

**1-07 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC****1-07.1 Laws to be Observed**

The Contractor shall always comply with all Federal, State, tribal or local laws, ordinances, and regulations that affect Work under the Contract. The Contractor shall indemnify, defend, and save harmless the State (including the Governor, Commission, Secretary, and any agents, officers, and employees) against any claims that may arise because the Contractor (or any employee of the Contractor or Subcontractor or material person) violated a legal requirement.

The Contractor shall be responsible for the safety of all workers and shall comply with all appropriate state safety and health standards, codes, rules, and regulations, including, but not limited to, those promulgated under the Washington Industry Safety and Health Act RCW Chapter 49.17 (WISHA) and as set forth in Title 296 WAC (Department of Labor and Industries). The Contractor shall likewise be obligated to comply with all federal safety and health standards, codes, rules, and regulations that may be applicable to the Contract Work.

U.S. Mine Safety and Health Administration rules apply when the project includes pit or quarry operations. Among other actions, these regulations require the Contractor to notify the nearest Mine Safety and Health sub district office (1) of the project before it begins, (2) of the starting date, and (3) of the Physical Completion Date.

Without usurping the authority of other agencies, the Contracting Agency will cooperate with them in their efforts to enforce legal requirements. Upon awareness of a violation of a legal requirement, the Engineer will notify the Contractor in an effort to achieve compliance. The Engineer may also notify the agency responsible for enforcement if the Engineer deems that action is necessary to achieve compliance with legal requirements. The Engineer will also assist the enforcement agency to obtain Contractor compliance to the extent such assistance is consistent with the provisions of the Contract.

The Contracting Agency will not adjust payment to compensate the Contractor for changes in legal requirements unless those changes are specifically within the scope of RCW 39.04.120. For changes under RCW 39.04.120, the Contracting Agency will compensate the Contractor by negotiated change order as provided in [Section 1-04.4](#).

Under certain conditions, the Contracting Agency will adjust payment to compensate for tax changes. First, the changes shall involve federal or state taxes on materials or fuel used in or consumed for the project. Second, the changes shall increase or decrease Contractor-paid taxes by more than \$500. For items in the original Contract, the tax change must occur after the Bid opening date. For negotiated Contracts or items in a supplemental agreement, the tax change must take place after the execution date of the Contract or agreement. Within these conditions, the Contracting Agency will adjust compensation by the actual dollar amounts of increase or decrease caused by the tax changes. If the Engineer requests it, the Contractor shall certify in writing that the Contract price does not include any extra amount to cover a possible change in taxes.

The Contracting Agency may audit the records of the Contractor as provided in [Section 1-09.12](#), to verify any claim for compensation because of changes in laws or taxes.

**1-07.2 State Taxes**

The Washington State Department of Revenue has issued special rules on the state sales tax. Sections 1-07.2(1) through 1-07.2(3) are meant to clarify those rules. The Contractor should contact the Financial System Manager, Department of Transportation, Olympia, for answers to questions in this area. The Contracting Agency will not adjust its payment if the Contractor bases a Bid on a misunderstood tax liability.

The Contractor shall include all Contractor-paid taxes in the unit Bid prices or other Contract amounts. In some cases, however, state retail sales tax will not be included. Section 1-07.2(2) describes this exception.

The Contracting Agency will pay the retained percentage only if the Contractor has obtained from the State Department of Revenue a certificate showing that all Contract-related taxes have been paid (RCW 60.28.050). The Contracting Agency may deduct from its payments to the Contractor any amount the Contractor may owe the State Department of Revenue, whether the amount owed relates to this Contract or not. Any amount so deducted will be paid into the proper State fund.

**1-07.2(1) State Sales Tax: Work Performed on City, County, or Federally-Owned Land**

State Department of Revenue Rule 171 and its related rules apply for this section.

The Special Provisions of the Contract will identify those parts of the project that require Work on land owned by:

1. A municipal corporation,
2. A political subdivision of the State, or
3. The United States of America.

For Work performed on such land, the Contractor shall include Washington State retail sales taxes in the various unit Bid prices or other Contract amounts. These retail sales taxes shall include those the Contractor pays on purchases of materials, equipment, and supplies used or consumed in doing the Work.

**1-07.2(2) State Sales Tax: Work on State-Owned or Private Land**

The Special Provisions of the Contract will identify those parts of the project that require Work on State-owned or private land.

For Work performed on State-owned or private land, the Contractor shall collect from the Contracting Agency, retail sales tax on the full Contract price. The Contracting Agency will automatically add this sales tax to each payment to the Contractor. For this reason, the Contractor shall not include the retail sales tax in the unit Bid prices or in any other Contract amount.

However, the Contracting Agency will not add in sales tax the Contractor (prime or Subcontractor) pays on the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the project. Such sales taxes shall be included in the unit Bid prices or in any other Contract amount whether the State owns the construction site or not.

**1-07.2(3) Services**

The Contractor shall not collect retail sales tax from the Contracting Agency on any Contract wholly for professional or other services (as defined in State Department of Revenue Rules 138 and 224).

**1-07.3 Forest Protection and Merchantable Timber Requirements****1-07.3(1) Forest Fire Prevention**

When the Work is in or next to State or Federal forests, the Contractor shall know and observe all laws and rules (State or Federal) on fire prevention and sanitation. The Contractor shall ask the local forest supervisor or regional manager to outline requirements for permits, sanitation, fire-fighting equipment, and burning.

The Contractor shall take all reasonable precautions to prevent and suppress forest fires. In case of forest fire, the Contractor shall immediately notify the nearest forest headquarters of its exact site and shall make every effort to suppress it. If needed, the Contractor shall require his/her employees and those of any Subcontractor to work under forest officials in fire-control efforts.

**1-07.3(2) Merchantable Timber Requirements**

When merchantable timber is to be cut, the Contractor shall obtain a permit from the appropriate regional office of the State Department of Natural Resources and comply fully with the State Forest Practices Act.

No person may export from the United States, or sell, trade, exchange, or otherwise convey to any other person for the purpose of export from the United States, timber originating from the project.

The Contractor shall comply with the Forest Resources Conservation and Shortage Relief Amendments Act of 1993, (Public Law 103-45), and the Washington State Log Export Regulations, (WAC 240-15).

**1-07.4 Sanitation****1-07.4(1) General**

The Contractor shall provide employees with all accommodations required by the State Department of Health and other agencies. These accommodations shall be kept clean, neat, and sanitized, and shall not create any public nuisance. The Contractor shall keep all campsites clean, properly dispose of all refuse, and leave each site in a neat and sanitary condition.

