resources Council

**(b) State of Oregon Agencies:**

Administrative Services, Department of  
Agriculture, Department of  
    Natural Resources Division  
    Soil and Water Conservation District  
Consumer and Business Services, Department of  
    Insurance Division  
    Oregon Occupational Safety and Health Division  
Energy, Office of  
Environmental Quality, Department of  
Fish and Wildlife, Department of  
Forestry, Department of  
Human Resources, Department of  
Labor and Industries, Bureau of  
Land Conservation and Development Department  
Parks and Recreation, Department of  
State Lands, Division of  
Water Resources Department

**(c) Local Agencies:**

City Councils  
County Courts  
County Commissioners, Boards of  
Design Commissions  
Historical Preservation Commissions  
Lane Regional Air Pollution Authority (LRAPA)  
Planning Commissions  
Port Districts  
Special Districts

**(d) Oregon Federally Recognized Tribal Governments:**

- Burns Paiute Tribe
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
- Confederated Tribes of Grand Ronde
- Confederated Tribes of Siletz
- Confederated Tribes of Umatilla Indian Reservation
- Confederated Tribes of Warm Springs
- Coquille Tribe
- Cow Creek Band of Umpqua Indians
- Klamath Tribe

**00170.02 Permits, Licenses, and Taxes**

As required to accomplish the Work, the Contractor shall do the following:

- Obtain all necessary permits and licenses, except for those noted in 00170.03;
- Pay all applicable charges, fees and taxes, except for those noted in 00170.03;
- Give all notices required by applicable Laws, or under the terms of the Contract;
- Comply with ORS 274.530 relating to lease of stream beds by Oregon Division of State Lands;
- License, in the State of Oregon, all vehicles subject to licensing;
- Comply with ORS 477.625 and ORS 527.670 relating to clearing and fire hazards on forest lands; and
- Comply with all orders and permits issued by a governmental authority, whether local, State, or federal.

**00170.03 Furnishing Right-of-Way and Permits**

RUSA will obtain and pay for the following when they are required by the applicable Laws or by Plans or Specifications:

- All necessary Rights-of-Way;
- Permits required for crossing or encroaching upon navigable streams;
- Permits required for removing materials from or depositing materials in waterways;
- System development fees charged by local units of government;
- Building construction permits, not including specialty work such as heating, ventilation, air conditioning, or electrical;
- Cost of referencing and replacing endangered survey monuments; and
- Environmental permits, including erosion control permits.

**00170.04 Patents, Copyrights, and Trademarks**

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

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

**00170.05 Assignment of Antitrust Rights**

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

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

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

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

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

**00170.10 Required Payments by Contractors**

The Contractor shall comply with ORS 279C.505 and ORS 279C.515 during the term of the Contract.

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

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

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

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

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

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

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

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

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

#### **00170.20 Public Works Bond**

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

#### **00170.32 Protection of Navigable Waters**

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

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

#### **00170.60 Safety, Health, and Sanitation Provisions**

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

Workers exposed to traffic shall wear upper body garments or safety vests that are highly visible and meet the requirements of 00225.27.

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

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

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

#### **00170.61 Industrial Accident Protection**

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

#### **00170.62 Labor Nondiscrimination**

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

It is a material term of this Contract that the Contractor certifies by entering into this Contract that the Contractor has a written policy and practice that meets the requirements described in ORS 279A.112 (House Bill 3060, 2017) for preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class and that the Contractor shall maintain the policy and practice in force during the entire term of this Contract.

#### **00170.63 Payment for Medical Care**

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

#### **00170.65 Minimum Wage and Overtime Rates for Public Works Projects**

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

As required by ORS 279C.520, the Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of the Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. The Contractor's compliance with this provision constitutes a material element of the Contract and failure to comply constitutes a material breach that entitles the Agency to exercise any remedies available under the Contract, including, but not limited to, termination for default.

As required by ORS 279C.520, the Contractor shall not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and shall not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

For work performed on Indian Reservations, tribally-owned businesses and businesses owned by tribally-enrolled Native Americans are not subject to the Oregon Bureau of Labor and Industries overtime requirements. These businesses are subject to the Federal Contract Work Hours and Safety Standards

Act, which states that employees must be paid time and one-half for all hours worked in excess of forty hours per week.

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

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

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

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

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

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

**(3) Additional Retainage**

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

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

**(4) Owner/Operator Data** - The Contractor shall furnish data to the Engineer for each owner/operator providing trucking services. Furnish the data before the time the services are performed and include without limitation for each owner/operator:

- Driver's name;
- Copy of driver's license;
- Vehicle identification number;
- Copy of vehicle registration;
- Motor vehicle license plate number;
- Motor Carrier Plate Number;
- Copy of ODOT Motor Carrier 1A Permit; and

- Name of owner/operator from the side of the truck.

(c) **State Overtime Requirements** – As a condition of the Contract, the Contractor shall comply with the provisions of ORS 279C.520 through ORS 279C.540.

**(1) Maximum Hours of Labor and Overtime Pay** - According to ORS 279C.520, no person shall be employed to perform Work under this Contract for more than 10 hours in any one Day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it. In such instances, the Contractor shall pay the employee at least time and a half pay:

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

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

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

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

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

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

(e) **Additional Requirements When Federal Funds Are Involved** - When federal funds are involved, the following requirements shall apply in addition to the requirements of 00170.65(a) through 0017.65(d). The Contractor shall include these provisions in all subcontracts as well as ensure that all Subcontractors include these provisions in their lower-tier subcontracts.

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

**(2) Minimum Wage Rates** – The Contractor shall pay each worker in each trade or occupation employed to perform any work under the Contract not less than the existing State (BOLI) prevailing wage rate or the applicable federal prevailing wage rate required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.), whichever is higher. The Contractor shall include this provision in all subcontracts.



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

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

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

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

## **00170.70 Insurance**

### **(a) Insurance Coverages**

**Contractor** - The Contractor shall obtain the insurance specified below prior to the execution of the Contract. The Contractor shall maintain the insurance in full force at the Contractor's expense throughout the duration of the Contract and all warranty periods that apply, at its expense, and keep in effect during the term of the Contract, the insurance coverages listed below.

**Subcontracting** - If the Contractor specifies prior to the execution of the Contract that a Subcontractor will satisfy an insurance requirement, that is permitted to be satisfied by a Subcontractor, the Contractor shall obtain Agency approval of Subcontractor and Subcontractor's insurance coverage(s), as required by 00180.21, prior to commencement of Subcontracted work. After the Contractor receives Agency approval of the Subcontractor, the Contractor may contractually obligate the Subcontractor to obtain and maintain, at the Subcontractor's expense or at the Contractor's expense, the insurance permitted.

The Contractor shall require that all Subcontractors carry insurance coverage that the Contractor deems appropriate based on the risks of the subcontracted work. The Contractor shall obtain proof of the required insurance coverages, as applicable, from any Subcontractor providing Services related to the Contract.

Neither the insurance provided by Subcontractor(s) nor any agreements Contractor or Subcontractor(s) may enter into shall place any limitation on the liability or indemnification obligations of the Contractor under applicable law or the Contract.

**Insurance Provisions** - The Contractor and Subcontractor(s), if any, shall obtain insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State and that are acceptable to the Agency. Insurance coverage shall be primary and noncontributory with any other insurance and self-insurance, with the exception of Workers' Compensation. The Contractor, or appropriate Subcontractor, but not the Agency, shall pay for all deductibles, self-insurance retentions and self-insurance, if any.

- **Commercial General Liability** – The Contractor shall provide Commercial General Liability Insurance written on an occurrence basis and covering the Contractor's liability for bodily injury and property damage. This insurance shall include personal and advertising injury liability, products and completed operations coverage, and contractual liability coverage. Coverage may be written in combination with Commercial Automobile Liability Insurance with separate limits for Commercial General Liability and Commercial Automobile Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in the Special Provisions. The annual aggregate limit shall not be less than the dollar amount indicated in the Special Provisions. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

When Work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy.

- **Commercial Automobile Liability** – The Contractor shall provide Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount specified in the Special Provisions. If this coverage is written in combination with the Commercial General Liability, the policy shall be endorsed to state that the Commercial General Liability annual aggregate limit shall apply separately to the Contract.
- **Pollution Liability** - If indicated by Special Provision, the Contractor, or Subcontractor, whichever is performing asbestos related Work, shall provide the Pollution Liability coverage with an Asbestos Liability endorsement. If an endorsement cannot be obtained, the Contractor or Subcontractor shall provide separate Asbestos Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.
- **Asbestos Liability** - If indicated by Special Provision, the Contractor or the Subcontractor, whichever is performing asbestos related Work, shall provide an Asbestos Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, The Contractor or subcontractor shall provide separate Asbestos Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.
- **Lead Liability** - If indicated by Special Provision, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide a Lead Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, the Contractor or subcontractor shall provide separate Lead Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the separate policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.
- **Commercial Automobile Liability with Pollution Coverage** - If indicated by Special Provision, the Contractor or Subcontractor, whichever is performing the pollution related Work, shall provide Commercial Automobile Liability Insurance with Pollution coverage covering the Contractor's or Subcontractor's liability for bodily injury, property damage, natural resource damage, and environmental damage arising out of the use of all owned, non-owned, or hired vehicles while performing Work under the Contract. Combined single limit per occurrence shall not be less than the dollar amount specified in the Contract. If the coverage is obtained by the Contractor, the coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability with Pollution Coverage and Commercial General Liability. If this coverage is written in combination with the Commercial General Liability, the policy shall be endorsed to state that the Commercial General Liability annual aggregate limit shall apply separately to the Contract.

Commercial Automobile Liability with Pollution Coverage is required for this Project because the Project includes pollution related Work. If the Contractor will be performing pollution related Work, this coverage covering the Contractor must be provided. If an appropriate subcontractor, but not the Contractor, will perform the pollution related Work, Commercial Automobile Liability with Pollution Coverage covering the subcontractor, but not the Contractor, must be provided, however, the

Contractor shall provide Commercial Automobile Liability insurance coverage covering the Contractor as provided in the Commercial Automobile Liability bullet above. If both the Contractor and an appropriate subcontractor will be performing pollution related Work, Commercial Automobile Liability with Pollution Coverage covering both the Contractor and the subcontractor shall be provided, and the Contractor may provide the coverage covering both the Contractor and the subcontractor, or the Contractor and the subcontractor may provide their own, separate Commercial Automobile Liability with Pollution coverage's.

**(b) Extended Reporting** - If any of the required insurance is permitted to be and is on a "claims made" basis, the Contractor or Subcontractor who provided the insurance coverage, shall obtain an extended reporting period on the claims made policy or maintain the claims made policy, for a duration of at least 24 months from the date the applicable work has been completed and accepted by the Agency or the date of Final Acceptance. This extended reporting requirement shall be satisfied with documentation of one of the following:

- Extended Reporting Endorsement;
- Tail Coverage; or
- Maintain the applicable continuous claims made policy with liability coverage.

The Contractor or Subcontractor shall furnish certification of this extended reporting requirement as a condition to receive third Notice under 00150.90(b) and 00180.50(g).

**(c) Excess/Umbrella Liability** - combination of primary and Excess/Umbrella Insurance may be used to meet the required limits of insurance. Excess/Umbrella coverage must be at least as broad as that provided by the underlying primary insurance policies. In addition, the limits of the underlying primary insurance must be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage provided by the Excess/Umbrella Liability policy.

**(d) Additional Insured** - The liability insurance coverages of 00170.70(a) shall include an Additional Insured Endorsement specifying the "Roseburg Urban Sanitary Authority, and their respective officers, members, agents, and employees" as Additional Insureds, but only with respect to the Contractor's activities to be performed under the Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The liability coverages of 00170.70(a) that are permitted by the Agency to be obtained by an appropriate Subcontractor shall include all of the foregoing as Additional Insureds and shall also include the Contractor and its officers and employees as Additional Insureds.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Agency.

**(e) Workers' Compensation** - All employers, including the Contractor and its Subcontractor(s), if any, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation Insurance coverage, unless such employers meet the requirements for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident.

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

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

All employers, including the Contractor and Subcontractor(s), if any, exempt under ORS 656.126(2) and subject to any other state's Workers' Compensation law, shall provide Workers' Compensation Insurance coverage as required by applicable Workers' Compensation laws. The coverage shall also include Employer's Liability Insurance with limits not less than \$500,000 each accident.

If the Contractors' and Subcontractors', if any, operations include use of watercraft on navigable waters and employ persons in applicable positions, a Maritime Coverage Endorsement must be added to the Workers' Compensation policy, unless coverage for captain and crew is provided in a Protection and Indemnity policy.

If the Contractor and Subcontractor, if any, conducts its operations in proximity to navigable waters and employ persons in applicable positions, United States Longshore and Harbor Workers' Compensation Act coverage must be endorsed onto the Workers' Compensation policy.

The Contractor shall require compliance with these requirements in all Subcontractor contracts.

- (f) Notice of Cancellation or Change** - The Contractor shall provide at least 30 Days' written notice to the Agency before cancellation of, material change to, potential exhaustion of aggregate limits, or non-renewal of the required insurance coverages. If a Subcontractor is providing insurance to meet the contract requirements, the Contractor shall provide at least 30 Days' written notice to the Agency before cancellation of, material change to, potential exhaustion of aggregate limits, or non-renewal of the required insurance coverage(s). Any failure to comply with the reporting provisions of this insurance shall not affect the coverage(s) provided to the State, Agency, County, City, or other applicable political jurisdiction or to the Agency's governing body, board, or Commission and its members, and the Agency's officers, agents, and employees.
- (g) Certificate(s) of Insurance** - As evidence of the insurance coverages required by the Contract, the Contractor shall furnish Certificate(s) of Insurance to the Agency at the time(s) provided in 00130.50(a). As evidence of insurance coverages required by this Contract but permitted by the Agency under 00170.70(a) to be obtained by an appropriate subcontractor, the Contractor shall furnish Certificate(s) of Insurance to the Agency for such coverage's together with the Contractor's request under 00180.21 for approval of the subcontract with that Subcontractor. The Certificate(s) will specify all of the parties who are Additional Insured. The Contractor(s):
- List the "Roseburg Urban Sanitary Authority and their respective officers, members, agents and employees" as a Certificate holder and as an endorsed Additional Insured;
  - Include all required endorsements or copies of the applicable policy language effecting coverage;
  - Specify that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Workers' Compensation;
  - Include a list of all policies that fall under the Excess/Umbrella Insurance if Excess or Umbrella Insurance is used to meet the minimum insurance requirement.
- (h) Agency Acceptance** - All insurance and insurance providers are subject to Agency acceptance. If requested by Agency, the Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required by the Contract.
- (i) Insurance Requirement Review** - The Contractor agrees to periodic review of insurance requirements by Agency under the Contract and to provide updated requirements as mutually agreed upon by the Contractor and Agency.

- (j) **Builders' Risk** - If specified by Special Provision, the Contractor shall obtain, at its expense, and keep in effect during the term of the Contract, Builders' Risk insurance on an all risks of direct physical loss basis, including, without limitation, earthquake and flood damage, for an amount equal to at least the value indicated in the Special Provisions. The policy shall not contain a coinsurance clause or any collapse exclusions. Any deductible shall not exceed \$50,000 for each loss, except that the earthquake and flood deductible shall not exceed 5% of each loss or \$50,000 for each loss, whichever is greater. The policy shall include the State of Oregon as loss payee.
- (k) **Builder's Risk Installation Floater** – The Contractor shall obtain, at its expense, and keep in effect during the term of the Contract, Builder's Risk Installation Floater Insurance covering the Contractor's labor, Materials and Equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the contractor's labor, equipment, materials, or fixtures to be installed, in-transit, or stored off-site during the performance of the Contract. This insurance shall include as loss payees the State of Oregon, the Owner, the Contractor and Subcontractors as their interests may appear.

**00170.71 Independent Contractor Status**

The service or services to be rendered and the Work to be completed under this Contract are those of an independent contractor as defined in ORS 670.600. The Contractor is not an officer, employee, or agent of the Agency or the State as those terms are used in ORS 30.265.

**00170.72 Indemnity/Hold Harmless**

To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, the Contractor shall indemnify, defend (with counsel approved by the Agency) and hold harmless the Agency, Agency's Authorized Representative, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnities") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to the following:

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

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

In claims against any person or Entity indemnified under this Subsection by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable,

the indemnification obligation under this Subsection shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

Notwithstanding the Contractor's foregoing defense obligations, neither the Contractor nor any attorney engaged by the Contractor shall defend any claim in the name of the Agency, nor purport to act as legal representative of the Agency or any of its agencies, without the prior written consent of the Agency's legal counsel, which in the case of ODOT is the Oregon Attorney General. The Agency may, at any time at its election, assume its own defense and settlement in the event that it determines that the Contractor is prohibited from defending the Agency, or that the Contractor is not adequately defending the Agency's interests, or that an important governmental principle is at issue or that it is in the best interests of the Agency to do so. The Agency reserves all rights to pursue any claims it may have against the Contractor.

**00170.74 Employee Drug Testing Program**

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

**00170.78 Conflict of Interest**

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

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

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

The Contractor shall also be and remain in compliance with the agency's Conflict of Interest Guidelines. (See 00120.40(g) and 00180.21(b)).

