**City of Portland General Conditions for Construction of Federal Aid Projects**

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# PART 00100 - GENERAL CONDITIONS

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

Organization

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

The "City of Portland General Conditions for Construction of Federal Aid Projects”, published by the City of Portland, which contain Part 00100 "General Conditions", which deal with the solicitation process and contractual relationships;

The " 2020 City of Portland Standard Construction Specifications," Parts 00200 through 03000, published by the City of Portland 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.

Conventions

**00110.05  Conventions Used throughout the Specifications Include:**

**(a)  Grammar** - The " City of Portland General Conditions for Construction of Federal Aid Projects ", Part 00100 "General Conditions", is written in the indicative mood, in which the subject is expressed. The "2020 City of Portland Standard Construction Specifications", published by the City of Portland, Parts 00200 through 03000, the detailed "Technical Specifications", are generally written in the imperative mood, in which the subject is implied. Therefore, throughout Parts 00200 through 03000, and on the Plans:

The subject, "the Contractor", is implied.

"Shall" refers to action required of the Contractor, and is implied.

"Will" refers to decisions or actions of the Owner and/or the Owner’s Representative.

The following words, or words of equivalent meaning, refer to the actions of the Owner and/or the Owner’s Representative, 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 Owner and/or the Owner’s Representative, 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 the accepted quantities "will be paid for at the Contract unit price, per unit of measurement, for the following items" (followed by a list of items). In such cases the Owner 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 Owner", and "the Owner’s Representative”.

**(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 phrases such as “applicable law”, "applicable laws and regulations", “applicable legal requirements” or similar phrases appear, they are 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. The words “law” or “laws” may or may not be capitalized in such phrases.

**(e)  Reference to Websites** - For Specifications that reference this Subsection, the Owner will identify the website addresses in the Special Provisions.

Abbreviations

**00110.10  Abbreviations** - Following are meanings of abbreviations used in the Standard Specifications, in the Special Provisions, on the Plans, and in other Contract Documents. Other abbreviations and meanings of abbreviations may be used in the individual Sections of the Standard Specifications to which they apply, in the Special Provisions, and in OAR 731-005 and OAR 731‑007.

AAR - Association of American Railroads

AASHTO - American Association of State Highway and Transportation Officials

ABC - Associated Builders and Contractors, Inc.

AC - Asphalt Concrete

ACI - American Concrete Institute

ACP - Asphalt Concrete Pavement

ACWS - Asphalt Concrete Wearing Surface

ADA - Americans with Disabilities Act AGC - Associated General Contractors of America

AIA - American Institute of Architects

AISC - American Institute of Steel Construction

AISI - American Iron and Steel Institute

AITC - American Institute of Timber Construction

ANSI - American National Standards Institute

APA - Engineered Wood Association

APWA - American Public Works Association

AREMA - American Railway Engineering and Maintenance of Right‑of‑Way Association

ASCE - American Society of Civil Engineers

ASME - American Society of Mechanical Engineers

ASTM - American Society for Testing and Materials

ATPB - Asphalt Treated Permeable Base

ASTV - Actual Strength Test Value

AWG - American Wire Gauge

AWPA - American Wood Protection Association

AWS - American Welding Society

AWWA - American Water Works Association

CAgT - Certified Aggregate Technician

CAT-I - Certified Asphalt Technician I

CAT-II - Certified Asphalt Technician II

CBM - Certified Ballast Manufacturers

CCO - Contract Change Order

CCT - Concrete Control Technician

CDT - Certified Density Technician

CEBT - Certified Embankment and Base Technician

CFR - Code of Federal Regulations

CMDT - Certified Mixture Design Technician

CPF - Composite Pay Factor

CPL - Construction Product List

CRSI - Concrete Reinforcing Steel Institute

CS - Commercial Standard, Commodity Standards Division, U.S. Department of Commerce

CSTT - Concrete Strength Testing Technician

D1.1 - Structural Welding Code - Steel, American Welding Society, current edition

D1.5 - Bridge Welding Code, American Welding Society, current edition

DBE - Disadvantaged Business Enterprise

DEQ - Department of Environmental Quality, State of Oregon

DOGAMI - Department of Geology and Mineral Industries, State of Oregon

DSL - Department of State Lands, State of Oregon

EAC - Emulsified Asphalt Concrete

EPA - U.S. Environmental Protection Agency

ESCP - Erosion and Sediment Control Plan

FHWA - Federal Highway Administration, U.S. Department of Transportation

FSS - Federal Specifications and Standards, General Services Administration

GSA - General Services Administration

ICEA - Insulated Cable Engineers Association (formerly IPCEA)

IES - Illuminating Engineering Society

IMSA - International Municipal Signal Association

ISO - International Standards Organization

ITE - Institute of Transportation Engineers

JMF - Job Mix Formula

MFTP - Manual of Field Test Procedures (ODOT)

MIL - Military Specifications

MSC - Minor Structure Concrete

MUTCD - Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, U.S. Department of Transportation

NEC - National Electrical Code

NEMA - National Electrical Manufacturer's Association

NESC - National Electrical Safety Code

NIST - National Institute of Standards and Technology

NPDES - National Pollutant Discharge Elimination System

NPS - Nominal Pipe Size (dimensionless)

OAR - Oregon Administrative Rules

ODA - Oregon Department of Agriculture

ODOT - Oregon Department of Transportation

ORS - Oregon Revised Statutes

OR-OSHA - Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services

OSHA - Occupational Safety and Health Administration, U.S. Department of Labor

PCA - Portland Cement Association

PCC - Portland Cement Concrete

PCI - Precast/Prestressed Concrete Institute

PCP - Pollution Control Plan

PF - Pay Factor of a constituent

PLS - Professional Land Surveyor

PMBB - Plant Mixed Bituminous Base

PTI - Post‑Tensioning Institute

PUC - Public Utility Commission, State of Oregon

QA - Quality Assurance

QC - Quality Control

QCT - Quality Control Technician

QL - Quality Level

RAP - Reclaimed Asphalt Pavement

REA - Rural Electrification Administration, U.S. Department of Agriculture

RMA - Radio Manufacturers Association or Rubber Manufacturers Association

SAE - Society of Automotive Engineers

SI - International System of Units (Système Internationale)

SRCM - Soil and Rock Classification Manual (ODOT)

SSPC - Society for Protective Coatings

T - Tolerances, AASHTO Test Method

TM - Test Method (ODOT)

TV - Target Value

UBC - Uniform Building Code (as adopted by the State of Oregon)

UL - Underwriters Laboratory, Inc.

UPC - Uniform Plumbing Code (as adopted by the State of Oregon)

USC - United States Code

WAQTC - Western Alliance for Quality Transportation Construction

WCLIB - West Coast Lumber Inspection Bureau

WWPA - Western Wood Products Association

Definitions

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

**3D Engineered Model** - The Owner-prepared electronic file(s) that identify northing, 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 Owner, that the Contractor is required to submit to the Owner’s Representative.

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

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

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

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

**Agency** - The city, county, or State agency or special district or political subdivision, as applicable, which has entered into a Contract with the Contractor. See definition of Owner.

**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, or the electronic version that is available to be downloaded from the Ownerwebsite that contain the information identified in 00120.10 (see 00110.05(e)).

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

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

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

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

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

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

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

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

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

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

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

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

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

**Change Order** - A written order issued by the Owner’s Representative 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, or otherwise modifying the Contract.

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

**Claims Package -** Documents required to be submitted to establish a Contractor’s right to, and the amount of, additional compensation or time requested pursuant to the claim procedure.

**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 non-recoverable 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 Owner’s Representative's judgment, with reasonable and customary manufacturing and construction tolerances.

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

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

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

**Construction Manager** - The Owner’s Representative's representative who directly supervises the engineering and administration of a Contract. Construction Manager may also be referred to as “Project Manager” in some Contract Documents.

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

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

**Contract Documents** - Solicitation Documents, Contractor’s Bid or proposal, Specifications, Plans, Contract booklet, Change Orders, Force Account Work orders, pay documents issued by the Owner, Materials certifications, Project Work schedules, final estimate, written orders and authorizations issued by the Owner, Material source development and reclamation plans, and permits, orders and authorizations obtained by the Contractor or Owner 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.

**Critical Path -** The most efficient sequence of activities necessary to perform the primary scope of Work to achieve completion in accordance with the Contract Documents.

**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 D4644. In the absence of test results, the Owner’s Representative may evaluate the durability visually.

**Emulsified Asphalt** - Emulsified asphalt cement.

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

**Engineer** - See Owner’s Representative.

**Entity** - A natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, for‑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 Roadways.

**Extra Work** - Work not included in the Contract, but deemed by the Owner’s Representative to be necessary to complete the Project.

**Final Acceptance** – Agreement by the Owner 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 by the Owner through action by City Council.

**Final Inspection** - The inspection conducted by the Owner’s Representative to determine that the Project has been completed according to the Contract.

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

**First Notification -** See definition of Notice to Proceed.

**Force Account Work** - Items of Extra Work ordered by the Owner’s Representative 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 Owner will make no separate or additional payment.

**Inspector** - A person designated by the Owner’s Representative 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 Owner from which the Contractor is required to obtain Materials. (See 00160.00(b))

**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 D4644, 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 acknowledgement by the Owner’s Representative of the date on which workers employed by the Contractor or Subcontractor have begun performance of the Contract, including Aggregate, source development or erection of a plant, but not including installation of installation of covered temporary signs according to Section 00225.

**Notification of Project Completion** - Written acknowledgment by the Owner’s Representative, subject to Final Acceptance, that as of the date of the notification the Contractor has completed the Project according to the Contract, including, without limitation, completion of all minor corrective work, Equipment and plant removal, site clean-up, and submittal of all certifications, bills, forms and documents required under the Contract.

**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 00222.

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

**Owner** - The City of Portland. The Owner may also be referred to as “the Agency” in some Contract Documents.

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

**Owner’s Representative** - The employee who represents the Owner and who is designated by the Owner to administer the Contract. The Owner’s Representative may also be referred to as “the Engineer” in some Contract Documents.

**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** - See Construction Manager.

**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 Owner, from which the Contractor has the option of obtaining Materials. (See 00160.00(a))

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

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

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

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

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

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

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

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

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

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

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

**Second Notification** – See definition of Substantial Completion.

**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, Owner-provided Plans, Standard Specifications, Special Provisions, Addenda, and which includes all documents incorporated by reference. May also be called Bid Documents.

**Special Inspection –** A permit and inspection required by the Bureau of Development Services.

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

**Special Services** - Work services that the Contractor and Owner’s Representative 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(c).

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

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

**Standard Specifications** - The "City of Portland General Conditions for Construction of Federal Aid Projects" published by the Owner, and the " Portland 2020 Standard Construction Specifications", Parts 00200 through 03000, "Technical Specifications", published by the City of Portland as amended by the Owner. It provides directions, provisions, and requirements necessary for performing public improvement projects.

**State** - The State of Oregon.

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

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

**Subcontractor** - An Entity having a direct contract with the Contractor or another Subcontractor, at any tier, 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.

**Substantial Completion** - Written acknowledgment by the Owner’s Representative of the end of Contract Time according to 00180.50(g).

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

**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, curbs, gutters, walks, driveways, multi-paths,or parking areas for pedestrian, bicycle or vehicle use.

**Third Notification** - See definition of Notification of Project Completion.

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

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

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

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

**Typical Section** - That Cross Section established by the Plans or the 3D Engineered Model which represents in general the lines to which the Contractor shall work in the performance of the Contract.

**Unilateral Change Order –** Is a Change Order which is issued by the Owner’s Representative without requiring the consent or signature of the Contractor.

**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, stormwater 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 groundwater 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.

**Work Day or Working Day** - Every Calendar Day excluding Saturdays, Sundays and legal holidays as listed in ORS 187.010.

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

**Working Drawings** - Supplemental Plans, not furnished by the Owner, that the Contractor is required to submit to the Owner’s Representative. (See 00150.35.)

## Section 00120 - Bidding Requirements and Procedures

**00120.00  Prequalification of Bidders -** All public improvement projects with an engineer’s estimate of $250,000 or greater require prequalification.

Bidders shall be prequalified in Class 2 – Street Improvements, for the total amount of the Bid.

Prequalification application forms may be obtained from Procurement Services, 1120 SW

Fifth Ave, Room 750, Portland, Oregon 97204 (see 00110.05(e) for website).

. Completed prequalification applications,

including all required documentation, must be received by Procurement Services at least

ten (10) days prior to the date of bid opening, unless specifically stated otherwise in the

advertisement. Pre-qualification applications received less than ten (10) days prior to the

bid opening may be processed or rejected at the City’s sole discretion. If the application is

not approved, the City will notify the bidder in a timely matter per City Code 5.34.510 (G).

**00120.01  General Bidding Requirements** -

See Bid Booklet under “Instructions to Bidders”.

As and when applicable, the Contractor shall maintain the certifications required by ORS 279A.107.

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

See Bid Booklet under “Instructions to Bidders” see section 1.0

**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 City of Portland)
* Class of Work
* Identification of applicable Special Provisions
* Bid statement
* Certificate of non-collusion
* Certificate of noninvolvement in any debarment or suspension (for Federal-aid Projects)
* Certificate regarding lobbying activities (for Federal-aid Projects)
* Certificate of compliance with Oregon tax laws
* Bid Schedule
* Identification of Bidder(s) and Sureties
* Bid signature page
* Bid Bond form
* First-tier Subcontractor disclosure form
* Certificate of nondiscrimination regarding ORS 279A.110
* 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)

Depending on the Class of Project, other certificates or statements may be included 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 -**A Bid shall be based on the requirements of the Bid Booklet. The Bidder shall not submit a Bid anticipating that any portion of the Bid Documents will be changed, modified or not enforced. However, if the Bidder believes that any portion of the Bid Booklet conflicts with, or is at variance with, the law, it shall immediately notify the Owner, so that the Owner can analyze the situation before bids are submitted. 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 Owner’s Representative. Requests shall be made in sufficient time for the Owner'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 Owner 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 Owner’s Representative. Such notification shall also be made in sufficient time for the Owner to make any necessary modifications and issue Addenda to Bidders prior to Bid Closing.

The Owner is under no obligation to search its records for other data that may or may not be helpful for the Bidder’s instructions, and no claims for additional compensation may be made if such additional test data is not provided by the Owner.

With regard to any Owner-supplied data, the Bidder acknowledges and agrees that:

**(a)** To the extent that Owner-supplied data is included in the Bid Documents, it is solely for the convenience of the Bidder and shall not relieve the Bidder of any risks or of any duty to make its own examinations and investigations as required by this Subsection or any other responsibility under the Contract Documents and such data is not a part of the Contract Documents.

**(b)** The Owner-supplied data represents with reasonable accuracy the conditions and materials found at the Project Site as known at the time such data was collected. The Owner makes no representation or warranty (express or implied) with regard to the condition, materials, or proportions of materials at any other locations on the Project Site.

**(c)** The Owner does not represent or warrant that the Owner-supplied data is sufficient or complete, nor that interpretations from the data made by the Owner are correct.

**(d)** The Owner assumes no responsibility for conclusions or interpretations made by the Bidder based on any information that the Owner makes available. Statements made by the Owner’s Representatives at the pre-bid or pre-proposal conference or elsewhere are not binding on the Owner and shall not change the Bid Document unless the Owner confirms the statements and changes to all prospective Bidders or proposer by written addendum to the Bid Document.

**00120.16  Material, Equipment, and Method Substitutions** - When the Contract specifies certain Materials, Equipment, products, and/or methods, the Bidder shall include those Materials, Equipment, products, and/or methods in the Bid unless the Owner’s Representative has issued an Addendum granting approval to substitute. Unless the Owner’s Representative 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, products, and/or methods other than those specified, the Bidder shall send a written request to the Owner’s Representative, at least 10 Calendar Days prior to Bid Opening, including complete descriptive and technical information on the proposed Materials, Equipment, products, and/or methods.

**(b)  Functional Similarity** - Materials, products, 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, products, 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 Owner’s Representative approves any proposed substitution, such approval, and any modifications necessitated to the design and construction by the substitution, will be acknowledged by Addenda.

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

**(a)  Within Normal Right-of-Way Limits** - If approved by the Owner’s Representative, the Contractor may use available property within the normal Right-of-Way limits for the purpose of constructing improvements under the Contract. Where the City of Portland owns, or has rights to, other adjacent properties in the Project area, "normal Right-of-Way" is limited to a line drawn across that property connecting the normal Right‑of-Way limits on either side of the property.

**(b)  Outside Normal Right-of-Way Limits** - The Contractor may not use City of Portland-owned property outside of normal Right-of-Way limits for the Project without the approval of the Owner’s Representative.

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

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

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

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

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

**00120.25  Subsurface Investigations -** If the Owner 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 Owner’s Representative's office. If the Owner has retained subsurface samples, they will also be available for inspection. Bidders and the Contractor may make arrangements for viewing the samples through the Owner’s Representative's office.

The availability of subsurface information from the Owner 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 Owner are for the purpose of obtaining data for planning and design of the Project.
* The data for individual test boring logs apply only to that particular boring and is not intended to be conclusive as to the character of any material between or around test borings.
* If Bidders use this information in preparing a Bid, it is used at their own risk, and Bidders are responsible for all conclusions, deductions, and inferences drawn from this information.

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

The Owner will not be responsible for failure of Bidders to receive Addenda sent as described in the preceding paragraph. Bids shall incorporate all Addenda. Bids may be rejected if opened and found by the Owner to not be based on all Addenda issued before Bid Closing.

**00120.40  Preparation of Bids** - Bids not in compliance with the requirements of this Subsection will be considered non‑responsive.

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

**Subsection Requirements**

00130.80 Project Site Restriction

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

**(b)  Bid Schedule Entries:**

**(1)  Bid Schedule Entries** - Using figures, Bidders shall fill in all blank spaces in the Bid Schedule. For each item in the 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 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** – Refer to the Bid Documents for instructions.

**(c)  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.

**(d)  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.

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 Owner. (See ORS 279C.365(4).)

If a Surety bond is submitted, Bidders shall use the Owner'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 Bid Booklet.

**(e)  Disclosure of First-Tier Subcontractors** - Without regard to the amount of a Bidder's Bid, if the Owner'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 Owner, on a form provided by the Owner, 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, may result in the rejection of the Bid as non-responsive. The Owner 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 Bid either:

* 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;
* By removing it from the Bid Booklet, filling it out and submitting it separately to the Owner at the address or FAX number given in the Bid Booklet; or
* By e-mail, using the form and address provided on the Owner's website named in the Bid Booklet.

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

The Owner 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.

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.

**(f)  Disclosure of Conflict of Interest** - The Owner has adopted the ODOT Conflict of Interest Guidelines and disclosure requirements. Bidders shall review the ODOT Conflict of Interest Guidelines, and if any disclosures are required (with the exception of any required disclosures for Subcontractors, which are addressed under 00180.21), Bidders shall complete the Conflict of Interest Disclosure Form(s) and submit to the Owner, before the time Bids are due to be submitted, by paper in accordance with Bid Documents. 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 Conflict of Interest Guidelines, no disclosures need be submitted.

**00120.45  Submittal of Bids** - See Bid Booklet under “Instructions to Bidders” section 2.0.

**00120.60  Revision or Withdrawal of Bids** - See Bid Booklet under “Instructions to Bidders” section 2.2.

**00120.65  Opening and Comparing Bids** -  Refer to the Bid Booklet, Section 2.0 Submitting Bids. Contract Bids will be opened and the total price for each Bid will be read publicly at the time and place indicated in the Bid Advertisement. Bidders and other interested parties are invited to be present.

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

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

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

* The Bid Section documents provided are not properly used or contain unauthorized alterations.

The Bid is incomplete or incorrectly completed.

The Bid contains improper additions, deletions, alternate Bids, or conditions.

The Bid is submitted on documents not obtained directly from the Owner, or is submitted by a Bidder who has not been identified by the Owner as a Holder of Bidding Plans, as required by 00120.05.

The Bid or Bid modifications are not signed by a person authorized to submit Bids or modify Bids, as required by 00120.01.

A member of a joint venture and the joint venture submit Bids for the same Project. Both Bids may be rejected.

Each change or correction is not individually initialed.

The price per unit cannot be determined.

The Bid guaranty is insufficient or improper.

The original Bid Bond form is not used or is altered.

The Oregon Construction Contractors Board registration number and expiration date are not shown on the Bid if required in the Solicitation Document. This requirement applies to Owner and State‑funded Projects, with the exception of Aggregate production and landscape Projects. (Not required on Federal‑aid Projects.)

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 Owner determines that any Pay Item is significantly unbalanced to the potential detriment of the Owner.

The Bidder has not submitted required Conflict of Interest Disclosure Form(s), if any, Non-Collusion Affidavit, or Assignment of Anti-Trust Rights.

* The Bidder has liquidated and delinquent debt owed to the State or any department or agency of the State.

In addition, the Owner may reject any Bids for good cause upon its finding that it is in the public interest to do so or where the Owner has determined that the Bidder is not a Responsible Bidder pursuant to ORS 279C.375. The Owner may also waive minor informalities or irregularities.

**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 has not been licensed by the State Landscape Contractors Board before submitting a Bid (ORS 279C.365(1)(k), ORS 701.021, ORS 701.026, and ORS 671.530). The Bidder's registration number and expiration date shall be shown in the Bid form, if requested. Failure to furnish the registration number, if requested, will render the Bid non-responsive and subject to rejection. (Not required on Federal-aid projects.); or

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

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

## Section 00130 - Award and Execution of Contract

**00130.00  Consideration of Bids** - After opening and reading Bids, the Owner 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 Owner for Award purposes.

The Owner reserves the right to waive minor informalities and irregularities, seek clarification of any Bid or response that, in its sole discretion, it deems necessary or advisable, 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 Owner's determination that any of the unit Bid prices are significantly unbalanced to the Owner's potential detriment. The Owner may correct obvious clerical errors, when the correct information can be determined from the face of the documents, if it finds that the best interest of the Owner and the public will be served thereby.

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

**00130.10  Award of Contract** - After the Bids are opened and a determination is made that a Contract is to be awarded, the Contract will be awarded to the lowest responsible Bidder. For the purposes of this Section, "lowest responsible Bidder" means the responsible Bidder who submitted the lowest responsive Bid, who is not on the list created by the Construction Contractors Board according to ORS Chapter 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 Owner 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 Owner.
* A satisfactory record of integrity. In evaluating a Bidder's record of integrity, the Owner may consider, among other things, whether the Bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Bidder's performance of a contract or subcontract.
* Qualified legally to contract with the Owner.
* Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Bidder fails to promptly supply information requested by the Owner concerning responsibility, the Owner will 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 Owner 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 Owner will document the record and the reasons for the unsatisfactory finding.

The Owner will mail the Notice of Intent to Award to the Bidders, and may provide Notice of Intent to Award on the Owner's website. (See 00110.05(e).)

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 Owner has provided a written response to each timely protest, denying the protest and affirming the Award.

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

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

**00130.15  Right to Protest Award** - Adversely affected or aggrieved Bidders and any other Bidder directly in line for Contract Award, may submit to the Owner a written protest of the Owner's intent to Award within 7 Calendar Days following the date of the Notice of Intent to Award. The protest shall specify the grounds upon which it is based.

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

* All lower Bids are non-responsive;
* The Owner failed to conduct the Bid process as described in the Bid Document;
* The Owner has abused its discretion in rejecting the protestor’s Bid as non-responsive or non-responsible; or
* The Owner’s evaluation of Bids or subsequent determination of award is otherwise in violation of ORS Chapters 279A and 279C or the Owner’s public contracting rules.

The written protest must describe the facts that support the protest. The Owner will not consider late protests or protests that do not describe facts that would support a finding that the Bidder is aggrieved for one of the reasons in clauses above.

**00130.20  Cancellation of Award** - Without liability to the Owner, the Owner 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:

* Special Provisions
* Addenda
* Schedule of Items
* Contract
* Performance Bond
* Payment Bond
* Certification of workers' compensation coverage

**00130.40  Contract Submittals** - Before the Owner 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 Owner's consent, nor will the Owner 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 Owner 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 Owner. Bidders may refer to 00170.70 for minimum coverage limits and other requirements.

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

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

**(d)  Registration Requirements:**

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

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

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

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

**(e)  Tax Identification Number** - The successful Bidder shall furnish the Owner 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 Owner within 10 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 Owner 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 Owner under 00170.70(a) to be obtained by appropriate Subcontractors shall be delivered by the Contractor to the Owner 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 Owner.

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 Owner** - Within 10 Working Days after the Owner has received and verified the properly executed documents specified in 00130.50(a), and received legal sufficiency approval from the Owner's attorney (if required), the Owner will execute the Contract. The Owner 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 Owner decides.

The forfeited Bid guaranty will become the Owner'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 Owner's execution of the Contract.

**00130.80  Project Site Restriction** - Until the Owner 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 Owner to send the Contract for execution. However, if more than 60 Calendar Days elapse between the date the Bid is opened and the date the Owner sends the Contract to be executed, the Owner 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 30 Calendar Days after the Contract is executed by the Owner.

Should the Owner fail to issue the Notice to Proceed within 30 Calendar Days of Contract execution, the Contractor may apply for an adjustment of Contract Time according to 00180.80(c).

## 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 or in the 3D Engineered Model, as modified by written order, or as directed by the Owner’s Representative.
* The Contractor shall perform all Work determined by the Owner’s Representative to be necessary to complete the Project.
* The Contractor shall contact the Owner’s Representative 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 Owner’s Representative.

**00140.20  Thickness** - The thickness of Courses of Materials shown on the Plans, given in the Specifications, or established by the Owner’s Representative 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 Owner’s Representative.

**00140.30  Owner-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 Owner 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 direct the Surety to increase the amount of the performance and payment bonds to equal the new Contract Amount. The Contractor shall provide the Owner with a copy of the modified bond documents within 15 Calendar Days of receipt of the Change Order. The Contractor’s performance of Work according to Change Orders shall neither invalidate the Contract nor release the Surety. Payment for changes in the Work will be made according to 00195.20. Contract Time adjustments, if any, will be made according to 00180.80.

When Changed Work is necessary, but the Owner and Contractor cannot reach agreement on the terms of a Change Order, the Owner will direct such Changed Work by issuing a Unilateral Change Order. The Unilateral Change Order may result in additions, deletions or other revisions to the Work to be performed. Upon receipt of a Unilateral Change Order, the Contractor shall promptly follow the direction given in the Unilateral Change Order and proceed with the Changed Work. Payment for Changed Workperformed shall be made as specified in Section 00195.20.

**00140.35 Change Orders -** The only authorized method for increasing or changing the amount of compensation, increasing the amount of Contract Time or changing the scope of work to be performed is through the execution of a written Change Order. Change Orders must be executed before the work is performed, unless the Owner’s Representative has issued written authorization. Compensation will not be paid until a Change Order is executed.

**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 Owner’s Representative 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 Owner has compiled a list at 00170.01 of those federal, State, and local agencies, of which the Owner 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 Owner contracts.

**00140.60  Extra Work** - If directed by the Owner’s Representative's written order, the Contractor shall perform work not included in the Contract. The Contractor shall perform this work according to the Contract Documents.

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

The Contractor's signature on the Change Order signifies the Contractor's agreement to perform the Extra Work for the additional compensation stated on the Change Order and that such amount is the total amount of compensation due to the Contractor for all costs, whether labeled as direct, indirect, impact costs, profit, and overhead or any other cost associated with the Extra Work, and that the total amount of additional Contract Time, if any, is the total amount of additional Contract Time resulting from the Extra Work.

If the Owner’s Representative and the Contractor cannot agree on a price for the Extra Work, the Owner’s Representative may issue a Unilateral Change 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.

**00140.65  Disputed Work** - TheContractor may dispute any part of a Change Order, written order, or an oral order from the Owner’s Representative by the procedures specified in Section 00199.

**00140.70  Cost Reduction Proposals** - The Contractor may submit written proposals to the Owner’s Representative 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 Owner, a proposal that is solely or primarily a proposal to reduce estimated quantities or delete Work, as determined by the Owner’s Representative, is not eligible for consideration as a cost reduction proposal and will instead be addressed under 00140.30, whether proposed or suggested by the Owner or the Contractor.