**1-07.4(2) Health Hazards**

Biological hazards and associated physical hazards may be present in the worksite. The Contractor shall take precautions and perform any necessary Work to provide and maintain a safe and healthful worksite in accordance with applicable laws. Payment for Work necessary to provide and maintain a safe worksite will be incidental to associated items of Contract Work unless the Contract includes provisions to the contrary.

**1-07.5 Environmental Regulations****1-07.5(1) General**

Throughout the Work, the Contractor shall comply with all current rules of the resource agencies having jurisdiction over the affected areas. Some, though not all, of these rules are summarized below. Any of these agencies may, without prejudice to the Contracting Agency, add rules as needed to protect game, fish, or the environment.

The following restrictions apply to all Work:

1. No Work shall occur within the jurisdictional areas unless authorized in the Contract Provisions and associated environmental permits.
2. No materials shall be placed below the ordinary high water line except as may be specified in the Contract.
3. No equipment shall enter waters of the State, except as may be specified in the Contract.

**1-07.5(2) State Department of Fish and Wildlife**

In doing the Work, the Contractor shall:

1. Not degrade water in a way that would harm fish. (Criteria: Washington State Water Quality Regulations.)
2. Release any fish stranded by the project into a flowing stream or open water.
3. Replant any stream bank or shoreline area if the project disturbs vegetative cover. Replanted trees, brush, or grasses shall resemble the type and density of surrounding growth, unless the Special Provisions permit otherwise.
4. Leave, when the Work is complete, an open-water channel at the lowest level of any isolated pothole to connect it with the main body of water.
5. Prevent any fish-threatening silt buildup on the bed or bottom of any body of water.
6. Never block stream flow or fish passage.
7. Never remove gravel or other bottom material from the high-water flow channel bed of any stream or from the bottom of any other body of water, except as may be permitted by the Special Provisions
8. Dispose of any project debris by removal, burning, or placement above high-water flows.

If the Work in (1) through (3) above differs little from what the Contract requires, the Contracting Agency will measure and pay for it at unit Contract prices. But if Contract items do not cover those areas, the Contracting Agency will pay pursuant to [Section 1-09.4](#). Work in (4) through (8) above will be incidental to Contract pay items.

**1-07.5(3) State Department of Ecology**

In doing the Work, the Contractor shall:

1. Get a waste discharge permit from the Ecology Department before:
  - a. Washing aggregate; or
  - b. Discharging water from pit sites or excavations into a ground or surface waterway when the water contains turbidity, silt, or foreign materials.
2. Give the Project Engineer a copy of each waste discharge permit before the Work begins.
3. Control drainage and erosion in a manner that reduces waterway pollution.
4. Perform Work in such a manner that all materials and substances not specifically identified in the Contract documents to be placed in the water do not enter waters of the State, including wetlands.
5. Use equipment that is free of external petroleum-based products.
6. Remove accumulations of soil and debris from drive mechanisms (wheels, tracks, tires) and undercarriage of equipment prior to using equipment below the ordinary high water line.

7. Clean loose dirt and debris from all materials placed below the ordinary high water line. No materials shall be placed below the ordinary high water line without the Engineer's approval.
8. Notify the Engineer and Ecology Department immediately should oil, chemicals, or sewage spill into waters of the State

#### **1-07.5(4) Air Quality**

The Contractor shall comply with all rules of local air pollution authorities. If there are none, air-quality rules of the State Department of Ecology shall govern the Work.

The Washington Clean Air Act requires that rock crushing, rock drilling, asphalt batch plants, and concrete plants receive an air quality permit in advance of the operation. The air quality permit process may include additional State Environment Policy Act (SEPA) requirements. Contractors or operators should contact the appropriate air pollution control authority well in advance of intended start-up. The permit process may require up to 30-days.

When the Work includes demolition of any existing facility, the Contractor shall comply with the requirements of the National Emission Standards for Asbestos. Any requirement included in state or Federal regulations on this subject that applies to the "owner or operator" shall be the responsibility of the Contractor.

#### **1-07.6 Permits and Licenses**

Contractors shall obtain all required permits and licenses and give any notices these call for.

The Contracting Agency will support the Contractor in efforts to obtain a temporary operating permit in its name if:

1. A local rule or an agency policy prevent issuing the permit to a private firm;
2. The Contractor takes all action to obtain the permit;
3. The permit will serve the public interest;
4. The permit applies only to Work under the Contract;
5. The Contractor agrees in writing: (a) to comply with all the issuing agency requires, and (b) to hold the Contracting Agency harmless for any Work-related liability incurred under the permit; and
6. The permit costs the Contracting Agency nothing.

#### **1-07.7 Load Limits**

##### **1-07.7(1) General**

While moving equipment or materials on any public Highway, the Contractor shall comply with all laws that control traffic or limit loads. The Contract neither exempts the Contractor from such laws nor licenses overloads. At the Engineer's request, the Contractor shall provide any facts needed to compute the equipment's weight on the Roadway.

When the Contractor moves equipment or materials within the project limits as shown in the Plans, legal load limits shall apply on:

1. Any road open to and in use by public traffic; or
2. Any existing road not scheduled for major reconstruction under the current Contract; or

3. Any newly paved road (with final lift in place) built under this Contract. The Contractor may haul overloads (not more than 25-percent above load limits) on such roads not open to public traffic if this does not damage completed Work. The Contractor shall pay all repair costs of any overload damage.

Elsewhere on the project, the Contractor may operate equipment with only the load-limit restrictions in 1, 2, and 3 in [Section 1-07.7\(2\)](#). The Contractor shall remain responsible, however, for all load-caused damage. All vehicles subject to license on a tonnage basis shall be licensed to maximum legal capacity before operating under these limits.

If necessary and safe to do so, and if the Contractor requests it in writing, the Engineer may approve higher load limits than those in the load-limit restrictions in 1, 2, and 3 in [Section 1-07.7\(2\)](#). The written request shall:

1. Describe loading details;
2. Describe the arrangement, movement, and position of equipment on the Structure or over culverts and pipes; and
3. State that the Contractor assumes all risk for damage.

Unit prices shall cover all costs for operating over bridges and culverts. Nothing in this section affects the Contractor's other responsibilities under these Specifications or under public Highway laws.