**00170.79 Third Party Beneficiary**

There are no third-party beneficiaries of the Contract.

**00170.80 Responsibility for Damage to Work**

**(a) Responsibility for Damage in General** - The Contractor shall perform Work, and furnish Materials and Equipment for incorporation into the Work, at the Contractor's own risk, until the entire Project has been completed and accepted by the Agency. The Contractor shall repair all damages to Work performed, Materials supplied, and Equipment incorporated into the Work, except as otherwise provided in this Section.

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

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

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

The Contractor shall provide reasonable protection of the Work from vandalism until Third Notification. If reasonable protection has been provided, the Contractor's responsibility for damage resulting from vandalism will be limited to \$5,000 per occurrence. Requests for reimbursement of amounts in excess of \$5,000 shall be in writing and directed to the Engineer. Upon receipt, the Engineer will investigate, evaluate the amount of damages and their cause, and determine whether, and how much, the Contractor will be recompensed.

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

#### **00170.82 Responsibility for Damage to Property and Facilities**

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

The Contractor shall be solely responsible for damages arising from:

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

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

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

- Provide adequate protection to avoid damaging Agency property and facilities;
- Be responsible for damage to Agency property and facilities caused by or resulting from the Contractor's operations; and
- Clean up and restore such damage by repair, rebuilding, replacement, or compensation, as determined by the Engineer.

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

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

The Contractor shall protect specific service signs, (e.g., business logos, and tourist-oriented directional signs (TODS)) from damage, whether the signs are to remain in place or be placed on temporary

supports. The Contractor shall repair or replace damaged signs at no cost to the Agency. Liquidated damages will be assessed against the Contractor in the amount of \$200 per Day for each sign out of service for more than 5 Calendar Days because of the Contractor's operations.

**00170.85 Responsibility for Defective Work**

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

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

(b) **Contractor Furnished Warranties –**

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

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

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

(2) **General Warranty for Local Agency Projects** – For those Contracts that are developed, advertised, awarded, and administered by Local Agencies, and do not contain federal funding, this 00170.85(b)(2) warranty applies.

The Contractor shall warrant all Work and workmanship, including Changed Work, Additional Work, Incidental Work, On-Site Work, and Extra Work, and Materials and Equipment incorporated in the Work, for 1 year from the date of Second Notification, except that warranties according to 00170.85(b)(1) and manufacturers' warranties and extended warranties according to 00170.85(c) shall not be abridged.

The Contractor shall be responsible for meeting the technical and performance Specifications required, making good the Work, and for all repairs of damage to the Work and other improvements, natural and artificial structures, systems, equipment, and vegetation caused by, or resulting in whole or in part from, occurrences beginning during the warranty period and are the result of defects in Materials, Equipment, and workmanship. The Contractor shall be responsible for all costs associated



with completing the repair of the defects and for associated Work including, but not limited to, permitting, mobilization, traffic control, erosion control, surface restoration, site cleanup and remediation caused by, or resulting in whole or in part from, defects in Materials, Equipment, or workmanship, and other Work determined by the Engineer to be necessary to complete the repair of the defects.

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

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

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

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

**(c) Manufacturer Warranties and Guarantees:**

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

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

The Warranty will start on the date the Engineer accepts the work and authorizes final payment unless otherwise specified in the Contract.

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

If, in the opinion of the Engineer, temporary repairs are necessary, the temporary repairs will be made by the Agency or an independent contractor at the Manufacturer's expense.

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

Warranty work shall be performed when weather permits.

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

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

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

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

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

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

- (b) Restoration of Roadway after Repair Work** - The Contractor shall restore the Roadway to a condition at least equal to that which existed before the repair work addressed under this Subsection was performed, as directed by the Engineer, at no additional cost to the Agency.

#### **00170.92 Fencing, Protecting Stock, and Safeguarding Excavations**

The Contractor shall be responsible for loss, injury, or damage that results from its failure to restrain stock and persons.

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

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

#### **00170.93 Trespass**

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

#### **00170.94 Use of Explosives**

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

## **Section 00180 - Prosecution and Progress**

### **00180.00 Scope**

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

### **00180.05 Assignment/Delegation of Contract**

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

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

Any purported or attempted assignment, delegation, sale, transfer or disposition without prior Agency consent shall be voidable.

If written Agency consent is given to assign, delegate, sell or otherwise dispose of any rights or obligations under the Contract, such consent shall not relieve the Contractor or its Surety of any part of their duties, obligations, responsibilities, or liabilities under or pursuant to the Contract.

### **00180.06 Assignment of Funds Due under the Contract**

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

- The assignment request is made on the form provided by the Agency;
- The Contractor secures the written consent of the Contractor's Surety to the assignment; and
- The Engineer approves the assignment, which will not be unreasonably withheld.

### **00180.10 Responsibility for Contract**

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

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

### **00180.15 Agency's Right to Do Work at Contractor's Expense**

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

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

**00180.20 Subcontracting Limitations**

- (a) **General** - The Contractor's own organization shall perform Work amounting to at least 50% of the original Contract Amount. The value of subcontracted Work is the full compensation to be paid to the Subcontractor(s) for all pay items in the Subcontract(s).
- (b) **Own Organization** - The term "own organization", as used in Section 00180, includes only employees of the Contractor, Equipment owned or rented by the Contractor, Incidental rental of operated Equipment, and Materials and Equipment to be incorporated into the Work purchased or produced by the Contractor.
- (c) **Rental of Operated Equipment** - The use of Equipment rented with operators will be allowed without a subcontract only when the following requirements are met:
  - (1) **Written Request** - The Contractor has submitted to the Engineer a written request describing the work or service to be provided, its estimated cost, and the estimated duration. The Engineer must approve the request before the service is provided.
  - (2) **Limitations** - The use of Equipment rented with operators is limited to performing minor, Incidental, short-duration work or services under the direct supervision of the Contractor or Subcontractor, with Equipment not customarily owned, rented, leased, or operated by a Contractor, or with Equipment that is temporarily unavailable to the Contractor.
  - (3) **Submittals** - The Contractor shall provide the Engineer with a copy of the rental agreement or purchase order covering the work or service to be provided. The Contractor shall make certain that the provider of approved work or services submits payrolls required under Section 00170 and complies with applicable Contract provisions, including, without limitation, 00170.07. The work or service provider will not be considered a Subcontractor under the Contract, but the work or services will be considered to have been performed by the Contractor's own organization for the purposes of determining compliance with 00180.20(a).
  - (4) **Revocation of Approval** - The Engineer may revoke approval for the services provided through rented, operated Equipment at any time the Engineer determines that the work is outside that authorized under 00180.20(c)(2). Unless the Contractor promptly submits to the Engineer a subcontract agreement for consent under 00180.21, the service provider shall be immediately removed from the Project Site.
- (d) **Disadvantaged Business Enterprise (DBE)** - Every agreement to perform Work, including, without limitation, subcontracts, trucking services agreements, purchase orders, and rental agreements, shall indicate whether the Work will be performed by a DBE or non-DBE.
- (e) **Trucking** - This Section does not apply to delivery of Materials by or for or from a Supplier. This Subsection applies to all truck hauling of Materials not performed with trucks owned (or rented) and operated by the Contractor. If the services under Rental of Operated Equipment or Trucking are provided by a committed DBE firm, a subcontract is required under 00180.21. For this purpose, a committed DBE firm is one that was identified by the Contractor to meet an assigned DBE goal including DBE firms substituting for DBE firms committed as a condition of Contract Award.
  - (1) **Trucking Services Agreement** - The Contractor shall submit at the preconstruction conference one or more proposed trucking services agreements for all trucking services for hauling materials. The proposed agreements shall include:
    - Statement specifying whether the services will be provided by a DBE;
    - Statement specifying whether the services will be provided by an owner/operator;
    - Prompt payment clause (10 days) (ORS 279C.580);

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

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

**(2) Limitations** - The approved trucking services agreements shall be used for all trucking services for hauling Materials not provided by trucks owned (or rented) and operated by the Contractor except for trucking services provided by committed DBEs that require a subcontract under 00180.21. The Contractor shall execute a trucking services agreement with every trucking services provider for hauling Materials prior to the trucking services provider doing any Work on the Project Site.

**(3) Submittals** - The Contractor shall provide the Engineer with an executed copy of the trucking services agreement not later than 2 Days after the trucking services provider for hauling Materials has started work. The Contractor shall make certain that the provider of approved trucking services submits payrolls required under Section 00170, complies with applicable Contract provisions, including, without limitation, 00170.07, and complies with applicable trucking services agreement provisions. The work or service provider will not be considered a Subcontractor under the Contract, but the work or services will be considered to have been performed by the Contractor's own organization for the purposes of determining compliance with 00180.20(a). If the trucking services are provided by an owner/operator:

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

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

**00180.21 Subcontracting**

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

A written request for consent to subcontract any portion of the Contract at any tier shall be submitted to the Engineer, and when required by the Engineer, shall be accompanied by background information showing that the organization proposed to perform the Work is experienced and equipped for such Work. The Agency will review the Contractor's submission to verify compliance with Contract requirements,

confirm the percentage of Work subcontracted, and evaluate the proposed Subcontractor's ability to perform the Work. If the Agency approves the Contractor's request to subcontract, the Agency will provide its consent to the Contractor's request as follows:

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

The Engineer may revoke consent to subcontract. If the Engineer revokes consent to subcontract, the Subcontractor shall be immediately removed from the Project Site.

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

The Contractor and proposed Subcontractors shall review the Agency's Conflict of Interest Guidelines, and if any disclosures are required, they shall complete the Conflict of Interest Disclosure Form(s) and submit them with the request for consent to subcontract. The ODOT Conflict of Interest Guidelines and Conflict of Interest Disclosure Form are available on the ODOT Procurement Office website (see 00110.05(e)).

If disclosures are not required under the Agency's Conflict of Interest Guidelines, no disclosures need be submitted.

The Subcontractors shall also otherwise be and remain in compliance with the Agency's Conflict of Interest Guidelines. (See 00170.78.)

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

- The disclosed Subcontractor fails or refuses to execute a written contract that is reasonably based either upon the Project Plans and Specifications, or the terms of the Subcontractor's written Bid, after having had a reasonable opportunity to do so;
- The disclosed Subcontractor becomes bankrupt or insolvent;
- The disclosed Subcontractor fails or refuses to perform the contract;
- The disclosed Subcontractor fails or refuses to meet the bond requirements of the prime Contractor that had been identified prior to the Bid submittal;
- The Contractor demonstrates to the Agency that the Subcontractor was disclosed as the result of an inadvertent clerical error;
- The disclosed Subcontractor does not hold a license from the Construction Contractors Board and is required to be licensed by the board;

- The Contractor determines that the Work performed by the disclosed Subcontractor is not in substantial compliance with the Plans and Specifications, or that the Subcontractor is substantially delaying or disrupting the progress of the Work;
- The disclosed Subcontractor is ineligible to work on a public improvement according to the applicable statutory provisions;
- The substitution is for “good cause” as defined by State Construction Contractors Board rule; or
- The substitution is reasonably based on the Contract alternates chosen by the Agency.

**(d) Terms of Subcontracts** – All subcontracts shall provide that Work performed under the subcontract shall be conducted and performed according to the terms of the Contract. All subcontracts, including Contractor’s with the first-tier Subcontractors and those of the first-tier Subcontractors with their subcontractors, and any other lower tier subcontracts shall contain a clause or condition that if the Contractor or a Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580. Additionally, according to the provisions of ORS 279C.580, subcontracts shall include:

- (1) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten Calendar Days of the Contractor’s receipt of payment from the Agency for the subcontracted Work.
- (2) A clause that requires the Contractor, if payment is not made within 30 days after receipt of payment from the Agency, to pay to the first-tier Subcontractor interest on amounts due in the case of each payment not made according to the payment clause included in the subcontract according to paragraph (1) of this Subsection. A Contractor or first-tier Subcontractor shall not be obligated to pay interest if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from the Agency or Contractor when payment was due. The interest shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and shall be computed at the rate specified in 00170.10©.
- (3) A provision requiring the first-tier Subcontractor to include a payment clause and an interest clause conforming to the standards of ORS 279C.580 (see 00180.21(d-1) and 00180.21(d-2)) in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or Materials supplier. This payment clause shall require the Contractor to return all retainage withheld from the Subcontractor, whether held by the Contractor or the Agency, as specified in 00195.50(d).

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

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

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

- Performance of subcontracted Work;
- Progress of subcontracted Work;

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

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

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

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

**00180.22 Payments to Subcontractors and Agents of the Contractor**

To the extent practicable, the Contractor shall pay in the same units and on the same basis of measurement as listed in the Schedule of Items for subcontracted Work or other Work not done by the Contractor's own organization. The Agency will not be responsible for any overpayment or losses resulting from overpayment by the Contractor to Subcontractors and to its other agents, work providers, service providers, and trucking services providers.

If requested, the Engineer will make estimates of the Work quantities performed by Subcontractors or by others on the Project, and of Materials eligible for advances on Materials in the progress payments. These estimates are approximate only, and will be made in units of measure as listed in the Schedule of Items. The Agency does not guarantee the accuracy of these estimates, and an incorrect estimate will not bind the Agency in final settlement.

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

**00180.30 Materials, Equipment, and Work Force**

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

The work force shall be trained and experienced for the Work to be performed. Upon receipt of the Engineer's written order, the Contractor shall immediately remove from the Project Site, and shall not employ again on the Project without the Engineer's prior written approval, any supervisor or employee of the Contractor or its Subcontractors who, in the Engineer's opinion, does not perform satisfactory Work or whose conduct interferes with the progress of the Work. If the Contractor fails to remove Equipment or persons as ordered, or fails to furnish suitable and sufficient Materials, Equipment and personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until such orders are complied with and such deficiencies are corrected, or the Engineer may terminate the Contract under the provisions of 00180.90(a).

**00180.31 Required Materials, Equipment, and Methods**



The Engineer's decisions under this Section are final. Substitutions after Award will be considered as provided below unless specified as the subject of an exemption per ORS 279C.345. See 00120.16 for possible substitutions before Bid Opening.

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

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

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

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

- The proposed Materials or Equipment are equal to or superior to the specified items in construction, efficiency and utility; or
- Due to reasons beyond the control of the Contractor, the specified Materials, products or Equipment cannot be delivered to the Project in sufficient time to complete the Work in proper sequence.

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

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

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

The Engineer will consider the Contractor's request and will provide a written response to the Contractor, either permitting or denying use of the proposed Equipment. Permission may be granted on a trial basis to test the quality of Work actually produced, subject to the following:

- There will be no cost to the Agency, either in Contract Amount or in Contract Time;
- The permission may be withdrawn by the Engineer at any time if, in the Engineer's opinion, the Equipment is not performing in all respects equivalent to the Equipment specified in the Contract;
- If permission is withdrawn, the Contractor shall perform the remaining Work with the originally-specified Equipment; and
- The Contractor shall remove and replace nonspecification Work resulting from the use of the Contractor's proposed Equipment, or otherwise correct it as the Engineer directs, at no additional compensation.

- (d) **Substitution of Methods** - The Agency encourages development of new, improved, and innovative construction methods. When the Plans or Specifications require a certain construction method for a

portion of the Work, the Contractor may submit a request for a change by following the provisions of 00140.70, "Cost Reduction Proposals".

**00180.32 Alternative Materials, Equipment, and Methods**

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

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

**00180.40 Limitation of Operations**

(a) **In General** - The Contractor shall comply with all Contract provisions and shall:

- Conduct the Work from 5:00 am to 3:00 pm Monday thru Thursday, and
- Rock hammering shall not begin prior to 7:00 am.

(b) **On-Site Work** - The Contractor shall not begin On-Site Work until the Contractor has:

- Received Notice to Proceed;
- Filed with the Construction Contractors Board the public works bond as required in 00170.20;
- An approved Project Work schedule;
- An approved Traffic Control Plan;
- Met with the Engineer at the required preconstruction conference; and
- Assembled all Materials, Equipment, and labor on the Project Site, or has reasonably assured that they will arrive on the Project Site, so the Work can proceed according to the Project Work schedule.

**00180.41 Project Work Schedules**

The Contractor shall submit a Project Work schedule meeting the requirements of this Subsection to the Engineer. The Project Work schedule is intended to identify the sequencing of activities and time required for prosecution of the Work. The schedule is used to plan, coordinate, and control the progress of construction. Therefore, the Project Work schedule shall provide for orderly, timely, and efficient prosecution of the Work, and shall contain sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, analyze, document, and control their respective Contract responsibilities. Sufficient detail shall also include all required double shifts, overtime work, or combination of both necessary to complete Contract Work within the Contract Time.

Contractor's activity related to developing, furnishing, monitoring, and updating these required schedules is Incidental.

One of the following Type "A" or "B" schedules will be required under the Contract. The type of schedule will be identified in the Special Provisions.

(a) **Type "A" Schedule** - When a Type "A" schedule is required, the Contractor shall do the following:

- (1) **Schedule** - 10 Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer four copies of a Project Work schedule, including a time-scaled bar chart and narrative, showing:

- Expected beginning and completion dates of each activity, including all staging; and
- Elements of the Traffic Control Plan as required under 00221.06.