**(a)  Proposal Requirements** - The Owner 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 Owner’s Representative. The request should contain a description of the proposal together with a rough estimate of anticipated dollar and time savings. The Owner’s Representative will, within a reasonable time, advise the Contractor in writing whether or not the proposal would be considered by the Owner, should the Contractor elect to submit a detailed cost reduction proposal.

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

* A description of existing Contract requirements for performing the Work and the proposed change;
* The Contract items of Work affected by the proposed change, including any quantity variation caused by the proposed change;
* Pay Items affected by the proposed change including any quantity variations;
* A detailed cost estimate for performing the Work under the existing Contract and under the proposed change. Cost estimates shall be made according to Section 00197. Costs of re‑design, which are incurred after the Owner has accepted the proposal, shall be included in the cost of proposed work; and
* A date by which the Owner’s Representative 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 Owner’s Representative issues a Change Order incorporating the cost reduction proposal. If the Owner’s Representative fails to issue a Change Order by the date specified in the proposal, the proposal shall be deemed rejected.

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

The Owner’s Representative 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 Owner’s Representative may disregard the Schedule of Items. The Owner’s Representative 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 Owner reserves the right to require the Contractor to share in the Owner's costs of investigating the proposal. If the Owner exercises this right, the Contractor shall provide written acceptance of the condition to the Owner’s Representative. Such acceptance will authorize the Owner to deduct its share of investigation costs from payments due or that may become due to the Contractor under the Contract.

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

* Statement that the Change Order is made according to 00140.70;
* Revised Contract Documents that reflect all modifications necessary to implement the approved cost reduction measures;
* Any conditions to which the Owner'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 Owner'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 Owner has accepted the proposal, will be included in the cost of the Work attributable to cost reduction measures.

If the Owner 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 Owner. The Owner 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 Owner’s Representative provides written approval that states that such rental is in the public interest; and
* Rental does not increase the Project cost.

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

* The Contractor shall retrim and reshape earthwork, and shall repair deteriorated portions of the Project Site.

Where the Work has impacted existing facilities or devices, the Contractor shall restore or replace those facilities to their pre-existing condition.

The Contractor shall clean all drainage facilities and sanitary sewers of excess Materials or debris resulting from the Work.

The Contractor shall clean up and leave in a neat, orderly condition, Rights-of-Way, Materials sites, and other property occupied in connection with performance of the Work.

The Contractor shall remove temporary buildings, construction plants, forms, falsework and scaffolding, surplus and discarded Materials, and rubbish.

The Contractor shall dispose of Materials and debris, including, without limitation, forms, falsework, scaffolding, and rubbish resulting from clearing, grubbing, trimming, clean-up, removal, and other Work. These Materials and debris become the property of the Contractor. The Contractor shall dispose of these Materials and debris immediately.

The Contractor shall restore and replant or resurface adjoining properties to match existing grades and existing surfaces.

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

## Section 00150 - Control of Work

**00150.00  Authority of the Owner’s Representative** - The Owner’s Representative has full authority over the Work and its suspension including, but not limited to, clarification and interpretation of the Contract and its administration. (See Section 00180.) The Contractor shall perform all Work to the complete satisfaction of the Owner’s Representative. The Owner’s Representative's determination shall be final on all matters, including, but not limited to, the following:

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

The Owner’s Representative'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 Owner’s Representative and has been accepted in writing by the Owner.

Interim approvals issued by the Owner’s Representative, including, but not limited to, Notification of Project Completion, 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  Construction Manager's Authority and Duties** - The Owner’s Representative may designate a Construction Manager as its representative on the Project with authority to enforce the provisions of the Contract.

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

The Construction 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 Owner’s Representative and Construction 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 Owner’s Representative'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.

**00150.03 Internet Based Project Management Requirements**

**(a) Scope -** This Subsection specifies an Internet-based project management system, e-Builder, required for use by the Contractor and the Owner for the processing of construction documents and for collaboration and communications of all Contract related work. Unless otherwise indicated, it is the Contractor’s responsibility to utilize e-Builder when performing all project communications. The Owner may, at any time during the Contract period, elect to stop, re-start, or completely discontinue the use of e-Builder, in part or in its entirety. If use of e-Builder is stopped, the Owner will direct the Contractor to provide communication and Construction documents via direct delivery, email, or other conventional means, as approved.

**(b) Definitions**

1. **Electronic Documents -** The electronic form or image of Project Communications that can be stored on and retrieved from an electronic storage device through a collaboration system over the Internet, including all written and graphic products produced with computer software or converted to electronic form or electronic image by computer software.
2. **e-Builder -** The website www.e-builder.net is an internet-based project management and collaboration system made and supported by e-Builder Inc. for facilitating real time communication of project data, documents, and project information, to assist in the management of construction projects. e-Builder serves as a single source of project information for communication among project participants by automating various tasks in an organization of modules. It provides secure, permissions-based access by requiring the identification of all users and approval of access rights.
3. **Notice -** As defined in 00110.20. Also defined as the time and date when a document is sent from one party to the other party as recorded in e-Builder.
4. **Project Communication(s) -** All written documentation and written communications required by the Contract Documents including, but not limited to: correspondence, reports, notices, written documents, demands, instruments, directives, submittals, transmittals, RFI’s, certified payrolls, progress drawings, notices of change, payment applications, change orders, claims, change order requests, field orders, proposal requests, meeting agendas and minutes, substitution requests, test reports, monitoring reports, punch lists, and all other formal Contract communications, unless otherwise indicated in this Section.
5. **Secure Documents -** A secure form of the original or created electronic document that communicates the content and information of the original/created document and prevents alteration of the original/created document.

**(c) Submittals –**  All the following submittal requirements and procedures apply.

* 00150.35 submittal requirements and procedures.
* Utilize the populated items in the Submittal Register, when available.
* Each submittal package shall contain one item or, if approved, a closely related group of items which serve as one functional unit.
* Each submittal item shall consist of one PDF document, which shall not have any restrictions or permissions associated with the file. Documents containing text shall be searchable.

**(d) e-Builder Access** – Provide the names of staff to be initially granted user licenses for accessing e-Builder Submit the following for each proposed authorized e-Builder user within ten (10) calendar days of the contract award, as follows:

* Name, title and company affiliation.
* Address, phone number, and email address.
* Specific job related functions.
* Level of authority within the Contractor’s organization.
* Submit an updated list of authorized users on a quarterly basis or more frequently as needed, to indicate users to be added or removed.
* Provide proposed schedule of attendance for e-Builder training sessions.
* Provide signed verification of training attendance for all users.

**(e) Project Communications**

**(1)** **Project Communications in e-Builder -** All official Project Communication and collaboration will take place in e-Builder by creating and distributing documents directly within the system, or by uploading project documents into the system for distribution. Unless otherwise indicated, no other form of written Project Communication will be recognized.

**(2)** **Project Submittals in e-Builder -** Create submittals in e-Builder Inc’s submittal module. Distribute reports, documents, samples, etc. that cannot be processed through e-Builder according to 00150.35. Use e-Builder to track processing of submittals. Scan and/or upload support documentation into e-Builder.

**(3)** **Owner’s Responses in e-Builder** - The Owner’s Representative will respond to all documents using the appropriate e-Builder module. Documents distributed electronically via e-Builder will be considered official project documentation. Documents requiring formal signature including change orders will be signed electronically and distributed via e-Builder unless indicated otherwise.

**(4) Record Drawings -** This Subsection shall not relieve the Contractor of its obligations to provide the Owner with Record Drawings in the physical form specified in 00150.35.

**(5)** **Coding of Documents** - Documents will require assigned project codes. The codes will be included in the beginning of the Title or Subject Line of all documents that are created and/or uploaded in the system. This coding will be provided at Notice to Proceed.

**(6) Submittal Packages Required Coding -** Submittal packages entered in e-Builder will require subject coding. This will permit easier grouping and searching of submittals throughout the course of the project. Submittal Titles shall be formatted: [Project Number] SUB [Submittal Item Number] [Primary Code] [Secondary Code (if applicable)] [Document Title]. Example: E10669 SUB 003.00 TRAFFIC CONTROL TCP at SW 1st & Jefferson. Note that the Submittal Item Number is assigned automatically by e-Builder. Submittal codes are as follows:

|  |  |  |
| --- | --- | --- |
| **Primary Code** | **Secondary Code** | **Description** |
| ANCHOR |  | Anchor Systems |
|  | ADHESIVE | Bonded Anchors |
|  | MECHANICAL | Expansion Anchors |
|  |  |  |
| BACKFILL |  | Backfill Materials |
|  | SELECT | Selected Material |
|  | BORROW | Borrow Material |
|  | STONE | Stone Embankment |
|  | AGGREGATE | Base & Shoulder Aggregate |
|  |  |  |
| BRIDGE |  | Structures |
|  | CONC | Concrete |
|  | PSC | Prestressed Concrete |
|  | PTC | Post-Tensioned Concrete |
|  | STL | Structural Steel |
|  | TMBR | Timber |
|  | REBAR | Steel Reinforcement |
|  | BEARING | Bridge Bearings |
|  | JOINT | Bridge Joints |
|  | RAIL | Bridge Rails |
|  | COATING | Paint & Powder Coatings |
|  |  |  |
| BRIDGE REMOVAL |  | Bridge Removal |
|  | BR PLAN | Bridge Removal Plan |
|  | EQUIPMENT | Equipment Type & Location |
|  |  |  |
| DRILLED SHAFT |  | Drilled Shafts |
|  | INSTALL | Installation Plan |
|  | REPAIR | Repair Plan |
|  | INSPECT | Inspection Reports |
|  | LOGS | Placement Logs & Vol Curves |
|  | TESTS | CSL Test Reports |
|  |  |  |
| DRIVEN PILE |  | Driven Piles |
|  | CONC | Concrete Piles |
|  | TMBR | Timber Piles |
|  | STL | Steel Piles |
|  |  |  |
| EROSION CONTROL |  | Erosion Control |
|  | EC PLAN | Erosion Control Plan |
|  | EC MATERIALS | Erosion Control Materials |
|  |  |  |
| EXCAVATION |  | Excavation, Bedding, Backfill |
|  | CLSM | Controlled Low Strength Mtl. |
|  | COFFERDAM | Cofferdam |
|  | ENGINEERED SHORING | Engineered Shoring |
|  | STAB | Stabilization Rock |
|  |  |  |
| GEOTEXTILE |  | Geotextiles |
|  | FABRIC | Geotextile Fabric |
|  |  |  |
| INLET |  | Inlets |
|  | G-1 |  |
|  | G-2 |  |
|  | CG-2 |  |
|  | CG-3 |  |
|  | BEEHIVE | Beehive |
|  | METAL | Metal |
|  | METAL, MOD | Metal, Modified |
|  | METAL, GRATE | Metal, with Grate |
|  | METAL, CHANNEL, GRATE | Metal with Channel & Grate |
|  |  |  |
|  |  |  |
| LINING |  | Pipe Lining & Repair |
|  | CIPP | Cured in Place Pipe |
|  | LATERAL | Lateral Liners |
|  | SECTIONAL | Sectional Liner |
|  | POINT | Point Repair |
|  | TOPHAT | Top Hat |
|  |  |  |
| MANHOLE |  | Manholes |
|  | 48 | 48” Manhole |
|  | 60 | 60” Manhole |
|  | 72 | 72” Manhole |
|  | 84 | 84” Manhole |
|  | 96 | 96” Manhole |
|  |  |  |
| PAVEMENT |  | Pavement Restoration |
|  | AC | Asphalt Concrete |
|  | TEMP | Temporary AC |
|  | PCC | Portland Cement Conc. Pvmt |
|  | CURB | Concrete Curb |
|  | DRIVEWAY | Concrete Driveway |
|  | SIDEWALK | Concrete Sidewalk |
|  |  |  |
| PIPE |  | Pipe Type |
|  | CSP | Concrete |
|  | DIP | Ductile Iron |
|  | HDPE | Polyethylene |
|  | PVC | Polyvinyl Chloride |
|  | RCP | Reinforced Concrete |
|  | VCP | Clay |
|  |  |  |
| POLLUTION CONTROL |  | Pollution Control |
|  | PC PLAN | Pollution Control Plan |
|  | PC MATERIALS | Pollution Control Materials |
|  |  |  |
| ROCK |  | Rock Products |
|  | BASE | Paving Base Rock |
|  | BACKFILL | Trench Backfill |
|  | RIPRAP | Riprap |
|  |  |  |
| TRAFFIC CONTROL |  | Traffic Control |
|  | TCP | Traffic Control Plan |
|  | SIGNS | Traffic Signs |
|  | STRIPING | Striping |
|  |  |  |
| TUNNEL,BORE, JACK |  | Tunneling, Boring & Jacking |
|  | TUNNEL | Tunneling |
|  | BORE | Boring & Jacking |
|  | BURST | Pipe Bursting |
|  |  |  |
| VIDEO |  | Video Inspection of Sewers |
|  | MAIN | Mainline |
|  | LATERAL | Laterals |
|  |  |  |
| WALL |  | Wall Structures |
|  | RETAIN | Retaining Walls |
|  | SOUND | Sound Walls |
| WORK ON EXISTING |  | Work on Existing Structures |
|  | DIVERSION | Flow Diversion |
|  | REHAB | Manhole Rehabilitation |
|  | REHAB BASE | Rehabilitate MH Base |
|  | CLEANOUT | Cleanout |
|  | STEPS | MH Steps |
|  |  |  |
| OTHER |  | Items not listed above |

**(e) Owner’s e-Builder Access Requirements** - Access to the Internet and an Internet email is required to access the system. The Owner will provide user accounts to access and use e-Builder throughout the project.

Users of the e-Builder website will be permitted access only to this Project, in accordance with permission levels configured by the Owner. Access will only be permitted to certain modules within the Project. Requests to change permission levels must be submitted to the owner’s e-Builder Administrator.

Contractor shall maintain the list of authorized users to reflect current authorized users of e-Builder.

Contractor shall protect the security of the e-Builder system by limiting access to authorized users only. Do not allow ‘sharing’ of usernames. Contractor shall take appropriate precautions to maintain the security of the e-Builder system and ensure that Owner’s Representative is notified immediately of any user who is no longer authorized to use the system so that their user account can be de-activated.

**(f)** **Computer / Network System Requirements -** The Contractor shall be responsible for possessing the materials and broadband internet connection for accessing the website to fully comply with the specifications, as follows:

* Computer operating system recommendation for optimal performance is Windows 7 or later & OS X v10.8 or later.
* Browser pop-up settings should be modified to allow pop-ups from app.e-builder.net.
* Requirements as specified in https://www.e-builder.net/support/optimization for supported internet browsers.

**(g)** **e-Builder Training** - All contractor personnel who will be using e-Builder are required to attend a minimum of one 2-hour training conducted by the owner prior to the Notice to Proceed. Training will be scheduled by owner after contract has been awarded.

Designate one staff person to serve as an on-site trained e-Builder resource for the Contractor’s users. The Contractor will have access to the owner’s support personnel for assistance in effectively utilizing the software and providing technical support when appropriate.

**(h) Use Requirements –** The Contractor shall:

* Use e-Builder as the Project file storage system with a file folder structure created by the Owner to organize the Project documents.
* Abide by all policies, procedures, and standards established by the Owner for the use and application of e-Builder.
* Comply with applicable laws and regulations regarding electronic transmission of documents requiring professional engineering stamps or signatures, including provision of hard copies of such documents as appropriate.
* Project Communications that require the signature of authorized persons will utilize Docusign (via e-Builder), the stamp tool in e-Builder Inc., or other approved secure electronic signature software.
* Use of e-Builder will not replace or change any contractual responsibilities. Provide an adequate number of users to properly manage the document process in accordance with the Contract.

**(i) Restrictions and Limitations:**

* All Project Communications submitted to the Owner’s Representative through e-Builder after 3:00 PM, Monday through Friday, will be acknowledged no earlier than the following business day.
* For Project Communication purposes, business days and hours are defined as Monday through Friday, 7:30 AM to 4:30 PM, Pacific Time, excluding the Owner’s holidays.
* User access rights to the e-Builder site will restrict access to this Contract only.
* Access permission levels will be established by the Owner.

**(j) Temporary Downtime:**

* In the event that the e-Builder system is temporarily unavailable, continue with project communications utilizing other electronic means (email) or hard copies to transmit and receive project communications.
* Maintain records of all project communication during the e-Builder downtime and upload the records to e-Builder when it is operational.
* Notify the Owner’s Representative by telephone or email when e-Builder is not functional.

**(k) Owner Responsibility:**

* Provide the Contractor with e-Builder Use Guidelines within seven (7) calendar days after the contract award.
* Provide user access to the e-Builder system for the duration of the Contract.
* Manage the e-Builder program, site, user accounts and the permissions level for all users of the system.
* Provide e-Builder training for personnel using the system for e-Builder users identified by the Contractor.
* Provide technical support (administration) for e-Builder through the e-Builder system vendor.
* Provide guidelines regarding the organization and format of the e-Builder modules and the access permission requirements for each module or element thereof.
* Allow contractor to upload, download, view, and markup files, based on role permissions established by the owner.
* Track history of revisions and activities with respect to each document submitted or managed within e-Builder
* Adjust and revise the folder structure as necessary to facilitate management of Project Communications.
* With the prior approval of Owner’s Representative, exceptions may be made to allow specific items to be transmitted, submitted, responded to, or distributed in hard copy only. In these instances, e-Builder shall be used to track and expedite processing of these items.

**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 Owner’s Representative will resolve any discrepancies between these documents in the following order of precedence:

* Contract Change Orders;
* Addenda;
* Special Provisions;
* Stamped Owner-prepared drawings specifically applicable to the Project and bearing the Project title;
* Reviewed and accepted, stamped Working Drawings;
* 3D Engineered Models and supplemental Owner‑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, including permits from governmental agencies.

Notes on a drawing shall take precedence over drawing details.

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

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

**(c)  Material Discrepancies** - If the Contractor identifies a discrepancy, error, or omission in the Contract Documents that cannot be resolved by the approach specified in (b) above, the Contractor shall immediately request clarification from the Owner’s Representative. If the Contractor identifies a discrepancy related to permit requirements the Owner’s Representative will coordinate with the permitting jurisdiction to clarify the requirements of the permit applicable to the Project.

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

Provide construction survey work as necessary to construct the Project as specified. All submittals shall be prepared by or under the direction of a Professional Land Surveyor licensed in the State of Oregon, and shall bear the surveyor’s signature, seal, and expiration date. All work shall be performed by, or under the direction and review of a Professional Land Surveyor licensed in the State of Oregon. No measurement of quantities will be made for construction survey work. The accepted quantities of construction survey work will be paid for at the Contract lump sum amount for the item “Construction Survey Work”. Payment will be payment in full for furnishing all material, equipment, labor and incidentals necessary to complete the work as specified. No separate or additional payment will be made for all temporary protection and direction of traffic measures including flaggers and signing necessary for the performance of the construction survey work. No separate or additional payment will be made for preparing surveying documents including but not limited to office time, preparing and checking survey note, and all other related preparation work. Progress payments will not be in excess of the reasonable value of the surveying work estimated by the Owner’s Representative. Costs incurred caused by survey errors will be at the Contractor’s expense. These costs include price adjustments for repair or removal and replacement of deficient product, and over-run of material.

**00150.20  Inspection:**

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

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

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

At the Owner’s Representative'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 Owner’s Representative rejects Work due to Materials or workmanship, or if the Contractor performed such Work without providing sufficient advance request for inspection to the Owner’s Representative, the Contractor shall bear all costs of uncovering and restoring the Work. If the Owner’s Representative accepts the uncovered Work, and the Contractor performed the Work only after providing the Owner’s Representative with sufficient advance notice, the costs of uncovering and restoring the Work will be paid for by the Owner according to 00195.20.

**(b)  Inspection Facilities** - The Contractor shall furnish walkways, railings, ladders, shoring, tunnels, platforms, and other facilities necessary to permit the Owner’s Representative 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 Owner’s Representative.

**(c)  Sampling** - When directed by the Owner, the Contractor shall furnish the Owner’s Representative with samples of Materials that the Owner’s Representative 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 Owner’s Representative and shall provide safe inspection access.

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

**00150.25  Acceptability of Materials and Work** - The Contractor shall furnish Materials and shall perform Work in Close Conformance to the Contract Documents. If the Owner’s Representative determines that the Materials furnished or the Work performed are not in Close Conformance with the Contract Documents, the Owner’s Representative 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 Owner, document the adjustment, and provide written documentation to the Contractor regarding the basis of the adjustment.

The Owner’s Representative's decisions concerning acceptability of Materials or Work will be final.

**00150.30  Delivery of Notices** - Written notices to the Contractor by the Owner’s Representative or the Owner will be delivered:

* In person;

By e-Builder as per 00150.03 or;

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 Owner; or

By overnight delivery service of a private industry courier, to the current office address as shown in the records of the Owner.

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 notification by e-Builder as per 00150.03 or;
* 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 Owner’s Representative or the Owner by the Contractor shall be delivered to the Owner address shown in the Special Provisions, unless a different address is agreed to by the Owner’s Representative, and shall be delivered:

* In person;
* By e-Builder as per 00150.03 or;
* 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 Owner:

At the time of actual receipt when delivered in person;

* At the time of notification by e-Builder as per 00150.03 or;

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.

Following Notice to Proceed, all notices and other documents submitted to the Contractor by the Owner’s Representative, or to the Owner’s Representative by the Contractor, electronically under 00150.03.

If recorded in eBuilder as received before 3:00 p.m. PST on a business day it shall be considered as received on the business day on which it was actually received in eBuilder.

If recorded in eBuilder as received on a non-business day, or after 3:00 p.m. PST on a business day, it shall be considered as received at 8:00 a.m. PST on the next business day.

Claims must be submitted in writing according to Section 00199.

**00150.35 Submittals:**

The Contractor shall submit to the Owner’s Representative all Working Drawings, Shop Drawings, Product Data, Samples and other Submittals required by the Contract Documents regardless of whether the document originated with the Contractor or Subcontractor or supplier. Submittals shall be submitted at the time required by the Contract Documents, or, if no time is specified, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor that are not required by the Contract Documents may be returned without action or may not be returned at all. Informational Submittals that do not require the Owner’s Representative to take responsive action may be so identified in the Contract Documents.

**(a) Working Drawings -** The Contractor shall supplement the Plans with Stamped Working Drawings or Unstamped Working Drawings that show all information necessary to complete the Work. The applicable Section or Subsection of the Specifications will indicate the supplemental information required and whether Stamped Working Drawings or Unstamped Working Drawings are required

**(b) Number, Size, and Format of Submittals -** The Contractor shall provide 3 copies of any Submittal required by the Contract or when requested by the Owner’s Representative. When required, such Submittals shall be in a standard searchable electronic format in lieu of hard copy. For Working Drawings or Shop Drawings, the Contractor shall submit one electronic copy and 3 hard copies of Working Drawings to the Owner’s Representative. The submitted copies shall be clear and readable and drawn to scale. Drawing dimension shall be 8 1/2 inches by 11 inches, 11 inches by 17 inches, or 22 inches by 34 inches in size as directed by the Owner’s Representative. 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 Owner’s Representative for processing as the Contractor would like to have returned.

In addition, the Contract may also require the Contractor to provide information about the Products and Materials it proposes to incorporate into the Work and to provide samples of such Products and Materials for inspection or testing. The Contractor shall be responsible for all Submittals presented to the Owner’s Representative for review, no matter what their point of origin may have been.

The Contractor shall not perform a portion of the Work that requires the Owner’s Representative to review a Submittal until the respective Submittal has been reviewed by the Owner‘s Representative and the Owner’s Representative has responded in a manner consistent with proceeding with the Work as set forth in section (h) below. Such work shall be performed in accordance with Submittals that conform to the Contract Documents.

When tendering a Submittal to the Owner’s Representative for review, the Contractor represents that it has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained in such Submittals with the requirements of the Work and of the Contract Documents. The Contractor shall expressly note where any Submittal differs from or varies from the requirements of the Contract, notwithstanding any belief on the part of the Contractor that the variance is obvious.

The Owner’s Representative’s review of any Submittal does not relieve the Contractor from its responsibility to follow the requirements of the Contract Documents. The Owner’s Representative is not responsible for ensuring that Submittals are correct. Failure of the Owner’s Representative to discover that a Submittal varies from the requirements of the Contract Documents does not relieve the Contractor of its responsibilities to conform to the Contract nor provide a basis for a Change Order. Nevertheless, the Owner’s Representative shall review any Submittals provided in order to make a general determination about whether they appear to meet Contract requirements or the intended design of the Project. The Contractor remains responsible for following the Contract Documents, including, but not limited to:

* Confirming and correlating all dimensions;
* Fabricating and construction techniques;
* Coordinating the Work with that of all other trades and Subcontractors;
* Satisfactorily performing the Work in accordance with the Contract Documents;
* Determining and implementing the means and methods of construction; and
* Conforming to all the requirements of the Contract Documents.

The Owner’s Representative will have 14 Calendar Days to review any Submittals, except for Working Drawings and Shop Drawings, unless a different time is established elsewhere in the Contract Documents. For Working Drawings and Shop Drawings, the Owner’s Representative will have 21 Calendar Days (65 Calendar Days if Railroad approval is required) to review such Working Drawing or Shop Drawing after receipt by the Owner’s Representative. If the Owner’s Representative fails to return such Working Drawing or Shop Drawing within this period of time, the Owner’s Representative will consider issuing a Change Order to extend the Contract Time in accordance with 00180.60.

The Owner’s Representative will review the Submittals and return them to the Contractor with one of the following written notations:

**(c) “NO EXCEPTIONS TAKEN”** If the Submittal is marked, “NO EXCEPTIONS TAKEN,” this means that the Contractor may immediately begin the work encompassed by the Submittal.

**(d) “MAKE CORRECTIONS NOTED”** If the Submittal is marked “MAKE CORRECTIONS NOTED” the Contractor is required to make any revisions listed by the Owner’s Representative and, upon correction, may immediately begin the work indicated by the Submittal or may incorporate the Material or Equipment covered by the Submittal into the Work.

**(e) “REVISE AND RESUBMIT”** If the Submittal is marked “REVISE AND RESUBMIT,” the Contractor is required to revise the Submittal and resubmit it to the Owner’s Representative. No work shown on the Submittal, or which is dependent upon approval of the Submittal or Material or Equipment covered by the Submittal, may be incorporated into the Work until the Contractor has made the necessary revisions, resubmitted the Submittal and received the Submittal back marked either “NO EXCEPTIONS TAKEN” or “MAKE CORRECTIONS NOTED".

**(f) “REJECTED”** If the Submittal is marked “REJECTED” it means that the Owner’s Representative has found the Submittal, material or product data to be unacceptable and not in conformance with the Contract. Generally speaking, rejection of a Submittal simply indicates the Owner’s Representative’s belief that the defects in the Submittal are so great that it cannot be revised in order to make it conform to the Contract, as indicated in 00150.35(b)(3) above. The Contractor may not begin work indicated by the Submittal, nor incorporate Material or Equipment, nor proceed with Work dependent upon review of the Submittal, into the Work based on any Submittal, product data or Material that has been marked “REJECTED".

**(g) “SUBMIT SPECIFIED ITEM”** If the Submittal is returned marked “SUBMIT SPECIFIED ITEM,” it means that additional information is required to permit a full review. Work may begin on incorporating the Material or Equipment covered by the Submittal into the Work, only if it is not affected by the item to be submitted. However, if any Material or Equipment is affected by the item to be submitted, then no work may begin until the Submittal is resubmitted and returned marked either “NO EXCEPTIONS TAKEN” or “MAKE CORRECTIONS NOTED".

If the Contractor disagrees with the Owner’s review of its Submittal and the Owner’s action has the potential of increasing the Contractor’s costs, the Contractor shall proceed as required by 00199.30.

The Contractor shall keep a current list of Submittals available for the Owner’s Representative to review.

**00150.37  Equipment Lists and Other Submittals** - The Contractor shall submit Equipment lists, and other required submittals for approval by the Owner’s Representative. The Owner’s Representative will respond to requests for approval within time frames specified in each Section of the Specifications that requires such approval.