#### **1-07.7(2) Load-Limit Restrictions**

1. **Structures Designed for Direct Bearing of Live Loads.** The gross or maximum load on each vehicle axle shall not exceed the legal load limit by more than 35-percent. No more than one vehicle shall operate over any Structure at one time. The Contractor shall immediately remove any dirt, rock, or debris that may gather on the Structure's Roadway surface.  
If the Contractor desires to utilize work methods resulting in load that exceed any of the restrictions described above, the Contractor shall submit calculations and other supporting information (as specified in [Section 6-01.6](#) for bridges under construction) to the Engineer for approval in accordance with Sections [6-01.6](#) and [6-01.9](#). The Engineer will review the calculations and supporting information to determine if the loading meets the criteria specified in [Section 6-01.6](#). The Contractor shall not place or operate construction vehicles or equipment on or over the Structure until receiving the Engineer's approval of the submittal.
2. **Underpasses and Reinforced Concrete Box Culverts Under Embankments.** Loads shall not exceed 24,000-pounds on a single axle and 16,000-pounds each on tandem axles spaced less than 10-feet apart. These limits are permitted only if the embankment has: (a) been built to Specifications, and (b) reached at least 3-feet above the top of the underpass or culvert.  
When the embankment has reached 5-feet above the top of the underpass or culvert, the Contractor may increase per-axle loads up to 100,000-pounds if outside wheel spacing is at least 7-feet on axle centers.
3. **Pipe Culverts and Sewer Pipes.** Loads over pipe culverts and sewer pipes shall not exceed 24,000-pounds on a single axle and 16,000-pounds each on tandem axles spaced less than 10-feet apart. These limits are permitted only if: (a) the culvert or pipe has been installed and backfilled to Specifications, and (b) the embankment has reached at least 2-feet above the top limit of pipe compaction.

When the embankment has reached 5-feet above the top limit of pipe compaction, the Contractor may increase per-axle loads up to 100,000-pounds if outside wheel spacing is at least 7-feet on axle centers, except that:

- a. For Class III reinforced concrete pipes, the embankment shall have risen above the top limit of compaction at least 6-feet.
- b. For Class II reinforced concrete pipes, the maximum load for each axle shall be 80,000-pounds if outside wheel spacing is at least 7-feet on axle centers. In this case, the embankment shall have risen above the top limit of compaction at least 6-feet.

### **1-07.8 High Visibility Apparel**

The Contractor shall require all personnel at the work site under their control (including Subcontractors and lower tier subcontractors) to comply with the following:

1. To wear reflective vests, except that during daylight hours, clothing of orange, yellow, strong yellow green or fluorescent versions of these colors may be worn in lieu of vests. Flaggers must wear reflective vests and hard hats at all times;
2. During hours of darkness, to wear vests, white coveralls or either high visibility reflective fluorescent lime yellow pants with fluorescent orange strip or reflective fluorescent orange pants with fluorescent lime yellow strip.
3. When rain gear is worn during hours of darkness, it shall be white or yellow;
4. The reflective vests shall always be the outermost garments.

Exceptions to these requirements are: (1) when personnel are out of view of, or not exposed to traffic, (2) when personnel are inside a vehicle, or (3) where it is obvious that such apparel is not needed for the employees safety from traffic.

Reflective vests shall be high visibility lime-yellow in base color with orange-red trim and 3M silver Scotchlite reflective material (or equivalent) or orange-red base color with lime-yellow reflective stripe. Vests shall have 230 or more square inches of reflective trim as measured on a medium vest. The 3M type 6187 (or equivalent) 2-inch wide lime-yellow reflective stripe can be used as the lime-yellow trim on a red-orange vest. All components to these garments must be visible in 360-degrees, from all angles and the reflective material visible at a minimum of 1,000-feet.

Reflective vests, hard hats, white coveralls, rain gear, and other apparel shall be furnished and maintained in a neat, clean, and presentable condition at no expense to the Contracting Agency.

### **1-07.9 Wages**

#### **1-07.9(1) General**

This Contract is subject to the minimum wage requirements of RCW 39.12 and to RCW 49.28 (as amended or supplemented). On Federal-aid projects, Federal wage laws and rules also apply. The hourly minimum rates for wages and fringe benefits are listed in the Contract Provisions. When Federal wage and fringe benefit rates are listed, the rates match those identified by the U.S. Department of Labor's "Decision Number" shown in the Contract Provisions.

The Contractor, any Subcontractor, and all individuals or firms required by RCW 39.12, WAC 296-127, or the Federal Davis-Bacon and Related Acts (DBRA) to pay minimum prevailing wages, shall not pay any worker less than the minimum hourly wage rates and fringe benefits required by RCW 39.12 or the DBRA. Higher wages and benefits may be paid.

By including the hourly minimum rates for wages and fringe benefits in the Contract Provisions, the Contracting Agency does not imply that the Contractor will find labor available at those rates. The Contractor shall be responsible for any amounts above the minimums that will actually have to be paid. The Contractor shall bear the cost of paying wages above those shown in the Contract Provisions.

When the project is subject to both State and Federal hourly minimum rates for wages and fringe benefits and when the two rates differ for similar kinds of labor, the Contractor shall not pay less than the higher rate unless the State rates are specifically preempted by Federal law. When the project involves both Highway Work and building Work, the Contract Provisions may list a Federal wage and fringe benefit rate for the Highway Work and a separate Federal wage and fringe benefit rate for the building Work. The area in which the worker is physically employed shall determine which Federal wage and fringe benefit rate shall be used to compare against the State wage and fringe benefit rate.

If employing labor in a class not listed in the Contract Provisions on state funded projects only, the Contractor shall request a determination of the correct wage and benefits rate for that class and locality from the Industrial Statistician, Washington State Department of Labor and Industries (State L&I), and provide a copy of those determinations to the Project Engineer.

If employing labor in a class not listed in the Contract Provisions on federally funded projects, the Contractor shall request a determination of the correct wage and benefit for that class and locality from the U. S. Secretary of Labor through the Project Engineer. Generally, the Contractor initiates the request by preparing standard form 1444 Request for Authorization of Additional Classification and Rate, available at <http://www.wdol.gov/docs/sf1444.pdf>, and submitting it to the Project Engineer for further action.