The schedule shall show detailed Work activities as follows:

- Construction activities;
- The time needed for completion of the utility relocation work;
- Submittal and approval of Materials samples and shop drawings;
- Fabrication, installation, and testing of special Materials and Equipment; and
- Duration of Work, including completion times of all stages and their sub phases.

For each activity, the Project Work schedule shall list the following information:

- A description in common terminology;
- The quantity of Work, where appropriate, in common units of measure;
- The activity duration in Calendar Days; and
- Scheduled start, completion, and time frame shown graphically using a time-scaled bar chart.

The schedule shall show the Work broken down into logical, separate activities by area, stage, or size. The duration of each activity shall be verifiable by manpower and Equipment allocation, in common units of measure, or by delivery dates.

The bar chart shall be prepared as follows:

- The length of bar shall represent the number of workdays scheduled.
- The time scale shall be appropriate for the duration of the Contract.
- The time scale shall be in Calendar Days.
- The smallest unit shown shall be one Calendar Day.
- The first day and midpoint of each month shall be identified by date.
- Distinct symbols shall be used to denote multiple shift, holiday, and weekend Work.

Each page of the bar chart shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the bar chart shall be drawn on a reasonable size of paper up to a maximum of 36 inch by 36 inch, using multiple sheets when needed.

Within 7 Calendar Days after the preconstruction conference, the Engineer and the Contractor shall meet to review the Project Work schedule as submitted. The Engineer will review the schedule for compliance with all Contract Time limitations and other restraints. Review of this and subsequent schedules by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract. Within 10 Calendar Days of this meeting, the Contractor shall resubmit to the Engineer four copies of the Project Work schedule, including required revisions.

- (2) Review by the Engineer** - The Project Work schedule may need revision as the Work progresses. Therefore, the Contractor shall periodically review the Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be

held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the Project Work schedule.

The Contractor shall compile an updated Project Work schedule incorporating any changes to the Project completion time(s). The bar chart shall reflect the updated information. The Contractor shall submit four copies of the updated Project Work schedule to the Engineer within 7 Calendar Days after the meeting. The report shall include without limitation the following:

- Sufficient narrative to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule; and
- Proposed corrective actions.

**(b) Type “B” Schedule** - When a Type “B” Schedule is required, the Contractor shall do the following:

**(1) Initial Schedule** – At least 10 Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer four copies of a time-scaled bar chart Project Work schedule showing:

- Expected beginning and completion date of each activity, including all staging; and
- Elements of the Traffic Control Plan as required under 00225.05.

The initial schedule shall show all Work intended for the first 60 Days of the Contract to the level of detail described in (2) below, and shall show the priority and interdependence (sequencing and network logic) of all major segments of the remainder of the Work.

**(2) Detailed Schedule** - In addition to the above requirements, and within 30 Calendar Days after the Notice to Proceed, the Contractor shall provide the Engineer one digital copy and four paper copies of a detailed time-scaled bar chart Project Work schedule indicating the critical course of the Work.

Detailed work schedule activities shall include the following:

- Construction activities;
- The time needed for completion of the Utility relocation work;
- Submittal and approval of Material samples and shop drawings;
- Procurement of critical Materials;
- Fabrication, installation, and testing of special Material and Equipment; and
- Duration of Work, including completion times of all stages and their sub phases.

For each activity, the Project Work schedule shall list the following information:

- A description in common terminology;
- The quantity of Work, where appropriate, in common units of measure;
- The activity duration in normal workdays; and
- Scheduled start, completion, and time frame shown graphically using a time-scaled bar chart.

The schedule shall show the Work broken down into logical, separate activities by area, stage, or size. The duration of each activity shall be verifiable by manpower and Equipment allocation, in common units of measure, or by delivery dates.

The bar chart shall be prepared as follows:

- The length of bar shall represent the number of normal workdays scheduled.
- The time scale shall be appropriate for the duration of the Contract.
- The time scale shall be in normal workdays (every day except Saturday, Sunday, and legal holidays).
- The smallest unit shown shall be 1 Calendar Day.
- The first day and midpoint of each month shall be identified by date.
- Distinct symbols shall be used to denote multiple shift, holiday, and weekend Work.

The bar chart drawing(s) shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the bar chart shall be drawn on a reasonable size of paper up to a maximum of 36 inch x 36 inch, using multiple sheets when needed.

Within 10 Calendar Days after submission of the Project schedule the Engineer and the Contractor shall meet to review the Project schedule as submitted. Within 10 Days of the meeting, the Contractor shall resubmit to the Engineer four copies of the Project schedule, including required revisions.

The accepted Project schedule shall represent all Work, as well as the planned sequence and time for the Work. Review of this and subsequent schedules by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

- (3) Review and Reporting** - The Project Work schedule may require revision as the Work progresses. Therefore, the Contractor shall monitor and when necessary, revise the Project Work schedule as follows:

**a. Review with the Engineer** - The Contractor shall perform ongoing review of the Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the Project Work schedule. After any necessary action has been agreed upon, the Contractor shall make required changes to the Project Work schedule.

The Contractor shall collect information on all activities worked on or scheduled to be worked on during the previous report period, including shop drawings, Material procurement, and Contract Change Orders that have been issued. Information shall include commencement and completion dates on activities started or completed, or if still in progress, the remaining time duration.

The Contractor shall develop detailed sub-networks to incorporate changes, Additional Work, and Extra Work into the Project Work schedule. Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. The restraints shall include those activities from the Project Work schedule that initiated the sub-network as well as those restrained by it.

The Contractor shall evaluate this information and compare it with the Contractor's project schedule. If necessary, the Contractor shall make an updated bar chart schedule to incorporate the effect changes may have on the Project completion time(s). For any activity that has started, the Contractor shall add a symbol to show the actual date the activity started and the number of normal workdays remaining until completion. For activities that are finished, a symbol shall be added to show the actual

date. The Contractor shall submit four copies of the updated bar chart to the Engineer within 7 days after the progress meeting, along with a progress report as required by “b.” below.

**b. Progress Report** - The Contractor shall submit a progress report to the Engineer each month. The report shall include the following:

- Sufficient narrative to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule; and
- Proposed corrective actions.

**(c) Type C Schedule - deleted**

**(d) Substitution of Schedules** - When a Type “A” schedule is required, a Type “B” may be substituted for the Type “A” schedule.

**(e) Specified Contract Time Not Superseded by Schedule Revisions** - The completion dates in any Project Work schedule and any revised or updated Project Work schedules shall be within the Contract Time(s) specified for the Project, or within adjusted Contract Times approved according to 00180.80(c). Acceptance of any Project Work schedule or any revised or updated Project Work schedules shall not constitute approval of any completion dates that exceed such Contract Time(s). If the Contractor believes that additional Contract Time is due, the Contractor shall submit, with a revised Project Work schedule, a request for adjustment of Contract Time according to 00180.80(c). A request for an adjustment of Contract Time will be evaluated using the most recently accepted Project Work schedule.

**(f) Float Time** - Float time shown on the Project Work schedule, including any time between a Contractor’s scheduled completion date and the specified Contract Time(s), does not exist for the exclusive use of either party to the Contract and belongs to the Project.

**(g) Schedules Do Not Constitute Notice** - Submittal of a Project Work schedule, with supporting Project narrative, does not constitute or substitute for any notice the Contractor is required under the terms of the Contract to give the Agency.

**(h) Failure to Provide Schedule** - The Project Work schedule is essential to the Agency. The Contractor’s failure to provide the schedule, schedule information, progress reports, Project narratives, or schedule updates when required will be cause to suspend the Work, or to withhold Contract payments as necessary to protect the Agency, until the Contractor provides the required information to the Engineer.

**00180.42 Preconstruction Conference**

Unless otherwise approved in writing by the Engineer, before any Work is performed and within 30 Calendar Days of the Notice to Proceed, the Contractor shall meet with the Engineer for a preconstruction conference at a time mutually agreed upon.

**00180.43 Commencement and Performance of Work**

From the time of commencement of the Work to the time of Final Acceptance the Contractor shall:

- Provide adequate Materials, Equipment, labor, and supervision to perform the Work;
- Perform the Work as vigorously and as continuously as conditions permit, and according to a Project Work schedule that ensures completion within the Contract Time or the adjusted Contract Time;

- Not voluntarily suspend or slow down operations without prior written approval from the Engineer; and if approved submit an updated Project Work schedule according to 00180.41 that ensures completion within the Contract Time or the adjusted Contract Time; and
- Not resume suspended Work without the Engineer's written authorization.

**00180.50 Contract Time to Complete Work**

- (a) **General** - The time allowed to complete the Work or Pay Item is stipulated in the Solicitation Documents, and will be known as the "Contract Time". (see 00110.20)
- (b) **Kinds of Contract Time** - The Contract Time will be expressed in one or more of the following ways:
  - (1) **Fixed Date Calculation** - The calendar date on which the Work or Pay Item shall be completed; or
  - (2) **Calendar Day Calculation** - The number of Calendar Days from a specified beginning point in which the Work or Pay Item shall be completed.
- (c) **Beginning of Contract Time** - When the Contract Time is stated in Calendar Days, counting of Contract Calendar Days will begin with the fifteenth Calendar Day following the date of the Notice to Proceed.
- (d) **Recording Contract Time** - All Contract Time will be recorded and charged to the nearest Day.

On Contracts with Calendar Day counts, the Engineer will furnish the Contractor a monthly statement of Contract Time charges. The statement will show the number of Calendar Days counted for the preceding month and the number of Calendar Days remaining prior to the established completion date for that Pay Item.

For Contracts with fixed completion dates for Pay Items, the Engineer will furnish the Contractor a weekly statement of Contract Time charges only after expiration of the Contract Time. The statement will show the number of Calendar Days of liquidated damages that have been assessed, if any. These statements will include any exclusions from, or adjustments to, Contract Time.

- (e) **Exclusions from Contract Time** - Regardless of the way Contract Time is expressed in the Contract, certain Calendar Days will not be charged against Contract Time. These exclusions will be allowed when the Contractor is prevented from performing Work due to one of the following reasons, resulting in delay:
  - Acts of God or Nature;
  - Court orders enjoining prosecution of the Work;
  - Strikes, labor disputes or freight embargoes that, despite the Contractor's reasonable efforts to avoid them, cause a shutdown of the entire Project or one or more major operations. "Strike" and "labor dispute" may include union action against the Contractor, a Subcontractor, a materials Supplier, or the Agency; or
  - Suspension of the Work by written order of the Engineer for reasons other than the Contractor's failure or neglect.
- (f) **Time Calculation Protest** - In the event the Contractor disputes the accuracy of the statement of Contract Time charges, it shall immediately contact the Engineer and attempt to resolve the dispute. If the dispute cannot be resolved informally, the Contractor shall submit a formal written protest to the Engineer within 7 Calendar Days of the date the Engineer mailed or delivered the statement. Failure to submit a formal written protest within the 7 Calendar Day period constitutes the Contractor's approval of the time charges, or adjusted time charges, itemized in the statement.
- (g) **End of Contract Time** - When the Engineer determines that the On-Site Work has been completed, except for the items listed below; the Engineer will issue a Second Notification.

The Second Notification will list:

- The date the time charges stopped;
- Final trimming and cleanup tasks (see 00140.90);
- Equipment to be removed from the Project Site;
- Minor corrective work not involving additional payment to be completed; and
- Submittals, including without limitation all required certifications, bills, forms, warranties, certificate of insurance coverage (00170.70(b)), and other documents, required to be provided to the Engineer before Third Notification is issued.

The Contractor shall complete all tasks listed in the Second Notification in an expeditious manner within the time frame proposed by the Contractor and accepted by the Engineer. Unless otherwise agreed by the Agency, failure of the Contractor to complete all tasks listed in the Second Notification within the time frame accepted, will result in the Agency rescinding the Second Notification. Counting of time charges will resume upon expiration of the accepted time frame.

#### **00180.60 Notice of Delay**

The Contractor shall notify the Engineer of any delay that will likely prevent completion of the Work or a Pay Item by the date specified in the Project Work schedule. The notice shall be in writing and shall be submitted within 7 Calendar Days of when the Contractor knew or should have known of the delay. The notice shall include, to the extent available, the following:

- The reasons or causes for the delay;
- The estimated duration of the delay and the estimated resulting cumulative delay in Contract completion;
- Except for 00180.50(e) and 00180.65 delays, whether or not the Contractor expects to request an adjustment of Contract Time due to the delay;
- Whether or not the Contractor expects to accelerate due to the delay; and
- Whether or not the Contractor expects to request additional compensation due to the delay. Except for 00185.50(e) and 00180.65 delays, failure to include this information will constitute waiver of the Contractor's right to later make such a request.

#### **00180.65 Right-of-Way and Access Delays**

Right-of-Way and access delays will be taken into consideration in adjusting Contract Time, and in approving additional compensation if the performance of the Work is delayed because of the Agency's failure to make available to the Contractor:

- Necessary Rights-of-Way;
- Agency-owned or Agency-controlled Materials sources that are offered in the Contract for the Contractor's use; or
- Access to, or rights of occupancy of, buildings and other properties the Contractor is required to enter or to disturb according to Contract requirements.

If the ending date of an anticipated delay is stated in the Special Provisions, only the delay occurring after that date will be considered for adjusting Contract Time or providing additional compensation.

#### **00180.70 Suspension of Work**



(a) **General** - The Engineer has authority to suspend the Work, or part of the Work, for any of the following causes:

- Failure of the Contractor to correct unsafe conditions;
- Failure of the Contractor to carry out any provision of the Contract;
- Failure of the Contractor to carry out orders issued by the Engineer, the Agency, or any regulatory authority;
- Existence of conditions unsuitable to proper or safe performance of the Work; or
- Any reason considered by the Agency to be in the public interest.

When Work has been suspended for any reason, the Contractor shall not resume work without the Engineer's written authorization.

(b) **Contractor's Responsibilities during and after Suspension** - During periods of suspension of the Work, the Contractor shall continue to be responsible for protecting and repairing the Work according to 00170.80, and for ensuring that a single designated representative responsible for the Project remains available according to 00150.40(b).

When Work is resumed after suspension, unless otherwise specified in the Contract, the Contractor shall perform the following at no additional compensation:

- Replace or repair any Work, Materials, and Equipment to be incorporated into the Work that was lost or damaged because of the temporary use of the Project Site by the public; and
- Remove Materials, Equipment, and temporary construction necessitated by temporary maintenance during the suspension, as directed by the Engineer.

(c) **Compensation and Allowances for Suspension** - Compensation and allowance of additional Contract Time due to suspension of any portion of the Work will be authorized only for Agency initiated suspensions for reasons other than the Contractor's failure or neglect. (See 00180.50(e), 00180.65, and 00195.40)

**00180.80 Adjustment of Contract Time**

(a) **General** - Contract Time established for the Work will be subject to adjustment, either by increase or decrease, for causes beyond the control of the Contractor, according to the terms of this Subsection. After adjustment, the Contract Time will become, and be designated as, the "Adjusted Contract Time". Except as provided in 00180.65 and 00195.40, an adjustment of Contract Time shall be the Contractor's only remedy for any delay arising from causes beyond the control of the Contractor.

(b) **Contractor's Request Not Required** - The Engineer may increase or decrease the Contract Time or the Adjusted Contract Time if Change Orders or Extra Work orders issued actually increase or decrease the amount of time required to perform the Work. The Engineer may also increase Contract Time in the event of Right-of-Way and Access delays (see 00180.65), and those delays due to causes beyond the Contractor's control specified in 00180.50(e). The Engineer will promptly inform the Contractor of adjustments made to Contract Time according to this Subsection, and will include the reasons for adjustment.

If the Agency anticipates delay during performance of the Contract, and specifies its expected duration in the Special Provisions, the Engineer will only consider additional delay beyond the stipulated duration in determining whether to adjust Contract Time.

(c) **Contractor's Request Required** - In the event the Contractor believes that additional Contract Time is due, the Contractor shall submit to the Engineer a timely request for adjustment of Contract Time. The

Engineer will not consider untimely requests. The Agency regards as timely only those requests for adjustment of Contract Time that:

- Accompany a proposed revised Project Work schedule submitted according to 00180.41, for comparison with the last revision of the Project Work schedule; or
- Are not otherwise deemed waived and are submitted within 45 Days after the date of Second Notification, if Second Notification has been issued.

The Engineer will not grant an adjustment of Contract Time for events that occurred prior to the date of the last revision of the Project Work schedule. The Engineer will not authorize, nor the Agency pay, acceleration costs incurred by the Contractor prior to its submittal of a request for adjustment of Contract Time to which the acceleration costs relate.

The Contractor's request for adjustment of Contract Time shall be submitted to the Engineer on a form provided by, or in a format acceptable to, the Engineer, and shall include a copy of the written notice required under 00180.60. The request shall include without limitation:

- Consent of the Contractor's Surety if the request totals more than 30 Calendar Days of additional Contract Time;
- Sufficient detail for the Engineer to evaluate the asserted justification for the amount of additional Contract Time requested;
- The cause of each delay for which additional Contract Time is requested, together with supporting analysis and data;
- Reference to the Contract provision allowing Contract Time adjustment for each cause of delay;
- The actual or expected duration of delay resulting from each cause of delay, expressed in Calendar Days; and
- A schedule analysis based on the current approved Project Work schedule for each cause of delay, indicating which activities are involved and their impact on Contract completion.