**00150.40  Cooperation and Superintendence by the Contractor**

**(a)** **General -** The Contractor shall:

* Keep one complete set of Contract Documents available on the Project Site at all times.
* Cooperate in good faith with the Owner’s Representative, Inspectors, the public and other contractors in performance of the Work.
* Designate, from the Contractor's organization, a competent representative responsible for the Project, experienced in the type of Work being performed, and capable of reading and thoroughly understanding the Plans and Specifications.
* Provide access, facilities and assistance to the Owner’s Representative in establishing such lines, grades and points as the Owner’s Representative requires.
* Carefully protect and preserve the Owner’s marks and stakes.
* Provide all assistance reasonably required by the Owner’s Representative to obtain information regarding the nature, quantity, and quality of any part of the Work.
* Allow the Owner’s Representative reasonable access to the Contractor’s books and records at all times. To the extent permitted by Oregon’s Public Records Law, the Owner’s Representative will make reasonable efforts to honor the Contractor’s request for protection of confidential information.
* Furnish the Owner’s Representative all data necessary to determine the actual cost of all, or any part, of the Work.
* Diligently pursue progress of the Work according to the schedule requirements of Section 00180.
* Direct, coordinate and control all Work performed under the Contract, including without limitation the Work performed by Subcontractors.

**(b)** **Designated Representative -** The Contractor shall appoint a designated representative for the Project in writing. The designated representative responsible for the Project shall:

* Have full authority and responsibility to promptly execute orders or directions of the Owner’s Representative.
* Have full authority and responsibility to promptly supply the Materials, Equipment, labor, and Incidental Work required for performance of the Work.
* Be available during the hours of work on the Project Site for communication with the Owner’s Representative and
* Be present for all Project Site Work except as provided in the Contract Documents, or approved by the City.

**(c) Single Designated Representative -** For short periods of time during the performance of minor or Incidental portions of the Work, the Contractor may designate a person to act on behalf of the single designated representative responsible for the Project. The Contractor shall submit the designation in writing to the Owner’s Representative. The form of designation shall state the designee’s name, duration of appointment, and scope of authority. The single designated representative responsible for the Project shall be available to the Owner’s Representative at all times for contact by telephone or radio.

**(d) Workforce -** The workforce shall be trained and experienced for the Work to be performed. The Contractor shall remove from the job and shall not employ again on the Project any laborer, worker, mechanic, foreman, superintendent or any other person who is found to be incompetent or who fails or refuses to perform the Work properly or whose conduct interferes with the progress of the Work. In addition, the Contractor shall remove and not employ again on the Project any person who disrupts the Work by being intemperate, troublesome, or disorderly. If the Contractor refuses to take such actions, the Owner’s Representative may order the person to be removed by written notice and those instructions shall be followed. Replacement of that person is at the Contractor’s cost. To the extent the Contractor fails to remove persons as ordered, the Owner’s Representative may suspend the Work by written notice until such orders are complied with or the Owner’s Representative may terminate the Contractor under the provisions of 00180.90(a).

**(e) Anti-Harassment Policy -** The Contractor shall implement an Anti-Harassment policy in compliance with the City’s Prohibition Against Workplace Harassment, Discrimination, and Retaliation Rule (HR 2.02). Contractor shall ensure that it complies with such policies and that all people employed to work on the Project at the Project Site comply with such policies for the duration of the Project. The Contractor shall have a means for aggrieved workers to report complaints of harassment or other violations of the Anti-Harassment policy and shall take all appropriate actions to address and remedy the complaints.

**(f) Owner Direction -** If, for some reason, neither the Contractor nor a fully authorized representative is available, and communication is necessary, the Owner may communicate with, or give directions to, any person working for the Contractor. The Contractor shall follow any direction given by the Owner. Such directions will be confirmed in writing at the Contractor’s request.

**(g)** **Failure To Provide The Superintendence -** The Contractor’s failure to provide the superintendence required by these provisions constitutes a material breach of the Contract, and the Owner’s Representative may impose any remedies available under the Contract, including but not limited to Contract termination or suspension of Contract performance.

**(h) Contractor Duties -** Nothing in this Subsection changes the Contractor’s duties as outlined elsewhere in the Contract Documents. For example, the Owner’s Representative’s presence does not relieve the Contractor from performing the Work in accordance with the Law, nor does it relieve the Contractor from obtaining all required Permits.

**00150.50  Cooperation with Utilities:**

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

**(b)  Owner Responsibilities** - Before Bids are received, the Owner will make preliminary arrangements for planned Adjustment of Utilities. The Owner 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** - TheContractor shall:

* Follow applicable rules adopted by the Oregon Utility Notification Center;
* Obtain written permission from the Portland Water Bureau before operating any potable water valve or hydrant. Unauthorized operation is prohibited. Contractor shall pay any fee associated with their operation;
* Maintain the flow of sewers, drains and water courses that might be interrupted by its work and restore that flow as directed by Owner;
* Be responsible for any damage caused to any Utility, whether known or unknown, and whether or not that was disclosed by the Contract Documents;
* Maintain in place all utilities whether or not shown on the Contract Documents;
* Not hinder the work of Owner or the owner of a Utility in the event that they relocate any Utility;
* Be responsible for locating all utilities on the Project Site and any other utilities which may be impacted by the Work;
* Contact Utility owners during Bid preparation and after the Contract is awarded to verify all Utilities' involvement on the Project Site;
* Hold a Utility scheduling meeting and monthly Utility coordination meetings (see also 00180.42);
* 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 the Utility from damage or disturbance and promptly notify the Owner’s Representative;
* Determine the exact location before excavating within the tolerance zone according to OAR 952‑001‑0090(3)(c);
* 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 Owner’s Representative and the Utility;
* In addition to the notification required in OAR 952‑001‑0090(6), notify the Owner’s Representative 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 Owner’s Representative and allow the Utility a minimum of two weeks to relocate or resolve the previously unknown Utility issues; and,
* Report to the Owner’s Representative any Utility owner who fails to cooperate or fails to follow the planned Utility adjustment.

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

**(d)  Delays** - If the Contractor complies with 00150.50(c), 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** - 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 811 or 1‑800‑332‑2344.

**(f) Utility Information:**

* If any Utility needs to be temporarily relocated for the Contractor’s convenience or because of the method of construction or as a result of site conditions, Contractor shall bear all costs for that temporary relocation. Contractor shall maintain utilities that are relocated by others in their relocated positions in order to avoid interference with Structures that cross the Project Work.
* Except for Contractor’s convenience as described above, arranging for a utility company to agree to the removal, relocation, or adjustment of a facility is the responsibility of the Owner.
* The Contractor shall be responsible for coordination of the removal, relocation, or adjustment of the impacted utility. The Contractor shall schedule work so as to afford the utility companies sufficient time and space to perform their work. Contact the Owner for information regarding these arrangements.
* A list of the organizations that may be adjusting utilities within the work area during the life of this Contract and an estimate of when the adjustment work is to be completed may be provided in the Contract Documents.
* The estimates of when adjustment work is to be completed, provided by organizations, are based upon available Working Days, not Calendar Days, and are not necessarily concurrent or continuous.
* The Contractor shall be responsible for all other utility adjustments to finish grade.
* There may be unavoidable delays due to utility companies or utility contractors working in the same construction zone. Notify the Owner's Representative immediately when utility work causes delays or construction issues.
* The utility companies or utility contractors may be in the right-of-way or on the Project Site working concurrently with this Contract. The Contractor's schedule and the schedules of the utility companies shall be coordinated and agreed upon prior to beginning construction on the Project Site. The Contractor shall work with the utility companies or the utility contractors so that all work on the Project is completed within the Contract Time.
* The Owner does not guarantee the site conditions will remain the same after the utility companies or the utility contractors have performed their work. The Contractor shall perform an assessment of site conditions prior to beginning work on the Project Site and after the utility companies or utility contractors have completed their work to determine actual conditions.
* A list of the Utilities and their field coordinators may be included in the Contract Documents.

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 Owner 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.

The Owner reserves the right to Award other contracts, or issue Permits, for work that may require coordination with the Contractor’s operations under this Contract.

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

* Coordinate Work with other contractors or forces;
* Cooperate with the Owner and other contractors to minimize interference, avoid delay, and provide all reasonable opportunities to allow them to perform their separate work, including, but not limited to, the introduction and storage of Materials and Equipment;
* Coordinate in good faith with all other contractors or forces;
* Perform the Work specified in the Contract in a way that will minimize interference and delay for all forces involved;
* Place and dispose of the Materials being used so as not to interfere with the operations of other forces; and,
* Join the Work with that of other forces in a manner acceptable to the Owner’s Representative or the Owner, and shall perform it in the accepted sequence with the work of the other force.

The Owner’s Representative will resolve any disagreements under this Subsection that may arise among the Contractor and other work forces, or between the Contractor and the Owner. The Owner’s Representative'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 Owner’s Representative. Before the Owner’s Representative accepts the schedule, each party shall have the opportunity to review all schedules. After this review and any necessary consultations, the Owner’s Representative will determine acceptable schedules.

The Contractor waives any right it may have to make claims against the Owner 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.

Contractor shall defend, hold harmless and indemnify Owner from all claims and all costs asserted by a separate contractor who asserts that the Contractor damaged its Work or property, as provided in 00170.72.

Contractor is responsible for any cutting, fitting and patching that may be required to complete the Work, except as otherwise specifically provided in the Contract Documents. The Contractor shall not endanger any work of any other contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other contractor, except as directed by the Owner’s Representative.

Contractor agrees that if a dispute arises regarding clean-up costs, the Owner’s Representative may apportion such costs to Contractor and other contractors as the Representative determines is fair and equitable.

Contractor shall not damage any work that the Owner has performed, either with its own forces or through the forces of another contractor. If the Contractor desires or needs to alter, change, cut or otherwise modify the work of Owner or another contractor in any way it shall seek the Owner’s Representative’s written approval.

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 provide a copy of the permit to the Owner’s Representative from the permitting jurisdiction authorizing any overweight load(s).

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

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

When any such damage occurs, the Owner’s Representative will determine if it is to be corrected by repair, replacement, or compensatory payment by the Contractor. If compensatory payment is required, the Owner’s Representative 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 Notification of Acceptance 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 Owner’s Representative will timely notify the Contractor of the 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 Owner’s Representative may proceed to remedy the deficiency, and deduct the entire cost from monies due or to become due the Contractor under the Contract.

**00150.80  Removal of Unacceptable and Unauthorized Work** -  The Contractor shall correct or remove unacceptable Work and remove unauthorized work, as directed by the Owner’s Representative in writing.

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 Owner’s Representative;
* Work that is contrary to the Owner’s Representative's instructions; and
* Work that is conducted without the Owner’s Representative's written authorization.

The Owner will not pay the Contractor for unacceptable Work, except as provided in 00150.25, or for unauthorized work. The Owner’s Representative may issue a written order for the correction or removal of such work at the Contractor's sole expense.

If, when ordered by the Owner’s Representative, the Contractor fails to correct or remove unacceptable Work or remove unauthorized work within a reasonable time, the Owner’s Representative 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.

Owner retains the right to accept portions of the Work that do not conform to the requirements of the Contract Documents. However, such acceptance will be in writing and given only by the Owner’s Representative. Inspectors, employees and other agents of Owner have no authority to bind the Owner to accept nonconforming portions of the Work. If the Owner’s Representative chooses to accept nonconforming portions of the Work, and those portions cost less than what the Contractor would have spent to comply with the Contract Documents, Owner is entitled to a credit for the difference in price, which may be deducted from the Contract Amount.

**00150.90  Final Inspection:**

**(a)  On-site Construction Work** - The Owner’s Representative 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 Owner’s Representative will issue Substantial Completion as specified in 00180.50(g).

Within 15 Calendar Days after the Owner’s Representative receives the Contractor's written notification that all punch list items, final trimming and cleanup according to 00140.90 have been completed, the Owner’s Representative 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 Owner’s Representative will issue the Notification of Project Completion 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, other than that incorporated into the Work; and
* The Contractor has submitted all required certifications, bills, forms, warranties and other documents.

**00150.91  Post-Construction Review** - The Contractor or the Owner’s Representative may request a Post‑Construction Review meeting, to be held at a time prior to issuance of Notification of Project Completion but not earlier than 7 Days following the date of Substantial Completion. The meeting may be held if agreed to by both parties. The party making the request will conduct the meeting, and will announce the time and place of the meeting at least 15 Days prior to the meeting date. The purpose of this meeting is to examine the Project for possible process improvements that may benefit future projects.

**00150.95  Final Acceptance** - After the Owner’s Representative completes Final Inspection of all Work and sends Notification of Project Completion to the Contractor, the Owner will acknowledge Project completion. The Owner will then notify the Contractor in writing of the date of Final Acceptance of the completed Project within 7 Calendar Days after Final Acceptance, or as soon thereafter as is practicable.

**00150.96  Maintenance Warranties and Guarantees** - Prior to Notification of Project Completion, the Contractor shall transfer to the Owner 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 Owner.

**00150.97  Responsibility for Materials and Workmanship:**

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

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

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

**(c)**Full or partial termination of the Contract under 00180.90 shall not relieve the Contractor of responsibility for completed or performed Work, or relieve the Contractor's Surety of the obligation for any just claims arising from the completed or performed Work.

## Section 00160 - Source of Materials

**00160.00  Definitions** - The following definitions apply to Section 00160:

**(a)  Prospective Source** - Owner-furnished Materials source, use of which by the Contractor is optional. The Owner 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** - Owner-furnished Materials source, use of which by the Contractor is required.

**(c) Electrical Equipment and Materials List** - Prequalified products and submittals for qualification of electrical equipment and materials.

**(d) Controller Equipment List** - Prequalified products and submittals for qualification of controller equipment.

**(e)  Red Sheets** - Statewide list of certification exempt traffic management systems components pursuant to ORS 479.540 and OAR 918-261-0037.

**00160.01  Notification of Source of Supply and Materials:**

**(a)  All Materials** - The Contractor shall notify the Owner’s Representative 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 the source is within the State; or
* At least 45 Calendar Days before using or fabricating Materials, if the source is outside 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 Owner’s Representative 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 Owner’s Representative'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 Owner’s Representative's approval.

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

00160.05  Construction Products List (CPL) - The CPL is a listing of manufactured products available on the market (shelf items) that the City of Portland has evaluated and found suitable for a specified use in highway construction. The CPL is available from PBOT's Construction Section website (See 00110.05(e)).

The most current published PDF version of the CPL on PBOT'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 CPL, unless specified as the subject of an exemption per ORS 279C.345, the Owner may approve for use a conditionally qualified product, a product qualified for inclusion in a later edition of the CPL, or other equivalent product, if the Engineer finds the product acceptable for use on the Project.

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

00160.07  Electrical Equipment and Materials

 - The Electrical Equipment and Materials List and Controller Equipment List are a listing of manufactured products available on the market (shelf items) that PBOT has evaluated and found suitable for use as electrical and controller equipment and materials for roadway construction. The Electrical Equipment and Materials List and Controller Equipment List are available on the PBOT website. The most current version of the Electrical Equipment and Materials List and Controller Equipment List on the date of Advertisement is the version in effect for the Project.

When the Contract specifies the use of the Electrical Equipment and Materials List and Controller Equipment List, unless specified as the subject of an exemption per ORS 279C.345, the Owner may approve for use a product qualified for inclusion in a later edition of the Electrical Equipment and Materials List and Controller Equipment List or other equivalent product that meets the requirements of the Electrical Equipment and Materials List , following the Electrical Equipment and Materials List Qualification/Specification Information, or the Controller Equipment List, following the “ODOT Standard Specification for Microcomputer Signal Controller”, including all published errata, and PBOT supplement except as supplemented and modified by the special provisions.

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 the Specifications or not properly handled or installed at no additional cost to the Owner.

**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 Owner’s Representative will notify the Contractor in writing of the quantities required. Quantity estimates by the Owner’s Representative 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 Owner’s Representative. The Contractor is responsible for payment for excess Materials delivered to the Project Site or storage sites without advance authorization from the Owner’s Representative. Unless otherwise specified in the Contract, the Owner 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 Owner’s Representative may be purchased by the Owner at the sole discretion of the Owner. (See 00195.80.)

**00160.20  Preferences for Materials:**

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

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

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

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

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

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

**00160.21  Cargo Preference Act Requirements** - If federal highway funds are involved on the Project, the Contractor shall comply with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including, but not limited to, the clauses in 46 CFR 381.7(a) and (b), which are incorporated by reference. The Contractor shall also include this provision in all subcontracts.

Additional information may be available at the following websites:

* <https://www.fhwa.dot.gov/construction/cqit/cargo.cfm>
* <https://www.fhwa.dot.gov/construction/cqit/cargo/qa.cfm>.

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

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

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

All Owner-furnished Materials not incorporated into the Work remain the property of the Owner. The Contractor shall deliver such Materials as directed by the Owner’s Representative.

**00160.50  Owner****-Controlled Land; Limitations and Requirements:**

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

Unless authorized in the Contract, the Contractor shall not disturb any material within Rights‑of‑Way without written authorization from the Owner’s Representative.

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

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

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

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

**00160.60  Contractor-Furnished Materials and Sources:**

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

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

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

**(1)**  Given to the Owner’s Representative a copy of permits from, or proof that permits are not required from:

* The Department of Geology and Mineral Industries, as required under ORS 517.790;
* The Department of State Lands, as required under ORS 196.815 (when removing material from the bed or banks of any waters or from any Wetland); and
* Local governmental authorities having jurisdiction over land use at the source location.

**(2)**  Furnished to the Owner’s Representative written approval of the property owner, if other than the Contractor, for the Contractor's proposed plans of operation in, and reclamation of, the source. The Contractor shall include in the document containing the property owner's written approval a summary of the requirements of the permits described above, which shall be subject to the Owner’s Representative's approval.

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

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

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

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

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

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

**(c)**  Excavate in quarries so that:

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

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

## Section 00165 - Quality of Materials

**Description**

**00165.00  General** - The Contractor shall incorporate into the Work only Materials conforming to the Specifications and approved by the Owner’s Representative. The Contractor shall incorporate into the Work only manufactured products made of new materials unless otherwise specified in the Contract. The Owner 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 Owner’s Representative.

**00165.01  Rejected Materials** - The Owner’s Representative may reject any Materials that appear to be defective (see 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 Owner’s Representative has approved their use. The Owner’s Representative may order the removal and replacement by the Contractor, at the Contractor's expense, of any defective Materials. (See also 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 Owner'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 work performed on or utilizing the sewer or water system, the Contract Documents will address the use of approved Materials and required testing.

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 Owner** - When testing Materials, the Owner will have tests conducted in its central laboratory, field laboratories, or other laboratories designated by the Owner’s Representative, even though certain AASHTO, ASTM, and other materials specifications may require testing at the place of manufacture. Results of the Owner's tests will be made available to the Contractor.

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

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

**Provisions and Requirements**

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

**(a)  Field-Tested Materials** - Field-tested Materials will be accepted according to the ODOT Manual of Field Test Procedures (MFTP). The MFTP is published once per year and is available from the ODOT Construction Section; 800 Airport Road SE; Salem, OR 97301-4798; phone 503‑986‑3000. The MFTP is also available on the ODOT Construction Section 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 on 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, AWWA, other governmental agencies, or other recognized organizations mean those officially adopted and in current use by the Owner or organization on the date of Advertisement.

If there are conflicting references, or if no reference is made to materials specifications, sampling and testing frequencies, or test method, the Owner’s Representative will resolve any discrepancies between these documents in the following orders of precedence:

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, AWPA, IMSA, ISSA, and UL; and

Industry standards in the location where the Work is being performed.

Sampling and testing frequencies:

* Contract Change Orders;

Special Provisions;

MFTP; and

Standard Specifications.

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

**00165.30  Field-Tested Materials:**

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

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

**(b)  Types of Tests** - The types of tests and testing methods generally required by the Owner 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 Owner according to the Quality Assurance program outlined in the MFTP. If the Owner'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 Owner’s Representative 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 Owner’s Representative.

If the Owner's verification test results do not verify the Contractor's test results, the Owner may require additional testing to determine whether the Materials meet Specifications. The Contractor shall perform additional testing or provide samples to the Owner for testing as directed. If the Materials do not meet Specifications, the Contractor shall reimburse the Owner 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 Owner 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, AWWA, NSF, 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 Owner’s Representative with the shipment of the material.

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

* Verify that the Material meets the Specifications, and identify by number the specified test methods used, (ODOT, AASHTO, ASTM, AWWA, NSF, UL, or other)
* Permit positive determination that Material delivered to the Project is the same Material covered by the certificate,
* Be delivered to the Owner’s Representative 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 Owner’s Representative 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 Owner’s Representative so elects. The Owner’s Representative may reject damaged or non-specification materials regardless of the Materials Conformance Documents furnished.

**00165.40  Statistical Analysis** - When 00165.30(c) or 00165.50 applies, the Contractor shall divide the Materials into lots and sublots, randomly sample and test them as required, and analyze the results statistically to determine whether the Materials conform to the Specifications.

All acceptance test results of lots and sublots will be analyzed collectively using the Quality Level Analysis procedure set out in this Subsection. This procedure shall not be used for a lot with less than three sublots. Sampling of Material for a lot that contains two or fewer sublots shall be increased to obtain at least three sublots. The Owner’s Representative has discretion to either accept or reject lots originating with two or fewer sublots, even after sampling is increased.

**(a)  Lot** - A lot is the quantity of Materials produced by a single process or JMF that is sampled, tested, and statistically evaluated, as specified in this Subsection.

**(b)  Sublot** - A sublot is a portion of a lot, for which a sample test value may be normally obtained.

**(c)  Quality Level Analysis** - Quality Level Analysis is a statistical procedure to determine, for each lot:

* The percentage of each constituent of the Materials meeting Specifications;
* The Pay Factor for each constituent; and
* The Composite Pay Factor, when specified.

**(d)  Pay Factor and Composite Pay Factor Computation** - Procedures for determining the percent meeting Specifications, Pay Factors, and Composite Pay Factor for a lot of Materials are as follows:

**(1)**  Compute lot arithmetic mean () for each constituent:

 = 

Where ΣX = summation of sample test values

n = total number of samples

**(2)**  Compute standard deviation (sd) for each constituent:

sd = 

Where  = summation of the squares of each sample test value

 = square of the lot arithmetic mean

**(3)**  Compute the upper quality index (QU) for each constituent:

QU = 

Where USL (upper specification limit) is the target value plus allowable tolerance

**(4)**  Compute the lower quality index (QL) for each constituent:

QL = 

Where LSL (lower specification limit) is the target value minus allowable tolerance

**(5)**  From Table 00165-1, for each constituent, determine the percent within the upper specification limit (PU) which corresponds to a given QU. If USL is 100% or is not specified, PU will be 100.

**(6)**  From Table 00165-1, for each constituent, determine the percent within the lower specification limit (PL) which corresponds to a given QL. If LSL is 0 or not specified, PL will be 100.

**(7)**  Compute the quality level, or total percent within Specification limits (PT), for each constituent:

PT = (PU + PL) – 100

**(8)**  Using the PT from Step 7, determine the Pay Factor (PF) from Table 00165-2 for each constituent tested. A minimum PF of 1.00 will be used when all sublot test values are within the upper and lower Specification limits, regardless of the calculated PF.

**(9)**  Compute the Weighted Pay Factor (WPF) for each constituent:

WPF = (PF) x (fi)

Where fi  = weighting factor listed in the Specifications for each constituent tested.