The Contractor shall be responsible for compliance with the requirements of the DBRA and RCW 39.12 by all firms (Subcontractors, lower tier subcontractors, Suppliers, Manufacturers, or Fabricators) engaged in any part of the Work necessary to complete this Contract. Therefore, should a violation of this subsection occur by any firm that is providing Work or materials for completion of this Contract whether directly or indirectly responsible to the Contractor, the Contracting Agency will take action against the Contractor, as provided by the provisions of the Contract, to achieve compliance, including but not limited to, withholding payment on the Contract until compliance is achieved.

In the event the Contracting Agency has an error (omissions are not errors) in the listing of the hourly minimum rates for wages and fringe benefits in the Contract Provisions, the Contractor, any Subcontractor, any lower tier subcontractor, or any other firm that is required to pay prevailing wages, shall be required to pay the rates as determined to be correct by State L&I (or by the U.S. Department of Labor when that agency sets the rates). A change order will be prepared to ensure that this occurs. The Contracting Agency will reimburse the Contractor for the actual cost to pay the difference between the correct rates and the rates included in the Contract Provisions, subject to the following conditions:

1. The affected firm relied upon the rates included in the Contract Provisions to prepare its Bid and certifies that it did so;
2. The allowable amount of reimbursement will be the difference between the rates listed and rates later determined to be correct plus only appropriate payroll markup the employer must pay, such as, social security and other payments the employer must make to the Federal or State Government;

3. The allowable amount of reimbursement may also include some overhead cost, such as, the cost for bond, insurance, and making supplemental payrolls and new checks to the employees because of underpayment for previously performed Work; and
4. Profit will not be an allowable markup.

Firms that anticipated, when they prepared their Bids, paying a rate equal to, or higher than, the correct rate as finally determined will not be eligible for reimbursement.

#### **1-07.9(2) Posting Notices**

In a location acceptable to State L&I, the Contractor shall ensure the following is posted:

1. One copy of the approved "Statement of Intent to Pay Prevailing Wages" for the Contractor, each Subcontractor, each lower tier subcontractor, and any other firm (Supplier, Manufacturer, or Fabricator) that falls under the provisions of RCW 39.12 because of the definition of "Contractor" in WAC 296-127-010;
2. One copy of the prevailing wage rates for the project;
3. The address and telephone number of the Industrial Statistician for State L&I (along with notice that complaints or questions about wage rates may be directed there); and
4. FHWA 1495/1495A "Wage Rate Information" poster if the project is funded with Federal-aid.

#### **1-07.9(3) Apprentices**

If employing apprentices, the Contractor shall submit to the Engineer written evidence showing:

1. Each apprentice is enrolled in a program approved by the Washington State Apprenticeship and Training Council;
2. The progression schedule for each apprentice; and
3. The established apprentice-journey level ratios and wage rates in the project locality upon which the Contractor will base such ratios and rates under the Contract. Any worker for whom an apprenticeship agreement has not been registered and approved by the Washington State Apprenticeship and Training Council shall be paid at the prevailing hourly journey level rate as provided in RCW 39.12.021.

#### **1-07.9(4) Disputes**

If labor and management cannot agree in a dispute over the proper prevailing wage rates, the Contractor shall refer the matter to the Director of State L&I (or to the U.S. Secretary of Labor when that agency sets the rates). The Director's (or Secretary's) decision shall be final, conclusive, and binding on all parties.

#### **1-07.9(5) Required Documents**

On forms provided by the Industrial Statistician of State L&I, the Contractor shall submit to the Engineer the following for itself and for each firm covered under RCW 39.12 that provided Work and materials for the Contract:

1. A copy of an approved “Statement of Intent to Pay Prevailing Wages” State L&I’s form number F700-029-000. The Contracting Agency will make no payment under this Contract for the Work performed until this statement has been approved by State L&I and a copy of the approved form has been submitted to the Engineer.
2. A copy of an approved “Affidavit of Prevailing Wages Paid,” State L&I’s form number F700-007-000. The Contracting Agency will not release to the Contractor any funds retained under RCW 60.28.011 until all of the “Affidavit of Prevailing Wages Paid” forms have been approved by State L&I and a copy of all the approved forms have been submitted to the Engineer.

The Contractor shall be responsible for requesting these forms from State L&I and for paying any approval fees required by State L&I.

Certified payrolls are required to be submitted by the Contractor to the Engineer, for the Contractor and all Subcontractors or lower tier subcontractors, on all Federal-aid projects and, when requested in writing by the Engineer, on projects funded with only Contracting Agency funds. If these payrolls are not supplied within ten calendar days of the end of the preceding weekly payroll period for Federal-aid projects or within ten calendar days from the date of the written request on projects with only Contracting Agency funds, any or all payments may be withheld until compliance is achieved. Also, failure to provide these payrolls could result in other sanctions as provided by State laws (RCW 39.12.050) and/or Federal regulations (29 CFR 5.12). All certified payrolls shall be complete and explicit. Employee labor descriptions used on certified payrolls shall coincide exactly with the labor descriptions listed on the minimum wage schedule in the Contract unless the Engineer approves an alternate method to identify the labor used by the Contractor to compare with the labor listed in the Contract Provisions. When an apprentice is shown on the certified payroll at a rate less than the minimum prevailing journey wage rate, the apprenticeship registration number for that employee from the State Apprenticeship and Training Council shall be shown along with the correct employee classification code.

#### **1-07.9(6) Audits**

The Contracting Agency may inspect or audit the Contractor’s wage and payroll records as provided in [Section 1-09.12](#).

#### **1-07.10 Worker’s Benefits**

The Contractor shall make all payments required for unemployment compensation under Title 50 RCW and for industrial insurance and medical aid required under Title 51 RCW. If any payment required by Title 50 or Title 51 is not made when due, the Contracting Agency may retain such payments from any money due the Contractor and pay the same into the appropriate fund. Such payment will be made only after giving the Contractor 15 days prior written notice of the Contracting Agency’s intent to disburse the funds to the Washington State Department of Labor and Industries or Washington State Employment Security Department as applicable. The payment will be made upon expiration of the 15-calendar day period if no legal action has been commenced to resolve the validity of the claim. If legal action is instituted to determine the validity of the claim prior to the expiration of the 15-day period, the Contracting Agency will hold the funds until determination of the action or written settlement agreement of the appropriate parties.

For Work on or adjacent to water, the Contractor shall make the determination as to whether workers are to be covered under the Longshoremen's and Harbor Worker's Compensation Act administered by the U.S. Department of Labor, or the State Industrial Insurance coverage administered by the Washington State Department of Labor and Industries.