**(d) Bases for Adjustment of Contract Time** - In the adjustment of Contract Time, the Engineer will consider causes that include, but are not limited to:

- Failure of the Agency to submit the Contract and bond forms to the Contractor for execution within the time stated in 00130.50, or to submit the Notice to Proceed within the time stated in 00130.90;
- Errors, changes, or omissions in the Supplemental Drawings, quantities, or Specifications;
- Performance of Extra Work;
- Failure of the Agency or Entities acting for the Agency to act promptly in carrying out Contract duties and obligations;
- Acts or omissions of the Agency or Entities acting for the Agency that result in unreasonable delay referenced in 00195.40;
- Causes cited in 00180.50(e); and
- Right-of-way and access delays referenced in 00180.65.

The Engineer will not consider requests for adjustment of Contract Time based on any of the following:

- Contentions that insufficient Contract Time was originally specified in the Contract;
- Delays that do not affect the specified or Adjusted Contract Time;

- Delays that affect the Contractor's planned early completion, but that do not affect the specified or adjusted Contract Time;
  - Shortage or inadequacy of Materials, Equipment or labor;
  - Late delivery of Materials and Equipment to be incorporated into the Work, except under those conditions referenced in 00180.50(e);
  - Different area of Material source in 00160.40(a);
  - Substitution of Equipment in 00180.31(c);
  - Reasonably predictable weather conditions; or
  - Other matters within the Contractor's control or Contract responsibility.
- (e) **Consideration and Response by Agency** - The Engineer will only consider a Contractor's request for Contract Time adjustment submitted according to the requirements of 00180.80(c). The Engineer may elect not to consider claimed delays that do not affect the specified or adjusted Contract Time required to complete the Work.

The Engineer may adjust Contract Time for causes not specifically identified by the Contractor in its request.

The Engineer will review a properly submitted request for Contract Time adjustment, and within a reasonable time will advise the Contractor of the Engineer's findings. If the Contractor disagrees with the Engineer's findings, the Contractor may request review according to the procedure specified in 00199.40.

**00180.85 Failure to Complete on Time; Liquidated Damages**

- (a) **Time is of the Essence** - Time is of the essence in the Contractor's performance of the Contract. It is essential and in the public interest that the Contractor prosecute the Work vigorously to Contract completion.

The Agency does not waive any rights under the Contract by permitting the Contractor to continue to perform the Contract, or any part of it, after the Contract Time or adjusted Contract Time has expired.

- (b) **Liquidated Damages** - Delays in the Contractor's performance of the Work will cause the Agency to sustain damages; increase risk to, inconvenience, and interfere with the traveling public and commerce; and increase costs to taxpayers. Because the Agency finds it is unduly burdensome and difficult to demonstrate the exact dollar value of such damages, the Contractor agrees to pay to the Agency, not as a penalty but as liquidated damages, the amount(s) determined as specified below for each Calendar Day the Work remains incomplete after the expiration of the Contract Time or adjusted Contract Time applicable to that Work. The liquidated damages shall constitute payment in full only of damages incurred by the Agency due to the Contractor's failure to complete the Work on time.

Payment by the Contractor of liquidated damages does not release the Contractor from its obligation to fully and timely perform the Contract according to its terms. Nor does acceptance of liquidated damages by the Agency constitute a waiver of the Agency's right to collect any additional damages it may sustain by reason of the Contractor's failure to fully perform the Contract according to its terms. The liquidated damages shall constitute payment in full only of damages incurred by the Agency due to the Contractor's failure to complete the Work on time.

If the Contract is terminated according to 00180.90(a), and if the Work has not been completed by other means on or before the expiration of Contract Time or adjusted Contract Time, liquidated damages will be assessed against the Contractor for the duration of time reasonably required to complete the Work.

**(1) Single Contract Time** - The liquidated damages per Calendar Day\* for failure to complete the Work on time as required by 00180.50(h) when a single Contract Time is listed under 00180.50(h) will be established using the following formula:

The Liquidated Damages per Calendar Day\* are 21.2 percent of C divided by T as defined in this Section.

C = The Contractor's Bid amount for the Contract.

T = The total Calendar Days between the latest completion date or time listed under 00180.50(h) in the Solicitation Documents and the Bid Opening that will result in the greatest value for T.

\* Calendar Day amounts are applicable when the Contract Time is expressed on the Calendar Day or fixed date basis.

**(2) Multiple Contract Times** - The liquidated damages per Calendar Day\* for failure to complete the Work on time as required by 00180.50(h) when multiple Contract Times are listed under 00180.50(h) will be established for each individual Contract Time as follows:

The Agency-determined percentage of the value of all Work required to be complete by a given Contract Time multiplied by the rate determined using the formula specified in 00180.85(b)(1).

When multiple Contract Times are listed under 00180.50(h), the Agency-determined percentages of the value of Work required to be complete by the Contract Times listed under 00180.50(h) will be listed in the Special Provisions.

If liquidated damages should become payable concurrently under any combination of liquidated damage rates, the rate that will be assessed will be the highest applicable rate.

\* Calendar Day amounts are applicable when the Contract Time is expressed on the Calendar Day or fixed date basis.

#### **00180.90 Termination of Contract and Substituted Performance**

**(a) Termination for Default** - Termination of the Contract for default may result if the Contractor:

- Fails to comply with the requirements for records;
- Violates any material provision of the Contract;
- Disregards applicable laws and regulations or the Engineer's instructions;
- Refuses or fails to supply enough Materials, Equipment or skilled workers for prosecution of the Work in compliance with the Contract;
- Fails to make prompt payment to Subcontractors;
- Makes an unauthorized general assignment for the benefit of the Contractor's creditors;
- Has a receiver appointed because of the Contractor's insolvency;
- Is adjudged bankrupt and the court consents to the Contract termination; or
- Otherwise fails or refuses to faithfully perform the Contract according to its terms and conditions.
- Has liquidated and delinquent debt owed to the State or any department or agency of the State.

If the Contract is terminated by the Agency, upon demand the Contractor and the Contractor's Surety shall provide the Engineer with immediate and peaceful possession of the Project Site, and of all Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50.

If the Contract is terminated for default, neither the Contractor nor its Surety shall be:

- Relieved of liability for damages or losses suffered by the Agency because of the Contractor's breach of Contract; or
- Entitled to receive any further progress payments until the Work is completed. However, progress payments for completed Work that remain due and owing at the time of Contract termination may be made according to the terms of 00195.50, except that the Engineer will be entitled to withhold sufficient funds to cover costs incurred by the Agency as a result of the termination. Final payment to the Contractor will be made according to the provisions of Section 00195.

If a termination under this provision is determined by a court of competent jurisdiction to be unjustified, the termination shall be deemed a termination for public convenience.

**(b) Substituted Performance** - According to the Agency's procedures, and upon the Engineer's recommendation that sufficient cause exists, the Agency, without prejudice to any of its other rights or remedies and after giving the Contractor and the Contractor's Surety 10 Calendar Days' written notice, may:

- Terminate the Contract;
- Substitute the Contractor with another Entity to complete the Contract;
- Take possession of the Project Site;
- Take possession of Materials on the Project Site;
- Take possession of Materials not on the Project Site, for which the Contractor received progress payments under 00195.50;
- Take possession of Equipment on the Project Site that is to be incorporated into the Work;
- Take possession of Equipment not on the Project Site that is to be incorporated into the Work, and for which the Contractor received progress payments under 00195.50; and
- Finish the Work by whatever method the Agency deems expedient.

If, within the 10 Calendar Day notice period provided above, the Contractor and/or its Surety corrects the basis for declaration of default to the satisfaction of the Engineer, or if the Contractor's Surety submits a proposal for correction that is acceptable to the Engineer, the Contract will not be terminated.

**(c) Termination for Public Convenience** - The Engineer may terminate the Contract in whole or in part whenever the Engineer determines that termination of the Contract is in the best interest of the public.

The Engineer will provide the Contractor and the Contractor's Surety seven Calendar Days' written notice of termination for public convenience. After such notice, the Contractor and the Contractor's Surety shall provide the Engineer with immediate and peaceful possession of the Project Site, and of Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50. Compensation for Work terminated by the Engineer under this provision will be determined according to the provisions of 00195.70(b).

## Section 00190 - Measurement of Pay Quantities

### Description

#### 00190.00 Scope

The Engineer will measure pay quantities for accepted Work according to the United States standard measure unless otherwise provided in the Contract. Unless otherwise specified in the Contract, the Engineer will round off all quantity computations using the following convention:

- The final significant digit will not be changed when the succeeding digit is less than 5.
- The final significant digit will be increased by one when the succeeding digit is 5 or greater.

The measurement provisions contained in the Specifications for each Pay Item will supplement or modify the above convention by:

- Imposing measurement limitations
- Describing measurement or computation procedures
- Giving conversion factors or adjustment conditions
- Providing for determination of reasonably accurate and representative Pay Item quantities.

Measurements required or allowed to be made by the Contractor will be subject to the Engineer's verification. The Engineer's decision about measurement is final.

#### 00190.10 Measurement Guidelines

Measurement of quantities will be made on the following bases, unless otherwise specified in the Contract:

- (a) **Unit Basis** - Unit will be each, unless otherwise specified in the Contract and will be determined by actual count of units in place.
- (b) **Length Basis** - Length will be feet or mile, unless otherwise specified in the Contract and will be determined by measuring the length at least to the nearest 0.1 foot or at least to the nearest 0.1 mile, as applicable, unless otherwise specified in the Contract. Measurements will be limited to the dimensions shown or specified, or as directed by the Engineer.
- (c) **Area Basis** - Area will be square foot, square yard, or acre, unless otherwise specified in the Contract and will be determined by measuring the width and the length (or height) at least to the nearest 0.1 foot and computed at least to the nearest 0.1 square foot, nearest 0.1 square yard, or nearest 0.1 acre, as applicable, unless otherwise specified in the Contract.
- (d) **Weight Basis** - Weight will be pound or ton, unless otherwise specified in the Contract and will be determined as follows:
  - (1) **Pound** - Pound weight will be determined by the net weight identified on the manufacturer's packaged labels, subject to periodic check weighing. Weight by pound will be measured at least to the nearest 1.0 pound unless otherwise specified in the Contract.  
  
Provide a certificate with each shipment together with a certified copy of the weight of each delivery. If the check weight is less than the manufacturer weight by more than 0.4%, the discrepancy will be resolved by the Engineer.
  - (2) **Ton** - Ton weight will be determined on Contractor-provided scales as required under 00190.20 unless otherwise allowed by the Specifications. Weight by ton will be measured at least to the nearest 0.01 ton unless otherwise specified in the Contract.

If bituminous materials, portland cement, lime, and similar bulk Materials are shipped by truck or rail, the supplier's shipping invoice with net scale weights, or volumes converted to weights, may be used for Pay Item quantity determination in place of weights determined on the Contractor provided vehicle scales.

Shipping invoice weights of the supplier's truck or transport shall be subject to periodic check weighing on the Contractor's vehicle scales, or other scales designated, according to 00190.20. If the check weight is less than the supplier weight by more than 0.4%, the discrepancy will be resolved by the Engineer.

No payment will be made:

- For quantities in excess of the supplier weight
- When Materials have been lost, wasted, or otherwise not incorporated into the Work
- For additional hauling costs resulting from the check weighing

- (e) **Volume Basis** - Volume will be cubic yard truck measure or in-place measure, gallons, foot board measure (FBM), or thousand foot board measure (MFBM), unless otherwise specified in the Contract and will be measured at least to the nearest 0.1 cubic yard, nearest 1.0 gallon, nearest 0.1 FBM, or nearest 0.1 MFBM, as applicable, unless otherwise specified in the Contract.

Truck measure will be the measured and calculated maximum "water level" capacity of the vehicle. Quantities will be determined at the point of delivery, with no allowance for settlement of Material during transit. When required to facilitate measurement, the vehicle load shall be leveled at the point of delivery. Payment will not be made for Material in excess of the maximum "water level" capacity. Deductions will be made for loads below the maximum "water level" capacity.

When bituminous materials are measured by volume, the volume will be measured at 60 °F or will be corrected to the volume at 60 °F using the correction factors found in the MFTP (ODOT TM 321).

- (f) **Time Basis** - Time will be hour, Day, or year, unless otherwise specified in the Contract, and will be measured to at least the nearest 0.5 hour, nearest 1.0 Day, or nearest 1.0 year, as applicable, unless otherwise specified in the Contract.

- (g) **Standard Manufactured Items** - If standard manufactured items, such as fence, wire, plates, rolled shapes, pipe, conduit and other similar items are specified in the Contract by properties such as gauge, unit weight, or section dimensions, the manufacturing tolerances established by the industry involved will be accepted unless more stringent tolerances are cited in the Contract.

- (h) **Lump Sum Basis** - Lump sum, when used, means the Work described shall be completed and accepted without measurement unless changes are ordered in writing by the Engineer. If estimated quantities of the Work to be performed are listed in the Special Provisions, they provide only a basis for adjusting payment amounts. Estimated quantities are approximate only, and are made from a reasonable interpretation of the Plans and Specifications. Computations based on the details and dimensions shown on the Plans or Specifications are not guaranteed to equal estimated quantities.

If the Agency issues no Change Order, the Agency will make no pay adjustment for quantities based on the Contractor's computations that overrun or underrun the estimated quantities.

If the Agency issues Change Orders for changes in the Work, the Engineer will measure such changes according to the standards set by 00195.20 to determine adjustment of payment.

## Section 00195 - Payment

### Description

#### 00195.00 Scope and Limit

- (a) **General** - The Agency will pay only for measured Pay Item quantities incorporated into the Work or performed according to the terms of the Contract. The Contractor understands and agrees that Pay Item quantities listed in the Schedule of Items do not govern payment. Payment constitutes full compensation to the Contractor for furnishing all Materials, Equipment, labor, and Incidentals necessary to complete the Work; and for risk, loss, damage, and expense arising from the nature or prosecution of the Work or from the action of the elements, subject to the provisions of 00170.80. The Contractor shall include the costs of bonds and insurance for the Project in the unit price for each Pay Item of Work to be performed.
- (b) **Essential or Incidental Materials or Work** - When the Specifications state that the unit price for a Pay Item is compensation for certain Materials or Work essential or Incidental to the Pay Item, the same Materials or Work will not be measured or paid under any other Pay Item.

### Provisions and Requirements

#### 00195.20 Changes to Plans or Character of Work

- (a) **Insignificant Changed Work** - If the changes made under 00140.30 do not significantly change the character or unit cost of the Work to be performed under the Contract, the Agency will pay for such work at the Pay Item price.

If the Work involved in the change is measured on a lump sum basis and its character is not significantly changed, payment for the Changed Work will be determined:

- As described in the applicable Section of the Specifications;
- If not described there, on a theoretical unit price determined by dividing the Contractor's lump sum price by the estimated quantity of the Pay Item listed in the Special Provisions; or
- If neither of the above applies, the Engineer will make an equitable adjustment.

- (b) **Significant Changed Work** - If the changes made under 00140.30 significantly alter the character, unit cost, or lump sum cost of the Work, the Agency will adjust the Contract. Adjustments will exclude any loss of anticipated profits. The parties shall agree upon the basis for payment and the amount of adjustment prior to the Contractor commencing the Changed Work. If the basis and amount cannot be agreed upon, the Engineer will make an equitable adjustment, which may increase or decrease the Contract Amount and Contract Time.

Any such adjustments will not be more than the amount justified by the Engineer on the basis of the established procedures set out in Section 00197 for determining rates. The term "Significant Changed Work" shall apply only to that circumstance in which the character of the Work, as changed, differs materially in kind, nature, or unit cost from that involved or included in the originally proposed construction.

#### 00195.30 Differing Site Conditions

Upon written notification, as required in 00140.40, the Engineer will investigate the identified conditions. If the Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required to perform any Work under the Contract, an adjustment in the Contract Amount or Contract Time, excluding loss of anticipated profits, will be made, and the Contract modified accordingly, in writing. The Engineer will notify the Contractor as to whether or not an adjustment of the Contract is warranted.



No Contract adjustment which benefits the Contractor will be allowed unless the Contractor has provided the required written notice.

**00195.40 Unreasonable Delay by the Agency**

If the Contractor believes that performance of all or any portion of the Work is suspended, delayed, or interrupted for an unreasonable period of time in excess of that originally anticipated or customary in the construction industry, due to acts or omissions of the Agency, or persons acting for the Agency, and that additional compensation, Contract Time, or both, are due the Contractor because of the suspension, delay or interruption, the Contractor shall immediately file a written notice of delay according to 00180.60. The Contractor shall then promptly submit a properly supported request for any additional compensation, Contract Time, or both, according to the applicable provisions in 00180.60 through 00180.80 and Section 00199.

The Engineer will promptly evaluate a properly submitted request for additional compensation. If the Engineer determines that the delay was unreasonable, and that the cost required for the Contractor to perform the Contract has increased as a result of the unreasonable suspension, delay or interruption, the Engineer will make an equitable adjustment, excluding profit, and modify the Contract in writing accordingly. The Engineer will notify the Contractor of the determination and whether an adjustment to the Contract is warranted.