**(10)**  Compute the Composite Pay Factor (CPF) for the lot and report the results to three decimal places.

CPF = 

Where  = sum of the weighted pay factors for each constituent

 = sum of the weighting factors listed in the Specifications

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Table 00165-1** | | | | | | | | | | | | | | |
| **QUALITY LEVEL ANALYSIS BY THE STANDARD DEVIATION METHOD** | | | | | | | | | | | | | | |
| PU or PL PERCENT WITHIN LIMITS FOR POSITIVE VALUES OF QU or QL | **UPPER QUALITY INDEX QU OR LOWER QUALITY INDEX QL** | | | | | | | | | | | | | |
|  |  | |  | |  | |  | |  | |  | | n = 10 |
|  |  | |  | |  | |  | |  | |  | | to |
| n = 3 | n = 4 | | n = 5 | | n = 6 | | n = 7 | | n = 8 | | n = 9 | | n = 11 |
| 100 | 1.16 | 1.50 | | 1.79 | | 2.03 | | 2.23 | | 2.39 | | 2.53 | | 2.65 |
| 99 | - | 1.47 | | 1.67 | | 1.80 | | 1.89 | | 1.95 | | 2.00 | | 2.04 |
| 98 | 1.15 | 1.44 | | 1.60 | | 1.70 | | 1.76 | | 1.81 | | 1.84 | | 1.86 |
| 97 | - | 1.41 | | 1.54 | | 1.62 | | 1.67 | | 1.70 | | 1.72 | | 1.74 |
| 96 | 1.14 | 1.38 | | 1.49 | | 1.55 | | 1.59 | | 1.61 | | 1.63 | | 1.65 |
| 95 | - | 1.35 | | 1.44 | | 1.49 | | 1.52 | | 1.54 | | 1.55 | | 1.56 |
| 94 | 1.13 | 1.32 | | 1.39 | | 1.43 | | 1.46 | | 1.47 | | 1.48 | | 1.49 |
| 93 | - | 1.29 | | 1.35 | | 1.38 | | 1.40 | | 1.41 | | 1.42 | | 1.43 |
| 92 | 1.12 | 1.26 | | 1.31 | | 1.33 | | 1.35 | | 1.36 | | 1.36 | | 1.37 |
| 91 | 1.11 | 1.23 | | 1.27 | | 1.29 | | 1.30 | | 1.30 | | 1.31 | | 1.31 |
| 90 | 1.10 | 1.20 | | 1.23 | | 1.24 | | 1.25 | | 1.25 | | 1.26 | | 1.26 |
| 89 | 1.09 | 1.17 | | 1.19 | | 1.20 | | 1.20 | | 1.21 | | 1.21 | | 1.21 |
| 88 | 1.07 | 1.14 | | 1.15 | | 1.16 | | 1.16 | | 1.16 | | 1.16 | | 1.17 |
| 87 | 1.06 | 1.11 | | 1.12 | | 1.12 | | 1.12 | | 1.12 | | 1.12 | | 1.12 |
| 86 | 1.04 | 1.08 | | 1.08 | | 1.08 | | 1.08 | | 1.08 | | 1.08 | | 1.08 |
| 85 | 1.03 | 1.05 | | 1.05 | | 1.04 | | 1.04 | | 1.04 | | 1.04 | | 1.04 |
| 84 | 1.01 | 1.02 | | 1.01 | | 1.01 | | 1.00 | | 1.00 | | 1.00 | | 1.00 |
| 83 | 1.00 | 0.99 | | 0.98 | | 0.97 | | 0.97 | | 0.96 | | 0.96 | | 0.96 |
| 82 | 0.97 | 0.96 | | 0.95 | | 0.94 | | 0.93 | | 0.93 | | 0.93 | | 0.92 |
| 81 | 0.96 | 0.93 | | 0.91 | | 0.90 | | 0.90 | | 0.89 | | 0.89 | | 0.89 |
| 80 | 0.93 | 0.90 | | 0.88 | | 0.87 | | 0.86 | | 0.86 | | 0.86 | | 0.85 |
| 79 | 0.91 | 0.87 | | 0.85 | | 0.84 | | 0.83 | | 0.82 | | 0.82 | | 0.82 |
| 78 | 0.89 | 0.84 | | 0.82 | | 0.80 | | 0.80 | | 0.79 | | 0.79 | | 0.79 |
| 77 | 0.87 | 0.81 | | 0.78 | | 0.77 | | 0.76 | | 0.76 | | 0.76 | | 0.75 |
| 76 | 0.84 | 0.78 | | 0.75 | | 0.74 | | 0.73 | | 0.73 | | 0.72 | | 0.72 |
| 75 | 0.82 | 0.75 | | 0.72 | | 0.71 | | 0.70 | | 0.70 | | 0.69 | | 0.69 |
| 74 | 0.79 | 0.72 | | 0.69 | | 0.68 | | 0.67 | | 0.66 | | 0.66 | | 0.66 |
| 73 | 0.76 | 0.69 | | 0.66 | | 0.65 | | 0.64 | | 0.63 | | 0.63 | | 0.62 |
| 72 | 0.74 | 0.66 | | 0.63 | | 0.62 | | 0.61 | | 0.60 | | 0.60 | | 0.59 |
| 71 | 0.71 | 0.63 | | 0.60 | | 0.59 | | 0.58 | | 0.57 | | 0.57 | | 0.57 |
| 70 | 0.68 | 0.60 | | 0.57 | | 0.56 | | 0.55 | | 0.55 | | 0.54 | | 0.54 |
| 69 | 0.65 | 0.57 | | 0.54 | | 0.53 | | 0.52 | | 0.52 | | 0.51 | | 0.51 |
| 68 | 0.62 | 0.54 | | 0.51 | | 0.50 | | 0.49 | | 0.49 | | 0.48 | | 0.48 |
| 67 | 0.59 | 0.51 | | 0.47 | | 0.47 | | 0.46 | | 0.46 | | 0.46 | | 0.45 |
| 66 | 0.56 | 0.48 | | 0.45 | | 0.44 | | 0.44 | | 0.43 | | 0.43 | | 0.43 |
| 65 | 0.52 | 0.45 | | 0.43 | | 0.41 | | 0.41 | | 0.40 | | 0.40 | | 0.40 |
| 64 | 0.49 | 0.42 | | 0.40 | | 0.39 | | 0.38 | | 0.38 | | 0.37 | | 0.37 |
| 63 | 0.46 | 0.39 | | 0.37 | | 0.36 | | 0.35 | | 0.35 | | 0.35 | | 0.34 |
| 62 | 0.43 | 0.36 | | 0.34 | | 0.33 | | 0.32 | | 0.32 | | 0.32 | | 0.32 |
| 61 | 0.39 | 0.33 | | 0.31 | | 0.30 | | 0.30 | | 0.29 | | 0.29 | | 0.29 |
| 60 | 0.36 | 0.30 | | 0.28 | | 0.27 | | 0.27 | | 0.27 | | 0.26 | | 0.26 |
| 59 | 0.32 | 0.27 | | 0.25 | | 0.25 | | 0.25 | | 0.24 | | 0.24 | | 0.24 |
| 58 | 0.29 | 0.24 | | 0.23 | | 0.22 | | 0.21 | | 0.21 | | 0.21 | | 0.21 |
| 57 | 0.25 | 0.21 | | 0.20 | | 0.19 | | 0.19 | | 0.19 | | 0.18 | | 0.18 |
| 56 | 0.22 | 0.18 | | 0.17 | | 0.16 | | 0.16 | | 0.16 | | 0.16 | | 0.16 |
| 55 | 0.18 | 0.15 | | 0.14 | | 0.14 | | 0.13 | | 0.13 | | 0.13 | | 0.13 |
| 54 | 0.14 | 0.12 | | 0.11 | | 0.11 | | 0.11 | | 0.11 | | 0.10 | | 0.10 |
| 53 | 0.11 | 0.09 | | 0.08 | | 0.08 | | 0.08 | | 0.08 | | 0.08 | | 0.08 |
| 52 | 0.07 | 0.06 | | 0.06 | | 0.05 | | 0.05 | | 0.05 | | 0.05 | | 0.05 |
| 51 | 0.04 | 0.03 | | 0.03 | | 0.03 | | 0.03 | | 0.03 | | 0.03 | | 0.03 |
| 50 | 0.00 | 0.00 | | 0.00 | | 0.00 | | 0.00 | | 0.00 | | 0.00 | | 0.00 |
| NOTE: For negative values of QU or QL, PU or PL is equal to 100 minus the table value for PU or PL. If the value of QU or QL does not correspond exactly to a figure in the table, use the next higher figure. | | | | | | | | | | | | | | |
| **Table 00165-1** | | | | | | | | | | | | | | |
| **QUALITY LEVEL ANALYSIS BY THE STANDARD DEVIATION METHOD** | | | | | | | | | | | | | | |
| PU or PL PERCENT WITHIN LIMITS FOR POSITIVE VALUES OF QU OR QL | **UPPER QUALITY INDEX QU OR LOWER QUALITY INDEX QL** | | | | | | | | | | | | | |
| n = 12 | | n = 15 | | n = 19 | | n = 26 | | n = 38 | | n = 70 | | n = 201 | |
| to | | to | | to | | to | | to | | to | | to | |
| n = 14 | | n = 18 | | n = 25 | | n = 37 | | n = 69 | | n = 200 | | n = ∞ | |
| 100 | 2.83 | | 3.03 | | 3.20 | | 3.38 | | 3.54 | | 3.70 | | 3.83 | |
| 99 | 2.09 | | 2.14 | | 2.18 | | 2.22 | | 2.26 | | 2.29 | | 2.31 | |
| 98 | 1.91 | | 1.93 | | 1.96 | | 1.99 | | 2.01 | | 2.03 | | 2.05 | |
| 97 | 1.77 | | 1.79 | | 1.81 | | 1.83 | | 1.85 | | 1.86 | | 1.87 | |
| 96 | 1.67 | | 1.68 | | 1.70 | | 1.71 | | 1.73 | | 1.74 | | 1.75 | |
| 95 | 1.58 | | 1.59 | | 1.61 | | 1.62 | | 1.63 | | 1.63 | | 1.64 | |
| 94 | 1.50 | | 1.51 | | 1.52 | | 1.53 | | 1.54 | | 1.55 | | 1.55 | |
| 93 | 1.44 | | 1.44 | | 1.45 | | 1.46 | | 1.46 | | 1.47 | | 1.47 | |
| 92 | 1.37 | | 1.38 | | 1.39 | | 1.39 | | 1.40 | | 1.40 | | 1.40 | |
| 91 | 1.32 | | 1.32 | | 1.33 | | 1.33 | | 1.33 | | 1.34 | | 1.34 | |
| 90 | 1.26 | | 1.27 | | 1.27 | | 1.27 | | 1.28 | | 1.28 | | 1.28 | |
| 89 | 1.21 | | 1.22 | | 1.22 | | 1.22 | | 1.22 | | 1.22 | | 1.23 | |
| 88 | 1.17 | | 1.17 | | 1.17 | | 1.17 | | 1.17 | | 1.17 | | 1.17 | |
| 87 | 1.12 | | 1.12 | | 1.12 | | 1.12 | | 1.12 | | 1.13 | | 1.13 | |
| 86 | 1.08 | | 1.08 | | 1.08 | | 1.08 | | 1.08 | | 1.08 | | 1.08 | |
| 85 | 1.04 | | 1.04 | | 1.04 | | 1.04 | | 1.04 | | 1.04 | | 1.04 | |
| 84 | 1.00 | | 1.00 | | 1.00 | | 1.00 | | 0.99 | | 0.99 | | 0.99 | |
| 83 | 0.96 | | 0.96 | | 0.96 | | 0.96 | | 0.95 | | 0.95 | | 0.95 | |
| 82 | 0.92 | | 0.92 | | 0.92 | | 0.92 | | 0.92 | | 0.92 | | 0.92 | |
| 81 | 0.88 | | 0.88 | | 0.88 | | 0.88 | | 0.88 | | 0.88 | | 0.88 | |
| 80 | 0.85 | | 0.85 | | 0.85 | | 0.84 | | 0.84 | | 0.84 | | 0.84 | |
| 79 | 0.81 | | 0.81 | | 0.81 | | 0.81 | | 0.81 | | 0.81 | | 0.81 | |
| 78 | 0.78 | | 0.78 | | 0.78 | | 0.78 | | 0.77 | | 0.77 | | 0.77 | |
| 77 | 0.75 | | 0.75 | | 0.75 | | 0.74 | | 0.74 | | 0.74 | | 0.74 | |
| 76 | 0.71 | | 0.71 | | 0.71 | | 0.71 | | 0.71 | | 0.71 | | 0.71 | |
| 75 | 0.68 | | 0.68 | | 0.68 | | 0.68 | | 0.68 | | 0.68 | | 0.67 | |
| 74 | 0.65 | | 0.65 | | 0.65 | | 0.65 | | 0.65 | | 0.64 | | 0.64 | |
| 73 | 0.62 | | 0.62 | | 0.62 | | 0.62 | | 0.62 | | 0.61 | | 0.61 | |
| 72 | 0.59 | | 0.59 | | 0.59 | | 0.59 | | 0.59 | | 0.58 | | 0.58 | |
| 71 | 0.56 | | 0.56 | | 0.56 | | 0.56 | | 0.56 | | 0.55 | | 0.55 | |
| 70 | 0.53 | | 0.53 | | 0.53 | | 0.53 | | 0.53 | | 0.53 | | 0.52 | |
| 69 | 0.50 | | 0.50 | | 0.50 | | 0.50 | | 0.50 | | 0.50 | | 0.50 | |
| 68 | 0.48 | | 0.48 | | 0.47 | | 0.47 | | 0.47 | | 0.47 | | 0.47 | |
| 67 | 0.45 | | 0.45 | | 0.45 | | 0.44 | | 0.44 | | 0.44 | | 0.44 | |
| 66 | 0.42 | | 0.42 | | 0.42 | | 0.42 | | 0.41 | | 0.41 | | 0.41 | |
| 65 | 0.39 | | 0.39 | | 0.39 | | 0.39 | | 0.39 | | 0.39 | | 0.39 | |
| 64 | 0.37 | | 0.37 | | 0.36 | | 0.36 | | 0.36 | | 0.36 | | 0.36 | |
| 63 | 0.34 | | 0.34 | | 0.34 | | 0.34 | | 0.33 | | 0.33 | | 0.33 | |
| 62 | 0.31 | | 0.31 | | 0.31 | | 0.31 | | 0.31 | | 0.31 | | 0.31 | |
| 61 | 0.29 | | 0.29 | | 0.28 | | 0.28 | | 0.28 | | 0.28 | | 0.28 | |
| 60 | 0.26 | | 0.26 | | 0.26 | | 0.26 | | 0.26 | | 0.25 | | 0.25 | |
| 59 | 0.23 | | 0.23 | | 0.23 | | 0.23 | | 0.23 | | 0.23 | | 0.23 | |
| 58 | 0.21 | | 0.21 | | 0.20 | | 0.20 | | 0.20 | | 0.20 | | 0.20 | |
| 57 | 0.18 | | 0.18 | | 0.18 | | 0.18 | | 0.18 | | 0.18 | | 0.18 | |
| 56 | 0.15 | | 0.15 | | 0.15 | | 0.15 | | 0.15 | | 0.15 | | 0.15 | |
| 55 | 0.13 | | 0.13 | | 0.13 | | 0.13 | | 0.13 | | 0.13 | | 0.13 | |
| 54 | 0.10 | | 0.10 | | 0.10 | | 0.10 | | 0.10 | | 0.10 | | 0.10 | |
| 53 | 0.08 | | 0.08 | | 0.08 | | 0.08 | | 0.08 | | 0.08 | | 0.08 | |
| 52 | 0.05 | | 0.05 | | 0.05 | | 0.05 | | 0.05 | | 0.05 | | 0.05 | |
| 51 | 0.03 | | 0.03 | | 0.03 | | 0.03 | | 0.03 | | 0.03 | | 0.02 | |
| 50 | 0.00 | | 0.00 | | 0.00 | | 0.00 | | 0.00 | | 0.00 | | 0.00 | |
| NOTE: For negative values of QU or QL, PU or PL is equal to 100 minus the table value for PU or PL. If the value of QU or QL does not correspond exactly to a figure in the table, use the next higher figure. | | | | | | | | | | | | | | |

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Table 00165-2** | | | | | | | | |
|  | **REQUIRED QUALITY LEVEL FOR A GIVEN**  **SAMPLE SIZE (n) AND A GIVEN PAY FACTOR** | | | | | | | |
| PAY FACTOR |  |  |  |  |  |  |  | n = 10 |
|  |  |  |  |  |  |  | to |
| n = 3 | n = 4 | n = 5 | n = 6 | n = 7 | n = 8 | n = 9 | n = 11 |
| 1.05 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 1.04 | 90 | 91 | 92 | 93 | 93 | 93 | 94 | 94 |
| 1.03 | 80 | 85 | 87 | 88 | 89 | 90 | 91 | 91 |
| 1.02 | 75 | 80 | 83 | 85 | 86 | 87 | 88 | 88 |
| 1.01 | 71 | 77 | 80 | 82 | 84 | 85 | 85 | 86 |
| 1.00 | 68 | 74 | 78 | 80 | 81 | 82 | 83 | 84 |
| 0.99 | 66 | 72 | 75 | 77 | 79 | 80 | 81 | 82 |
| 0.98 | 64 | 70 | 73 | 75 | 77 | 78 | 79 | 80 |
| 0.97 | 62 | 68 | 71 | 74 | 75 | 77 | 78 | 78 |
| 0.96 | 60 | 66 | 69 | 72 | 73 | 75 | 76 | 77 |
| 0.95 | 59 | 64 | 68 | 70 | 72 | 73 | 74 | 75 |
| 0.94 | 57 | 63 | 66 | 68 | 70 | 72 | 73 | 74 |
| 0.93 | 56 | 61 | 65 | 67 | 69 | 70 | 71 | 72 |
| 0.92 | 55 | 60 | 63 | 65 | 67 | 69 | 70 | 71 |
| 0.91 | 53 | 58 | 62 | 64 | 66 | 67 | 68 | 69 |
| 0.90 | 52 | 57 | 60 | 63 | 64 | 66 | 67 | 68 |
| 0.89 | 51 | 55 | 59 | 61 | 63 | 64 | 66 | 67 |
| 0.88 | 50 | 54 | 57 | 60 | 62 | 63 | 64 | 65 |
| 0.87 | 48 | 53 | 56 | 58 | 60 | 62 | 63 | 64 |
| 0.86 | 47 | 51 | 55 | 57 | 59 | 60 | 62 | 63 |
| 0.85 | 46 | 50 | 53 | 56 | 58 | 59 | 60 | 61 |
| 0.84 | 45 | 49 | 52 | 55 | 56 | 58 | 59 | 60 |
| 0.83 | 44 | 48 | 51 | 53 | 55 | 57 | 58 | 59 |
| 0.82 | 42 | 46 | 50 | 52 | 54 | 55 | 57 | 58 |
| 0.81 | 41 | 45 | 48 | 51 | 53 | 54 | 56 | 57 |
| 0.80 | 40 | 44 | 47 | 50 | 52 | 53 | 54 | 55 |
| 0.79 | 38 | 43 | 46 | 48 | 50 | 52 | 53 | 54 |
| 0.78 | 37 | 41 | 45 | 47 | 49 | 51 | 52 | 53 |
| 0.77 | 36 | 40 | 43 | 46 | 48 | 50 | 51 | 52 |
| 0.76 | 34 | 39 | 42 | 45 | 47 | 48 | 50 | 51 |
| 0.75 | 33 | 38 | 41 | 44 | 46 | 47 | 49 | 50 |
| REJECT | QUALITY LEVELS LESS THAN THOSE SPECIFIED FOR A 0.75 | | | | | | | |
| NOTE: If the computed QUALITY LEVEL does not correspond exactly to a figure in the table, use the next lower value. | | | | | | | | |

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Table 00165-2** | | | | | | | |
|  | **REQUIRED QUALITY LEVEL FOR A GIVEN**  **SAMPLE SIZE (n) AND A GIVEN PAY FACTOR** | | | | | | |
| PAY FACTOR | n = 12 | n = 15 | n = 19 | n = 26 | n = 38 | n = 70 | n = 201 |
| to | to | to | to | to | to | to |
| n = 14 | n = 18 | n = 25 | n = 37 | n = 69 | n = 200 | n = ∞ |
| 1.05 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 1.04 | 95 | 95 | 96 | 96 | 97 | 97 | 99 |
| 1.03 | 92 | 93 | 93 | 94 | 95 | 95 | 97 |
| 1.02 | 89 | 90 | 91 | 92 | 93 | 94 | 95 |
| 1.01 | 87 | 88 | 89 | 90 | 91 | 93 | 94 |
| 1.00 | 85 | 86 | 87 | 89 | 90 | 91 | 93 |
| 0.99 | 83 | 85 | 86 | 87 | 88 | 90 | 92 |
| 0.98 | 81 | 83 | 84 | 85 | 87 | 88 | 90 |
| 0.97 | 80 | 81 | 83 | 84 | 85 | 87 | 89 |
| 0.96 | 78 | 80 | 81 | 83 | 84 | 86 | 88 |
| 0.95 | 77 | 78 | 80 | 81 | 83 | 85 | 87 |
| 0.94 | 75 | 77 | 78 | 80 | 81 | 83 | 86 |
| 0.93 | 74 | 75 | 77 | 78 | 80 | 82 | 84 |
| 0.92 | 72 | 74 | 75 | 77 | 79 | 81 | 83 |
| 0.91 | 71 | 73 | 74 | 76 | 78 | 80 | 82 |
| 0.90 | 70 | 71 | 73 | 75 | 76 | 79 | 81 |
| 0.89 | 68 | 70 | 72 | 73 | 75 | 77 | 80 |
| 0.88 | 67 | 69 | 70 | 72 | 74 | 76 | 79 |
| 0.87 | 66 | 67 | 69 | 71 | 73 | 75 | 78 |
| 0.86 | 64 | 66 | 68 | 70 | 72 | 74 | 77 |
| 0.85 | 63 | 65 | 67 | 69 | 71 | 73 | 76 |
| 0.84 | 62 | 64 | 65 | 67 | 69 | 72 | 75 |
| 0.83 | 61 | 63 | 64 | 66 | 68 | 71 | 74 |
| 0.82 | 60 | 61 | 63 | 65 | 67 | 70 | 72 |
| 0.81 | 58 | 60 | 62 | 64 | 66 | 69 | 71 |
| 0.80 | 57 | 59 | 61 | 63 | 65 | 67 | 70 |
| 0.79 | 56 | 58 | 60 | 62 | 64 | 66 | 69 |
| 0.78 | 55 | 57 | 59 | 61 | 63 | 65 | 68 |
| 0.77 | 52 | 56 | 57 | 60 | 62 | 64 | 67 |
| 0.76 | 51 | 55 | 56 | 58 | 61 | 63 | 66 |
| 0.75 | 51 | 53 | 55 | 57 | 59 | 62 | 65 |
| REJECT | QUALITY LEVELS LESS THAN THOSE SPECIFIED FOR A 0.75 | | | | | | |
| NOTE: If the computed QUALITY LEVEL does not correspond exactly to a figure in the table, use the next lower value. | | | | | | | |

**00165.50  Statistical Acceptance Sampling and Testing** - The Contractor shall sample and test Materials for acceptance, as required by the Contract. The Contractor may statistically evaluate test results for purposes of quality control or to predict a Pay Factor or Composite Pay Factor. The following apply:

**(a)  Statistical Acceptance** - The Owner’s Representative will perform statistical analysis according to 00165.40 for acceptance and to determine a Pay Factor (PF) or Composite Pay Factor (CPF). The Owner’s Representative's determination of the PF or CPF shall be controlling.

**(b)  Pay Adjustments** - As an incentive to produce quality Materials, the Owner’s Representative's acceptance will be based upon the following:

**(1)  Specification Materials** - For Materials accepted by a PF, when all constituents of a Material have a PF of 1.00 or greater, that Material will be considered specification Materials. For Materials accepted by a CPF, all Materials with a CPF of 1.0000 or greater will be considered specification Materials. Materials with a CPF greater than 1.0000, when specified, may earn a CPF adjustment of greater than 1.0000, up to a maximum of 1.0500.

**(2)  Non-specification Materials** - For Materials accepted by a PF, when any constituent of a Material has a PF of less than 1.00, that Material will be considered non‑specification Material. For Materials accepted by a CPF, all Materials with a CPF less than 1.0000 will be considered non‑specification Materials. A lot containing non‑specification Materials will be evaluated as described in 00165.50(c).

**(c)  Non-specification Materials:**

**(1)  Isolation of a Partial Sublot** - The Owner’s Representative may isolate from a sublot or adjoining sublots any Material that the Contractor's test results show to be non‑specification. The Contractor shall perform additional testing or provide samples to the Owner as directed. The Owner’s Representative will accept or reject the Material according to 00150.25.

**(2)  Isolation of an Entire Sublot** - The Owner’s Representative may isolate a sublot or a series of sublots in which the Contractor's test results show the Material to be non‑specification. The Contractor shall perform additional testing or provide samples to the Owner as directed. The isolated Material will be evaluated as a separate lot. The Owner’s Representative will accept or reject the Material according to 00150.25.

**(3)  A Lot-in-Progress** - The Contractor shall shut down production when any of the following occurs:

* The CPF for a lot-in-progress drops below 1.0000, and the Contractor is taking no corrective action;
* The CPF is less than 0.7500; or
* Any constituent test is continually out of Specification limits, regardless of whether or not the CPF is below 0.7500.

The Contractor shall not resume production until the Owner’s Representative has determined that Specification Materials can be produced, and has given approval to resume.

**(4)  An Entire Lot** - The Owner’s Representative may reject an entire lot of Materials with a CPF between 0.7500 and 1.0000, or may take action according to 00150.25.

For a lot of Material with a CPF below 0.7500, the Owner’s Representative will take one or more of the following actions:

**a.  Remain in Place** - Allow Materials to remain in place with an appropriate price reduction that may range from 25% to 100% (no payment);

**b.  Corrective Work** - Require corrective work, at the Contractor's expense, with an appropriate price reduction that may range from zero (full payment) to 100% (no payment); or

**c.  Remove and Replace** - Require complete removal and replacement with Specification Materials. No payment will be made for the rejected Materials, the cost of removal, or for the costs of sampling and testing.

**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 Owner’s Representative. The Owner’s Representative may waive this requirement temporarily if Materials are necessary for immediate 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 Owner’s Representative, 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 Owner’s Representative:

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

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

Stored Materials:

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

**Measurement**

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

**Payment**

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

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

|  |  |  |
| --- | --- | --- |
| **Zone** | **Place of Fabrication** | **Reduction in Payment** |
| 1 | All of State of Oregon, and those portions of adjacent states within 50 airline miles of the Oregon border | $0 |
| 2 | Outside of Zone 1, and up to 300 airline miles from the Oregon border | $200 per Calendar Day |
| 3 | Outside of Zone 2, up to 3,000 airline miles from the Oregon border, and within the continental United States. | Round trip coach airfare from Portland, Oregon plus $200 per Calendar Day |
| 4 | Outside of Zone 3, or outside of the continental United States. | Round trip coach airfare from Portland, Oregon plus $250 per Calendar Day |

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

This Subsection applies to all fabricated items or manufactured Materials that are inspected by or on behalf of the Owner, which include, but are not limited to:

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

## Section 00170 - Legal Relations and Responsibilities

**Description**

**00170.00  General** - 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.

The Contractor shall indemnify, defend, and hold harmless the Owner 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 Owner 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 Owner 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 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 Owner 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 Multnomah County; 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 Owner’s intention to make all payments due under the Contract if funds are legally available for such purpose. The Owner 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 Owner’s appropriation or limitation, or other funding sources. Owner’s payment of amounts under the Contract is contingent on the Owner receiving adequate appropriations, limitations or other expenditure authority or funds to allow the Owner to continue to make payments under the Contract. In the event the Owner becomes aware that sufficient funds are not available and authorized, the Owner will provide prompt written notice to the Contractor, and the Owner may terminate the Contract as provided in 00180.90(c).

**Provisions and Requirements**

**00170.01  Other Agencies Affecting Owner 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

Columbia River Gorge Commission

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

Geology and Mineral Industries, Department of

Human Resources, Department of

Labor and Industries, Bureau of

Land Conservation and Development Department

Parks and Recreation, Department of

State Lands, Department of

Water Resources Department

**(c)  Local Agencies:**

City Councils

County Courts

County Commissioners, Boards of

Design Commissions

Historical Preservation Commissions

Lane Regional Air Pollution Authority

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 shalldo 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**

 - Unless required to be obtained in the name of the Contractor, the Owner will obtain and pay for the following when they are required by the applicable Laws or by Plans or Specifications:

* All necessary Rights-of-Way;
* Permits required for crossing or encroaching upon navigable streams;
* Permits required for removing materials from or depositing materials in waterways;
* Permits required for operating in Owner-controlled source of Materials or disposal area;
* System development fees charged by local units of government;
* Building construction permits, not including specialty work such as heating, plumbing, 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 Owner 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 Owner 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 Owner 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; or
* 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 Owner 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 Owner'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;
* Of 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 Owner 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 Owner. In the event the Contractor fails to make such payment, the Owner may deduct the amount from monies due or to become due the Contractor under the Contract.

**00170.06  Federal-Aid Participation** - This Project is to be conducted according to the Federal regulations applying to Federal-Aid Highway Projects, in addition to other applicable Laws.

**00170.07  Record Requirements** - For purposes of this Subsection, the term "Contractor" includes the Contractor, all Subcontractors, Material Suppliers, and providers of rented operated Equipment (except non-DBE truck drivers), at all tiers, for all subcontracts with first-tier Subcontractors, all subcontracts between the first-tier Subcontractors and their Subcontractors and any other lower‑tier subcontracts, and "Related Entities" as that term is defined in OAR 734‑010‑0400. The Material Suppliers included in this definition are those for Aggregates, asphalt cement concrete, portland cement concrete and the supply and fabrication of structural steel items, and Material Suppliers that provide quotes.

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

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

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

* Bidding estimates and records, worksheets, tabulations or similar documents.
* Job cost detail reports, including monthly totals.
* Payroll records (including, without limitation, the ledger or register, and tax forms) and all documents that establish the periods, individuals involved, the hours for the individuals, and the rates for the individuals.
* Records that identify the Equipment used by the Contractor and Subcontractors in the performance of the Contract or subcontracts, including, without limitation, Equipment lists, rental contracts and any records used in setting rental rates.
* Invoices from vendors, rental agencies, and Subcontractors.
* Material quotes, invoices, purchase orders and requisitions.
* Contracts with Subcontractors and contracts with Material Suppliers, Suppliers and providers of rented equipment.
* Contracts or documents of other arrangements with any Related Entity as defined in OAR 734-010-0400.
* General ledger.
* Trial Balance.
* Financial statements (including, without limitation, the balance sheet, income statement, statement of cash flows, and financial statement notes).
* Income tax returns.
* All worksheets used to prepare bids or claims, or to establish the cost components for the Pay Items, including, without limitation, the labor, benefits and insurance, Materials, Equipment, and Subcontractors.

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

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

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

The Contractor shall include in its subcontracts, purchase orders, and all other written agreements, a provision requiring all Subcontractors, Material Suppliers and providers of rented operated Equipment (except non-DBE truck drivers), at all tiers, to comply with 00170.07. The Contractor shall also require all Subcontractors, Material Suppliers, and providers of rented operated Equipment (except non-DBE truck drivers), at all tiers, and Related Entities to include in their contracts, purchase orders, and all other written agreements, a provision requiring all lower‑tier Subcontractors, Material Suppliers and providers of rented operated Equipment (except non-DBE truck drivers) to comply with 00170.07. The Material Suppliers to which this applies are those for Aggregates, asphalt cement concrete, portland cement concrete and the supply and fabrication of structural steel items and Material Suppliers that provide Material quotes and Related Entities as defined in OAR 734‑010‑0400.

**(b)  Access to Records** - The Contractor shall provide the Owner’s Representative access to or a copy of all Contractor records upon request. An Owner’s Representative's authority to request or access records is subject to OAR 734‑010‑0400(9). During the record retention period the Owner’s Representative, employees of the Owner, representatives of the Owner, or representatives of regulatory bodies or units of government may:

* Inspect, examine and copy or be provided a copy of all Contractor records;

Audit the records, a Contract or the performance of a Contract;

* Inspect, examine and audit the records when, in the Owner's sole discretion, the records may be helpful in the resolution of any claim, litigation, administrative proceeding or controversy arising out of or related to a Contract.

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

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

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

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

**(d)  Public Records Requests** - If records provided under this section contain any information that may be considered exempt from disclosure as a trade secret under either ORS 192.345(2) or ORS 646.461(4), or under other grounds specified in Oregon Public Records Law, ORS 192.311 through ORS 192.478, the Contractor shall clearly designate on or with the records the portions which the Contractor claims are exempt from disclosure, along with a justification and citation to the authority relied upon. Entire records or documents should not be designated as a trade secret or otherwise exempt from disclosure. Only specific information within a record or document should be so designated.

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

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

* The Contractor consents to such disclosure; or
* The Owner is prohibited by applicable law or court order from providing a copy of the public records request to the Contractor.