The Contractor shall include in the various items in the Bid Proposal all costs for payment of unemployment compensation and for providing either or both of the insurance coverages. The Contractor will not be entitled to any additional payment for: (1) failure to include such costs, or (2) determinations made by the U.S. Department of Labor or the Washington State Department of Labor and Industries regarding the insurance coverage.

The Public Works Contract Division of the Washington State Department of Labor and Industries will provide the Contractor with applicable industrial insurance and medical aid classification and premium rates. After receipt of a *Revenue Release* from the Washington State Department of Revenue, the Contracting Agency will verify through the Department of Labor and Industries that the Contractor is current with respect to the payments of industrial insurance and medical aid premiums.

### **1-07.11 Requirements For Nondiscrimination**

#### **1-07.11(1) General Application**

Discrimination in all phases of contracted employment, contracting activities and training is prohibited by Title VI of the Civil Rights Act of 1964, Section 162(a) of the Federal-Aid Highway Act of 1973, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Justice System Improvement Act of 1979, the American with Disabilities Act of 1990, the Civil Rights Restoration Act of 1987, 49 CFR Part 21, RCW 49.60 and other related laws and statutes. The referenced legal citations establish the minimum requirements for affirmative action efforts and define the basic nondiscrimination provisions as required by this section of these Standard Specifications.

#### **1-07.11(2) Contractual Requirements**

1. The Contractor shall not discriminate against any employee or applicant for contracted employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory or mental disability.
2. The Contractor shall, in all solicitations or advertisements for employees, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.
3. The Contractor shall insert the following notification in all solicitations for bids for Work or material subject to federal laws and regulations and made in connection with all program and activities and, in adapted form in all proposals for negotiated agreements:

**The Contractor in accordance to Title VI of the Civil Rights Act of 1964, 78 Stat.252, 42 U.S. Code 2000d to 2000d-4, and Title 49 Code of Federal Regulations, Part 21, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color national origin and sex in consideration for an award.**

4. The Contractor shall make decisions with regard to selection and retention of sub Contractors, procurement of materials and equipment and similar actions related to the Contract without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.
5. The Contractor shall send to each labor union, employment agency, or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency or worker's representative, of the Contractor's commitments under this Contract with regard to nondiscrimination.
6. The Contractor shall permit access to its books, records and accounts by the Contracting Agency for the purpose of investigating to ascertain compliance with these Specifications. In the event that information required of a Contractor is in the possession of another who fails or refuses to furnish this information, the Contractor shall describe, in writing, what efforts were made to obtain the information.
7. The Contractor shall maintain records with the name and address of each minority/female worker referred to the Contractor and what action was taken with respect to the referred worker.
8. The Contractor shall notify the Contracting Agency whenever the union with which the Contractor has a collective bargaining agreement has impeded the Contractor's efforts to effect minority/female workforce utilization. This being the case, the Contractor shall show what relief they have sought under such collective bargaining agreements.
9. The Contractor is encouraged to participate in Contracting Agency and Washington State Human Rights Commission approved program(s) designed to train craft-workers for the construction trades.

#### **1-07.11(2)A Equal Employment Opportunity (EEO) Responsibilities**

##### **Title VI Responsibilities**

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance With Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter DOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
2. **Nondiscrimination.** The Contractor, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiations made by the Contractor for Work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.
4. **Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Washington State Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Washington State Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Washington State Department of Transportation shall impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or;
  - b. Cancellation, termination, or suspension of the Contract, in whole or in part.
6. **Incorporation of Provisions.** The Contractor shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any Subcontractor or procurement as the Washington State Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance.

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the Washington State Department of Transportation enter into such litigation to protect the interests of the state and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**1-07.11(3) Equal Employment Opportunity Officer**

The Contractor shall officially designate and make known to the Engineer during the preconstruction meetings and discussions the firm's Equal Employment Opportunity Officer (hereinafter referred to as the EEO Officer). The EEO Officer will also be responsible for making him/herself known to each of the Contractor's employees. The EEO Officer must possess the responsibility, authority, and capability for administering and promoting an active and effective Contractor program of equal employment opportunity.

**1-07.11(4) Dissemination of Policy****1-07.11(4)A Supervisory Personnel**

All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, shall be made fully cognizant of, and shall implement the Contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions shall be taken as a minimum:

1. **EEO Meetings.** Periodic meetings of supervisory and personnel office employees shall be conducted before the start of Work and then not less often than once every 6-months, at which time the Contractor's equal employment opportunity policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or other knowledgeable company official.
2. **EEO Indoctrination.** All new supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the Contractor's equal employment opportunity obligations within 30-days following their reporting for duty with the Contractor.
3. **Internal EEO Procedures.** All personnel who are engaged in direct recruitment for the project shall be instructed by the EEO Officer or appropriate company official in the Contractor's procedures for locating and hiring minority group and female employees.

**1-07.11(4)B Employees, Applicants, and Potential Employees**

In order to make the Contractor's equal employment opportunity policy known to all employees, prospective employees, and potential sources of employees, e.g., schools, employment agencies, labor unions (where appropriate), college placement officers, community organizations, etc., the Contractor shall take the following actions:

1. **Notices and Posters.** Notices and posters setting forth the Contractor's equal employment opportunity policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.
2. **EEO Indoctrination.** The Contractor's equal employment opportunity policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**1-07.11(5) Sanctions**

In the event of the Contractor is found in noncompliance with the provisions of [Section 1-07.11](#), the Contracting Agency may impose such Contract sanctions as it or the Federal Highway Administration may determine necessary to gain compliance including, but not limited to:

1. Progress payment requests may not be honored until the noncompliance is remedied to the satisfaction of the Contracting Agency.
2. The Contract may be suspended, in whole or in part, until such time as the Contractor is determined to be in compliance by the Contracting Agency.
3. The Contractor's pre-qualification may be suspended or revoked pursuant to WAC 468-16. The Contracting Agency may refer the matter to the Federal Highway Administration (FHWA) for possible federal sanctions.
4. The Contract may be terminated.

**1-07.11(6) Incorporation of Provisions**

The Contractor shall include the provisions of [Section 1-07.11\(2\)](#) Contractual Requirements (1) through (4) and the [Section 1-07.11\(5\)](#) Sanctions in every subcontract including procurement of materials and leases of equipment. The Contractor shall take such action or enforce sanctions with respect to a Subcontractor or supplier as the Contracting Agency or the FHWA may direct as a means of enforcing such provisions. In the event a Contractor becomes involved in litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the Contracting Agency enter into such litigation to protect their interests and the Contracting Agency may request the federal government to enter into such litigation to protect the interests of the United States.