Under this provision, no Contract adjustment will be allowed:

- Unless the Contractor has provided the written notice required by 00180.60;
- For costs incurred more than 10 Calendar Days before the Engineer receives the Contractor's properly submitted written request;
- For any portion of a delay that the Engineer deems to be a reasonable delay, or for which an adjustment is provided for or excluded under other terms of the Contract; or
- To the extent that performance would nevertheless have been suspended, delayed or interrupted by causes other than those described in this Subsection.

**00195.50 Progress Payments and Retained Amounts**

**(a) Progress Payments** - The Agency's payment of progress payments, or determination of satisfactory completion of Pay Items or Work or release of retainage under 00195.50(d), shall not be construed as acceptance Final Acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective Materials or workmanship or latent defects and warranty obligations.

The estimates upon which progress payments are based are not represented to be accurate estimates. All estimated quantities are subject to correction in the final estimate. If the Contractor uses these estimates as a basis for making payments to Subcontractors, the Contractor assumes all risk and bears any losses that result.

If the estimated amount due the Contractor for any given month is less than \$1,000, the Agency will make no payment for that month unless requested by the Contractor.

**(1) Progress Estimates** - At the same time each month, the Engineer will make an estimate of the amount and value of Pay Item Work completed. The amount of Work completed will be the sum of the estimated number of units completed for unit price Pay Items plus the estimated percentage completed of lump sum Pay Items.

The estimated value of the Work completed will then be determined by using the Contract unit price for unit price Pay Items, and by using one of the following methods to determine the value of the lump sum Pay Items:

- The "theoretical unit price", when the Special Provisions contain an estimated number of units;

- A Contractor-submitted, Engineer-approved Schedule of Values, when there is no theoretical unit price available; or
- Engineer's determination, when there is neither an available theoretical unit price, nor an approved, Contractor-submitted Schedule of Values.

The amounts to be allowed for lump sum Pay Items in progress payments will not exceed the reasonable value of the Work performed, as determined by the Engineer.

Incidentals such as formwork, falsework, shoring, and cribbing shall be included in the unit prices for the various Pay Items requiring their use, unless specified as a separate Pay Item. No payment will be made for Pay Items that include Incidentals until units or portions of such Pay Item Work are in place and completed. The costs of Incidentals will be paid in proportion to the percentage of Pay Item Work completed.

- (2) **Value of Materials on Hand** – If requested by the contractor, the Engineer will make an estimate of the amount and value of acceptable Materials on hand, i.e., already delivered and stored according to 00195.60(a), to be incorporated into the Work.
- (3) **Value of Work Accomplished** - The sum of the values in (1) and (2) above will be collectively referred to in this Subsection as the “value of Work accomplished”, subject to (4) below.
- (4) **Limitations on Value of Work Accomplished** - In determining the “value of Work accomplished”, the Engineer's estimate will be based on the unit prices for the various Pay Items. Any amounts not included in progress payments due to substantial mathematical unbalancing of Pay Item prices will be included in the final payment issued according to 00195.90(b).
- (5) **Reductions to Progress Payments** - With each progress payment, the Contractor will receive a Contract payment voucher and summary setting forth the value of Work accomplished reduced by the following:
  - Amounts previously paid;
  - Amounts deductible or owed to the Agency for any cause specified in the Contract;
  - Additional amounts retained to protect the Agency's interests according to Subsection (e) below.

(b) **Retainage** - The Agency reserves the right in its sole discretion to not withhold retainage from progress payments or to begin withholding retainage at any time. If the Agency withholds retainage from progress payments, the amount to be retained from progress payments will be 2.5% of the value of Work accomplished, and will be retained in one of the forms specified in Subsection (c) below. If the Agency determines that satisfactory progress is not being made on the Work, the Agency may withhold up to 5% of the value of Work accomplished from subsequent progress payments. No retainage will be withheld from Work performed as Force Account Work, escalation/de-escalation, bonuses, or other items decided by the Agency.

As provided in 00170.65(a) additional retainage of 25% of amounts earned will be withheld and released according to ORS 279C.845 when the Contractor fails to file the certified statements required in ORS 279C.845, FHWA Form 1273, and 00170.65.

(c) **Forms of Retainage** – If the Agency withholds retainage, forms of acceptable retainage are specified below in Subsections (1). No other forms are available under Roseburg Urban Sanitary Authority contracts.

(1) **Cash, Alternate A** - Retainage will be deducted from progress payments and held by the Agency until final payment is made according to 00195.90, unless otherwise specified in the Contract.

Except as otherwise provided, the Agency will deposit the cash retainage withheld in an interest-bearing account in a bank, trust company, or savings association for the benefit of the Agency, as provided by ORS 279C.560(4). Interest earned on the account shall accrue to the Contractor. Amounts retained and interest earned will be included in the final payment made according to 00195.90, unless specified in the Contract.

Any retainage withheld on Work performed by a Subcontractor will be released to the Contractor according to 00195.90(d).

**(d) Reduction of Retainage** - As the Work progresses, the amounts to be retained under (b) of this Subsection are subject to reduction in the Engineer's sole discretion. Retainage reductions will be considered only as follows:

- When the Work is 97.5% or more completed, the Engineer may, without application by the Contractor, reduce the retained amount to 100% of the value of the Work remaining.
- When a Subcontractor has satisfactorily completed all of its Work, it may request release of retainage for that Work from the Contractor. The Contractor shall request reduction of retainage in the amount withheld for the Subcontractor's Work after certifying to the Agency that the Subcontractor's Work is complete, and that all contractual requirements pertaining to the Subcontractor's Work have been satisfied. Within 60 Calendar Days of the end of the month in which the Agency receives the Contractor's certification regarding the Subcontractor's Work, the Agency will either notify the Contractor of any deficiencies which require completion before release of retainage, or verify that the Subcontractor's Work complies with the Contract and release all retainage for that Work with the next scheduled progress payment. Within 10 Calendar Days of receipt of retainage, the Contractor shall pay to the Subcontractor all such retainage released except for latent defects or warranty.
- The Agency will only release retainage for satisfactorily completed portions of the Work represented by Pay Items in the Schedule of Items, or by Pay Items added by Change Order. Work not represented by a Pay Item, but which constitutes part of an uncompleted Pay Item, will not be regarded as satisfactorily completed Work for the purposes of this Subsection. If retainage has been reduced or eliminated, the Agency reserves the right to protect its interests by retaining amounts from further progress payments at the rates provided in 00195.50(b).

**(e) Withholding Payments** - The Engineer may withhold such amounts from progress payments or final payment as may reasonably protect the Agency's interests until the Contractor has:

- Complied with all orders and directives issued by the Engineer under or pursuant to the Contract; and
- Correct or cured its failure to comply with the Contract; and
- Satisfied all legal actions filed against the Agency, the Agency's governing body and its members, and Agency employees that the Contractor is obliged to defend. (see 00170.72); and
- Paid all liquidated and delinquent debt owned to the State or any department or agency of the State. (In addition to the Agency's other rights and remedies, the Agency may also undertake collection by administrative offset, or garnishment if applicable, of all monies due to recover such debt. Offsets or garnishment may be initiated after the Contractor has been given notice if required by law.)

Notwithstanding ORS 279C.555 or 279C.570, if a Contractor is required to file certified statements on the prevailing rate of wages, but fails to do so, the Agency will retain 25% of any amount earned as required in 00170.65.

**(f) Prompt Payment Policy** - Payments shall be made promptly according to ORS 279C.570, ORS 279C.580 and other applicable legal requirements.

**00195.60 Advance Allowance for Materials on Hand**

(a) **General** - If the total value of Materials on hand is at least \$1,000 or the total value of a single class of Materials on hand is at least \$500, the Engineer may authorize an advance allowance for the Materials in the progress payments. The Agency will not make advance allowances on the Materials unless the following three conditions are satisfied:

(1) **Request for Advance Allowance** - If Materials on hand meet the requirement of (2) below, an advance allowance will be made if:

- A written request for advance allowance for Materials on hand has been received by the Engineer at least five Calendar Days before the pay period cutoff date; and
- The request is accompanied by written consent of the Contractor's Surety, if required by the Agency.

(2) **Stored or Stockpiled Conditions** - The Materials shall have been delivered and/or acceptably stored or stockpiled according to the Specifications and as follows:

- At the Project Site;
- On Agency-owned property;
- On property in the State of Oregon on which the property owner has authorized storage in writing. The written authorization must allow the Agency to enter upon the property and remove Materials for at least 6 months after completion of the Project. The Contractor shall furnish a copy of the written permission to the Agency.

To be eligible for advance allowance, the Materials shall:

- Meet Specification requirements;
- Have the required Materials conformance and quality compliance documents on file with the Engineer (see Section 00165);
- Be in a form ready for incorporation into the Work; and
- Be clearly marked and identified as being specifically fabricated, or produced, and reserved for use on the Project.

(3) **Responsibility for Protection** - The Contractor has full control and responsibility for the protection of Materials on hand from the elements and against damage, loss, theft, or other impairment until the entire Project has been completed and accepted by the Agency.

If Materials are damaged, lost, stolen, or otherwise impaired while stored, the monetary value advanced for them, if any, will be deducted from the next progress payment.

If these conditions in 00195.60(a)(1) through 00195.60(a)(3) have been satisfied, the amount of advance allowance, less the retainage described in 00195.50, will be determined by one of the following methods as elected by the Engineer:

- Net cost to the Contractor of the Materials, f.o.b. the Project Site or other approved site; or
- Price (or portion of it attributable to the Materials), less the cost of incorporating the Materials into the Project, as estimated by the Engineer.

(b) **Proof of Payment** - The Contractor shall provide the Engineer with proof of payment to the Materials suppliers for purchased Materials within 30 Calendar Days of the date of the progress payment that includes the advance allowance.

If proof of payment is not provided, sums advanced will be deducted from future progress payments, and the Engineer will not approve further prepayment advance allowance requests.

- (c) **Terminated Contract** - If the Contract is terminated, the Contractor shall provide the Agency immediate possession of all Materials for which advance allowances have been received, as provided above. If, for any reason, immediate possession of the Materials cannot be provided, the Contractor shall immediately refund to the Agency the total amount advanced for the Materials. The Agency may deduct any amount not so refunded from final payment.

**00195.70 Payment under Terminated Contract**

Payment for Work performed under a Contract that is terminated according to the provisions of 00180.90 will be determined under (a) or (b) of this Subsection.

- (a) **Termination for Default** - Upon termination of the Contract for the Contractor's default, the Agency will make no further payment until the Project has been completed. The Agency will make progress payments to the party to whom the Contract is assigned, but may withhold an amount sufficient to cover anticipated Agency costs, as determined by the Engineer, to complete the Project.

Upon completion of the Project, the Engineer will determine the total amount that the defaulting Contractor would have been entitled to receive for the Work, under the terms of the Contract, had the Contractor completed the Work (the "cost of the Work").

If the cost of the Work, less the sum of all amounts previously paid to the Contractor, exceeds the expense incurred by the Agency in completing the Work, including without limitation expense for additional managerial and administrative services, the Agency will pay the excess to the Contractor, subject to the consent of the Contractor's Surety.

If the expense incurred by the Agency in completing the Work exceeds the Contract Amount, the Contractor or the Contractor's Surety shall pay to the Agency the amount of the excess expense. The Engineer will determine the expense incurred by the Agency and the total amount of Agency damage resulting from the Contractor's default. That determination will be final as provided in 00150.00.

If a termination for default is determined by a court of competent jurisdiction to be unjustified, it shall be deemed a termination for public convenience, and payment to the Contractor will be made as provided in Subsection (b) below.

**(b) Termination for Public Convenience:**

- (1) **General** - Full or partial termination of the Contract shall not relieve the Contractor of responsibility for completed portions of the Work, or relieve the Contractor's Surety of the obligation for any just claims arising from the completed Work.
- (2) **Mobilization** - If mobilization is not a separate Pay Item, and payment is not otherwise provided for under the Contract, the Agency may pay the Contractor for mobilization expenses, including moving Equipment to and from the Project Site. If allowed, payment of mobilization expenses will be based on cost documentation submitted by the Contractor to the Engineer.
- (3) **All Other Work** - The Agency shall pay the Contractor at the unit price for the number of Pay Item units of completed, accepted Work. For units of Pay Items partially completed, payment will be as mutually agreed, or, if not agreed, as the Engineer determines to be fair and equitable. No claim for loss of anticipated profits will be allowed. The Agency will purchase Materials left on hand according to 00195.80.

**00195.80 Allowance for Materials Left on Hand**

- (a) **Purchase of Unused Materials** - If Materials are delivered to the Project Site, or otherwise acceptably stored at the order of the Engineer, but not incorporated into the Work due to complete or partial

elimination of Pay Items, changes in Plans, or termination of the Contract for public convenience according to 00180.90, and it is not commercially feasible for the Contractor to return them for credit or otherwise dispose of them on the open market; the Agency may purchase them according to the formula and conditions specified in Subsection (b) below.

**(b) Purchase Formula and Conditions:**

**(1) Formula** - The Agency will apply the following formula in determining the Contractor's allowance for Materials left on hand:

Contractor's Actual Cost, plus 5% Overhead Allowance, minus Advance Allowances under 00195.60, but no markup or profit.

**(2) Conditions** - The Agency will not purchase the Contractor's Materials left on hand unless the Contractor satisfies the following conditions:

- Requests the Agency's purchase of unused Materials;
- Shows acquisition of the Materials according to 00160.10;
- Shows that the Materials were acquired prior to the Agency change or termination;
- Shows that the Materials meet Specifications; and
- Provides receipts, bills and other records of actual cost of Materials delivered to the designated delivery points.

**00195.90 Final Payment**

**(a) Final Estimate** - As soon as practicable after Final Inspection of the Project, as provided in 00150.90, the Engineer will prepare a final estimate of the quantities of the Pay Items performed. With this estimate of quantities as a base, the total amount due the Contractor will be determined according to the terms of the Contract including without limitation any amounts due for Extra Work performed.

**(b) Final Payment** - The amount of final payment will be the difference between the total amount due the Contractor and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

After computation of the final amount due, and after Final Acceptance of the Project, final payment will be mailed to the Contractor's last known address as shown in the records of the Agency.

Beginning 45 Calendar Days after the date of Final Acceptance, interest will begin to accrue at the rate established by ORS 279C.570 on any money due and payable to the Contractor as final payment, determined as described above. No interest will be paid on money withheld due to outstanding amounts owed by the Contractor under the provisions of 00170.10.

**(c) No Waiver of Right to Make Adjustment** - The fact that the Agency has made any measurement, estimate, determination or certification either before or after completion of the Project, Final Acceptance, Agency assumption of possession of the Project Site, determination of satisfactory completion of Pay Items or Work or release of retainage under 00195.50(D) or payment for any part of the Work, shall not prevent either party from:

- Showing the true amount and character of the Work;
- Showing that any measurement, estimate or certification is incorrect (except for Agency verifications under 00195.50(d));
- Recovering from the other party damages that may have been suffered because the other party failed to comply with the Contract.

- (d) **Release of Liens** - Before RUSA pays the Contractor for the work included under the Contract, the Contractor shall sign and deliver to RUSA a release of liens or claims sworn to under oath and duly notarized. The release shall state that the Contractor has satisfied all claims and indebtedness of every nature in any way connected with the Project, including but not limiting the generality of the foregoing, all payrolls, amounts due to subcontractors, accounts for labor performed and materials furnished, incidental services, liens and judgments.

If any lien or claim remains unsatisfied after payment to the Contractor is made, the Contractor shall refund to RUSA all monies that RUSA may be compelled to pay in discharging such a lien or claim, including all costs and reasonable attorneys' fees.

**00195.95 Error in Final Quantities and Amounts**

- (a) **Request for Correction of Compensation** - If the Contractor believes the quantities and amounts detailed in the final Contract payment voucher, prepared by the Engineer according to 00195.90, to be incorrect, the Contractor shall submit an itemized statement to the Engineer detailing all proposed corrections.

This statement must be submitted to the Engineer within 90 Calendar Days from the date the voucher was mailed to the Contractor, according to 00195.90(b). Any request for compensation not submitted and supported by an itemized statement within the 90 Calendar Day period will not be paid by the Agency. This does not limit the application of Section 00199.

(b) **Acceptance or Rejection of Request:**

- (1) **Consideration of Request** - The Engineer will consider and investigate the Contractor's request for correction of compensation submitted according to 00195.95(a), and will promptly advise the Contractor of acceptance or rejection of the request in full or in part.
- (2) **Acceptance of Request** - If the Engineer accepts the Contractor's request(s) in full or in part, the Engineer will prepare a post-final Contract payment voucher, including all accepted corrections, and will forward it to the Contractor.
- (3) **Rejection of Request** - If the Engineer rejects the request(s) in full, the Engineer will issue a written notice of rejection and mail it to the Contractor.
- (4) **Contractor Objection to Revised Voucher or Notice of Rejection** - If the Contractor disagrees with the revised voucher or notice of rejection, the Contractor may request review according to the procedure specified in 00199.40. If the Contractor fails to submit a request for 00199.40 review within 30 Calendar Days after the Engineer mails a post-final Contract payment voucher or notice of rejection, the Contractor waives all rights to a claim based on errors in quantities and amounts.

If the Engineer rejects the Contractor's request on the basis that the issue was not one that qualified for treatment under this Section, no review according to 00199.40 will be allowed.