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

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

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

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

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

**(d)  Owner'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 Owner 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 Owner has no obligation to pay these Entities, and the Owner will not normally do so, but will refer them to the Contractor and the Contractor's Surety.)

The payment of a claim by the Owner 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.

**(g)  Paid Summary Report** - The Contractor shall submit a “Paid Summary Report", form 734‑2882, to the Owner’s Representative certifying payments made to all of the following:

* All Subcontractors

Committed DBE suppliers

Non-committed DBE suppliers and service providers with estimated total payments for the Project over $10,000.

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.

Submit the completed and signed Paid Summary Report to the Owner’s Representative within 20 Calendar Days of receipt of payment from the Owner for each month in which payments were made to each Subcontractor, each committed DBE Supplier, and each non-committed DBE Supplier or service provider with estimated total payments for the Project over $10,000. At the completion of the Project, submit form 734‑2882 recapping the total amounts paid to each Subcontractor, each committed DBE Supplier, and each non committed DBE Supplier or service provider with estimated total payments for the Project over $10,000.

The Contractor shall require each Subcontractor at every tier to comply with the requirement to submit form 734‑2882 within 20 Calendar Days of receipt of payment from its controlling contractor and provide a recap of the total amounts paid at the completion of the Project or completion of their Work.

Forms shall be submitted to an email address provided to the Contractor at the preconstruction conference.

**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(2) 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 00221.20

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.

1. **Contractor Compliance -** The Contractor shall comply with all safety and health Laws including, but not limited to, the following:
2. **Oregon Revised Statutes -** ORS 654 - The Oregon Safe Employment Act

**(2) Oregon Administrative Rules -** OAR 437 - The Oregon Occupational Safety and Health Code

1. **Oregon Occupational Safety & Health Administration (OR-OSHA)**

**a. Division 1 -** General Administrative Rules

**b. Division 2 -** General Occupational Safety & Health Rules

**c. Division 3 -** Construction

**(4) Bureau of Labor and Industries**

**(5) Oregon Department of Transportation**

**(b) Statute Versus Contract Documents -** In the event that the Law requires greater safety obligations than those imposed by the Contract Documents, the Contractor shall perform the obligations required by the Law without additional cost to the Owner.

**(c) Coordination -** The Contractor shall coordinate the Work with police, fire, emergency service providers, TriMet, and other agencies, school districts and individuals as may be required. Refer to names, address, and phone numbers found in Notice to Bidders for specific contact information.

**(d) Site Specific Safety and Health Plan -** The Contractor shall develop and submit an SSSHP addressing safety issues for all persons working on the Project, regardless of their employer. The SSSHP shall be prepared by a Competent Person and consist of a narrative and supporting plans detailing the methods for dealing with all the known exposures and risks. The SSSHP shall detail the methods for addressing Work hazards identified by the Job Safety Analysis (JSA).

**(e) Document Control -** The Contractor shall maintain at least one current copy of the SSSHP at the Project Site for the duration of the Project, instruct all employees where this document is available for reference, and inform the Owner's Representative where to find a copy on the Project Site.

**(f) Subcontractors -** The Contractor shall develop a plan for distributing information in the SSSHP to all persons working on the Project, regardless of their employer, establish a method for documenting all safety training, and maintain an inventory of personal protective Equipment provided to all works.

**(g) Other Specifications -** SSSHP shall also comply with the requirements of the Contract Documents.

**(h) Public Safety -** The Contractor shall ensure the public safety during its performance of the Work and minimize public inconvenience. Prepare a description of the methods for securing the Work area from public access.

**(i) Competent Persons -** The Contractor shall supply a list of Competent Persons, together with 24-hour contact numbers and areas of expertise for each of the applicable following specialties:

* Confined Space
* Excavation and Shoring
* Cranes and Rigging
* Electrical and Hot Work
* Chemicals and Biohazards

**(j) Working Procedures -** The SSSHP shall contain detailed information outlining safe working procedures to address any identified hazards and risks when completing the Work, including the following:

**(1) Confined Space -** Describe entrance and exit procedures from confined spaces. Outline procedures and Equipment requirements when working in a confined space. Define the rescue procedure to extract an employee during an emergency. Describe all personal protective Equipment provided to employees working in a confined space including gas monitoring Equipment use, maintenance, and storage.

**(2) Excavation and Shoring -** Define the procedures when excavating undisturbed and previously disturbed soils. Describe the requirements when working around existing utilities, manholes, and connections, lateral connections, work within historic trench limits, and entering and exiting from trenches.

**(3) Cranes and Rigging -** Provide requirements for operators and Equipment certifications including lift capacity. Identify all lift Equipment to be used on the Project, describe the plan(s) for moving, and lifting Materials, and define Equipment location(s) and position(s) to perform safe lifts.

**(4) Electrical and Hot Work -** Describe lockout/tagout procedures for electrical Equipment, define the procedures for requesting that existing systems be taken out of service, for testing and trouble-shooting new Equipment and coordinating with any outside utility or agency.

**(5) Chemical and Biohazards -** Identify all substances, agents and site conditions that present a hazard and recommend actions for their control. Provide and maintain Equipment in good working order to test and monitor for Hazardous substances.

**(6) Other Issues -** Describe procedures for addressing any other safety issues other than what has been described above.

**(k) Project Emergency Procedures -** The Contractor shall develop and implement a Project Emergency Procedures Plan to handle any catastrophic event that could occur on the Project, such as flood, fire, cave-in, slide, power outage, sewer gas, chemical spill, or similar emergencies. Some examples of topics the plan could address include safe distance and staging area (safety zones), evacuation routes, emergency medical treatment and first aid, emergency alerting and response procedures, personal protective and emergency Equipment.

**(l) Submittal Requirements -** The Contractor shall submit copies of the Project SSSHP, including the JSA, for review to the Owner's Representative. The Owner's Representative will review the SSSHP to determine if it addresses known exposures and risks in a reasonable manner and reject the submittal if it fails to do so. Nevertheless, the Owner's review is not intended to, nor does it, relieve the Contractor of its obligation to be completely responsible for the safety and health of all persons working on the Project nor does it diminish any other contractual or legal obligation of the Contractor.

**(m) Review and Acceptance -** Construction activity shall not begin until the Owner's Representative has reviewed and accepted the SSSHP. Continued acceptance of the SSSHP will be predicated on demonstrated performance to comply with the SSSHP 's requirements. If a work situation poses a safety hazard not covered by the SSSHP, the Contractor shall take immediate action to correct the safety hazard and modify the SSSHP accordingly.

**(n) Secure Construction Site -** The Contractor shall provide and maintain all labor, Material, and Equipment needed to secure the construction site from damage until the Work is complete and accepted by the Owner. This may include labor, lighting, fencing, alarm systems and other miscellaneous materials to maintain security at all sites where the Contractor may be working, staging work and storing Materials or Equipment. The Contractor also shall assure that only authorized personnel are at the Project Site.

**(o) Safety Equipment -** The Contractor shall furnish all safety Equipment required by the SSSHP.

**(p) Cost -** The Contractor shall include the cost of development, implementation, and maintenance of the SSSHP in its Bid, and therefore it is included in the Contract Amount. No separate or additional payment will be made for the SSSHP.

**00170.61  Industrial Accident Protection:**

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

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

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

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 has 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 Owner 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. Contractor’s compliance with this provision constitutes a material element of the Contract and failure to comply constitutes a material breach that entitles the Owner 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.

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

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

See the Project Wage Rates page included in the Bid Booklet 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 Owner’s Representative 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 Contractor and Subcontractors shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

Weekly Certified Payroll Reports shall be submitted by the Contractor and all subcontractors via LCP Tracker, no later than the 5th day of each month. All hours subject to prevailing wage rates on public projects shall be reported.

LCP Tracker is web-based (see 00110.05(e) for website).

**(3)  Additional Retainage:**

**a.  Owner** - As required in ORS 279C.845(7) the Owner will retain 25% of any amount earned by the Contractor on the Project until the Contractor has filed the certified statements required in ORS 279C.845 and in FHWA Form 1273, if applicable. The Owner 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 Owner the certified statements required in ORS 279C.845 and in FHWA Form 1273, if applicable. Before paying any amount retained, the Contractor shall verify that the first‑tier Subcontractor has filed the certified statement. Within 14 Days after the first‑tier Subcontractor files the required certified statement, the Contractor shall pay the first‑tier Subcontractor any amount retained.

**(4)  Owner/Operator Data** - For a project funded by the FHWA, the Contractor shall furnish data to the Owner’s Representative 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;
* Present of driver license upon request;
* Vehicle identification number;
* Present vehicle registration upon request;
* Motor vehicle license plate number;
* Motor Carrier account number;
* Present ODOT Motor Carrier 1A Permit upon request; and
* Name of owner/operator from the side of the truck.

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

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

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

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

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

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

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

* Cause a circular, clearly printed in boldfaced 12-point type 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 that is readily available and freely visible to any or all workers employed to perform Work; and
* Maintain such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

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

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

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

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

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

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

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

**00170.70  Insurance:**

**(a)  Insurance Coverages** - **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.

**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 Owner approval of Subcontractor and Subcontractor’s insurance coverage(s), as required by 00180.21, prior to commencement of Subcontracted work. After the Contractor receives Owner 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 Owner. 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 Owner, 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 specified in the Special Provisions. The annual aggregate limit shall not be less than the dollar amount specified 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.

The policy must contain the following endorsement, which must be stated on the certificate of insurance: • Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage).

* **Pollution Liability - I**f indicated by Special Provision, the Contractor or Subcontractor, whichever is performing the pollution related Work, shall provide Pollution Liability Insurance written on an occurrence or claims made basis and covering the Contractor's or Subcontractor’s liability, for bodily injury, property damage, and environmental damage resulting from sudden, accidental, and gradual pollution, and related clean‑up costs. If the coverage is obtained by the Contractor, the coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Pollution Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount specified in the Special Provisions. The annual aggregate limit shall not be less than the dollar amount specified in the Special Provisions. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.
* **Asbestos Liability - I**f 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.
* **Lead Liability -**If indicated by Special Provision, the Contractor or Subcontractor, whichever is performing lead related Work, shall provide the Pollution Liability coverage with a Lead Liability endorsement. 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. The Commercial Automobile Liability Insurance shall include endorsements CA9948 and MCS-90 if transporting any type of hazardous materials.

* **Marine Insurance (watercraft)** ‑ If indicated by Special Provision, the Contractor or Subcontractor, whichever is performing watercraft related Work, entails the use of watercraft, including but not limited to barges, tug boats, work boats, and supply boats, shall provide the following insurance:
* **Marine Liability Insurance** ‑ For the performance of the Work that requires the use of any watercraft, whether owned, non-owned, leased, rented, or chartered by Contractor or any Subcontractors, Marine Liability insurance shall not be less than the dollar amount specified in the Special Provisions per occurrence for bodily injury and property damage. Such insurance shall also include coverage for collision liability, tower’s liability, marine contractual liability, wreck/debris removal, and liability for seepage, pollution, containment and cleanup.
* **Hull and Machinery Insurance** ‑ Including collision liability, with sister-ship clause un‑amended, with limits of liability at least equal to the full value of all vessels used in connection with performance of the Work required under this Contract and with navigational limitations adequate for the Contractor to perform the specified Work. Where vessels engage in towing operations, said insurance shall include full towers’ liability with the sister-ship clause un-amended.
* **Protection and Indemnity Insurance** ‑ To be evidenced through a full entry with a Group P&I Club, including collision liability, towers’ liability, marine contractual liability, tankermans’ liability, and specialist operations. Alternatively, if a full entry in a Group P&I Club is not available or applicable, Protection and Indemnity Insurance coverage shall be evidenced on the SP-23 form or equivalent, including, by endorsement or otherwise, collision liability, tower’s liability, specialist operations, and liability for seepage, pollution, containment and cleanup, with extensions for marine contractual liability, shall not be less than the dollar amount specified in the Special Provisions.
* **Pollution Liability Insurance** ‑ If pollution coverage is provided outside of a P&I Club entry or outside of Protection and Indemnity Insurance coverage evidenced on the SP-23 form or equivalent, the amount shall not be less than the dollar amount specified in the Special Provisions. Pollution liability coverage shall cover bodily injury, property damage, including cleanup costs and defense costs resulting from sudden and gradual pollution conditions of contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water.

With respect to the aforementioned Hull & Machinery Insurance, Protection and Indemnity Insurance and Pollution Insurance, the policy or policies shall be endorsed as follows:

* Other than owner provisions of all policies shall be deleted with respect to the naming of Company as an Additional Assured/Insured;

Delete any as owner clause and any other language, which limits or purports to limit the coverage afforded to an insured or an additional insured who is not a ship-owner, with coverage to be afforded to all additional insureds in any capacity in which they may be held liable; and

Operator warrants that COFR’s are on file with the U.S. Coast Guard as per Federal requirements.

If Subcontractor(s) are utilized to perform any Work that requires the use of watercraft under the Contract, all such Subcontractor(s) shall maintain insurance including limits, coverages, terms and conditions as required herein unless said Subcontractor(s) are insured by Contractor. Where Contractor provides coverage for a Subcontractor, the Contractor shall issue a Certificate of Insurance, along with related endorsement(s) required to effect coverage, evidencing Subcontractor’s “Additional Insured/Assured” status under Contractor’s coverage.

An Excess Marine Liability (Bumbershoot) insurance policy may be used to meet the required limits of insurance. Excess coverage must follow form and be as broad as that provided by the underlying primary liability insurance policies.

ORS 15.320 provides that Oregon law applies to the Contract. The parties also agree that Oregon law applies to the Contract, even if ORS 15.320 is determined to be inapplicable or invalid.

**(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 Owner 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

Maintaining 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 Notice of Project Completion under 00150.90(b) and 00180.50(g).

**(c)  Excess/Umbrella Liability** ‑ A 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 the Owner, the Owner's governing body, board, or Commission and its members, and their respective officers, agents, and employees as Additional Insureds, but only with respect to the Contractor's activities to be performed under the Contract. When federal transportation funding is involved, the liability coverages of 00170.70(a) shall also include the City of Portland, State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers, members and employees as additional insureds, but only with respect to the Contractor's activities to be performed under the Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The liability coverages of 00170.70(a) that are permitted by the Owner 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 Owner.

**(e)  Workers' Compensation** - All employers, including the Contractor and 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 requirement for an exemption under ORS 656.126(2). The coverage shall include Employer’s Liability Insurance with limits not less than $1,000,000 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.

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 $1,000,000 each accident.

If the Contractor’s and Subcontractor‘s, 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 Owner 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 Owner 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, Owner County, City, or other applicable political jurisdiction or to the Owner’s governing body, board, or Commission and its members, and the Owner’s officers, agents, and employees.

**(g)  Certificate(s) of Insurance** - As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance to the Owner at the time(s) provided in 00130.50(a). As evidence of insurance coverages required by the Contract but permitted by the Owner under 00170.70(a) to be obtained by an appropriate Subcontractor, the Contractor shall furnish Certificate(s) of Insurance to the Owner for such coverages together with the Contractor's request under 00180.21 for approval of the subcontract with that Subcontractor. The Certificate(s) shall:

* List the Owner and when federal transportation funding is involved, shall also include “State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees” as a Certificate holder and endorse as an Additional Insured;

Include all required endorsements or copies of the applicable policy language effecting coverage required by the Contract;

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 that is used to meet the minimum insurance requirement.

**(h)  Owner Acceptance** ‑ All insurance and insurance providers are subject to Owner acceptance. If requested by Owner, the Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Owner’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 Owner under the Contract and to provide updated requirements as mutually agreed upon by the Contractor and Owner.

**(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 specified 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 $100,000, whichever is greater. The policy shall include the Owner, the State of Oregon, and the building or structure owner as loss payees.

**(k)  Installation Floater** ‑ If specified by Special Provision, 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 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 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 Owner, the State of Oregon, the building or structure 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 Owner 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 Owner) and hold harmless the Owner, Owner's Authorized Representative, Architect/Owner’s Representative, Architect/Owner’s Representative's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever that arise out of, result from or are related to the following:

* Any damage, injury, loss, expense, inconvenience or delay described in this Subsection.
* Any accident or occurrence that 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 that 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, omissions, or the improper conduct 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, person, or Entity 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 Owner, nor purport to act as legal representative of the Owner, without the prior written consent of the Owner's legal counsel. The Owner 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 Owner, or that the Contractor is not adequately defending the Owner's interests, or that an important governmental principle is at issue or that it is in the best interests of the Owner to do so. The Owner reserves all rights to pursue any claims it may have against the Contractor.

When federal transportation funding is involved, the following additional requirements apply:

* The indemnity required in 00170.72 extends to the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers and members and employees.
* The State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers and members and employees (for purposes of this Subsection 00170.72 collectively "State") are additional Indemnitees.
* Neither Contractor nor Subcontractors nor any attorney engaged by the Contractor or Subcontractors shall defend any claim in the name of the State or purport to act as legal representative of the State or any of its agencies, without the prior written consent of the State's legal counsel, the Oregon Attorney General. State may, at any time at its election, assume its own defense and settlement in the event that it determines that the Contractor or Subcontractors are prohibited from defending the State, or that the Contractor or Subcontractors are not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue any claims it may have against the Contractor or Subcontractors.
* Contractor shall include a provision in each subcontract requiring Subcontractors to indemnify, defend (with counsel approved by the State) and hold harmless the State in accordance with this Subsection 00170.72.

**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 Owner retains the right to audit and/or monitor the program. On request by the Owner’s Representative, 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 Owner's governing body or employee of the Owner 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 Owner employee or member of the Owner's governing body.

No ex-employee of the Owner who has worked for the Owner 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 Owner's Conflict of Interest Guidelines. (See 00120.40(f) and 00180.21(b).)

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

**00170.80****Responsibility for Damage to Work:**

**(a)  Responsibility for Damage in General** - The Contractor shall perform Work, and furnish Materials and Equipment for incorporation into the Work, at the Contractor's own risk, until the entire Project has been completed and accepted by the Owner. 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 Notification of Project Completion, 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 Owner has assumed responsibility according to the provisions of (c) below. The Contractor shall perform all repairs of damage to Work at no additional cost to the Owner, except for repairs necessitated by damage caused by:

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

**(c)  Responsibility for Damage to Work Caused by Public Traffic** - The Contractor may apply for relief of responsibility for damage to Work caused by Public Traffic by submitting a signed Contractor's Request for Relief of Responsibility, form 734‑2768, to the Owner’s Representative by mail, personal delivery, courier, by e-Builder as per 00150.03, or other agreed-upon method.

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

The approval of the Owner’s Representative is limited, and is made only for the purposes of determining relief of responsibility for damage to completed portions of the Work caused by Public Traffic. The completed portions of the Work are not considered complete, and are not finally accepted for any other purposes under the Contract.

If the Contractor disagrees with the Engineer's findings, the Contractor may request a Higher Authority review according to 00199.30(h).

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

* A segment of Roadway, drainage facilities, Slopes, lighting, traffic control devices and access facilities;
* A Bridge or other Structure within a segment of Roadway;
* Traffic signals and appurtenances at an intersection;
* Permanent, passive traffic control devices;
* Complete circuits of a roadway lighting system; and
* Portions of a building open to public use.

The Owner will approve a request for the Owner to assume responsibility for damages to the completed portions of the Work caused by Public Traffic only under the following conditions:

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

**(2)  Scope of Relief** - When the Owner assumes responsibility for damage to completed portions of the Work caused by Public Traffic, any damages will be repaired by the Contractor on a Changed Work basis, or by Owner forces, or by other means as determined by the Owner’s Representative. If completed portions of the Work are damaged by Public Traffic before Final Inspection, and the Owner requires the Contractor to repair the damages, the Owner’s Representative will reimburse the Contractor for the Changed Work at 75% of the total amount calculated according to Section 00197.

If completed portions of the Work are damaged by Public Traffic after Final Inspection, and the Owner requires the Contractor to repair the damages, the Owner’s Representative will reimburse the Contractor for the Work at 100% of the total amount calculated according to Section 00197.

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

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

The Contractor shall provide reasonable protection of the Work from vandalism until Notification of Project Completion. If reasonable protection has been provided, the Contractor's responsibility for damage resulting from vandalism will be limited to $5,000.00 per occurrence. Requests for reimbursement of amounts in excess of $5,000.00 shall be in writing and directed to the Owner’s Representative. Upon receipt, the Owner’s Representative will investigate, evaluate the amount of damages and their cause, determine the number of occurrences, and determine whether, and how much, the Contractor will be compensated.

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 Owner 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 Owner.

**(b)  Protection and Restoration of City of Portland Property and Facilities** - The following requirements apply to Highways, Highway Structures and other improvements that are existing, under construction, or completed. The Contractor shall:

* Provide adequate protection to avoid damaging Owner property and facilities;
* Be responsible for damage to Owner 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 Owner’s Representative.

**(c)  Protection and Restoration of Non City of Portland**'**s 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 Owner’s Representative 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 Owner’s Representative, 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 Owner. Liquidated damages will be assessed against the Contractor in the amount of $200 per Day for each sign out of service for more than 5 Calendar Days because of the Contractor's operations.

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

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

**(b)  Contractor Furnished Warranties:**

**(1)  Contractor Warranty for Specific Items** - For those Items with Specifications referencing this 00170.85(b)(1) warranty, the Contractor warrants that the Work for those Items, including Changed Work, Additional Work, Incidental Work, On-Site Work, and Extra Work, and Materials and Equipment incorporated into the Work, shall meet the technical and performance Specifications required under the Contract. The warranty period will be identified in each applicable Specification or elsewhere in the Contract and will begin on the date of Substantial Completion. 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 Owner 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.

**(c)  Manufacturer Warranties and Guarantees:**

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

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

The warranty period will begin on the date of Substantial Completion, unless otherwise specified in the Contract.

When the Owner 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 Owner’s Representative, temporary repairs are necessary, the temporary repairs will be made by the Owner or an independent contractor at the Manufacturer's expense. The Manufacturer shall replace all temporary repairs at no additional cost to the Owner.

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

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 Owner’s Representative 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 Owner’s Representative’s at no additional cost to the Owner. All restoration work required as a result of Contractor’s failure to protect Utilities, Railroads, railways and fire-control facilities shall be at the Contractor’s expense.

**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 Owner’s Representative's satisfaction, fences damaged by the Contractor's operations and the operations of the Contractor's agents, employees and Subcontractors.

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

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

**00170.94  Use of Explosives** - The Contractor shall comply with all Laws pertaining to the use of explosives. The Contractor shall comply with the Contract Documents and contact the City of Portland Fire Bureau for details on the required permit for the use of explosives.

The Contractor shall notify anyone having facilities near the Contractor's operations of the 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 Contrac**t**-** Unless the Owner gives prior written consent, which will not be unreasonably withheld, the Contractor shall not assign, delegate, sell, or otherwise transfer or dispose of any rights or obligations under the Contract, whether voluntarily or involuntarily, and whether by merger, consolidation, dissolution, operation of law, or any other manner, including, without limitation:

* The power to execute or duty to 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 Owner consent shall be voidable.

If written Owner consent is given to assign, delegate, sell, or otherwise transfer or 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 Owner;

The Contractor secures the written consent of the Contractor's Surety to the assignment; and

The Owner’s Representative gives prior written consent to 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 Owner’s Representative's orders are carried out promptly. The Contractor's failure to direct, supervise and control its employees, Subcontractors and agents performing Work will result in one or more of the following actions, or other actions as the Owner’s Representative deems appropriate:

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

**00180.15  Owner'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 Owner may, after 2 Calendar Days' written notice, correct the deficiencies at the Contractor's expense. In situations where the Owner’s Representative reasonably believes there is danger to life or property, the Owner may immediately and without notice correct the deficiencies at the Contractor's expense.

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

**00180.20  Subcontracting Limitations**:

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

**(b)  Own Organization** - The term "own organization", as used in Section 00180, includes only employees of the Contractor, Equipment owned or rented by the Contractor, Incidental rental of operated Equipment, truck hauling of Materials not included in or requiring a subcontract, 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, except truck hauling of materials which is addressed in 00180.20(e), will be allowed without a subcontract only when the following requirements are met:

**(1)  Written Request** - The Contractor has submitted to the Owner’s Representative a written request describing the work or service to be provided, its estimated cost, and its estimated duration. The Owner’s Representative must approve the request before the work or 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 Owner’s Representative 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 Owner’s Representative may revoke approval for the work or services provided through rented, operated Equipment at any time the Owner’s Representative determines that the work is outside that authorized under 00180.20(c)(2). Unless the Contractor promptly submits to the Owner’s Representative a subcontract agreement for consent under 00180.21, the work or service provider shall be immediately removed from the Project Site.

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

**(e)  Trucking** - 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 Owner 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, rented, or leased 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 Owner’s Representative 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 Owner’s Representative may revoke approval for trucking services provided under the trucking services agreement at any time the Owner’s Representative 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 Owner'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 Owner’s Representative, and when required by the Owner’s Representative, shall be accompanied by background information showing that the organization proposed to perform the Work is experienced and equipped for such Work. The Owner 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 Owner approves the Contractor's request to subcontract, the Owner will provide written notice of its determination to give or withhold consent to the Contractor's request as follows:

* If the Subcontractor is not providing any of the insurance coverages as permitted under 00170.70(a), the Owner will respond within 7 Calendar Days after the Owner’s Representative's receipt of the request.
* If the Subcontractor is providing any of the insurance coverages as permitted under 00170.70(a), the Owner will respond within 35 Calendar Days after the Owner’s Representative's receipt of the request. (28 Calendar Days for the Owner 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 Owner’s Representative may revoke consent to subcontract. If the Owner’s Representative 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 Owner's form, available from the Owner’s Representative. The Contractor shall attach a duplicate original subcontract agreement. The Contractor must also submit in writing any amendments or modifications proposed to Owner-approved subcontract agreements, at any tier, before the affected Work begins. The Owner's written consent will be required before such amendments or modifications become effective.

The Contractor and proposed Subcontractors shall review the Owner'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 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 Owner's Conflict of Interest Guidelines, no disclosures need be submitted.

The Subcontractors shall also otherwise be and remain in compliance with the Owner'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 Owner’s Representative 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 Owner 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 Owner.

**(d)  Terms of Subcontracts -** All subcontracts shall provide that work performed under the subcontract shall be conducted and performed according to, and shall include, the pertinent requirements, provisions, terms, and conditions of the Contract, including but not limited to the requirements of Subsection 00170.72. Compliance with 00170.07 is required. All subcontracts, including Contractor's with the first tier Subcontractors and those of the first tier Subcontractors with their Subcontractors, and any other lower tier subcontracts shall contain a clause or condition that if the Contractor or a Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580. Additionally, according to the provisions of ORS 279C.580, subcontracts shall include:

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

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

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

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

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

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

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

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

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

As and when applicable, the Contractor shall require in its subcontracts that Subcontractors maintain the certifications required by ORS 279A.107.

**(e)  Contractor's Responsibilities** - As a condition of the Owner'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 Owner’s Representative's consent to subcontract will not create a contract between the Owner and the Subcontractor, will not convey to the Subcontractor any rights against the Owner, 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 Owner’s Representative 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 Owner; 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 Owner 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 Owner’s Representative 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 Owner does not guarantee the accuracy of these estimates, and an incorrect estimate will not bind the Owner 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 Owner, or pay document provided by the Owner 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 Owner’s Representative's written order, the Contractor shall immediately remove, and not use again on the Project without the Owner’s Representative's prior written approval, Equipment that, in the Owner’s Representative'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 Owner’s Representative's written order, the Contractor shall immediately remove from the Project Site, and shall not employ again on the Project without the Owner’s Representative's prior written approval, any supervisor or employee of the Contractor or any Subcontractor who, in the Owner’s Representative's opinion, does not perform satisfactory Work or whose conduct interferes with the progress of the Work.

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

The Contractor shall remove from the job any laborer, worker, mechanic, foreman, superintendent or other person who is found to be incompetent or who fails or refuses to perform the work properly. In addition, the Contractor shall remove any person who disrupts the Work by being intemperate, troublesome, or disorderly. In doing so, the Contractor shall comply with the City’s Prohibition Against Workplace Harassment, Discrimination and Retaliation Rule (HR 2.02). If the Contractor refuses to take such actions the Owner’s Representative may order the person to be removed and those instructions shall be followed. Replacement of that person is at the Contractor’s cost.