**1-07.11(7) Vacant****1-07.11(8) Vacant****1-07.11(9) Subcontracting, Procurement of Materials, and Leasing of Equipment**

**Nondiscrimination.** The Contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the selection and retention of Subcontractors, including procurement of materials and leases of equipment.

**Solicitation and Utilization.** The Contractor shall use their best effort to solicit bids from, and to utilize, disadvantaged, minority, and women Subcontractors, or Subcontractors with meaningful minority and women representation among their employees.

**Subcontractor EEO Obligations.** The Contractor shall notify all potential Subcontractors and suppliers of the EEO obligations required by the Contract. The Contractor shall use their efforts to ensure Subcontractors compliance with their equal employment opportunity obligations.

**1-07.11(10) Records and Reports****1-07.11(10)A General**

The Contractor shall keep such records as are necessary to determine compliance with the Contractor's equal employment opportunity obligations. The records kept by the Contractor shall be designated to indicate:

1. **Work Force Data.** The number of minority and nonminority group members and women employed in each work classification on the project.
2. **Good Faith Efforts — Unions.** The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).
3. **Good Faith Efforts — Recruitment.** The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
4. **Subcontracting.** The progress and efforts being made in securing the services of disadvantaged, minority, and women Subcontractors or Subcontractors with meaningful minority and female representation among their employees.

#### **1-07.11(10)B Required Records and Retention**

All records must be retained by the Contractor for a period of three years following acceptance of the Contract Work. All records shall be available at reasonable times and places for inspection by authorized representatives of either the Washington State Department of Transportation or the Federal Highway Administration.

##### **Federal-Aid Highway Construction Contractors Annual EEO Report**

**FHWA #1391.** This form is required for all federally assisted projects provided the Contract is equal to or greater than \$10,000 and for every associated subcontract equal to or greater than \$10,000. Each Contract requires separate reports filed for the Contractor and each Subcontractor (subject to the above noted criteria). These forms are due by August 25<sup>th</sup> in every year during which Work was performed in July. The payroll period to be reflected in the report is the last payroll period in July in which Work was performed. This report is required of each Contractor and Subcontractor for each federally assisted Contract on which the Contractor or Subcontractor performs Work during the month of July.

##### **Monthly Employment Utilization Reports**

**WSDOT Form #820-010.** This form (or substitute form as approved by the Contracting Agency) is required for all federally assisted projects if the Contract is equal to or greater than \$10,000 and for every associated subcontract equal to or greater than \$10,000. These monthly reports are to be maintained in the respective Contractor or Subcontractor's records.

#### **1-07.12 Federal Agency Inspection**

Federal laws, rules, and regulations shall be observed by the Contractor on Federal-aid projects. This Work is subject to inspection by the appropriate Federal agency. The Contractor shall cooperate with the Federal agencies in these inspections. These inspections shall not make the Federal Government a party to the Contract and shall not constitute an interference with the rights of the Contracting Agency or the Contractor.

#### **1-07.13 Contractor's Responsibility for Work**

##### **1-07.13(1) General**

All Work and material for the Contract, including any change order Work, shall be at the sole risk of the Contractor until the entire improvement has been completed as determined by the Engineer, except as provided in this section.

The Contractor shall rebuild, repair, restore, and make good all damages to any portion of the permanent or temporary Work occurring before the Physical Completion Date and shall bear all the expense to do so, except damage to the permanent Work caused by: (a) acts of God, such as earthquake, floods, or other cataclysmic phenomenon of nature, or (b) acts of the public enemy or of governmental authorities; or (c) slides in cases where [Section 2-03.3\(11\)](#) is applicable; Provided, however, that these exceptions shall not apply should damages result from the Contractor's failure to take reasonable precautions or to exercise sound engineering and construction practices in conducting the Work.

If the performance of the Work is delayed as a result of damage by others, an extension of time will be evaluated in accordance with [Section 1-08.8](#).

Nothing contained in this section shall be construed as relieving the Contractor of responsibility for, or damage resulting from, the Contractor's operations or negligence, nor shall the Contractor be relieved from full responsibility for making good any defective Work or materials as provided for under [Section 1-05](#).

#### **1-07.13(2) Relief of Responsibility for Completed Work**

Upon written request, the Contractor may be relieved of the duty of maintaining and protecting certain portions of the Work, as described below, which have been completed in all respects in accordance with the requirements of the Contract. If the Engineer provides written approval, the Contractor will be relieved of the responsibility for damage to said completed portions of the Work resulting from use by public traffic or from the action of the elements or from any other cause, but not from damage resulting from the Contractor's operations or negligence.

Portions of the Work for which the Contractor may be relieved of the duty of maintenance and protection as provided in the above paragraph include but are not limited to the following:

1. The completion of ¼-mile of Roadway or ¼-mile of one Roadway of a divided Highway or a frontage road including the Traveled Way, Shoulders, drainage control facilities, planned Roadway protection Work, lighting, and any required traffic control and access facilities.
2. A bridge or other Structure of major importance.
3. A complete unit of a traffic control signal system or of a Highway lighting system.
4. A complete unit of permanent Highway protection Work.
5. A building that is functionally complete and open to the public.
6. Any Contract Proposal item.

#### **1-07.13(3) Relief of Responsibility for Damage by Public Traffic**

When it is necessary for public traffic to utilize a Highway facility during construction, the Contractor will be relieved of responsibility for damages to permanent Work by public traffic under the following circumstances:

1. The Work is in accordance with the Contract Plans or approved stage construction plans,
2. The Work is on a section of Roadway required by the Contract to be opened to public traffic, and
3. The traffic control is in accordance with the approved traffic control plans.

If traffic is relocated to another section of Roadway, the Contractor shall resume responsibility for the Work until such time as the section of Roadway is again open to public traffic or the Contractor submits a written request for Work that is completed to a point where relief can be granted in accordance with [Section 1-07.13\(2\)](#).

**1-07.13(4) Repair of Damage**

The Contractor shall promptly repair all damage to either temporary or permanent Work as ordered by the Engineer. For damage qualifying for relief under Sections [1-07.13\(1\)](#), [1-07.13\(2\)](#) or [1-07.13\(3\)](#), payment will be made in accordance with [Section 1-09.4](#) using the estimated Bid item “Reimbursement for Third Party Damage”.