## **Section 00196 - Payment for Extra Work**

### **Description**

#### **00196.00 General**

Only work not included in the Contract as awarded but deemed by the Engineer to be necessary to complete the Project (see 00140.60) will be paid as Extra Work. Regardless of alterations and changes, any item of Work provided for in the Contract will not constitute Extra Work. Payment for alterations and changes to Work will be made according to 00195.20.

Compensation for Extra Work will be paid only for Work authorized in writing by the Engineer and performed as specified. Work performed before issuance of the Engineer's written authorization shall be at the Contractor's risk. Extra Work will be paid as determined by the Engineer, according to 00196.10 and 00196.20.

### **Provisions and Requirements**

#### **00196.10 Negotiated Price**

If the Engineer can reasonably determine a price estimate for Extra Work, the Engineer may then give written authorization to the Contractor to begin the Extra Work. As soon as practicable, but within 10 Calendar Days after that authorization, the Contractor shall respond in writing to the Engineer's Extra Work price estimate by submitting to the Engineer an Extra Work price quote. The price quote shall detail the following items related to the Extra Work:

- Types and amounts of Materials
- Hours of Equipment use and hours of labor
- Travel
- Overhead and profit
- Other costs associated with the proposed Extra Work

Pending approval of the price quote, the Engineer will maintain force account records of the Extra Work. As soon as practicable, but within 10 Calendar Days of receipt of a properly supported price quote, the Engineer will review the price quote and advise the Contractor if it is accepted or rejected. The Engineer will not accept a price quote that cannot be justified on a Force Account basis. If the Contractor's price is accepted, the Engineer will issue a Change Order, and the Extra Work will be paid at the accepted price.

#### **00196.20 Force Account**

If the Engineer and the Contractor cannot agree on a price for the Extra Work, the Engineer may issue a Force Account Work order requiring the Extra Work to be paid as Force Account Work. Force Account Work records and payment will be made according to Section 00197.



**Section 00197 - Payment for Force Account Work**  
**Force Account Work**

**00197.00 Scope**

The Materials, Equipment and labor rates established in this Section apply only to Extra Work ordered by the Engineer to be performed as Force Account Work. These rates do not apply to any other Work performed under the Contract.

**00197.01 General**

Before ordering Force Account Work, the Engineer will discuss the proposed work with the Contractor, and will seek the Contractor's comments and advice concerning the formulation of Force Account Work specifications. The Engineer is not bound by the Contractor's comments and advice, and has final authority to:

- Determine and direct the Materials, Equipment and labor to be used on the approved Force Account Work; and
- Determine the time of the Contractor's performance of the ordered Force Account Work.

If the Engineer orders the performance of Extra Work as Force Account Work, the Engineer will record, on a daily basis, the Materials, Equipment, labor, and Special Services used for the Force Account Work during that day. The Engineer and the Contractor shall sign the record daily to indicate agreement on the Materials, Equipment, labor, and Special Services used for the Force Account Work performed on that day.

The following shall be reflected on the daily record:

- Materials used in the Force Account Work as directed by the Engineer, except those furnished and paid under rental rates for use of Equipment;
- Equipment which the Engineer considers necessary to perform the Force Account Work. Equipment hours will be recorded to the nearest quarter hour;
- Labor costs, including that of Equipment operators and supervisors in direct charge of the specific operations while engaged in the Force Account Work;
- Special Services; and
- The Engineer's and Contractor's signatures confirming its accuracy.

**00197.10 Materials**

**(a) General** - The Contractor will be paid for Materials actually used in the Force Account Work as directed by the Engineer, except for those furnished and paid for under rental rates included with the use of Equipment. Payments will be at actual cost, including transportation costs to the specified location, from the supplier to the purchaser, whether the purchaser is the Contractor, a Subcontractor, or other forces. All costs are subject to the provisions of this Subsection.

**(b) Trade Discount** - If a commercial trade discount is offered or available to the purchaser, it shall be credited to the Agency, even though the discount may not have actually been taken. The Agency will not take any discounts for prompt or early payment, whether or not offered or taken.

**(c) Not Directly Purchased From Supplier** - If Materials cannot be obtained by direct purchase from and direct billing by the supplier, the cost shall be considered to be the price billed to the purchaser less commercial trade discounts, as determined by the Engineer, but not more than the purchaser paid for the Materials. No markup other than actual handling costs will be permitted.

- (d) **Purchaser-Owned Source** - If Materials are obtained from a supply or source wholly or partly owned by the purchaser, the cost shall not exceed the price paid by the purchaser for similar Materials furnished from that source on Pay Items, or the current wholesale price for the Materials delivered to the Project Site, whichever is lower.

**00197.20 Equipment**

- (a) **General** - Equipment approved by the Engineer to perform the Force Account Work will be eligible for payment at the established rates only during the hours it is operated or on standby if so ordered by the Engineer. Equipment hours will be recorded on the daily record to the nearest quarter hour.

Except as modified by these provisions, Equipment use approved by the Engineer will be paid at the rental rates given in the most current edition of EquipmentWatch Cost (Blue Book) published by EquipmentWatch a division of Penton Business Media, Inc., and available from EquipmentWatch (phone 1-800-669-3282) (see 00110.05(e) for website).

For Force Account work that totals under \$10,000, the Engineer may accept for use the commercially established wholesale rental rate published from the contractor for general construction work including cost with operator as long as the total hourly cost does not exceed the method of establishing equipment, operational costs and labor as described elsewhere in this subsection and subsection 00197.30(a). If this is accepted by the Engineer, record keeping requirements will remain the same.

- (b) **Equipment Description** - On the billing form for Equipment costs, the Contractor shall submit to the Engineer sufficient information for each piece of Equipment and its attachments to enable the Engineer to determine the proper rental rate from the Blue Book.

(c) **Rental Rates (without Operator):**

- (1) **Rental Rate Formula** - Rental rates for Equipment will be paid on an hourly basis for Equipment and for attachments according to the following formula:

$$\text{Hourly Rate} = \frac{\text{Monthly Base Rate} \times \text{Rate Adjustment Factor}}{176 \text{ hours/month}} + \text{Hourly Operating Rate}$$

Some attachments are considered “standard Equipment” and are already included in the monthly base rate for the Equipment. That information can be obtained from EquipmentWatch.

- (2) **Monthly Base Rate** - The monthly base rate used above for the machinery and for attachments represents the major costs of Equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs.
- (3) **Rate Adjustment Factor** - The rate adjustment factor used above will be determined as per page iii of each section of the Blue Book.
- (4) **Hourly Operating Rate** - The hourly operating rate used above for the machinery and for attachments represents the major costs of Equipment operations, such as fuel and oil, lubrications, field repairs, tires or ground engaging components, and expendable parts.
- (5) **Limitations** - The Blue Book “Regional Adjustment Factor” shall not apply.

If multiple attachments are included with the rental Equipment, and are not considered “standard Equipment”, only the attachment having the higher rental rate will be eligible for payment, provided the attachment has been approved by the Engineer as necessary to the Force Account Work.

Rental will not be allowed for small tools that have a daily rental rate of less than \$5, or for unlisted Equipment that has a fair market value of \$400 or less.

The above rates apply to approved Equipment in good working condition. Equipment not in good working condition, or larger than required to efficiently perform the work, may be rejected by the Engineer or accepted and paid for at reduced rates.

- (d) Moving Equipment** - If it is necessary to transport Equipment located beyond the Project Site exclusively for Force Account Work, the actual cost to transport the Equipment to, and return it from, its On-Site Work location will be allowed as an additional item of expense. However, the return cost will not exceed the original delivery cost. These costs will not be allowed for Equipment that is brought to the Project Site for Force Account Work if the Equipment is also used on Pay Item or related Work.

If transportation of such Equipment is by common carrier, payment will be made in the amount paid for the freight. No markups will be allowed on common carrier transportation costs. If the Equipment is hauled with the Contractor's own forces, transportation costs will include the rental rate of the hauling unit and the hauling unit operator's wage. If Equipment is transferred under its own power, the rental rate allowed for transportation time will be 75% of the appropriate hourly rate for the Equipment, without attachments, plus the Equipment operator's wage.

- (e) Standby Time** - If ordered by the Engineer, standby time will be paid at 40% of the hourly rental rate calculated according to this Subsection, excluding the hourly operating rate. Rates for standby time that are calculated at less than \$1 per hour will not be paid. Payment will be limited to not more than eight hours in a 24-hour period or 40 hours in a one-week period.

- (f) Blue Book Omissions** - If a rental rate has not been established in the Blue Book, the Contractor may:

- If approved by the Engineer, use the rate of the most similar model found in the Blue Book, considering such characteristics as manufacturer, capacity, horsepower, age and fuel type;
- Request EquipmentWatch to furnish a written response for a rental rate on the Equipment, which shall be presented to the Engineer for approval; or
- Request that the Engineer establish a rental rate.

- (g) Outside Rental Equipment** - If Contractor- or Subcontractor-owned Equipment is not available, and Equipment is rented from outside sources, payment will be based on the actual paid invoice.

If the invoice specifies that rental rate does not include fuel, lubricants, field repairs, and servicing, an amount equal to the Blue Book hourly operating cost may be added for those items that were excluded.

The Agency may reduce the payment when the invoice amount plus allowance is higher than the amount authorized under (c) through (f) of this Subsection.

The provisions of 00180.20(c) apply to owner-operated Equipment.

**00197.30 Labor**

The Contractor will be paid for all labor engaged directly on Force Account Work, including Equipment operators and supervisors in direct charge of the specific force account operations.

- (a) Standard Calculation** - The hourly amount paid to the Contractor for each employee engaged on Force Account Work will be two times the actual base hourly wage (excluding fringe benefits, vacation, and all other direct or indirect costs including subsistence) paid to the employee for:

- (1) Work under each Force Account Work order, up to an accumulated total value for labor under that order of \$10,000; and
- (2) Workers whose work class has an industrial accident insurance rate of 25% or less as determined by the National Council on Compensation Insurance (NCCI) for the assigned risk pool for the appropriate worker class.

This amount paid to the Contractor will be full compensation for all costs associated with labor on Force Account Work including wages, fringe benefits, vacation, insurance, markup and other direct or indirect costs except for per diem costs. If per diem is paid to workers for similar Pay Item Work, per diem costs will be paid on an actual-cost basis for the Force Account Work. The markup described in 00197.80 will not be added, except that the supplemental markup for Force Account Work performed by Subcontractors will be allowed.

**(b) Work Value for Labor over \$10,000 or NCCI Rate over 25%** - After the accumulated value of labor performed under a Force Account Work order exceeds either 00197.30(a-1) or 00197.30(a-2), payment for Force Account Work labor will be calculated as follows:

- (1) Wages** - The actual wages paid to laborers and supervisors, if those wages are paid at rates not more than those for comparable labor currently employed on the Project, or at the recognized, current, prevailing rates in the locality of the Project.
- (2) Required Contributions** - The actual cost of industrial accident insurance, unemployment compensation contributions, payroll transit district taxes, and social security for old age assistance contributions incurred or required under statutory law and these Specifications. The actual cost of industrial accident insurance is the NCCI rate for the assigned risk pool for the appropriate work class multiplied by the experience modification factor for the Contractor.
- (3) Required Benefits** - The actual amount paid to, or on behalf of, workers as per diem and travel allowances, health and welfare benefits, pension fund benefits, or other benefits, when such amounts are required by a collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Project. The cost of labor calculated under this Subsection will also be subject to the applicable markups in 00197.80.

**00197.40 Invoices for Special Services**

Invoices for Special Services that reflect current market pricing may be accepted without complete itemization of Materials, Equipment, and labor costs, if the itemization is impractical or not customary. The invoice for Special Services shall show credit for commercial trade discounts offered or available.

No percentage markup will be allowed other than that specified in 00197.80.

**00197.80 Percentage Allowances**

To the Contractor's actual costs incurred, as limited in this Section 00197, amounts equal to a percentage markup of such costs will be allowed and paid to the Contractor as follows:

<b>Subsection</b>	<b>Percent</b>
00197.10 Materials	17
00197.20 Equipment	17
00197.30(b) Labor	22
00197.40 Special Services	17

When a Subcontractor performs ordered Force Account Work, the Contractor will be allowed a supplemental markup of 8% on each Force Account Work order.

These allowances made to the Contractor will constitute complete compensation for overhead, general and administrative expense, profit, and all other Force Account Work costs that were incurred by the Contractor, or by other forces that the Contractor furnished. No other reimbursement, compensation, or payment will be made.

**00197.90 Billings**

Billings for Force Account Work by the Contractor shall be submitted for the Engineer's approval on forms provided by the Agency or approved by the Engineer. Billings for Materials (other than Incidental items out of the inventory of the Contractor or Subcontractors), rental Equipment from sources other than the Contractor or Subcontractors, and Special Services, shall be accompanied by copies of invoices for the goods and services. The invoices shall be fully itemized showing dates, quantities, unit prices, and complete descriptions of goods and services provided. Invoices for amounts of \$10 or less per invoice are not required, unless requested by the Engineer.

Costs included on the billings shall comply with 00197.01(a) and 00197.10 through 00197.40.

When a billing for Force Account Work has been paid at the Project level, no further corrections will be made because of further review if those corrections amount to less than \$10.

## Section 00199 - Disagreements, Protests and Claims

### Description

#### 00199.00 General

This Section details the process through which the parties agree to resolve any disagreement concerning additional compensation or concerning a combination of additional compensation and Contract Time. (See 00180.80 for disagreements and claims concerning additional Contract Time only, and 00195.95 for disagreements and claims concerning correction of final compensation.) The Agency will not consider direct disagreements, protests, or claims from Subcontractors, Materials suppliers, or any other Entity not a party to the Contract.

### Provisions and Requirements

#### 00199.10 Procedure for Resolving Disagreements

When disagreements occur concerning additional compensation or a combination of additional compensation and Contract Time, the Contractor shall first pursue resolution through the Engineer of all issues in the dispute, including without limitation the items to be included in the written notice in 00199.20. If the discussion fails to provide satisfactory resolution of the disagreement, the Contractor shall follow the protest procedures outlined in 00199.20. If the Engineer denies all or part of the Contractor's protest, and the Contractor desires to further pursue the issues, the Contractor shall submit a claim for processing according to 00199.30.

#### 00199.20 Protest Procedure

If the Contractor disagrees with anything required in a Change Order or other written or oral order from the Engineer, including any direction, instruction, interpretation, or determination, or if the Contractor asserts a disagreement or dispute on any other basis, except 0195.95, that, in the Contractor's opinion, entitles or would entitle the Contractor to additional compensation or a combination of compensation and Contract Time, the Contractor shall do all of the following in order to pursue a protest and preserve its claim:

- (a) **Oral Notice** - Give oral notice of protest to the Engineer and outline the areas of disagreement before starting or continuing the protested Work.
- (b) **Written Notice** - File a proper written notice of protest with the Engineer within seven Calendar Days after receiving the protested order. In the notice the Contractor shall:
  - Describe the acts or omissions of the Agency or its agents that allegedly caused or may cause damage to the Contractor, citing specific facts, persons, dates and Work involved;
  - Describe the nature of the damages;
  - Cite the specific Contract provision(s) that support the protest;
  - Include the estimated dollar cost, if any, of the protested Work, and furnish a list of estimated Materials, Equipment and labor for which the Contractor might request additional compensation; and
  - If additional compensation is estimated to be due, include the estimated amount of additional time required, if any.

The Engineer has no responsibility to evaluate the protest unless the Contractor has timely filed a proper notice submitting all of the above information. Failure to comply with this notice requirement renders the notice improper.

- (c) **Records** - Keep complete records of all costs and time incurred throughout the protested Work, and allow the Engineer access to those and other supporting records. Provide daily records of protested Work, on a weekly basis, on a schedule to be set by agreement with the Engineer.

- (d) **Comparison of Records** - Provide the Engineer adequate facilities for keeping cost and time records of the protested Work. The Contractor and the Engineer will compare records and either bring them into agreement at the end of each day, or record and attempt to explain any differences.
- (e) **Work to Proceed** - In spite of any protest, proceed promptly with the Work ordered by the Engineer.
- (f) **Evaluation of Protest** - The Engineer has no responsibility for evaluating a protest that is not timely filed, or for which adequate supporting documentation has not been kept. Provided the procedures above are followed, the Engineer will promptly evaluate all protests and, if the protest is denied, advise the Contractor in writing of the reasons for full or partial denial. If a protest is found to be valid, the Engineer will, within a reasonable time, make an equitable adjustment of the Contract. Adjustment of time will be evaluated according to 00180.80.

The Engineer has no responsibility for evaluating and may reject a protest that does not comply with 00199.20(b). If the protest is rejected, the Engineer will notify the Contractor in writing of the reasons for rejection.

- (g) **Protest Evaluation by Third Party Neutral** - If the Engineer agrees that the Contractor has fully complied with the requirements described in 00199.20(b), and if the Engineer fully or partially denies, in writing, the Contractor's protest according to 00199.20(f), the Contractor may request that a mutually selected Third Party Neutral review the protest. Procedures for selecting, using, and paying for the cost of the Third Party Neutral will be specified by Change Order.