**00180.31  Required Materials, Equipment, Products, and Methods** - The Owner’s Representative'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 Owner’s Representative in writing.

**(b)  Substitution of Materials, Products, and Equipment to be Incorporated into the Work** - After execution of the Contract, the Owner’s Representative may approve substitution of Materials, products, and Equipment to be incorporated into the Work as follows:

**(1)  Reasons for Substitution** - The Owner’s Representative will consider substitution only if:

* The proposed Materials, products, 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 Owner’s Representative, including manufacturers' brochures and other information needed to verify equality of the proposed item(s).

**(c)  Substitution of Equipment Specified to Perform Work** - The Owner 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 Owner’s Representative 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 Owner’s Representative, that the proposed Equipment is capable of functioning as well as or better than the specified Equipment.

The Owner’s Representative 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 Owner, either in Contract Amount or in Contract Time;
* The permission may be withdrawn by the Owner’s Representative at any time if, in the Owner’s Representative'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 non‑specification work resulting from the use of the Contractor's proposed Equipment, or otherwise correct it as the Owner’s Representative directs, at no additional compensation.

**(d)  Substitution of Methods** - The Owner 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 Owner does not guarantee that all listed alternative Materials, Equipment, or methods of construction can be used successfully throughout all or any part of the Work.

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

**00180.40  Limitation of Operations:**

**(a)  In General** - The Contractor shall comply with all Contract provisions and shall:

* Conduct the Work at all times so as to cause the least interference with traffic, and
* Not begin Work that may allow damage to Work already started.

**(b)  On-Site Work** - The Contractor shall not begin On-Site Work until the Contractor has:

* Received Notice to Proceed;
* Filed with the Construction Contractors Board the public works bond as required in 00170.20;
* An approved Project Work schedule;
* An approved Traffic Control Plan;
* An approved Pollution Control Plan;
* An approved Erosion and Sediment Control Plan;
* An approved Site Specific Health and Safety Plan;
* An approved migratory bird protection plan;
* An approved Contaminated Media Disposal Plan
* Met with the Owner’s Representative 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** Construction Schedules **-** An accurate and regularly updated construction schedule is essential for Owner to monitor progress of the Work. The Contractor shall provide an updated construction schedule showing compliance with Contract Time as described in this Subsection. The construction schedule is intended to identify the sequencing of activities and time required for prosecution of the Work. The construction schedule is used to plan, coordinate, and control the progress of construction. Therefore, the construction schedule shall provide for orderly, timely, and efficient prosecution of the Work, and shall contain sufficient detail to enable both the Contractor and the Owner’s Representative to plan, coordinate, analyze, document, and control their respective responsibilities under the Contract Documents.

The Contractor shall submit an initial construction schedule at the preconstruction conference, unless requested at a different time by the Owner’s Representative.

Within three (3) weeks of receipt of the Notice to Proceed or before starting work, whichever is earlier, the Contractor shall submit for Owner’s written review a comprehensive construction schedule in the form required by the Contract Documents. If during the course of that review the Owner’s Representative notices that the schedule conflicts in some way with the Contract Documents, that fact will be brought to Contractor’s attention. However, failure to catch errors or inconsistencies in the schedule by Owner’s Representative shall not relieve the Contractor from having to comply with the Contract Documents, or from finishing the Work within the Contract Time.

If it is desirable to carry on portions of the Work in more than one location simultaneously, Contractor shall submit a schedule for each location at least two (2) weeks in advance of that activity, or at such other time as requested by the Owner’s Representative.

In the event that the Contractor’s proposed construction schedule does not meet the requirements of the Contract, Contractor shall immediately resubmit a schedule that conforms to the Contract.

Construction schedules must show the proposed sequence of the Work, state the time required for completion of major tasks, and include all contract milestone dates and reflect how the Work shall be completed to meet such milestones. Construction schedules shall take into account the passage and handling of traffic with the least practicable interference. The Owner will use the Contractor’s schedule to check on the progress of work, to coordinate related activities such as Utility relocation, Owner-performed work, to ensure adequate inspection resources, and to plan and coordinate surveying and testing.

Contractor shall prepare and submit a revised schedule whenever requested by the Owner’s Representative or when substantial changes in the sequence, timing, or progress of work require it. The Owner’s Representative may request a revised schedule at any time and, if so, Contractor shall provide one within 7 Calendar Days of the request.

In the event a schedule or revised schedule does not accurately reflect work on the Project or conflicts with requirements of the Contract, the Owner’s Representative may direct that the Contractor’s work be suspended until satisfactory schedules are provided. The suspension will not entitle the Contractor to additional Contract Time or additional compensation. In addition, the Owner’s Representative may withhold part or all of a progress payment until proper schedules and revised schedules are submitted.

The Contractor shall meet with the Owner's Representative as required under Section 180.42. A written 3-week schedule for the current week and the following 2 weeks' work will be submitted at that time with particular attention given to the current and following week's schedule. If the 3-week schedule deviates more than 2 weeks behind the overall schedule, the Contractor shall resubmit an updated overall schedule that indicates what measures will be taken to get the Project completed within the allotted time.

The Contractor shall be required to submit a construction schedule meeting the requirements of either 00180.41(a), (b), or (d) to the Owner’s Representative as required by the Contract Documents .

One of the following Type "A", "B", or "C" schedules will be required under the Contract. The type of schedule will be identified in the Special Provisions.

**(a) Type "A" Construction Schedule -** When a Type "A" construction schedule is required, the Contractor shall do the following:

1. **Initial Construction Schedule –** At the preconstruction conference, the Contractor shall provide to the Owner’s Representative one digital copy and 2 paper copies of a time-scaled bar chart schedule. The initial construction schedule shall show:

* Expected beginning and completion dates of each activity, including all staging;
* Elements of the traffic control Plan as required according to the Contract Documents;
* Elements of the diversion of flow Plan as required according to the Contract Documents;
* Elements of other plans as required by the permitting jurisdiction, regulatory authority, or the Owner; and
* Work elements performed by or supplied by the Owner such as Owner-furnished Equipment, testing by Owner or planting by Owner.

The construction schedule shall show the duration of detailed Work activities as follows:

* Construction activities delineated by categories of work and, if required by the Owner’s Representative, coordination requirements and interrelationship of activities;
* Third-party work required for the Project such as Utility relocation work, technology infrastructure work, and other such work by others to be coordinated by the Contractor or as directed by the Owner;
* Submittal and approval of Material samples, mix designs, and shop drawings;
* Procurement of critical Materials and Equipment including lead times;
* Fabrication, installation, and testing of special Material and Equipment;
* Duration of Work, including completion times of all stages, milestones, and their subphases.

For each activity, the construction 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 construction schedule shall show the Work broken down into separate bars for each category of Work. 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 for each category of Work shall represent the amount of time required to perform that portion of the Work taking into consideration and showing the number of Working Days scheduled within that time period. To the extent that portion of the Work shall be interrupted for the performance of a different portion of the Work, the bar shall be non-continuous representing breaks in that portion of the Work as necessary. To the extent portions of the Work will be performed simultaneously, the bar shall be continuous.
* The time scale shall be appropriate for the duration of the Contract.
* The time scale shall be in Calendar Days.
* The smallest unit shown shall be 1 Calendar Day.
* The first day and midpoint of each month shall be identified by date.
* Distinct symbols shall be used to denote multiple shifts, 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 prepared and transmitted in such a way as to be easily reviewable and capable of being resized if necessary, using multiple sheets when needed.

**(2) Review with the Owner’s Representative -** The Owner’s Representative will review the construction schedule for compliance with all Contract Time limitations and other restraints. Within 10 Calendar Days of receipt of the Owner’s Representative’s comments, the Contractor shall resubmit to the Owner’s Representative one digital and 2 paper copies of the updated construction schedule, including required revisions if necessary.

In addition, the construction schedule may need revision as the Work progresses. Therefore, the Contractor shall periodically review the construction schedule and progress of the Work with the Owner’s Representative. If the Owner’s Representative or the Contractor determines that the construction schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Owner’s Representative and the Contractor. At this meeting, the Contractor and the Owner’s Representative shall review Project events and any changes for their effect on the construction schedule.

The Contractor shall compile an updated construction schedule incorporating any changes to the Project completion time(s). The bar chart shall reflect the updated information. The Contractor shall submit one digital and 2 paper copies of the updated construction schedule to the Owner’s Representative 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.

The accepted construction schedule shall represent all Work, as well as the planned sequence and time for the Work. Review of this and subsequent construction schedules by the Owner’s Representative shall not relieve the Contractor of responsibility for timely and efficient execution of the Project.

**(b) Type "B" Construction Schedule -** When a Type "B" construction schedule is required, the Contractor shall do the following:

**(1) Initial Construction Schedule –** At the preconstruction conference, the Contractor shall provide to the Owner’s Representative one digital copy and 2 paper copies of a time-scaled bar chart schedule. The initial construction schedule shall show:

* Expected beginning and completion date of each activity, including all staging;
* Elements of the traffic control Plan as required according to the Contract Documents;
* Elements of the diversion of flow Plan as required according to the Contract Documents;
* Elements of other plans as required by the permitting jurisdiction, regulatory authority, or the Owner; and
* Work elements performed by or supplied by the Owner such as Owner-furnished Equipment, testing by Owner or planting by Owner.

The initial construction schedule shall show all Work intended for the first 60 Calendar Days of the Contract to the level of detail described in 00180.41(b)(2) 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 Owner’s Representative a digital and 2 paper copies of a detailed time-scaled bar chart construction schedule utilizing Critical Path method (CPM), including the following:

* Construction activities delineated by categories of work and, if required by the Owner’s Representative, coordination requirements and interrelationship of activities;
* Third-party work required for the Project such as Utility relocation work, technology infrastructure work, and other such work by others to be coordinated by the Contractor or as directed by the Owner;
* Submittal and approval of Material samples, mix designs, and shop drawings;
* Procurement of critical Materials and Equipment including lead times;
* Fabrication, installation, and testing of special Material and Equipment;
* Duration of Work, including completion times of all stages, milestones, and their subphases;
* Crew resources that identify and clearly depict Contractor’s crew or Subcontractor performing the Work associated with the scheduled activity;
* Detailed sub-networks to incorporate changes, Additional Work, and Extra Work as applicable, including all necessary activities and logic connectors to describe the Work and all restrictions on it. The restraints shall include those activities from the construction schedule that initiated the sub-network as well as those restrained by it; and
* Indicate the Critical Path.

For each activity, the construction 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 construction schedule shall show the Work broken down into separate bars for each category of Work. 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 for each category of Work shall represent the amount of time required to perform that portion of the Work taking into consideration and showing the number of Working Days scheduled within that time period. To the extent that portion of the Work shall be interrupted for the performance of a different portion of the Work, the bar shall be non-continuous representing breaks in that portion of the Work as necessary. To the extent portions of the Work will be performed simultaneously, the bar shall be continuous.
* The time scale shall be appropriate for the duration of the Contract.
* The time scale shall be in Calendar Days.
* The smallest unit shown shall be 1 Calendar Day.
* The first day and midpoint of each month shall be identified by date.
* Distinct symbols shall be used to denote multiple shifts, 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 construction 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 prepared and transmitted in such a way as to be easily reviewable and capable of being resized if necessary, using multiple sheets when needed.

**(3) Review and Reporting -** The Owner’s Representative will review the construction schedule for compliance with all Contract Time limitations and other restraints. Within 10 Calendar Days of receipt of the Owner’s Representative’s comments, the Contractor shall resubmit to the Owner’s Representative 1 digital and 2 paper copies of the updated construction schedule, including required revisions if necessary.

The construction schedule may require revision as the Work progresses. Therefore, the Contractor shall monitor and when necessary revise the construction schedule as follows:

**a. Review with the Owner’s Representative -** The Contractor shall perform ongoing review of the construction schedule and progress of the Work with the Owner’s Representative.

As part of the review, 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 and Equipment 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 evaluate this information and compare it with the construction schedule and provide such information to the Owner’s Representative. If the Owner’s Representative or the Contractor determines that the construction schedule no longer represents the Contractor's own plans or expected time for the Work, the Contractor shall prepare and submit to the Owner’s Representative an updated Detailed construction schedule to better align current conditions with the Contract Time, including 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 Calendar Days remaining until completion. For activities that are finished, a symbol shall be added to show the actual date.

In addition, the Owner’s Representative may request a meeting be held between the Owner’s Representative and the Contractor to review Project events and any changes for their effect on the Detailed construction schedule. The Contractor shall submit 1 digital copy and 2 full size paper copies of the updated Detailed construction schedule to the Owner’s Representative within 7 Calendar Days after the meeting, along with a progress report as required by 00180.41(b)(3)(b.).

**b. Progress Report –** On the first working day of each month the Contractor shall submit a progress report along with an updated detailed construction schedule. 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.

Submission of the first accepted detailed construction schedule shall be the Contractor’s representation that the detailed construction schedule includes all Work, as well as the planned sequence and time for the Work. Review and acceptance of any detailed construction schedule and Project Narratives by the Owner’s Representative shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

**(c) Float Time -** Float Time is the additional time included in the Contractor’s schedule that does not belong to any specific scope of Work. Float Time shown on the construction schedule, including any time between a Contractor’s scheduled completion date and the specified Contract completion date, does not exist for the exclusive use of either party to the Contract and is used to benefit the Project only.

**(d) Type “C” Schedule –** When a Type "C" Schedule is required, the Contractor shall do the following:

**(1) Initial Construction Schedule -** At the preconstruction conference, the Contractor shall provide to the Owner’s Representative one digital copy and 2 full size paper copies of a time-scaled bar chart schedule. The digital copy shall be compatible with the current MS Project, the current Primavera, the current SureTrak Project Manager or another scheduling program approved by the Owner’s Representative. The initial construction schedule shall show:

* Expected beginning and completion date of each activity, including all stages and phases;
* The time needed for completion of any utility relocation work;
* Elements of the Traffic Control Plan as required according to the Contract Documents;
* Elements of the Diversion of Flow Plan as required according to the Contract Documents;
* Elements of other plans as required by the permitting jurisdiction, regulatory authority, or the Owner; and
* Work elements performed by or supplied by the Owner such as Owner-furnished Equipment, testing by the Owner or planting by the Owner.

The initial construction schedule shall show all Work intended for the first 60 Calendar Days of the Contract to the level of detail described in 00180.41(d)(2), and shall show the priority and interdependence (sequencing and network logic) of all major segments of the remainder of the Work.

**(2) Detailed Construction Schedule -** In addition to the above requirements, and within 30 Calendar Days after the Notice to Proceed, the Contractor shall provide the Owner’s Representative 1 digital copy and 2 full-size copies of the detailed construction schedule. The digital copy shall be compatible with the current MS Project, the current Primavera, the current SureTrak Project Manager, or another scheduling program approved by the Owner’s Representative. Upon request, provide additional copies of the detailed construction schedule and updates in electronic data files in a format readable by and compatible with the current MS Project, Primavera, or Sure Track Project Manager software.

The detailed construction schedule shall include work activities and other information as listed below:

* All construction activities delineated by categories of work and, if required by the Owner’s Representative, coordination requirements and interrelationship of activities;
* Any limitations of operation specified in the Contract Documents;
* Third-party work required for the Project such as utility relocation work, technology infrastructure work, and other such work by others to be coordinated by the Contractor or as directed by the Owner;
* Implementation of the Traffic Control Plan for each stage and phase;
* Submittal and approval of Material samples, mix designs, and shop drawings;
* Owner and other entities’ timeframes to process and return Contractor submitted plans, working drawings, Equipment lists and other submittals;
* Procurement of critical Materials and Equipment including lead times;
* Fabrication, installation, and testing of special Material and Equipment;
* Duration of Work, including beginning and completion times of all stages, milestones, and their subphases;
* Specified cure times for all concrete elements;
* Crew resources which identify and clearly depict Contractor’s crew or subcontractor performing the Work associated with the scheduled activity;
* Detailed sub-networks including all necessary activities and logic connectors to describe the Work and all restrictions on it. The restraints shall include those activities from the initial construction schedule that initiated the sub-network as well as those restrained by it;
* Include and identify any anticipated slack or float time; and
* Include the detailed time-scaled Critical Path as appropriate for a Critical Path method (CPM) schedule.

**(3) Format of Detailed Construction Schedule -** The first submitted detailed construction schedule shall also contain a listing of the quantity of Work for each activity, when appropriate, in common units of measure.

The activities shall be separately identifiable by coding or use of sub-networks or both. The duration of each activity shall be verifiable by manpower and Equipment allocation, in common units of measure, or by delivery dates and shall be justifiable by the Contractor upon the request of the Owner’s Representative.

The time scale used on the detailed construction schedule shall be appropriate for the duration of the activities and the Project duration. The time scale shall be in normal Working Days, with calendar dates identified no less than the first and midpoint of each calendar month. The smallest unit shown shall be one day. The detailed construction schedule shall show the length of the activity or part scaled to accurately represent the number of normal Working Days scheduled. Distinct symbols or graphics shall be used to show multiple shift, holiday, or weekend work.

The detailed construction schedule 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 of paper copies, the detailed construction schedule shall be on a reasonable size of paper up to a maximum of 36 inch x 36 inch, using multiple sheets when needed.

**(4) Project Narrative -** In addition to the above requirements, and within 30 Calendar Days after Notice to Proceed, the Contractor shall provide to the Owner’s Representative a final written Project narrative that discusses the planning, coordinating, scheduling and resourcing of the Work. The Project narrative shall include the following written description:

* Plans for staging the Project.
* All critical activities.
* All near critical activities, defined as those with less than 30 Working Days of float.
* All subcontractor activities that are critical, near critical, and those that are greater than 2 weeks in duration.
* Labor resourcing, by stage and phase, to include the number of crews, average crew size and planned night/weekend shifts activities including that of subcontractors.
* Equipment allocation, by stage and phase to include mobilization, demobilization and planned activities including that of subcontracts.
* Notification required under the Contract during each stage and phase which may include, but is not limited to, road closures, lane closures, night work, cold plane pavement removal, and pile driving.
* Provide discussion on addressing reasonably predictable weather conditions and their impact on all weather sensitive activities. Also provide discussion on other weather limitations that may affect the project schedule.
* Submittal and approval of material samples, mix designs, and stop drawings.
* Procurement of critical materials.
* Plans for dealing with "unique" construction items.
* Coordination of utilities and any immediate concerns for impacts/delays.
* Constructability issues.
* Cost Reduction Proposals or immediate requests for changes to the specifications.
* Concerns/issues that need to be addressed within the first 90 Calendar Days following Notice to Proceed.

By submitting the Project narrative, the Contractor represents that it includes all critical and near critical Work, as well as the planned sequence and time for the Work.

**(5) Review and Reporting –** The Owner’s Representative will review the construction schedule for compliance with all Contract Time limitations and other restrictions. Within 14 Calendar Days of the Owner’s Representative’s comments, the Contractor shall resubmit to the Owner’s Representative 1 digital copy and 2 full size paper copies of the detailed construction schedule, including required revisions if necessary.

The detailed construction schedule may require revision as the Work progresses. Therefore, the Contractor shall monitor and when necessary revise the detailed construction schedule as follows:

**a. Review with the Owner’s Representative -** The Contractor shall perform ongoing review of the detailed construction schedule and progress of the Work with the Owner’s Representative. As part of the review, 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 and Equipment 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 evaluate this information and compare it with the detailed construction schedule and provide such information to the Owner’s Representative. The Contractor shall review and revise detailed sub-networks to incorporate changes, Additional Work, and Extra Work into the detailed construction schedule.

If the Owner’s Representative or the Contractor determines that the detailed construction schedule no longer represents the Contractor's own plans or expected time for the Work, shall prepare and submit to the Owner’s Representative an updated detailed construction schedule to better align current conditions with the Contract Time, including the effect the 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 Calendar Days remaining until completion. For activities that are finished, a symbol shall be added to show the actual date. The updated detailed construction schedule shall be submitted by the Contractor to the Owner’s Representative within 7 Calendar Days after the Contractor or the Owner’s Representative have determined that an updated detailed construction schedule is necessary.

In addition, the Owner’s Representative may request a meeting be held between the Owner’s Representative and the Contractor to review Project events and any changes for their effect on the detailed construction schedule. The Contractor shall submit 1 digital copy and 2 full size paper copies of the update detailed construction schedule to the Owner’s Representative within 7 Calendar Days after the meeting, along with a progress report as required by 180.41(d)(5)(b).

**b. Progress Report –** On the first working day of each month the Contractor shall submit a progress report along with an updated detailed construction schedule. The report shall include the following:

* A 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;
* Proposed corrective actions;
* Proposals to keep the Project on schedule in the event of a delay; and
* Any changes to the logic as compared to the accepted Project Work schedule.

Submission of the first accepted detailed construction schedule shall be the Contractor’s representation that the detailed construction schedule includes all work, as well as the planned sequence and time for the Work. Review and acceptance of any detailed construction schedule and Project Narratives by the Owner’s Representative shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

**(e) Substitution of Schedules -** When a Type "A" schedule is required, a Type "B" or Type "C" schedule may be substituted for the Type "A" schedule. When a Type "B" schedule is required, a Type "C" schedule may be substituted for the Type "B" schedule.

**(f) Specified Contract Time Not Superseded by Construction Schedule Revisions -** The predicted completion date(s) for the construction schedule shall be within the specified Contract Time(s) or adjusted Contract Time. If the Contractor believes that additional Contract Time is due, the Contractor shall submit, with the updated construction schedule, a request for adjustment of Contract Time according to 00180.80.

**(g) Construction Schedules Do Not Constitute Notice -** Submittal of a construction 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 Owner.

**(h) Construction Schedule Costs Are Incidental -** Contractor’s activity related to developing, furnishing, monitoring, and updating these required construction schedules is incidental.

**(i) Owner’s Representative Review -** The Owner’s Representative review of the construction schedule will not constitute a warranty or representation by the Owner that the Contractor can perform the Work according to such construction schedule. Review of the construction schedules by the Owner’s Representative shall not relieve the Contractor of the responsibility for timely and efficient execution of the Project.

**(j) Failure to Provide Construction Schedule -** The construction schedule is essential to the Owner. The Contractor's failure to provide the construction schedule, progress reports or construction schedule updates when required or requested may delay the Work and permits the Owner to take any actions necessary to protect itself and cause the construction schedule to be delivered, including, but not limited to, withholding payment.

**00180.42 Meetings**

**(a) Utility Scheduling Meeting -** When Utilities are involved in or in the proximity of the performance of the Work, the Contractor shall conduct a group Utilities scheduling meeting with representatives from the applicable Utility companies and the Owner’s Representative. Such Utilities scheduling meeting shall occur prior to the Preconstruction Conference. The Contractor shall incorporate the Utilities time needs into the Contractor’s schedule submitted at the Preconstruction Conference.

**(b) Preconstruction Conference -**  After the Contract is Awarded, unless otherwise approved in writing by the Owner's Representative, but before any Work is performed, the Contractor shall meet with the Owner's Representative for a preconstruction conference within thirty (30) Calendar Days from Award of the Contract, to occur at a time mutually agreed upon by the parties. The Contractor shall submit the following at the preconstruction conference:

* The names and telephone numbers of its Project Manager, Superintendent and Office Manager and a list of personnel authorized to sign change orders and receive progress payments;
* The name, address and telephone numbers of two or more persons employed by the Contractor who can be reached at any time of the day or night to handle emergency matters;
* A list of all known Subcontractors that will work on the Project, a description of work they will perform, and a contact list for each Subcontractor with phone numbers and address;
* An initial construction schedule and a detailed construction schedule of the first 2 weeks;
* Traffic Control Plan, required unless stated otherwise;
* Erosion and Sediment Control Plan, required unless stated otherwise;
* A list of known Materials suppliers and Products;
* A list of all labor classes and Equipment (year, make, model) to be used on the Project, required unless otherwise stated;
* A detailed breakdown of all lump sum bid items, except Mobilization, TPDT, Erosion Control and Pollution Control.;
* Copies of all subcontracts between the Contractor and any Subcontractor in effect at the time of the Preconstruction Conference or upon execution of the subcontracts;
* Site Specific Safety and Health Plan;
* Utility Protection Plan, required unless stated otherwise;
* Pollution Control Plan, required unless stated otherwise;
* Labor Burdens Information for Force Account Work, required unless stated otherwise; and
* Shoring Plan, required unless stated otherwise.

**(c) Progress Meetings -** Progress meetings shall occur once a week to discuss the progress of the Work.

* The Contractor shall be in attendance at each weekly meeting.
* At the weekly meeting, safety, schedule, and outstanding issues will be discussed, amongst any other issue raised by the Owner’s Representative.
* A submittal log, RFI log, RFP log, Change Order log, and updated schedules required under Section 00180.41 shall be provided for review and use at each weekly meeting, in addition to any other documents required by the Owner’ Representative.

**(d)** **Other Meetings -** Other meetings may be required by the Owner’s Representative as necessary to facilitate the progress of the Work.

**(e) Attendance at Meetings -** Attendance at meetings shall be required as follows:

**(1)** **Preconstruction Conference -** For the preconstruction conference, the Contractor’s Project Manager and Superintendent shall be in attendance. In addition, Subcontractors and other representatives shall be in attendance as requested by the Owner’s Representative.

**(2)** **Progress Meetings -** For progress meetings, the Contractor’s Project Manager and Superintendent shall attend all meetings. To the extent required by the Owner, the Contractor shall ensure the attendance of any Subcontractor or Supplier at any meeting as indicated by the Owner’s Representative. The Owner’s Representative will inform Contractor of any Subcontractor whose attendance is required at least five (5) Calendar Days in advance of the meeting.

**00180.43  Commencement and Performance of Work** - From the time of commencement of the Work to the time of Notification of Project Completion the Contractor shall:

* Provide adequate Materials, Equipment, labor, and supervision to perform and complete the Work within the Contract Time or the adjusted Contract Time;
* 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 Owner’s Representative, 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 Owner’s Representative'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 Contract Time is expressed as a given number of Calendar Days, the date on which it will begin is the first Calendar Day following the date of the Notice to Proceed, unless the Notice establishes a different date.

**(d)  Recording Contract Time** - All Contract Time will be recorded and charged to the nearest Calendar Day.

On Contracts with Calendar Day counts, the Owner’s Representative will furnish the Contractor a weekly statement of Contract Time charges. The statement will show the number of Calendar Days counted for the preceding week and the number of Calendar Days remaining prior to the established completion date for the specified Work.

For Contracts with fixed completion dates for Pay Items, the Owner’s Representative 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 Owner; or
* Suspension of the Work by written order of the Owner’s Representative 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 Owner’s Representative and attempt to resolve the dispute. If the dispute cannot be resolved informally, the Contractor shall submit a formal written protest to the Owner’s Representative within 7 Calendar Days of the date the Owner’s Representative 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 Owner’s Representative determines that the On-Site Work has been completed, except for the items listed below, the Owner’s Representative will issue a Substantial Completion.

The Substantial Completion 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 Owner’s Representative before Notification of Project Completion will issue.

The Contractor shall complete all tasks listed in the Substantial Completion in an expeditious manner within the time frame proposed by the Contractor and accepted by the Owner’s Representative. Unless otherwise agreed by the Owner, failure of the Contractor to complete all tasks listed in the Substantial Completion within the time frame accepted, will result in the Owner rescinding the Substantial Completion. Counting of time charges will resume upon expiration of the accepted time frame.

**00180.60  Notice of Delay** - The Contractor shall notify the Owner’s Representative of any delay that will likely prevent completion of the Work or a Pay Item by the date specified in the Project Work schedule. The notice shall be in writing and shall be submitted within 7 Calendar Days of when the Contractor knew or should have known of the delay. The notice shall include, to the extent available, the following:

* The reasons or causes for the delay;
* The estimated duration of the delay and the estimated resulting cumulative delay in Contract completion;
* Except for 00180.50(e) and 00180.65 delays, whether or not the Contractor expects to request an adjustment of Contract Time due to the delay;
* Whether or not the Contractor expects to accelerate due to the delay; and
* Whether or not the Contractor expects to request additional compensation due to the delay. Except for 00180.50(e) and 00180.65 delays, failure to include this information will constitute waiver of the Contractor's right to later make such a request.