In the event the Contracting Agency pays for damage to the Contractor’s Work or for damage to the Contractor’s equipment caused by third parties, any claim the Contractor had or may have had against the third party shall be deemed assigned to the Contracting Agency, to the extent of the Contracting Agency’s payment for such damage.

Payment will be limited to repair of damaged Work only. No payment will be made for delay or disruption of Work.

For the purpose of providing a common Proposal for all Bidders, the Contracting Agency has entered an amount for “Reimbursement For Third Party Damage” in the Proposal to become a part of the total Bid by the Contractor.

**1-07.14 Responsibility for Damage**

The State, Governor, Commission, Secretary, and all officers and employees of the State, including but not limited to those of the Department, will not be responsible in any manner: for any loss or damage that may happen to the Work or any part; for any loss of material or damage to any of the materials or other things used or employed in the performance of Work; for injury to or death of any persons, either workers or the public; or for damage to the public for any cause which might have been prevented by the Contractor, or the workers, or anyone employed by the Contractor.

The Contractor shall be responsible for any liability imposed by law for injuries to, or the death of, any persons or damages to property resulting from any cause whatsoever during the performance of the Work, or before final acceptance.

Subject to the limitations in this section, the Contractor shall indemnify, defend, and save harmless the State, Governor, Commission, Secretary, and all officers and employees of the State from all claims, suits, or actions brought for injuries to, or death of, any persons or damages resulting from construction of the Work or in consequence of any negligence regarding the Work, the use of any improper materials in the Work, caused in whole or in part by any act or omission by the Contractor or the agents or employees of the Contractor during performance or at any time before final acceptance. In addition to any remedy authorized by law, the State may retain so much of the money due the Contractor as deemed necessary by the Engineer to ensure indemnification until disposition has been made of such suits or claims.

Subject to the limitations in this section, the Contractor shall indemnify, defend, and save harmless any county, city, or region, its officers, and employees connected with the Work, within the limits of which county, city, or region the Work is being performed, all in the same manner and to the same extent as provided above for the protection of the State, its officers and employees, provided that no retention of money due the Contractor be made by the State except as provided in RCW 60.28, pending disposition of suits or claims for damages brought against the county, city, or district.

The Contractor will not be required to indemnify, defend, or save harmless the indemnitee as provided in the preceding paragraphs of this section if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the indemnitee. Where such claims, suits, or actions result from the concurrent negligence of (a) the indemnitee or the indemnitee's agents or employees and (b) the Contractor or the Contractor's agent or employees, the indemnity provisions provided in the preceding paragraphs of this section shall be valid and enforceable only to the extent of the Contractor's negligence or the negligence of its agents and employees.

The Contractor shall bear sole responsibility for damage to completed portions of the project and to property located off the project caused by erosion, siltation, runoff, or other related items during the construction of the project. The Contractor shall also bear sole responsibility for any pollution of rivers, streams, ground water, or other waters that may occur as a result of construction operations.

The Contractor shall exercise all necessary precautions throughout the life of the project to prevent pollution, erosion, siltation, and damage to property.

The Contracting Agency will forward to the Contractor all claims filed against the State according to RCW 4.92.100 that are deemed to have arisen in relation to the Contractor's Work or activities under this Contract, and, in the opinion of the Contracting Agency, are subject to the defense, indemnity, and insurance provisions of these Standard Specifications. Claims will be deemed tendered to the Contractor and insurer, who has named the State as a named insured or an additional insured under the Contract's insurance provisions, once the claim has been forwarded via certified mail to the Contractor. The Contractor shall be responsible to provide a copy of the claim to the Contractor's designated insurance agent who has obtained/met the Contract's insurance provision requirements.

Within 60-calendar days following the date a claim is sent by the Contracting Agency to the Contractor, the Contractor shall notify the Claimant and WSDOT (Risk Management Office, PO Box 47418, Olympia, WA 98504-7418) of the following:

- a. whether the claim is allowed or is denied in whole or in part, and, if so, the specific reasons for the denial of the individual claim, and if not denied in full, when payment has been or will be made to the claimant(s) for the portion of the claim that is allowed, or
- b. if resolution negotiations are continuing. In this event, status updates will be reported no longer than every 60-calendar days until the claim is resolved or a lawsuit is filed.

If the Contractor fails to provide the above notification within 60-calendar days, then the Contractor shall yield to the Contracting Agency sole and exclusive discretion to allow all or part of the claim on behalf of the Contractor, and the **Contractor shall be deemed to have WAIVED any and all defenses, objections, or other avoidances to the Contracting Agency's allowance of the claim, or the amount allowed by the Contracting Agency**, under common law, constitution, statute, or the Contract and these Standard Specifications. If all or part of a claim is allowed, the Contracting Agency will notify the Contractor via certified mail that it has allowed all or part of the claim and make appropriate payments to the claimant(s) with State funds.

Payments of State funds by the Contracting Agency to claimant(s) under this section will be made on behalf of the Contractor and at the expense of the Contractor, and the Contractor shall be unconditionally obligated to reimburse the Contracting Agency for the “total reimbursement amount”, which is the sum of the amount paid to the claimant(s), plus all costs incurred by the Contracting Agency in evaluating the circumstances surrounding the claim, the allowance of the claim, the amount due to the claimant, and all other direct costs for the Contracting Agency’s administration and payment of the claim on the Contractor’s behalf. The Contracting Agency will be authorized to withhold the total reimbursement amount from amounts due the Contractor, or, if no further payments are to be made to the Contractor under the Contract, the Contractor shall directly reimburse the Contracting Agency for the amounts paid within 30-days of the date notice that the claim was allowed was sent to the Contractor. In the event reimbursement from the Contractor is not received by the Contracting Agency within 30-days, interest shall accrue on the total reimbursement amount owing at the rate of 12-percent per annum calculated at a daily rate from the date the Contractor was notified that the claim was allowed. The Contracting Agency’s costs to enforce recovery of these amounts are additive to the amounts owing.

#### **1-07.15 Temporary Water Pollution/Erosion Control**

In an effort to prevent, control, and stop water pollution and erosion within the project, thereby protecting the Work, nearby land, streams, and other bodies of water, the Contractor shall perform all Work in strict accordance with all Federal, State, and local laws and regulations governing waters of the State, as well as permits acquired for the project.

The Contractor shall perform all temporary water pollution/erosion control measures shown in the Plans, specified in the Special Provisions, proposed by the Contractor and approved by the Engineer, or ordered by the Engineer as Work proceeds.