If the Contractor does not accept the Engineer's evaluation of the protest, or either the Contractor or Engineer disagrees with the resolution recommended by the Third Party Neutral, the Contractor may pursue a claim as described in 00199.30.

#### 00199.30 Claims Procedure

- (a) **General** - If the Contractor believes that additional compensation is due, or a combination of additional compensation and Contract Time, and has pursued and exhausted all the procedures provided in 00199.10 and 00199.20 to resolve a disagreement and protest, the Contractor may file a claim.

The Agency's Contract is with the Contractor. There is no contractual relationship between the Agency and any Subcontractor. It is the Contractor's responsibility to fully analyze any claim before presenting it to the Agency. In addition, when a claim includes Work done or costs incurred by a Subcontractor, Materials supplier, or any Entity other than the Contractor, the Contractor remains solely responsible for presenting the claim to the Agency.

Claims that include Work done or costs incurred by any Entity other than the Contractor will not be considered by the Agency unless the Contractor has:

- Completed and provided its own written analysis and evaluation of the claim; and
- Verified by its own independent review and analysis the amount of compensation sought; and
- Certified the claim according to 00199.30(b) (Part 10).

- (b) **Claims Requirements** - At any time during the progress of the Work, but not later than 15 Calendar Days following the date of the Notice of Substantial Completion, the Contractor shall submit to the Engineer claims for additional compensation or a combination of additional compensation and Contract Time additional to that specified in the Contract. For a claim not submitted within the 15day limit, that has not met the requirements of 00199.20, or is not filed as provided in 00199.30, the Contractor waives any claim for additional compensation or for additional compensation and Contract Time, and the Agency may reject the claim.

To be considered, claims for additional compensation, or for additional compensation and Contract Time, shall be completed according to 00199.30 and shall be submitted with the required information and in the format below and labeled as required below for each claimed issue:

**(Part 1)** Summary (label page 1.1 through page 1.X) - In the summary, include a detailed, factual statement of the claim for additional compensation and Contract Time, if any, with necessary dates and locations of Work involved in the claim, the dates of when the event arose, and when notice was given to the Agency. Also include detailed facts supporting the Contractor's position relative to the Engineer's decision (see 00199.20(f));

**(Part 2)** Copies of the Contract Specifications that support the Contractor's claim (label page 2.1 through page 2.X);

**(Part 3)** Theory of entitlement supporting the claim (label page 3.1 through page 3.X) - Include a narrative of how or why the specific Contract Specifications support the claim and a statement of the reasons why such Specifications support the claim;

**(Part 4)** Itemized list of claimed amounts (label page 4.1 through page 4.X) - Claimed damages that resulted from the event with a narrative of the theories and documents used to arrive at the value of the damages;

**(Part 5)** Additional Contract Time requests (label page 5.1 through page 5.X) - If the claim is for a combination of additional compensation and Contract Time, submit a copy of the schedule that was in effect when the event occurred and a detailed narrative which explains how the event impacted Contract Time. In addition, if an Agency-caused delay is claimed:

- Include the specific days and dates under claim;
- Provide detailed facts about the specific acts or omissions of the Agency that allegedly caused the delay, and the specific reasons why the resulting delay was unreasonable; and
- A schedule analysis that accurately describes the impacts of the claimed delay;
- (Also see 00180.80 for additional requirements regarding claims for Contract Time and causes that are eligible and ineligible for consideration.);

**(Part 6)** Copies of actual expense records (label page 6.1 through page 6.X) - Include documents that contain the detailed records and which support and total to the exact amount of additional compensation sought. Include the information and calculations necessary to support that amount. That amount may be calculated on the basis of Section 00197, if applicable, or may be calculated using direct and indirect costs presented in the following categories:

- Direct Materials;
- Direct Equipment. The rate claimed for each piece of Equipment shall not exceed the actual cost. In the absence of actual Equipment costs, the Equipment rates shall not exceed 75 percent of those calculated under the provisions of 00197.20. For each piece of Equipment, the Contractor shall include a detailed description of the Equipment and attachments, specific days and dates of use or standby, and specific hours of use or standby;
- Direct labor;
- Job overhead;
- General and administrative overhead; and
- Other categories as specified by the Contractor or the Agency;



**(Part 7)** Supporting documents (label page 7.1 through page 7.X) - Include copies of, or excerpts from the following:

- Any documents that support the claim, such as manuals standard to the industry and used by the Contractor; and
- Any daily reports or diaries related to the event, photographs or media that help explain the issue or event (optional), or all other information the Contractor chooses to provide (optional);

**(Part 8)** Contractor evaluation of a lower tier claim (label page 8.1 through 8.X) - If the claim includes Work done or costs incurred by a Subcontractor, Materials supplier, or any Entity other than the Contractor, the following are required:

- Data required by the other Subsections of 00199.30(b);
- Copy of the Contractor’s separate analysis and evaluation;
- Copy of the Contractor’s independent review and analysis of the amount of damages sought; and **(Part 9)** Certification (label page 9.1 through 9.X) - A certified statement by the Contractor, Subcontractor or Materials supplier, as appropriate, as to the validity of facts and costs containing the following language:

*Under penalty of law for perjury or falsification, the undersigned, (Name), (Title), (Company) certifies that this claim for additional compensation for Work on the Contract is a true statement of the actual costs incurred (in the amount of \$\_\_\_\_\_, exclusive of interest) and is fully documented and supported under the Contract between the parties.*

Signature: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

Notary Public

My commission expires \_\_\_\_\_

A person authorized to execute Change Orders on behalf of the Contractor must countersign this statement.

Claims shall be made in writing, and shall include all information necessary for the Agency to properly and completely analyze the claim. All pages shall have page numbers and be marked with the numbering system shown above. The Agency reserves the right at any time to request additional information related to the claim or the Contract either directly or through Agents working toward resolution of the disputed or claimed events and issues.

**(c) Records Required** - The Contractor shall keep full and complete records of the actual costs incurred for the submitted claim. These records shall include all worksheets used to prepare the claim establishing the cost components for items of the claim.

**(d) Access to Records** - The Contractor shall provide the Engineer access to all Contractor records required to determine the facts, contentions, and costs involved in the claim. The Engineer may perform an audit of these records. The Contractor shall retain all Contract records for a period of at least three years after Final Acceptance of the Project by the Agency, or until all disputes, including litigation, if any, are resolved (the “record retention period”). The Agency and/or its agents shall be provided full access to all Contract records during the record retention period.

- (e) **Compliance Required** - Full compliance by the Contractor with the provisions of this Section is a condition precedent to the commencement of any lawsuit by the Contractor to enforce any claim.

**00199.40 Claim Decision; Review; Exhaustion of Administrative Remedies**

The Agency intends to resolve all claims at the lowest possible administrative level. If the Engineer denies the claim for additional compensation or a combination of additional compensation and Contract Time, in full or in part, according to 00199.40(a), the Contractor may request review of the denial. The disputed claim for additional compensation or a combination of additional compensation and Contract Time may then be resolved, in full or in part, at any of the three progressive steps of claim review procedure as specified in (b) through (d) of this Subsection.

If the Engineer has denied a claim, in full or in part, for Contract Time only according to 00180.80, or has denied a claim, in full or in part, for correction of final compensation according to 00195.95, those disputed claims may then be resolved, in full or in part, at any of the three progressive steps of claim review procedure as specified in (b) through (d) of this Subsection. For all claims, all of the actions and review under each step of the review process shall occur before the review can be advanced to the next higher step.

If, at any step in the claim decision or review process, the Contractor fails to promptly submit requested information or documentation that the Agency deems necessary to analyze the claim, the Contractor is deemed to have waived its right to further review, and the claim will not be considered properly filed and preserved.

- (a) **Decision by the Engineer** - The Engineer will, as soon as practicable, consider, investigate, and evaluate a Contractor's claim for additional compensation, or for a combination of additional compensation and Contract Time, if submitted as required by 00199.30.

If the Engineer determines that additional information or documentation is needed to allow proper analysis of the claim, the Contractor shall meet with the Engineer within 14 Calendar Days, or as otherwise agreed by the parties, to present the additional information or documentation, or make other arrangements with the Engineer to supply that material.

The Engineer will advise the Contractor of the decision to accept or deny the claim, and the reasons for any full or partial denial of the claim, within 30 Calendar Days of receipt of the Contractor's claim, or the receipt of requested additional information or documentation regarding the claim, whichever is later, unless the Engineer and Contractor have agreed upon a longer response time.

If the Contractor does not accept the Engineer's decision, the Contractor may, within 10 Calendar Days of receipt of the written decision, request in writing that the Engineer arrange a review at Step 1 (see (b) below).

- (b) **Step 1: RUSA General Manager** - The Contractor shall request that the Engineer arrange a meeting with the Roseburg Urban Sanitary Authority General Manager in order to present the denied or partially denied claim for formal review and discussion. The meeting will take place within 21 Calendar Days of the Agency's receipt of the request, or as otherwise agreed by the parties.

If the General Manager determines that the Contractor must furnish additional information or documentation to allow proper analysis of the claim, the manager will schedule a second meeting, to be held within 14 Calendar Days, or as otherwise agreed by the parties, at which the Contractor shall present the requested information or documentation.

The General Manager will provide a written decision to the Contractor within 30 Calendar Days of the last Step 1 meeting.

If the Contractor does not accept the Step 1 decision, the Contractor may, within 10 Calendar Days of receipt of the written decision, request in writing that the Engineer arrange a review at Step 2 (see (c) below).

**(c) Step 2: RUSA Board of Directors** - The Contractor shall request a meeting with the Board of Directors to present the claim for final Agency review. The presentation will take place within 21 Calendar Days of the Agency's receipt of the Contractor's written request, or as otherwise agreed by the parties.

If the Board determines that the Contractor must furnish additional information or documentation to allow proper analysis of the claim, the Board will schedule a second meeting, to be held within 14 Calendar Days or as otherwise agreed by the parties, at which the Contractor shall present the requested information or documentation. The Board of Directors will provide a written decision to the Contractor within 30 Calendar Days of the final Step 2 meeting.

**d) Step 3: Litigation** - This step applies to:

- Claims over \$250,000;
- Appeals of Agency Decisions issued under Step 2 above.

The Contractor must follow each step, in order, and exhaust all available administrative remedies before resort to litigation. Lawsuits must be properly filed in a court of competent jurisdiction within six months from the date of the final decision that exhausted the Contractor's available administrative remedies under this Section 00199.

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

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

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

#### **00199.50 Mediation**

Notwithstanding the formal claims procedure specified above, the parties may enter into nonbinding mediation by mutual agreement at any time, in which case the parties may also agree to suspend the time requirements in Section 00199 pending the outcome of the mediation process. The rules, time and place for mediation, as well as selection of the mediator, shall be established by mutual agreement. Costs shall be divided equally between the Contractor and the Agency. Either party may terminate mediation at any time upon 5 Calendar Days' notice to the other, after which the time requirements of Section 00199 shall be automatically reinstated.

# SPECIAL PROVISIONS

ROSEBURG URBAN SANITARY AUTHORITY

UMPQUA STREET SEWER REPLACEMENT

Roseburg, Oregon

Prepared by:



i.e. Engineering, Inc.  
809 SE Pine Street  
Roseburg, OR 97470  
(541) 673-0166

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**SPECIAL PROVISIONS****WORK TO BE DONE**

*This work is the Umpqua St. Sewer Replacement located in Roseburg, Douglas County.*

*The Work to be done under this Contract is to replace the 8" main sewer line servicing the residents, medical, and commercial facilities on Umpqua Street and an adjacent private drive. The owner intends to award the Bid Schedule. Owner's decision will be based on the Owner's best interest.*

*The Bid Schedule Work generally consists of the following:*

1. Install and maintain temporary traffic control throughout project.
2. Install approximately 1,134 feet of new sanitary sewer pipe and 585 feet of sewer connection laterals with cleanouts.
3. Abandon existing sewer pipe and manholes.
4. Install approximately 7 sanitary sewer manholes.
5. Including trench restoration of asphalt, sidewalk, curb & gutters and lawn area.
6. Perform additional and incidental work as called for by the Specifications and Plans.

**APPLICABLE SPECIFICATIONS**

The Specification that is applicable to the Work on this Project is the 2024 edition of the "Oregon Standard Specifications for Construction", Volume 2. Volume 1 of the 2024 Oregon Standard Specifications for Construction are modified by Roseburg Urban Sanitary Authority and called "*Modified General Conditions*" and are contained within this booklet.

All number references in these Special Provisions shall be understood to refer to the Sections and subsections of the Standard Specifications, Modified General Conditions and Supplemental Specifications bearing like numbers and to Sections and subsections contained in these Special Provisions in their entirety.



## SECTION 00110 - ORGANIZATION, CONVENTIONS, ABBREVIATIONS AND DEFINITIONS

Comply with Section 00110 of the Modified General Conditions modified as follows:

**00110.05 Request for Solicitation Documents** – Add the following to the end of this subsection:

The Plans, which are applicable to the Work to be performed under the Contract bear title and date as follows:

Umpqua Street Sewer Replacement  
Roseburg, Oregon  
January 2, 2024

## SECTION 00120 - BIDDING REQUIREMENTS AND PROCEDURES

Comply with Section 00120 of the Modified General Conditions modified as follows:

**00120.15 - Examination of Work Site and Solicitation Documents; Consideration of Conditions to be Encountered.**

The request for clarification shall be made in sufficient time for the reply to reach all bidders before submission of the bidder's bid. No requests will be answered within 3 working days of the bid submittal date.

- For information pertaining to work on this project contact: Ryon Kershner, Roseburg Urban Sanitary Authority, 1297 Grandview Drive, Roseburg, OR 97470. Phone: (541) 672-1551; FAX: (541) 672-7548; email: ryon@rusa-or.org

## SECTION 00130 – AWARD AND EXECUTION

Comply with Section 00130 of the Modified General Conditions.

## SECTION 00140 – SCOPE OF WORK

Comply with Section 00140 of the Modified General Conditions.

## SECTION 00150 - CONTROL OF WORK

Comply with Section 00150 of the Modified General Conditions modified as follows:

**00150.15(b) Agency Responsibilities** - Replace this subsection, except for the subsection number and title, with the following:

The Engineer will perform the Agency responsibilities described in the Construction Surveying Manual for Contractors, Chapter 1.5 (see Section 00305).

**00150.15(c) Contractor Responsibilities** - Replace this subsection, except for the subsection number and title, with the following:

The Contractor shall perform the Contractor responsibilities described in the Construction Surveying Manual for Contractors, Chapter 1.6 (see Section 00305).

**00150.50(c) Contractor Responsibilities** – Replace the bullet that begins "Protect from damage or disturbance any Utility that remains..." with the following bullet:

- Protect from damage or disturbance any Utility that remains within the area in which Work is being performed. Maintain and re-establish location marks according to OAR 952-001-0090(3)(a). Coordinate re-establishment of the location marks with the associated Utility;

Replace the bullet that begins "Determine the exact location before excavating within ..." with the following bullet:

- Determine the exact location before excavating within the tolerance zone according to OAR 952-001-0090(3)(c);

Replace the bullet that begins " In addition to the notification required in OAR 952-001-0090(5), notify the Engineer..." with the following bullet:

- In addition to the notification required in OAR 952-001-0090(6), notify the Engineer and the Utility as soon as the Contractor discovers any previously unknown Utility conflicts or issues. Contrary to the OAR, stop excavating until directed by the Engineer and allow the Utility a minimum of two weeks to relocate or resolve the previously unknown Utility issues; and

#### **SECTION 00160 – SOURCE OF MATERIALS**

Comply with Section 00160 of the Modified General Conditions.

#### **SECTION 00165 – QUALITY OF MATERIALS**

Comply with Section 00165 of the Modified General Conditions.

#### **SECTION 00170 – LEGAL RELATIONS AND RESPONSIBILITIES**

Comply with Section 00170 of Modified General Conditions modified as follows:

**00170.00 General** - Replace the paragraph that begins "The Contractor shall comply with all laws, ordinances, ..." with the following paragraph:

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

**SECTION 00180 – PROSECUTION AND PROGRESS**

Comply with Section 00180 of the Modified General Conditions modified as follows:

**00180.41 – Project Work Schedules –**

After the paragraph that begins "One of the following Type..." add the following paragraph:

In addition to the "look ahead" Project Work schedule, a Type "A" schedule as detailed in the Standard Specifications is required on this Contract.

**00180.50(h) Contract Time** - There is one Contract Time on this Project as follows:

The Contractor shall complete all Work to be done under the Contract before the elapse of 75 Calendar Days starting on July 15, 2024 and ending on September 27, 2024.

**00180.85(b)(1) Single Contract Time** - Replace this subsection, except for the subsection number and title, with the following:

The Liquidated damages for failure to complete the Work on time required by 00180.50(a) will be \$500.00 per Calendar Day.

**SECTION 00190 – MEASUREMENT OF PAY QUANTITIES**

Comply with Section 00190 of the Modified General Conditions.

**SECTION 00195 – PAYMENT**

Comply with Section 00195 of the Modified General Conditions.

**SECTION 00196 – PAYMENT FOR EXTRA WORK**

Comply with Section 00196 of the Modified General Conditions.

**SECTION 00197 – PAYMENT FOR FORCE ACCOUNT WORK**

Comply with Section 00197 of the Modified General Conditions.