**00180.65  Right-of-Way and Access Delays** - Right-of-Way and access delays will be taken into consideration in adjusting Contract Time, and in approving additional compensation if the performance of the Work is delayed because of the Owner's failure to make available to the Contractor:

* Necessary Rights-of-Way;
* Owner-owned or Owner-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 Owner’s Representative 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 Owner’s Representative, the Owner, or any regulatory authority;
* Existence of conditions unsuitable to proper or safe performance of the Work; or
* Any reason considered by the Owner to be in the public interest.

When Work has been suspended for any reason, the Contractor shall not resume Work without the Owner’s Representative'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.

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 Owner’s Representative.

**(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 Owner-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 Owner’s Representative may increase or decrease the Contract Time or the Adjusted Contract Time if Change Orders or Unilateral Change Orders issued actually increase or decrease the amount of time required to perform the Work. The Owner’s Representative 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 Owner’s Representative will promptly inform the Contractor of adjustments made to Contract Time according to this Subsection, and will include the reasons for adjustment.

If the Owner anticipates delay during performance of the Contract, and specifies its expected duration in the Special Provisions, the Owner’s Representative 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 Owner’s Representative a timely request for adjustment of Contract Time. The Owner’s Representative will not consider untimely requests. The Owner 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 7 Days after the date of Substantial Completion, if Substantial Completion has been issued.

The Owner’s Representative 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 Owner’s Representative will not authorize, nor the Owner 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 Owner’s Representative on a form provided by, or in a format acceptable to, the Owner’s Representative, 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 Owner’s Representative to evaluate the asserted justification for the amount of additional Contract Time requested;
* The cause of each delay for which additional Contract Time is requested, together with supporting analysis and data;
* Reference to the Contract provision allowing Contract Time adjustment for each cause of delay;
* The actual or expected duration of delay resulting from each cause of delay, expressed in Calendar Days; and
* A schedule analysis based on the current approved Project Work schedule for each cause of delay, indicating which activities are involved and their impact on Contract completion.

**(d)  Basis for Adjustment of Contract Time** - In the adjustment of Contract Time, the Owner’s Representative will consider causes that include, but are not limited to:

* Failure of the Owner 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 Owner or Entities acting for the Owner to act promptly in carrying out Contract duties and obligations;
* Acts or omissions of the Owner or Entities acting for the Owner 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 Owner’s Representative will not consider requests for adjustment of Contract Time based on any of the following:

* Contentions that insufficient Contract Time was originally specified in the Contract;
* Delays that do not affect the specified or Adjusted Contract Time;
* Delays that affect the Contractor's planned early completion, but that do not affect the specified or adjusted Contract Time;
* Shortage or inadequacy of Materials, Equipment or labor;
  + - * Work stoppage required by the Owner’s Representative to determine the extent of Work defects;
      * Time for the Contractor to correct the Work defects from date of notification of the defects until the correction work is completed and has been approved by the Owner’s Representative;
* Late delivery of Materials and Equipment to be incorporated into the Work, except under those conditions referenced in 00180.50(e);
* Substitution of Equipment in 00180.31(c);
* Reasonably predictable weather condition: For Fixed Date Contracts, normally expected inclement weather conditions are considered in the Engineer’s selection of the completion date, and time extensions will only be considered for reasons shown in 00180.50(e) and for weather conditions which in the opinion of the Engineer have an extraordinarily low statistical probability. Low statistical probability will be determined using historical weather data from a government website for the previous 10 years in which weather that occurs within 7 years of the 10-year period is considered reasonable and predictable; or
* Other matters within the Contractor's control or Contract responsibility;
* The Contractor’s delay resulted from the Owner’s use of the full amount of allotted time under the Contract to review the Contractor’s Submittal;
* The Contractor’s delay resulted from its own failure to provide a Submittal in a timely manner;
* The Contractor’s delay resulted from a Submittal that properly was marked “Revise and Resubmit,” “Rejected,” or “Submit Specified Item”; or
* The Contractor did not understand what it was required to submit and failed to inquire about it in a timely manner.

**(e)  Consideration and Response by Owner** - The Owner’s Representative will only consider a Contractor's request for Contract Time adjustment submitted according to the requirements of 00180.80(c). The Owner’s Representative may elect not to consider claimed delays that do not affect the specified or adjusted Contract Time required to complete the Work.

The Owner’s Representative may adjust Contract Time for causes not specifically identified by the Contractor in its request.

The Owner’s Representative will review a properly submitted request for Contract Time adjustment, and within a reasonable time will advise the Contractor of the Owner’s Representative's findings. If the Contractor disagrees with the Owner’s Representative's findings, the Contractor may request review according to the procedure specified in 00199.30(h).

**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 and within Contract Time or adjusted Contract Time.

The Owner 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 Owner to sustain damages; increase risk to, inconvenience, and interfere with the traveling public and commerce; and increase costs to taxpayers. Because the Owner finds it is unduly burdensome and difficult to demonstrate the exact dollar value of such damages, the Contractor agrees to pay to the Owner, 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 Owner 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 Owner constitute a waiver of the Owner'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.

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.

The liquidated damages for failure to complete the Work on time required by 00180.50(h) will be shown in the Special Provisions.

**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 Owner’s Representative's instructions;
* Refuses or fails to supply enough Materials, Equipment or skilled workers for prosecution of the Work in compliance with the Contract;
* Fails to make prompt payment to Subcontractors;
* Makes an unauthorized general assignment for the benefit of the Contractor's creditors;
* Has a receiver appointed because of the Contractor's insolvency;
* Is adjudged bankrupt and the court consents to the Contract termination; or
* Otherwise fails or refuses to faithfully perform the Contract according to its terms and conditions.

If the Contract is terminated by the Owner, upon demand the Contractor and the Contractor's Surety shall provide the Owner’s Representative 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 Owner 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 Owner’s Representative will be entitled to withhold sufficient funds to cover costs incurred by the Owner 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 Owner's procedures, and upon the Owner’s Representative's recommendation that sufficient cause exists, the Owner, without prejudice to any of its other rights or remedies and after giving the Contractor and the Contractor's Surety at least 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 Owner 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 Owner’s Representative, or if the Contractor's Surety submits a proposal for correction that is acceptable to the Owner’s Representative, the Contract will not be terminated.

**(c)  Termination for Public Convenience** - The Owner’s Representative may terminate the Contract for convenience in whole or in part whenever the Owner’s Representative determines that termination of the Contract is in the best interest of the public.

The Owner’s Representative will provide the Contractor and the Contractor's Surety 7 Calendar Days' written notice of termination for public convenience. After such notice, the Contractor and the Contractor's Surety shall provide the Owner’s Representative with immediate and peaceful possession of the Project Site, and of Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50.

If the Contract is terminated for public convenience, neither the Contractor nor its Surety shall be relieved of liability for damages or losses suffered by the Owner as a result of defective, unacceptable or unauthorized Work completed or performed.

Compensation for Work terminated by the Owner’s Representative 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 Owner’s Representative 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 Owner’s Representative 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 Owner’s Representative's verification. The Owner’s Representative'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 Owner’s Representative.

**(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 Owner’s Representative.

**(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 Owner’s Representative.

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 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.

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 Owner’s Representative. If estimated quantities of the Work to be performed are listed in the Special Provisions, they provide only a basis for adjusting payment amounts. Estimated quantities are approximate only, and are made from a reasonable interpretation of the Contract Documents. Computations based on the details and dimensions shown on the Contract Documents are not guaranteed to equal estimated quantities.

If the Owner issues no Change Order, the Owner will make no pay adjustment for quantities based on the Contractor's computations that overrun or underrun the estimated quantities.

If the Owner issues Change Orders for changes in the Work, the Owner’s Representative will measure such changes according to the standards set by 00195.20 to determine adjustment of payment.

**00190.20  Contractor to Provide Vehicle Weigh Scales:**

**(a)  General** - If the Specifications require measurement by weighing on vehicle weigh scales, the Contractor shall provide vehicle weigh scales and shall transport Materials to the scales. Subject to the Owner’s Representative's approval, weights may be determined by plant or hopper scales according to 00190.30.

Contractor-provided scales shall be furnished, installed and maintained by the Contractor or its supplier, or, subject to the Owner’s Representative's approval, may be commercial scales located in the vicinity of the Project.

Unless otherwise provided in the Contract, Pay Items to be measured by weight shall include all Contractor costs for providing, maintaining, inspecting, and testing scales; for furnishing appropriate weigh tickets; for self-printing scales; and for transporting Materials to the scales or to check weighing.

**(b)  Requirements** - The scales shall conform to ORS 618, or the laws of the state in which they are located, and NIST Handbook 44, and shall be:

* Licensed by the Oregon Department of Agriculture, or by the analogous regulatory body for scales located outside the State;
* Technically suitable for weighing the Materials;
* Properly installed and maintained; and
* Accurate to the required tolerances.

The weight of any Materials weighed by anyone other than the Owner’s Representative will be subject to check weighing as the Owner’s Representative directs.

**(c)  Approaches** - Vehicle scale approaches shall be:

* At each end of the scale platform;
* Straight and in line with the platform; and
* Long enough to accommodate combination vehicles longer than the scale platform so that they are level and allow release of brakes before weighing.

**(d)  Inspections** - Contractor shall have all scales certified, that is inspected and their accuracy tested, by the Oregon Department of Agriculture, an analogous regulatory body for scales located outside the State, or a scale service company, as follows:

* Before use if installed at a new site;
* 60 Calendar Days after initial inspection;

As otherwise required by the Oregon Department of Agriculture, or an analogous regulatory body for scales located outside the State; and

* When the Owner’s Representative directs additional inspections.

No Materials weighed on scales without current certifications according to this Subsection will be accepted. The Contractor shall provide a copy of all required certifications to the Owner’s Representative.

Testing by a scale service company within the State of Oregon shall comply with ORS 618.

If additional inspections directed by the Owner’s Representative confirm that the scale accuracy is within the required tolerances, the Owner will pay the cost for inspecting and testing the scales. If the scale accuracy is not within these tolerances, the Contractor shall pay the cost for inspecting and testing the scales.

**(e)  Inspection Results** - If an inspection indicates the scales have been under-weighing (indicating less than the true weight), the Owner will make no additional payment to the Contractor for Materials previously weighed.

If an inspection indicates the scales have been over-weighing (indicating more than the true weight), the weights will be reduced for Materials received after the time the Owner’s Representative determines the overweighing began or, if that is not possible, after the last acceptable certification of the scales. The reduction will be the amount of error in excess of the 0.2% maintenance tolerance allowed in the Contract.

**(f)  Contractor-Provided Weigh Technician** - The Contractor shall provide a technician to operate Contractor-provided vehicle weigh scales. The Owner may observe procedures and require check weighing according to the following:

**(1)  Scale with Automatic Printer** - If the scales have an automatic weigh memo printer that does not require manual entry of gross weight information, the Owner may periodically have a representative at the scales to observe the weighing procedures. In addition, the Owner’s Representative may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20(b) and 00190.20(d).

If a different scale is not available within a 30‑mile round trip from the regular haul route, the Owner will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Owner’s Representative will resolve discrepancies found by check weighing. Owner employee costs will be paid by the Owner. The Contractor shall pay all other costs resulting from the check weighings, including, without limitation, the use of other scales.

When 2,000 tons or less of all types of Materials are received from a scale, check weighing will be at the discretion of the Owner’s Representative.

The Contractor shall make at least one check weighing on projects where more than 2,000 Tons of all types of Materials are received from a scale.

If more than 50 Tons per Day of all types of Materials are received from a scale, the Contractor shall make random check weighings at least once every ten Days on which more than 50 Tons is received or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by the Owner’s Representative. The check weighing frequency does not apply to total quantities less than 2,000 Tons of all types of Materials from a scale. The Contractor shall provide the Owner’s Representative with the results of the check weighing.

**(2)  Scale Without Automatic Printer** - If the scales require manual entry of gross weight information, the Owner may periodically have a representative weigh witness at the scales to observe the weighing procedures. The Contractor shall inform the Owner’s Representative of his intent to use a scale without an automatic printer at least 3 working days before weighing begins or before the Contractor changes to a scale that does not have an automatic printer. The Contractor shall pay costs for the weigh witness. The hourly cost of the weigh witness will be as stated in the Special Provisions. In addition, the Owner’s Representative may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20(b) and 00190.20(d).

If a different scale is not available within a 30‑mile round trip from the regular haul route, the Owner will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Owner’s Representative will resolve discrepancies found by check weighing. Owner employee costs for check weighings will be paid by the Owner. The Contractor shall pay all other costs resulting from the check weighings, including, without limitation, the use of other scales.

If more than 50 tons per Day of all types of Materials are received from a scale, the Contractor shall make random check weighings at least every tenth day on which more than 50 tons is received or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by the Owner’s Representative. The Contractor shall make at least one check weighing on all projects where materials are received from a scale without an automatic printer. The Contractor shall provide the Owner’s Representative with the results of the check weighing.

**(3)  Duties of Weigh Technician** - The Contractor's weigh technician shall:

* Determine twice a Day, or as otherwise directed by the Owner’s Representative, the empty haul weights (tare weights) of hauling vehicles, unless vehicles are tared before each load;
* Furnish daily a listing of the tare weights if 10 or more loads are hauled during that Day;
* Furnish a note listing the net weight for each consecutive ten loads with the following load;
* Furnish a daily listing of the net weights and total weight for each type of Material hauled during that Day; and
* Furnish a legible, serially numbered weigh memo for each load of Materials to the Owner's Materials receiver at the point of delivery, or as directed by the Owner’s Representative. The memo shall identify the Project, the Materials, the date, net weight (gross and tare as appropriate), and identification of the vehicle and weigh technician.

**00190.30  Plant Scales** - The Contractor, with the Owner’s Representative's written approval, may weigh plant‑mixed Materials on scales that have either:

* An automatic weight batching and mixing control printer system; or
* A weigh hopper printer system.

Any additional costs resulting from the use of these scales shall be borne by the Contractor. Check weighing will be done according to 00190.20(f).

Except for 00190.20(c) regarding approaches, the Contractor's use of plant scales shall comply with all provisions of 00190.20.

The Owner’s Representative's approval for the Contractor's use of plant scales to determine pay weights will be rescinded if check weighing or scale inspections indicate the scales do not consistently determine weights within the tolerances allowed by state law.

## Section 00195 - Payment

**Description**

**00195.00  Scope and Limit:**

**(a)  General** - The Owner 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.

Any Work required to be performed by the Contract Documents for which no Pay Item is established shall be considered Incidental and no separate measurement or payment will be made for such Work.

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 Owner will pay for such Work at the Pay Item price.

If the Work involved in the change is measured on a lump sum basis and its character is not significantly changed, payment for the Changed Work will be determined:

* As described in the applicable Section of the Specifications;
* If not described there, on a theoretical unit price determined by dividing the Contractor's lump sum price by the estimated quantity of the Pay Item listed in the Special Provisions; or
* If neither of the above apply, the Owner’s Representative 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 Owner 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 Owner’s Representative will make an equitable adjustment, which may increase or decrease the Contract Amount and Contract Time.

Any such adjustments may be less than, but will not be more than the amount justified by the Owner’s Representative on the basis of the established procedures set out in Section 00197 for determining rates. This does not limit the application of Section 00199.

The term "Significant Changed Work" shall apply only to that circumstance in which the character of the Work, as changed, differs materially in kind, nature, or unit cost from that involved or included in the originally proposed construction.

**00195.30  Differing Site Conditions** - Upon written notification, as required in 00140.40, the Owner’s Representative will investigate the identified conditions. If the Owner’s Representative 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 Owner’s Representative will notify the Contractor as to whether or not an adjustment of the Contract is warranted.

No Contract adjustment which benefits the Contractor will be allowed unless the Contractor has provided the required written notice. Any such adjustments will be made according to 00195.20.

**00195.40  Unreasonable Delay by the Owner** - 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 Owner, or persons acting for the Owner, in a manner that constitutes a basis for adjustment of Contract Time as set forth in 00180.80(d) 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 Owner’s Representative will promptly evaluate a properly submitted request for additional compensation. If the Owner’s Representative 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 Owner’s Representative will make an equitable adjustment, excluding profit, and modify the Contract in writing accordingly. The Owner’s Representative 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 Owner’s Representative receives the Contractor's properly submitted written request;
* For any portion of a delay that the Owner’s Representative 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 Owner's payment of progress payments, or determination of satisfactory completion of Pay Items or Work or release of retainage under 00195.50(d), shall not be construed as Final Acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective Materials or workmanship or for latent defects and warranty obligations.

The estimates upon which progress payments are based are not represented to be accurate estimates. All estimated quantities are subject to correction in the final estimate. If the Contractor uses these estimates as a basis for making payments to Subcontractors and Suppliers, the Contractor assumes all risk and bears any losses that result.

**(1)  Progress Estimates** - The Owner will pay the Contractor two times per month. The Contractor shall make payments to its Subcontractors twice per month. At the first and the sixteenth day of each month, the Owner’s Representative 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, Owner’s Representative-approved Schedule of Values, when there is no theoretical unit price available; or
* Owner’s Representative'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 Owner’s Representative.

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** - The Owner’s Representative will also 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 Owner’s Representative'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 and summary setting forth the value of Work accomplished reduced by the following:

* Amounts previously paid;
* Amounts deductible or owed to the Owner for any cause specified in the Contract;
* Additional amounts retained to protect the Owner's interests according to Subsection (e) below.

**(b)  Retainage** - The Owner reserves the right in its sole discretion to not withhold retainage from progress payments or to begin withholding retainage at any time. If the Owner withholds retainage from progress payments the amount to be retained from progress payments will be 5% of the value of Work accomplished, and will be retained in one of the forms specified in Subsection (c) below. Retainage will be withheld until the Owner’s Final Acceptance of the Work.

As provided in 00170.65(b)(3) in addition to any retainage, a withholding 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 Owner withholds retainage, forms of acceptable retainage are specified below in Subsections (1) through (3). Unless the Contractor requests and the Owner accepts a form of retainage under Subsections (2) or (3), the Owner will use the "Cash, Alternate A" in this Subsection. If the Owner incurs additional costs as a result of the Contractor's election to use a form of retainage other than Cash, Alternate A, the Owner may recover such costs from the Contractor by a reduction of the final payment.

**(1)  Cash, Alternate A** - Retainage will be deducted from progress payments and held by the Owner until final payment is made according to 00195.90, unless otherwise specified in the Contract.

Except as otherwise provided, the Owner will deposit the cash retainage withheld in an interest-bearing escrow account as required by ORS 279C.570(2). The Contractor shall execute such documentation and instructions respecting the interest-bearing escrow account as the Owner may require to protect its interests, including but not limited to a provision that no funds may be paid from the account to anyone without the Owner’s advance written authorization. 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 otherwise specified in the Contract.

For a contract over $500,000, if the Contractor requests that the Owner deposit the retainage in an interest-bearing account under ORS 279C.560(5), the Owner will use the “Cash, Alternate A” in this Subsection. For a contract $500,000 or less, if the Contractor requests that the Owner deposit the retainage in an interest-bearing account under ORS 279C.560(5), the Owner will use an interest-bearing account (in a bank, savings bank, trust company, or savings association) as provided under ORS 279C.560(5).

Any retainage withheld on Work performed by a Subcontractor will be released to the Contractor according to 00195.50(d).

**(2)   Alternate B (Retainage Surety Bond)** -  The surety bond must be in the bond form provided by the Owner. The bond must be provided by the same Surety that provides the Performance and Payment Bonds.

If an acceptable retainage surety bond is provided, the Contractor shall notify all Subcontractors of the existence of the retainage surety bond and shall advise them of their rights under ORS 279C.560(7) and ORS 701.435.

**(3)  Bonds, Securities, and Other Instruments** - In accordance with ORS 279C.560, unless the Owner finds in writing that accepting a bond, security or other instrument poses an extraordinary risk that is not typically associated with the bond, security or other instrument, the Owner will approve the Contractor's written request to deposit bonds, securities or other instruments with the Owner or in a custodial account or other account satisfactory to the Owner with an approved bank or trust company, to be held instead of cash retainage for the benefit of the Owner. In such event, the Owner will reduce the cash retainage by an amount equal to the value of the bonds, securities and other instruments. Interest or earnings on the bonds, securities and other instruments shall accrue to the Contractor.

Bonds, securities and other instruments deposited instead of cash retainage shall be assigned to or made payable to the Owner and shall be of a kind approved by the Director of the Oregon Department of Administrative Services, including, but not limited to:

* Bills, certificates, notes or bonds of the United States;
* Other obligations of the United States or agencies of the United States;
* Obligations of a corporation wholly owned by the federal government;
* Indebtedness of the Federal National Mortgage Association;
* General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon;
* Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Owner may require to protect its interests. When the Owner’s Representative determines that all requirements for the protection of the Owner's interest have been fulfilled, the bonds and securities deposited instead of cash retainage will be released to the Contractor.

**(d)  Reduction of Retainage** - As the Work progresses, the amounts to be retained under (b) of this Subsection are subject to reduction in the Owner’s Representative's sole discretion. Retainage reductions will be considered only for a project funded by the FHWA, when a subcontractor has satisfactorily completed all of its Work, it may request release of retainage for that Work from the Contractor. The Contractor shall request reduction of retainage in the amount withheld for the subcontractor’s Work after certifying to the Owner 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 Owner receives the Contractor’s certification regarding the subcontractor’s Work, the Owner 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 Owner 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 Owner reserves the right to protect its interests by retaining amounts from further progress payments at the rates provided in 00195.50(b).

A determination of satisfactory completion of Pay Items or Work or release of retainage shall not be construed as acceptance or approval of the Work and shall not relieve the Contractor of responsibility for defective Materials or workmanship or for latent defects and warranty obligations.

The Contractor shall comply with all applicable legal requirements for withholding and releasing retainage and for prompt payments, including but not limited to those in ORS Chapters 279C and 701, and 49 CFR 26.29.

**(e)  Withholding Payments** - The Owner’s Representative may withhold such amounts from progress payments or final payment as may reasonably protect the Owner's interests, as well as impose other remedies.

**(1)** **Reasons for** **Withholding Payments -** Withholding payments based on any of the following reasons:

* The Work has not progressed to the point indicated by the Contractor’s submittal;
* Defective, unsatisfactory or improper Work is discovered;
* The Contractor fails to make payments to employees, Subcontractors or suppliers as required by the Contract Documents;
* The Contractor violated a material term or condition of the Contract Documents that has not been remedied;
* The Contractor performed unsatisfactory Work for which payment was sought;
* The Owner has a monetary claim against the Contractor that the Contractor has not yet paid;
* Failure to submit a construction schedule or updated construction schedule as required by the Contract Documents;
* Failure to submit a Schedule of Values or updated Schedule of Values as required by the Contract Documents;
* The Contractor was exceeding the limits of Work specified by the Contract Documents;
* The Contractor owes liquidated damages to the Owner; or
* The Contractor owes delinquent debt to the Owner; or
* The Contractor fails to submit certified payrolls in accordance with 00195.50(d).

**(2)** **Interest -** The Contractor is not entitled to interest on money purposely withheld for any of the reasons specified in 00195.50(e).

**(3) Authorized Personnel -** The Contractor shall provide the Auditor’s Office with a list of personnel authorized to receive Contract payments. No payment will be released to an unauthorized person. In addition, no payment will be made if the estimated progress payment is less than $1500, unless approved in advance by the Owner’s Representative.

**(4)** **Payments to Subcontractors -** If the Contractor fails to make timely advance payments or progress payments to its Subcontractors, the Owner is entitled to take any and all actions permitted by Law, including, but not limited to, the following:

* Withhold all or a part of any progress payment until Contractor makes payment;
* Find the Contractor is a not a “responsible bidder” for future City projects as that term is used in Oregon Law;
* Pay the Subcontractor who has not received proper payment directly; and
* Terminate the Contract for Default as provided in 00180.90(a).

**(5)** **Other Requirements -** Such withheld payments will not be made until the Contractor has:

* Complied with all orders issued by the Owner’s Representative according to the Specifications; and
* Satisfied all legal actions filed against the Owner, the Owner's governing body and its members, and Owner employees that the Contractor is obliged to defend. (See 00170.72.)

**(6)**  **Prevailing Rate Of Wages -** Notwithstanding ORS 279C.555 or ORS 279C.570 or 00195.50(d), if a Contractor is required to file statements on the prevailing rate of wages, but fails to do so, the Owner will withhold 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.

Within 10 Calendar Days from the date that any payment is sent by Owner to Contractor, Contractor shall pay its Subcontractors for work performed during the period covered by the Application for Payment regardless if the Subcontractor agrees to some different schedule. The Contractor is required to take all necessary good faith actions to ensure that it makes payment to its Subcontractors. In the event of a dispute, the Contractor shall pay the portion not in dispute and timely resolve the amount that is in dispute.

**00195.60  Advance Allowance for Materials on Hand:**

**(a)  General** - The Owner’s Representative has discretion, but is not required, to approve payments to the Contractor of up to 85% of the total bid item price for Materials and Equipment that will be incorporated into the Work that are not yet incorporated if the following conditions are met:

**(1)**  **Value Of The Materials Or Equipment -** The value of the Materials or Equipment shall be greater than $5,000;

**(2)**  **Title To The Materials Or Equipment -** The Contractor submits bills of sale or other documentation satisfactory to Owner establishing the Contractor’s proof of payment and title to the Materials or Equipment and the Materials are free and clear of liens, claims, security interests or other encumbrances. When payments are made, the Contractor guarantees that title to all Materials and Equipment covered by a progress payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances;

**(3) Protect The Owner’s Interest -** The Contractor shall protect the Owner’s interest in the Materials or Equipment, including applicable insurance and transportation to the site. In no event shall payment for such Materials require the Owner to pay for replacement Materials if the original Materials or Equipment for which payment was made are damaged or destroyed prior to their incorporation into the Work. By submitting a request for payment, the Contractor accepts full responsibility to continue to protect the stored Materials and Equipment from the elements and against loss or damage;

**(4) Contract Requirements -** The Materials or Equipment meet Contract requirements, proof that the Materials or Equipment conform to the Contract Documents has been provided to Owner, are in a form ready for incorporation into the Project and are clearly marked and identified as being specifically fabricated, produced and reserved for use on the Project;

**(5)** **Advance Allowances -** The Owner will not make advance allowances on the Materials unless the following two conditions are satisfied:

**a.  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 Owner’s Representative at least 5 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 Owner.

**b.  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 Owner property;
* On property in the State of Oregon on which the property owner has authorized storage in writing. The written authorization must allow the Owner 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 Owner; or
* On property outside the State of Oregon on which the property owner has authorized storage in writing, provided that such storage location is allowed by the Special Provisions or authorized in writing by the Owner’s Representative. The permit must allow the Owner 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 Owner.

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 Owner’s Representative (see Section 00165);
* Be in a form ready for incorporation into the permanent Work; and
* Be clearly marked and identified as being specifically fabricated, or produced, and reserved for use on the Project.

**(6)  Amount of Advance Allowance** - 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 Owner’s Representative:

* 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 Owner’s Representative.

**(b)  Terminated Contract** - If the Contract is terminated, the Contractor shall provide the Owner 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 Owner the total amount advanced for the Materials. The Owner 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 Owner will make no further payment until the Project has been completed. The Owner will make progress payments to the party to whom the Contract is assigned, but may withhold an amount sufficient to cover anticipated Owner costs, as determined by the Owner’s Representative, to complete the Project.

Upon completion of the Project, the Owner’s Representative 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 completed Work").

If the cost of the completed Work, less the sum of all amounts previously paid to the Contractor, exceeds the expense incurred by the Owner in completing the Work, including, without limitation, expense for additional managerial and administrative services, the Owner will pay the excess to the Contractor, subject to the consent of the Contractor's Surety.

If the expense incurred by the Owner in completing the Work exceeds the Contract Amount, the Contractor or the Contractor's Surety shall pay to the Owner the amount of the excess expense.

The Owner’s Representative will determine the expense incurred by the Owner and the total amount of Owner damage resulting from the Contractor's default. That determination will be final as provided in 00150.00.

If a termination for default is determined by a court of competent jurisdiction to be unjustified, it shall be deemed a termination for public convenience, and payment to the Contractor will be made as provided in Subsection (b) below.

**(b)  Termination for Public Convenience:**

**(1)  General** - Full or partial termination of the Contract shall not relieve the Contractor of responsibility for completed or performed Work, or relieve the Contractor's Surety of the obligation for any just claims arising from the completed or performed Work.

**(2)  Mobilization** - If mobilization is not a separate Pay Item, and payment is not otherwise provided for under the Contract, the Owner 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 Owner’s Representative.

**(3)  All Other Work** - The Owner will 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 or other compensable work, payment will be as mutually agreed, or, if not agreed, as the Owner’s Representative determines to be fair and equitable. No claim for loss of anticipated profits will be allowed. The Owner will purchase Materials left on hand according to 00195.80.

**(4) Subcontractor Termination Claims -** The Owner will pay the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if such costs are not included in 00195.70(b)(3) subject to the following:

* The Contractor shall reach a binding agreement with the Subcontractor before the Contractor can recover the amount of the Subcontractor’s termination claim from the Owner. That agreement shall be reached before the Contractor presents its claim to the Owner. Contingent agreements with Subcontractors are prohibited.
* The Owner is only liable for reasonable settlement costs between the Contractor and its Subcontractors. Therefore, if the Contractor has agreed to pay an unreasonable amount to a Subcontractor by way of settlement, the Owner is liable only for reasonable costs incurred in that settlement. Reasonable settlement costs do not include the Subcontractor’s anticipated profits on unperformed work or consequential damages, or costs similar to those excluded by 00180.90(b).

**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 Owner’s Representative, 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 Owner will purchase them according to the formula and conditions specified in Subsection (b) below.

**(b)  Purchase Formula and Conditions:**

**(1)  Formula** - The Owner 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 Owner will not purchase the Contractor's Materials left on hand unless the Contractor satisfies the following conditions:

* Requests the Owner's purchase of unused Materials;
* Shows acquisition of the Materials according to 00160.10;
* Shows that the Materials were acquired prior to the Owner 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)** **Notification -** The Contractor shall notify the Owner’s Representative in writing when it considers that all the Work required by the Contract Documents meets the requirements for Final Completion and will request Final Inspection pursuant to 00150.90.

In the event the Contractor does not notify the Owner, but the Owner determines the Work is complete or Substantially Complete, the Owner may, but is not required to, notify the Contractor of its determination. If so, the Owner will notify the Contractor and the Contractor shall proceed with either the completion of the Punch List items noted above or shall sign the Certificate of Completion in the same manner and within the same time as that stated in 00195.90(b)(1) and 00195.90(b)(2).

1. **Final Inspection -** The Owner’s Representative will carry out a Final Inspection and will take one of the following actions:

**(1)** **Certificate of Completion -** Determine the Work is complete and prepare and forward to the Contractor a Certificate of Completion to be signed by the Contractor. After return of the Certificate, the Owner’s Representative will submit it, together with the estimate of the Final Payment due to the Contractor for Acceptance of the Work.

**(2)** **Letter of Substantial Completion -** Determine that the Work is Substantially Complete and provide the Contractor with a Letter of Substantial Completion and a Punch List of items that remain to be performed or corrected for Final Completion.

* The Contractor is required to proceed promptly to complete the Punch List of items remaining. If the Contractor fails to do so within 30 Days or such other time as may be allowed by the Owner’s Representative, the Owner may terminate any further services of the Contractor and pursue all remedies pursuant to 00180.90.
* When the Contractor believes the Punch List items have been corrected and completed, the Contractor shall again notify the Owner’s Representative that all the work required by the Contract Documents is completed and the Owner’s Representative will again take the actions referenced in 00195.90(b)(1) or 00195.90(b)(2).
* Upon Substantial Completion, the Owner will be responsible for utilities, insurance, security, maintenance and damage to work caused by the Owner’s agents and employees unless otherwise provided in the Letter of Substantial Completion. The Contractor remains responsible for damage to work caused by its Subcontractors, agents and employees during the performance of Punch List items.
* Warranties for Products and services provided by the Contractor shall commence upon issuance of the Letter of Substantial Completion, unless otherwise provided by the Contract Documents or agreed to in writing by the Owner’s Representative.

**(3)** **Deficiency List Of Items -** Determine the Work is neither complete nor Substantially Complete and provide the Contractor with a Deficiency list of items that remain to be corrected and completed. When all such items have been corrected and completed, the Contractor shall again notify the Owner’s Representative that the Work is complete or Substantially Complete.

**(c)** **Disagreements -** If the Contractor disagrees with the Owner’s conclusion that the Work has not met the requirements for Final Completion, the Contractor nevertheless shall perform the Work that the Owner believes is required by the Contract Documents. If the Contractor then believes that the performance of such Work entitles it to additional compensation, additional Contract Time, or both, it shall follow the requirements of 00199.30. After performing such Work, the Contractor shall then again provide the Notice required by 00195.90(a).

**(d)** **Final Payment Calculation -** The Final Payment shall be the difference between the Contract Amount, as adjusted by any authorized Change Orders, and the sums of all payments previously made, plus any Retainage held by the Owner.

* The Owner may deduct against any progress payment, including the Final Payment, any amount previously paid to the Contractor in error or any other amount owed to the Owner for any reason resulting from the Contractor’s work under the Contract Documents.
* If the Work under the Contract Documents is designated for a Local Improvement District Project (LID), Retainage will not be released until the conclusion of the assessment hearings and the adoption of an assessment ordinance as provided in City Code.
* If the Owner declares a default of the Contract and it’s Surety fulfills its responsibility to ensure Final Completion, then the Contractor agrees that all progress payments not yet made, and all Retainage held by the Owner shall be paid to the Surety and not to the Contractor.
* ORS 279C.845 requires the Contractor or it’s Surety and every Subcontractor or Subcontractor’s Surety to file certified statements with the Owner in writing certifying various matters regarding the hourly rate of wage paid each worker and that no worker has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract. If the Contractor fails to file these certified statements, the Owner is required to retain 25% of any amount earned by the Contractor until the Contractor has filed the statements. The Owner will follow the requirements of ORS 279C.845 as if fully set forth herein.

**(e)**  **Payment Timeline -** After Acceptance of the Work, the Contractor shall be paid within 30 Days.

**(f)** **Acceptance of the Work -** Acceptance of the Work will not occur until the Contractor provides the Notice required by 00195.90(a), signs and submits the Certificate of Completion referenced in 00195.90(b)(1), signs and submits the acknowledgement form referenced in 195.90(g), submits the Warranty Bond referenced in 0150.96(g) and all other documents required by the Contract Documents, the Owner's Representative presents a report recommending acceptance to the Owner and that report is approved. Thereafter, Final Payment will be made within 30 Days.

**(g)**  **Acknowledgement Form -** Upon Acceptance of the Work, and as a condition of Final Payment, the Contractor shall sign an acknowledgement form:

**(1)** **Acknowledging Payment -** Acknowledging payment of sums previously paid to the Contractor except for Final Payment; and

**(2)** **Monetary Claims Against the Owner -** Releasing all monetary claims against the Owner other than the receipt of Final Payment. However, if the Contractor has submitted a claim to the Owner pursuant to 00199.30, the Contractor may state that a claim has been submitted, and not yet resolved. If that occurs, no waiver of the claims stated on the form will be deemed to have occurred. However, all claims not specifically referenced on the form will be deemed to have been waived; and

**(3) Obligations Due -** All amounts due for labor, materials and other obligations due to the Contractor’s own workers, its Subcontractors and suppliers have been fully paid in accordance with Oregon Law, Chapter 279C, except for amounts that might be due upon Final Payment or if a claim submitted pursuant to 00199.30 that is specifically referenced on the form is later paid by the Owner in whole or in part; and

**(4) Outstanding Claims -** If there are outstanding claims against the Contractor from any person, including the Owner, that are disputed by the Contractor that such claims are payable by its Performance and Payment Bond, its insurance carrier, or by the Contractor itself.

**(5)**  **Conclusion of the Work -** At the conclusion of the Work, the Owner will provide the Contractor the acknowledgement form. If the Contractor fails to return the acknowledgement form, the Owner will send the acknowledgement form to the Contractor via certified mail. If the Contractor still fails to return the acknowledgement form within 30 days from the date of the mailing, such failure shall be deemed to serve as:

* An acknowledgement that all payments are correct; and
* A waiver of any future right to claims in respect to the Contract, except for claims that have already been submitted by the Contractor pursuant to 00199.30.

**0195.95  Resolution of Final Quantities**

**(a)  Request for Correction of Compensation** **-** If the Contractor believes the quantities and amounts detailed in the estimate of the Final Payment, prepared by the Owner’s Representative according to 00195.90, to be incorrect, the Contractor shall submit an itemized statement to the Owner’s Representative detailing all proposed corrections.

**(b) Timeframe for Correction Statement -** This statement must be submitted to the Owner’s Representative within 90 Calendar Days from the date the estimate of the Final Payment was mailed to the Contractor, according to 00195.90(d). Any request for compensation not submitted and supported by an itemized statement within the 90 Calendar Day period will not be paid by the Owner.

**(c)  Acceptance or Rejection of Request:**

**(1)  Consideration of Request** - The Owner’s Representative 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 Owner’s Representative accepts the Contractor's request(s) in full or in part, the Owner’s Representative will prepare a post-final Contract payment, including all accepted corrections, and will forward it to the Contractor.

**(3)  Rejection of Request** - If the Owner’s Representative rejects the request(s) in full, the Owner’s Representative will issue a written notice of rejection and mail it to the Contractor.

**(d) Resolution of Final Quantities -** The timeframe set forth in Section 00199.30(b) for the submission of a claim shall not apply to an error or dispute on final quantities or amounts under this section; however, all other applicable timeframes set forth in Section 00199 shall apply. In addition, the process outlined in Section 00199.30(h) shall be utilized to resolve any remaining dispute on the estimate of the Final Payment. This section does not limit the application of other requests for compensation under Section 00199.

**00195.96 Payment Requirement per Statute -** Pursuant to ORS 279C.605, the Contractor shall include in each of its subcontracts for work or supplies for the Project, a notice of claim clause as defined in ORS 279C.605 and required in ORS 279C.600 for the right of action on the Contractor’s Payment Bond and public works bond.

**Section 00196 - Payment for Extra Work**

**Description**

00196.00  General - Only work not included in the Contract as awarded but deemed by the Owner’s Representative 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 Owner’s Representative and performed as specified. Work performed before issuance of the Owner’s Representative s written authorization shall be at the Contractor's risk. Extra Work will be paid as determined by the Owner’s Representative, according to 00196.10 and 00196.20.

**Provisions and Requirements**

00196.10  Negotiated Price - If the Owner’s Representative can reasonably determine a price estimate for Extra Work, the Owner’s Representative 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 Owner’s Representative Extra Work price estimate by submitting to the Owner’s Representative an Extra Work proposal. The proposal 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 proposal, the Owner’s Representative will maintain force account records of the Extra Work. As soon as practicable, but within 10 Calendar Days of receipt of a properly supported proposal, the Owner’s Representative will review the proposal and advise the Contractor if it is accepted or rejected. The Owner’s Representative will not accept a proposal that cannot be justified on a Force Account basis. If the Contractor's price is accepted, the Owner’s Representative will issue a Change Order, and the Extra Work will be paid at the accepted price.

00196.20  Force Account - If the Owner’s Representative and the Contractor cannot agree on a price for the Extra Work, the Owner’s Representative may issue a Unilateral Change Order requiring the Extra Work to be paid as Force Account Work. Force Account Work records and payment will be made according to Section 00197.

## Section 00197 - Payment for Force Account Work

**00197.00  Scope** - The Materials, Equipment and labor rates and procedures established in this Section apply to Extra Work ordered by the Owner’s Representative to be performed as Force Account Work. With the exceptions identified in 00197.01(b), these rates and procedures also apply to other Work when according to other Sections this Section 00197 applies, including, without limitation, the following:

* 00140.70 - Cost Reduction Proposals
* 00195.20 - Changes to Plans or Character of Work
* 00195.30 - Differing Site Conditions
* 00199.30(b) - Claims Requirements

**00197.01  General:**

**(a)   Extra Work on a Force Account Basis** - Before ordering Force Account Work, the Owner’s Representative 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 Owner’s Representative 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 Owner’s Representative orders the performance of Extra Work as Force Account Work, the Owner’s Representative will record, on a daily basis, the Materials, Equipment, labor, and Special Services used for the Force Account Work during that day. The Owner’s Representative 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 Owner’s Representative, except those furnished and paid under rental rates for use of Equipment;
* Equipment that the Owner’s Representative 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 Owner’s Representative's and Contractor's signatures confirming its accuracy.

**(b)  Other Work** - When according to other Sections, this Section 00197 applies. The following exceptions apply to the Work under those other Sections, except for Extra Work ordered by the Owner’s Representative to be performed as Force Account Work.

* 00197.01(a) does not apply.
* Cost Efficiency - The Owner will not be responsible for additional costs that are a direct or indirect result of the Contractor's inefficient means and methods or that reasonably could have been avoided if the Materials, Equipment, labor or services had been obtained at a more commercially reasonable cost.
* Standby Time - Equipment that is necessary for the Work but is not being operated to progress the Work will be considered to be on standby and will be limited to the standby rates and hour limitations in 00197.20(e). Equipment costs will be limited to a combination of operating time and standby time of not more than 8 hours in a 24 hour period or 40 hours in a 1 week period. The Equipment must be onsite and available for use to be eligible for standby time.

For a period of 7 or fewer Calendar Days: If a continuous period of standby time for a piece of Equipment does not exceed 7 Calendar Days, the accumulated standby cost for that continuous period of standby time shall be limited to the standby rates and hour limitations in 00197.20(e).

For a period of more than 7 Calendar Days: Unless the Owner’s Representative has otherwise agreed in advance in writing, if a continuous period of standby time for a piece of Equipment exceeds 7 Calendar Days, the accumulated standby cost shall be limited to:

* For the first 7 Calendar Days, the standby rates and hour limitations in 00197.20(e), and
* For the portion of the continuous period of standby time after the first 7 Calendar Days, the lesser of:
* The standby rates and hour limitations in 00197.20(e); or
* The cost for moving that piece of Equipment to and from the Project Site according to 00197.20(d).

**00197.10  Materials:**

**(a)  General** - The Contractor will be paid for Materials actually used in the Force Account Work as directed by the Owner’s Representative, 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 Owner, even though the discount may not have actually been taken. The Owner 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 Owner’s Representative, 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 Owner’s Representative 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 Owner’s Representative. 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 Owner’s Representative will be paid at the rental rates given in the most current edition of the EquipmentWatch Cost Recovery (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).

**(b)  Equipment Description** - On the billing form for Equipment costs, the Contractor shall submit to the Owner’s Representative sufficient information for each piece of Equipment and its attachments to enable the Owner’s Representative 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:

Hourly Rate = + 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 by applying only the Model Year Adjustment to the Blue Book Rates. The Regional and User Defined Ownership/Operating Adjustments shall not apply.

**(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** - 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 Owner’s Representative 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 Owner’s Representative 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 Owner’s Representative, standby time will be paid at 40% of the hourly rental rate calculated according to this Subsection, excluding the hourly operating rate. Rates for standby time that are calculated at less than $1 per hour will not be paid. Payment will be limited to not more than 8 hours in a 24-hour period or 40 hours in a 1 week period.

**(f)  Blue Book Omissions** - If a rental rate has not been established in the Blue Book, the Contractor may:

* + - * If approved by the Owner’s Representative, 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 Owner’s Representative for approval; or
      * Request that the Owner’s Representative establish a rental rate.

**(g)  Outside Rental Equipment** - If Contractor-owned or Subcontractor-owned Equipment is not available, and Equipment is rented from outside sources, payment will be based on the actual paid invoice.

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 Owner may reduce the payment when the invoice amount plus allowance is higher than the amount authorized under (c) through (f) of this Subsection.

The provisions of 00180.20(c) apply to owner-operated Equipment.

**00197.30  Labor** - The Contractor will be paid for all labor engaged directly on Force Account Work, including Equipment operators and supervisors in direct charge of the specific force account operations, as follows:

**(a)  Wages** - The actual wages paid to laborers and supervisors, if those wages are paid at rates not more than those for comparable labor currently employed on the Project, or at the recognized, current, prevailing rates in the locality of the Project.

**(b)  Required Contributions** - The actual cost of industrial accident insurance, unemployment compensation contributions, payroll transit district taxes, and social security for old age assistance contributions incurred or required under statutory law and these Specifications. The actual cost of industrial accident insurance is the National Council on Compensation Insurance (NCCI) rate for the assigned risk pool for the appropriate work class multiplied by the experience modification factor for the Contractor.

**(c)  Required Benefits** - The actual amount paid to, or on behalf of, workers as per diem and travel allowances, health and welfare benefits, pension fund benefits, or other benefits when such other benefits are required by a collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Project.

**00197.40  Invoices for Special Services** - Invoices for Special Services that reflect current market pricing may be accepted without complete itemization of Materials, Equipment, and labor costs, if the itemization is impractical or not customary. The invoice for Special Services shall show credit for commercial trade discounts offered or available.

No percentage markup will be allowed other than that specified in 00197.80.

**00197.80  Percentage Allowances** - To the Contractor's actual costs incurred, as limited in this Section 00197, amounts equal to a percentage markup of such costs will be allowed and paid to the Contractor as follows:

**Subsection Percent**

00197.10 Materials 17

00197.20 Equipment 0

00197.30 Labor 22

00197.40 Special Services 15

When a Subcontractor performs ordered Force Account Work, the Contractor will be allowed a supplemental markup of 5% 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 Owner’s Representative's approval on forms provided by the Owner or approved by the Owner’s Representative. 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 Owner’s Representative.

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

**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 quantities.) The Owner will not consider direct disagreements, protests, or claims from Subcontractors, Suppliers, or any other Entity not a party to the Contract.

**Provisions and Requirements**

**00199.10  Procedure for Resolving Disagreements -** When disagreements occur concerning additional compensation or a combination of additional compensation and Contract Time, the Contractor shall first pursue resolution through the Owner’s Representative 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 Owner’s Representative 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 Owner’s Representative, 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 Owner’s Representative and outline the areas of disagreement before starting or continuing the protested Work.

**(b)  Written Notice** - File a proper written notice of protest on a form provided by the Owner with the Owner’s Representative within 7 Calendar Days after receiving the protested order. In the notice the Contractor shall:

* Describe the acts or omissions of the Owner 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.

Failure to comply with these notice requirements renders the notice improper.

**(c)  Records** - Keep complete records of all costs and time incurred throughout the protested Work, and allow the Owner’s Representative 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 Owner’s Representative.

**(d)  Comparison of Records** - Provide the Owner’s Representative adequate facilities for keeping cost and time records of the protested Work. The Contractor and the Owner’s Representative 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 Owner’s Representative.

**(f)  Evaluation of Protest** - The Owner’s Representative will promptly evaluate all protests, after the Contractor has fully complied with the requirements described in 00199.20(b). If the protest is denied, the Owner’s Representative will notify the Contractor in writing of the reasons for full or partial denial. If a protest is found to be valid, the Owner’s Representative will, within a reasonable time, make an equitable adjustment of the Contract. Adjustment of time will be evaluated according to 00180.80.

The Owner’s Representative has no responsibility for evaluating and may reject a protest that does not comply with 00199.20(b). If the protest is rejected, the Owner’s Representative will notify the Contractor in writing of the reasons for rejection.

**00199.30 Claims Procedure:**

1. **General -** This section outlines the procedure to be followed if the Contractor believes that it is entitled to additional compensation, additional Contract Time or both. This section applies to all claims for additional compensation, and all claims for additional Contract Time not resolved under 00180.80 and or 00195.95, regardless of whether the basis for the claim for additional compensation, or claim for additional Contract Time, or both, stems from the performance of Extra Work, excusable delays of any nature, suspension of Contract work, or any other reason whatsoever.

If the Owner agrees with the Contractor’s request for additional compensation or Contract Time, the parties shall execute a Change Order setting forth their agreement. If the Owner disagrees, the Contractor shall do the following:

• Continue promptly with the Work, including any Extra Work or Changed Work, as ordered by the Owner’s Representative;

• Keep complete records of its costs in the manner set forth by the Force Account Work provisions of the Contract Documents, as applicable. The Owner will also keep such records to eliminate later confusion. The keeping of such records by either Contractor or Owner does not mean that any claim is valid;

• Submit documentation supporting the request for additional compensation, additional time or both, as required by 00199.30(c) and 00199.30(d).

**(b)**  **Notification -** When the Contractor believes it is entitled to be paid more than the Contract Amount or is entitled to additional days to be added to the Contract Time, or both, the Contractor shall notify the Owner’s Representative in writing before beginning any work for which additional compensation is sought, or, where possible, prior to the occurrence that merits the additional time. To meet the claim requirements, the written Notice must include:

* A description of the event that requires additional compensation or additional Contract Time;
* The estimated amount of the additional cost to the Owner;
* An estimate of the delay, if applicable;
* Any Contract Document provision(s) that support the claim; and
* The estimated time to complete the work for which additional compensation is sought or additional Contract Time and the estimated date for submission of the Claims Package described in subsection (f) below which is required to be submitted within 45 Days from completion of the work at issue.

**(c)** **Claims Package for Additional Compensation -** The Contractor’s request for additional compensation shall be supported by a Claims Package that includes all documentation that establishes its right to additional compensation as it relates to the contract and all documentation substantiating the amount of additional compensation to which it is entitled. The documentation shall include the cost records required by 00199.30 and all other relevant documentation, such as payroll records, purchase orders, quotations, invoices, estimates, profit and loss statements, daily logs, ledgers and journals.

The Claims Package shall be submitted within 45 Days following completion of any work and no more than 7 Days after Substantial Completion for which a claim of additional compensation is made.

The Owner will evaluate the accuracy of the Claims Package to assess the Contractor’s claim. Failure to submit the Claims Package within the time frame set forth in above is a conclusive waiver of the Contractor’s right to additional compensation.

**(d)**  **Claims Package for** **Additional Time -** Any request for additional Contract Time shall be supported by the Claims Package that includes a description of the event on which the request is based, and all information, including a schedule analysis, that shows that the event delayed completion of the Project as a whole.

The Contractor shall submit the documentation within 45 days following the completion of the event that caused the delay and for which a claim of additional time has been made.

The Owner will evaluate the accuracy of the Claims Package to assess the Contractor’s claim. Failure to submit the Claims Package within the time frame set forth in above is a conclusive waiver of the Contractor’s right to additional compensation.

**(e) Additional Information -** The Contractor shall provide additional documentation to support its request within 10 days if requested to do so by the Owner.

**(f)** **Failure to Comply -** If the Contractor does not provide written Notice of a Claim for additional compensation or additional Contract Time in accordance with 199.30(b), as applicable, or provide a Claims Package substantiating the claim in accordance with 199.30(c), (d), and (e), as applicable, the Notice is invalid and the claim for additional compensation, additional Contract Time, or both, is waived.

**(g)** **Decision by** **Owner’s Representative** **-** Following receipt of all required documentation, the Owner’s Representative will arrange a meeting, within 21 Calendar Days or as otherwise agreed by the parties, with the Contractor in order to present the claim for formal review and discussion. If Owner determines that the Contractor has not provided required documentation, the Owner may still meet with Contractor to discuss any claim without waiver of the Owner's right to later assert that the Contractor's claim has been waived for failure to submit documentation.

If the Owner’s Representative determines that the Contractor must furnish additional information, records or documentation to allow proper evaluation of the claim, the Owner’s Representative will schedule a second meeting, to be held within 14 Calendar Days or as otherwise agreed by the parties, at which the Contractor shall present the requested information, records and documentation.

The Owner’s Representative will provide a written decision to the Contractor within 30 Calendar Days of the last Owner’s Representative-level meeting.

**(h) Higher Authority Review -** If the Contractor does not accept the Owner’s Representative's decision, the Contractor may, within 10 Calendar Days of receipt of the written decision, request in writing that the Owner’s Representative arrange a review with higher authority, who also shall have the authority to resolve the dispute.

The meeting will take place within 21 Calendar Days of the Owner's receipt of the request, or as otherwise agreed by the parties.

If the Owner’s higher authority determines that the Contractor must furnish additional information, records or documentation to allow proper evaluation of the claim, the Owner’s higher authority will schedule a second meeting, to be held within 14 Calendar Days, or as otherwise agreed by the parties, at which the Contractor shall present the requested information, records and documentation.

The Owner’s higher authority will provide a written decision to the Contractor within 30 Calendar Days of the last higher authority meeting.

**(i) Mediation -** If the claim is not resolved after the last higher authority meeting, the Contractor and Owner agree that the matter will be submitted to mediation. The mediator shall be chosen by mutual agreement. If a mediator cannot be agreed upon, the Contractor and Owner agree to a two person mediation panel with each party selecting one mediator. The mediation fee shall be borne equally by the Owner and Contractor.

**(j) Arbitration -** If the matter is not resolved by mediation, the Owner and Contractor may mutually agree to resolve the dispute by arbitration. The Owner and Contractor may mutually agree to any arbitration method. In the event that no agreement is reached as to the method of arbitration, the arbitration shall be as set forth in accordance with the Large, Complex Construction Cases procedures of the American Arbitration Association’s panels of arbitrators for Large, Complex Construction Cases. The Contractor shall pay the arbitration fee required to initiate the arbitration.

The Contractor and Owner shall agree upon the appointment of an arbitrator. In the event of disagreement, each party shall appoint one arbitrator within 30 Calendar Days of the disagreement. Those two arbitrators will appoint a third arbitrator to act as the presiding arbitrator.

The decision of the arbitration panel shall be final, binding and conclusive upon the parties and subject to appeal only on those grounds for which arbitrations in Oregon are subject to appeal and may be confirmed or embodied in an order or judgment of any court having jurisdiction. The arbitrators appointed pursuant to this Agreement shall not have the power to award punitive damages or attorney fees and shall not have the power to rescind this agreement.

**(k) Litigation -** If the matter is not arbitrated and the dispute remains unresolved, either party may pursue resolution through litigation in accordance with the requirements of the Specifications.

The procedures specified in this subsection shall be the sole and exclusive procedures for the resolution for disputes between the Owner and Contractor arising out of or relating to this Contract, except that either may seek preliminary judicial relief or an injunction to avoid irreparable damage. Despite any injunctive relief, the procedures specified in this Contract for the resolution of claims shall remain applicable.

The Owner is not obligated under the Contract to provide additional Contract Time or additional Compensation unless documentation submitted by the Contractor establishes its entitlement to additional compensation, additional Contract Time, or both. The parties agree that it is not a breach of contract to deny a request for additional compensation or request for additional Contract Time if the Contractor fails to submit adequate documentation substantiating its claim or request for time.

**00199.40 Litigation -** Any legal proceeding, of any nature whatsoever, brought by the Contractor against the Owner, that asserts a breach of contract, a declaratory judgment proceeding, or any other legal or equitable claim related to, or arising, from work performed pursuant to the Contract Documents, shall be brought within 1 year of the date that Final Payment is made to the Contractor, regardless of whether the Contractor is aware of the legal claim it might have during that time. If the legal proceeding is not brought within that 1 year period, the Contractor expressly waives any and all claims that are in any way related to the Contract.

For purposes of this Subsection payment is considered made when the City of Portland sends a check to the Contractor that contains the Final Payment. The subsequent payment of claims made pursuant to Subsection 00199.30, shall not affect the date when Final Payment is considered to have been made.

The Contractor agrees that any legal proceeding initiated by the Contractor shall be brought only in the Circuit Court of Multnomah County, Oregon or in the U.S. District Court for the District of Oregon located in Portland, Oregon, whichever is applicable.

The Contractor agrees that, as a result of its willingness to do business with the City of Portland, the Contractor shall resolve any dispute with the Owner in Multnomah County, Oregon. All discovery between the parties undertaken pursuant to federal, state, or local rules shall be conducted within that county, including, but not limited to, the production of documents and the appearance of expert and lay witnesses for deposition, if such depositions are permitted by court rules.

In the event of a dispute, the Contractor and the Owner agree to bear the cost of producing their own employees for deposition in Multnomah County, including but not limited to travel costs, per diem expenses and the cost of employee time. The parties further agree that if court rules or the court itself permits the deposition of expert witnesses, the party seeking the testimony of the expert witness will bear that witness’ reasonable costs of travel, reasonable preparation costs and costs for time while in transit.

If litigation has commenced or is expected, the Contractor and its representative, including but not limited to the Contractor's attorneys, agree to make any requests for documents, including Public Records Requests, through the City Attorney's Office of the City of Portland.