**SECTION 00199 – DISAGREEMENTS, PROTESTS AND CLAIMS**

Comply with Section 00199 of the Modified General Conditions.

**SECTION 00210 - MOBILIZATION**

Comply with Section 00210 of the Standard Specifications.

## SECTION 00220 - ACCOMMODATIONS FOR PUBLIC TRAFFIC

Comply with Section 00220 of the Standard Specifications modified as follows:

**00220.40(c) Driveways** – Add the following bulleted item(s):

- Coordinate with residences when closing access to property at least 24 hours in advance.
- Provide temporary access once excavation is past by use of steel plates, aggregate or other approved method. Protect and delineate access by use of traffic cones.

**00220.40(d) Adjacent to Excavations** – Replace this subsection, except for the subsection number and title with the following:

- At the end of each working day, backfill the trench in areas completed to match the existing surface with permanent backfill material. Cover with steel plates areas where further work will continue. At the end of each work week, temporary patch excavated trench with AC. After all work is completed and laterals re-connected, complete permanent patch.
- Delineate excavation with traffic cones spaced at 25' max.

**00220.40(e)(1) Closed Lanes** – Replace this subsection, except for the subsection number and title with the following:

- **Work in Umpqua St** - Lanes within Umpqua may be closed to through traffic during work hours with appropriate signing and flagging. Maintain access to local residences in accordance with 00220.40(c). Prior to closure, obtain and comply with the requirements of a City of Roseburg Permit for the closure.
- **Work in private drive** - Access may be closed to through traffic during work hours with appropriate signing. Maintain access to local residences in accordance with 00220.40(c). Prior to closure, obtain and comply with the requirements of a City of Roseburg Permit for the closure.

## SECTION 00221 - COMMON PROVISIONS FOR WORK ZONE TRAFFIC CONTROL

**00221.06 Traffic Control Plan** - Replace this subsection, except for the subsection number and title with the following:

**(a) Traffic Control Plan** – The contractor shall provide a traffic control plan submitted 5 days before the precon conference.

## SECTION 00222 – TEMPORARY TRAFFIC CONTROL SIGNS

Comply with Section 00222 of the Standard Specifications.

## SECTION 00223 – WORK ZONE TRAFFIC CONTROL LABOR AND VEHICLES

Comply with Section 00223 of the Standard Specifications.

**SECTION 00224 – TEMPORARY TRAFFIC CHANNELIZING DEVICES**

Comply with Section 00224 of the Standard Specifications.

**SECTION 00225 – TEMPORARY PAVEMENT MARKING**

Comply with Section 00225 of the Standard Specifications.

**SECTION 00280 – EROSION AND SEDIMENT CONTROL**

Comply with Section 00280 of the Standard Specifications modified as follows:

00280.00 Scope - Replace the paragraph that begins "This Work also consists of providing temporary ..." with the following paragraph:

This Work also consists of providing temporary erosion and sediment control (ESC) measures and furnishing, installing, moving, operating, maintaining, inspecting, and removing ESC throughout the Project area according to the Standard Drawings, the erosion and sediment control plan (ESCP), the Specifications, or as directed, until the site is permanently stabilized. Included also is the monitoring of weather, of stormwater and receiving waters, the reporting of monitoring observations, the reporting of corrective actions (when necessary) and the updates and revisions of the ESCP, including ESCP cover sheet, necessary to keep it representative of current site conditions and compliant with the 1200-CA permit if applicable.

Delete the paragraph that begins "When contaminants, pollutants or hazardous materials..."

Add the following paragraph to the end of this subsection:

The Agency's NPDES 1200-CA permit is not applicable to this Project. Comply with all applicable conditions of this Section.

**SECTION 00290 – ENVIRONMENTAL PROTECTION**

Comply with Section 00290 of the Standard Specifications.

**SECTION 00305 - CONSTRUCTION SURVEY WORK**

Comply with Section 00305 of the Standard Specifications modified as follows:

**Description**

**00305.05 3D Engineered Models** –Replace this subsection with the following:

**00305.05 Engineer Provided Information** –

Engineer has supplied the horizontal and vertical information of 9 control points. The first control points are shown on the plan view and in a point table. Construction centerlines will be provided as an AutoCAD drawing and in xml format.

**SECTION 00310 – REMOVAL OF STRUCTURES AND OBSTRUCTIONS**

Comply with Section 00310 of the Standard Specifications modified as follows:

**00310.02 Exclusions** – Add the following bullet to the end of this subsection

- Items to be removed that are wholly or partially located within the alignment of the new pipe or structure installation are considered incidental to other items of work under Contract.
- Excavation, pipe, and pipe fittings within the 36” trench allowance

**00310.92 Separate Items Basis** – Add the following pay items to the Pay Item list:

Pay Item	Unit of Measurement
(a) Abandon pipes (fill with Slurry).....	Foot
(b) Removal of concrete walks, driveways, curbs, & gutters.....	SY
(c) Removal of Surfacing.....	SY
(d) Abandon Manholes (Remove top cone and fill with Slurry).....	EA
(e) Remove Manhole.....	EA

**SECTION 00330 - EARTHWORK**

Comply with Section 00330 of the Standard Specifications.

**00330.82 Embankment Basis Measurement** – Add the following paragraph after the first paragraph:

The quantities of embankment measured for payment will include the volumes of Class “B” aggregate used to backfill excavations for the access road and trench backfill outside of the 36” standard trench width.

**00330.94 Embankment Basis Payment** - When listed in the Contract Schedule of Items, the following items will be paid for on the embankment basis:

Pay Item	Unit of Measurement
(a) Embankment In Place.....	Ton

**SECTION 00405 - TRENCH EXCAVATION, BEDDING, AND BACKFILL**

Comply with Section 00405 of the Standard Specifications modified as follows:

**00405.01 General** – Add the following paragraph after the first paragraph:

Comply with the City of Roseburg requirements when excavating through new asphalt that is less than 5 years old, remove all asphalt for a distance of 10 feet each side of the trench and replace with new asphalt at the same depth. If asphalt is greater than 3 inches, replace in two lifts. Payment will be made according to Section 00495.90.

**00405.12 Bedding** – Replace this subsection except for the number and title with the following: Bedding material shall be commercially available 1" - 0 or 3/4" - 0.

**00405.13 Pipe Zone Material** – Replace this subsection except for the number and title with the following: Pipe zone material shall be commercially available 1" - 0 or 3/4" - 0.

**00405.14 Trench Backfill**– Use Class B Backfill

**0405.42 Rock Excavation** – Add the following after the first paragraph:

Rock excavation is described as material that is unable to be excavated using traditional methods and requires either a rock hammer or blasting to excavate the material to the depths as indicated.

### **SECTION 00440 - COMMERCIAL GRADE CONCRETE**

Comply with Section 00440 of the Standard Specifications.

### **SECTION 00442 - CONTROLLED LOW STRENGTH MATERIALS DESCRIPTION**

Comply with Section 00442 of the Standard Specifications.

### **SECTION 00445 - SANITARY, STORM, CULVERT, SIPHON, AND IRRIGATION PIPE**

Comply with Section 00445 of the Standard Specifications modified as follows:

**00445.10 General** – Add the following paragraph after the third paragraph;

Wherever sewer mains cross water lines with less than 18 inches of vertical clearance, the sewer main shall be C900 PVC, DR18 conforming to 02470.40 for the entire distance between manholes. Wherever sewer laterals cross water lines with less than 18 inches of vertical clearance, the sewer lateral shall be C900 PVC or ductile iron pipe for a minim distance of 9 feet on each side of the waterline, centering the pipe section on the waterline.

**00445.11 Materials** – Add the following bullets to the end of this subsection:

(f) **Pipe Materials** - See profile on construction plans for pipe material designation Unless specified otherwise, all sanitary sewer pipe used on this project shall be 3034, SDR35 Polyvinyl Chloride (PVC) Pipe conform to 02410.70. All service Tee connections shall be gasketed PVC factory fabricated sections meeting the same requirements as the pipe. Ductile Iron Pipe shall be Class 50 when called out on plans. Use centrifugally cast ductile iron pipe meeting the requirements of AWWA C151. Ductile iron pipe shall have a Protecto 401 Ceramic Epoxy lining or approved equal. Joints shall conform to AWWA C111/A21.11-00 for push on rubber gasket joints and shall be Tyton® or approved equal. Joint gaskets

including gasket lubricant shall be furnished with the fittings. Sanitary sewer pipe used as carrier pipe shall be C900 PVC, DR18 conforming to 2470.40.

**00445.11(e) Tracer Wire** – Tracer wire shall be 12-gauge solid copper insulated high molecular weight polyethylene (HMW-PE) tracer wire. The HMW-PE insulated cover shall be green and a minimum 45 mil thick. The wire shall be UL rated for 140°F.

**Construction**

**00445.40(b) Line and Grade -**

- Add the following bullet to the end of this section: .
- Standing water in excess of 3/8 inch

**00445.43(c) PVC Pipe** – Add the following at the end of this section:

Field verify size of existing sanitary service lines located near the property line prior to placing mainline pipe and required Tee section. Match the Tee to the appropriate service size along with the service pipe size between the mainline and property line. Size shall be 4-inch minimum. If 6-inch line is used into the dwelling, then use 6-inch from the main line. No additional payments will be made for 6-inch services.

**00445.70(b) Siphon, Irrigation and Sanitary Sewer Installations** – Delete the last sentence and substitute the following:

Contractor shall perform deflection and air testing. The agency will perform a video inspection.

**00445.72(b) Hydrostatic Testing** – Delete this subsection for Sanitary Sewer Pipe testing.

**00445.72(c) Air Testing** – Replace this subsection, except for the subsection number and title, with the following: The pressure test gauge used in air testing shall have a minimum divisions of 0.1 psi and an accuracy of 0.0625 psi. The test procedure is as follows

- (1) Add air slowly to the section of system being tested until the internal air pressure is raised to 4 psi greater than the average back pressure due to groundwater. When acceptable to the engineer, 5 psi may be used to account for groundwater.
- (2) After the test pressure is reach, allow at least 2 minutes for the air temperature to stabilize, adding only the amount of air required to maintain pressure.
- (3) After the temperature stabilization, disconnect the air supply.
- (4) Monitor the pressure gauge for the minimum time required. There will be no internal air pressure drop allowed with 3034 PVC pipe. In no case shall length of test (T) be less than the following chart.

Pipe Diameter (inches)	Min Time (min:sec)	Length for Min Time (Feet)	Time for longer length (sec)



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8	3:47	298	0.76L
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**00445.73 (c) Mandrel Deflection Test**

Comply with Section 00445.73 (c) of the Standard Specifications

**00445.74 Video Inspection of Sanitary and Storm Sewers** – Replace this subsection, except for the subsection number and title, with the following:

Video inspection will be performed once by RUSA 30 days after the trench is completely backfilled at no cost to the contractor. Prior video inspections or subsequent video inspections will be performed by the agency at the contractor’s expense. The contractor will be charged for subsequent testing required due to failing tests and will be deducted from contract payments per 00195.502(a-5).

**00445.91 Payment** – Add the following to the description for item (b):

In item (b) payment will be made on a length basis on the service laterals regardless of method of installation and will include payment in full for furnishing and placing all materials, and for furnishing all equipment labor, clean-outs, tee’s, wye’s, caps, covers and other fittings along with incidentals necessary to complete the work as specified. No additional payments will be made for 6” services.

Payment - The accepted quantities of pipe and related Work items performed under this

Section will be paid for at the Contract unit price, per unit of measurement, for the following items:

Pay Item Unit of Measurement

- (a) \_\_\_\_ Inch \_\_\_\_ Pipe, \_\_\_\_ Depth..... Foot
- (b) Pipe Tees, \_\_\_\_ Inch.....Each

**SECTION 00470 - MANHOLES, CATCH BASINS, AND INLETS**

Comply with Section 00470 of the Standard Specifications modified as follows:

**00470.11 Precast Concrete Manholes and Bases** – Add the following after the first paragraph:

Sanitary manhole cone sections shall have a concentric opening. All sanitary manholes shall be 48-inch nominal inside diameter unless specified otherwise. Connections to existing manholes shall be cored or saw cut only.

Replace the paragraph that begins “Prior to delivery of precast....” with the following paragraph:

Prior to delivery of precast manhole sections to the job site, perform yard permeability tests at the point of manufacture. Test all manhole sections to be supplied for this project. All test specimens will be mat tested, and shall meet the permeability test requirements of ASTM C497. The Engineer may require that each manhole be tested per ASTM C 1244 as an alternative to ASTM C497. All tests shall be observed and certified by a qualified registered professional engineer or certified special inspector provided by the manufacturer.

**00470.13 Inside Drop Manhole Connectors** – Delete this subsection as inside drop manholes are not required.

**00470.45 Steps and Ladders** – Delete this subsection as steps and ladders are not required.

**00470.71(b) Vacuum Testing** – Replace the paragraph that begins “Field test all sanitary sewer manholes....” with the following:

Field test all sanitary sewer manholes for acceptance by vacuum testing after completion of backfilling, compaction, and surface restoration, including paving. If the manhole fails the test, necessary repairs are to be made to the exterior of the manhole. Prior approval by the Engineer of repair methodology is required. Repair and retest the manhole until satisfactory test is obtained. Contractor is responsible for all testing. All testing to be witnessed by RUSA and the Engineer.

**00470.80 Measurement** – The quantities of manholes and other structures will be measured on the unit basis.

**00470.90 Payment** – Add the following pay items to the Pay Item list:

Pay Item	Unit of Measurement
(a) Concrete Sanitary Sewer Manholes.....	Each
(b) Remove Cone & Fill Abandoned Manhole In-Place .....	Each

**SECTION 00490 – DRAINAGE CURBS**

Comply with Section 00480 of the Standard Specifications modified as follows:

**00480.90 Payment** – Add to the end of the first paragraph.

Work under this project is subject to the requirements of this section as modified.

**00490.40 General** – Replace the paragraph that begins “Bypass pump sanitary sewer....” With the following:

Bypass pump sanitary sewer flows around the pipe section or manhole being repaired or replaced by plugging existing upstream manholes and/or pipes and pumping the flow around the work to a downstream manhole and/or pipe. Submit a bypass pumping plan to the Engineer at least two weeks before beginning bypass pumping and obtain approval from the engineer. Use a pump with adequate capacity to handle existing flows. Pumps shall not exceed a noise level of 86 dB at a distance of 50 feet. Do not operate bypass pumps at night except in an emergency. At the end of each working day, temporary tie-ins shall be made between replaced section and existing system. Do not discharge raw sewage onto private property or city streets, or into storm drain systems. The bypass pumping plan shall include an emergency response plan to be followed in the event of a failure of the bypass pumping system.

The pumped sewage shall be in an enclosed hose or pipe that is adequately protected from traffic and shall be redirected in a sanitary sewer system. The contractor shall be liable for all cleanup, damages, and resultant fines in the event of a spill. The contractor shall take all necessary precautions to ensure that no

private properties are subjected to a sewage backup or spill. After work is completed, flow shall be returned to the replaced sewer and all temporary equipment removed.

Removed pipe & manhole materials shall be hauled off site.

**00490.43 Abandoning Pipe in Place** – Replace the paragraph that begins “Fill abandoned pipes....” With the following:

Fill abandoned pipes 8 inches diameter or greater for their entire length with a 1 sac sand slurry, controlled low-strength materials meeting the requirements of 00442, or other approved material.

**490.90 Payment** – Add the following items to the Pay Item list:

- (a) Filling Abandoned Pipe In-Place ..... Foot

Items (a) applies to filling abandoned pipes only.

Note: removal of pipe and structure is considered incidental to replacement and pipe excavation.

**SECTION 00495 – TRENCH RESURFACING**

Comply with Section 00495 of the Standard Specifications modified as follows:

**00495.80 Measurement** - It is expected that conditions will require a wider than normal trench as shown on the plans. Payment for resurfacing includes, but is not limited to the area directly above the trench.

**00495.90 Payment** – Add the following pay items to the Pay Item list:

Pay Item	Unit of Measurement
(a) Trench Resurfacing (excluding curb, gutter, & sidewalk).....	Ton
(b) Trench Resurfacing of curb, gutter, & sidewalk.....	Sq Foot

**SECTION 00640 – AGGREGATE BASE**

Comply with Section 00640 of the Standard Specifications.

**SECTION 00744 – ASPHALT CONCRETE PAVEMENT**

Comply with Section 00744 of the Standard Specifications modified as follows:

**00744.11(a) Asphalt Cement** - Add the following to the end of this subsection:

Provide 64-22 grade asphalt cement for this Project.

### **SECTION 00759 – MISCELLANEOUS PORTLAND CEMENT CONCRETE STRUCTURES**

Comply with Section 00759 of the Standard Specifications.

### **SECTION 02450 - MANHOLE AND INLET MATERIALS**

Comply with Section 02450 of the Standard Specifications modified as follows:

**02450.30 Metal Frames, Covers, Grates, and Ladders** –Replace the paragraph that begins “Steps for manholes shall...” with the following:

Manhole cover shall conform to Roseburg Urban Sanitary Authority standard manhole lid as cast by East Jordan Iron Works, Product Number 00260368, Catalog Number 2603C or approved equal. See project plans.