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

The Contractor shall prepare a project specific spill prevention, control and countermeasures (SPCC) plan to be used for the duration of the project. The plan shall be submitted to the Engineer prior to the commencement of any on site construction activities. The Contractor shall maintain a copy of the plan at the Work site, including any necessary updates as the Work progresses. If hazardous materials are encountered during construction, the Contractor shall do everything possible to control and contain the material until appropriate measures can be taken. Hazardous material, as referred to within this Specification, is defined in RCW 70.105.010 under “Hazardous Substances”. Occupational safety and health requirements that may pertain to SPCC planning are contained in but not limited to WAC 296-824 and WAC 296-843.

The SPCC plan shall address the following project-specific information:

1. SPCC Plan Elements
  - A. Site Information

Identify general site information useful in construction planning, recognizing potential sources of spills, and identifying personnel responsible for managing and implementing the plan.

B. Project Site Description

Identify staging, storage, maintenance, and refueling areas and their relationship to drainage pathways, waterways, and other sensitive areas. Specifically address:

- the Contractor's equipment maintenance, refueling, and cleaning activities.
- the Contractor's on site storage areas for hazardous materials.

C. Spill Prevention and Containment

For each of the locations identified in B, above, specifically address:

1. Spill prevention and containment measures to be used at each location.
2. The method of collecting and treating, or disposing of runoff from each location.
3. The method of diverting project runoff from each location.

D. Spill Response

Outline spill response procedures including assessment of the hazard, securing spill response and personal protective equipment, containing and eliminating the spill source, and mitigation, removal and disposal of the material.

E. Standby, On-Site, Material and Equipment

The plan shall identify the equipment and materials the Contractor will maintain on site to carry out the preventive and responsive measures for the items listed.

F. Reporting

The plan shall list all federal, state and local agency telephone numbers the Contractor must notify in the event of a spill.

G. Program Management

Identify site security measures, inspection procedures and personnel training procedures as they relate to spill prevention, containment, response, management and cleanup.

H. Preexisting Contamination

If preexisting contamination in the project area is described elsewhere in the Plans or Specifications, the SPCC plan shall indicate measures the Contractor will take to conduct Work without allowing release or further spreading of the materials.

I. Work Below the Ordinary High Water Line

Identify equipment that will be used below the ordinary high water line. Outline daily inspection and cleanup procedures that ensure equipment is free of all external petroleum-based products. Identify refueling procedures for equipment that cannot be moved from below the ordinary high water line.

2. Attachments

- A. Site plan showing the locations identified in (1. B. and 1. C.) noted previously.
- B. Spill and Incident Report Forms, if any, that the Contractor will be using.

**Implementation Requirements**

The Contractor shall implement prevention and containment measures identified in the SPCC plan prior to performing any of the following:

1. Placing materials or equipment in staging or storage areas
2. Equipment refueling
3. Equipment washing
4. Stockpiling contaminated materials

**Payment**

The lump sum Contract price for the “SPCC Plan” shall be full pay for:

1. All costs associated with creating the SPCC plan.
2. All costs associated with providing and maintaining on site standby materials and equipment described in the SPCC plan.
3. All costs associated with implementing the prevention and containment measures identified in the approved SPCC plan.

As to other costs associated with spills, the Contractor may request payment as provided for in the Contract. No payment shall be made if the spill was caused by or resulted from the Contractor’s operations, negligence or omissions.

**1-07.16 Protection and Restoration of Property****1-07.16(1) Private/Public Property**

The Contractor shall not use Contracting Agency owned or controlled property other than that directly affected by the Contract Work without the approval of the Engineer. If the Engineer grants such approval, the Contractor shall then vacate the area when ordered to do so by the Engineer. Approval to temporarily use the property shall not create any entitlement to further use or to compensation for any conditions or requirements imposed.

The Contractor shall protect private or public property on or in the vicinity of the Work site. The Contractor shall ensure that it is not removed, damaged, destroyed, or prevented from being used unless the Contract so specifies.

Property includes land, utilities, trees, landscaping, improvements legally on the right-of-way, markers, monuments, buildings, Structures, pipe, conduit, sewer or water lines, signs, and other property of all description whether shown on the Plans or not.

If the Engineer orders, or if otherwise necessary, the Contractor shall install protection, acceptable to the Engineer, for property such as that listed in the previous paragraph. The Contractor is responsible for locating and protecting all property that is subject to damage by the construction operation.

If the Contractor (or agents/employees of the Contractor) damage, destroy, or interfere with the use of such property, the Contractor shall restore it to original condition. The Contractor shall also halt any interference with the property’s use. If the Contractor refuses or does not respond immediately, the Engineer may have such property restored by other means and subtract the cost from money that will be or is due the Contractor.

The Contractor may access the worksite from adjacent properties. The Contractor shall not use or allow others to use this access to merge with public traffic. During non-working hours, the Contractor shall provide a physical barrier that is either locked or physically unable to be moved without equipment. The access shall not go through any existing Structures. The access may go through fencing. The Contractor shall control or

prevent animals from entering the worksite to the same degree that they were controlled before the fence was removed. The Contractor shall prevent persons not involved in the Contract Work from entering the worksite through the access or through trails and pathways intersected by the access. If the Contract documents require that existing trails or pathways be maintained during construction, the Contractor will insure the safe passage of trail or pathway users. The Contractor shall effectively control airborne particulates that are generated by use of the access. The location and use of the access shall not adversely affect wetlands or sensitive areas in any manner. The Contractor shall be responsible for obtaining all haul road agreements, permits and/or easements associated with the access. The Contractor shall replace any fence, repair any damage and restore the site to its original state when the access is no longer needed. The Contractor shall bear all costs associated with this worksite access.

#### **1-07.16(2) Vegetation Protection and Restoration**

Existing vegetation, where shown in the Plans or designated by the Engineer, shall be saved and protected through the life of the Contract. The Engineer will designate the vegetation to be saved and protected by a site preservation line and/or individual flagging.

Damage which may require replacement of vegetation includes bark stripping, broken branches, exposed root systems, cut root systems, poisoned root systems, compaction of surface soil and roots, puncture wounds, drastic reduction of surface roots or leaf canopy, changes in grade greater than 6 inches, or any other changes to the location that may jeopardize the survival or health of the vegetation to be preserved.

When large roots of trees designated to be saved are exposed by the Contractor's operation, they shall be wrapped with heavy burlap for protection and to prevent excessive drying. The burlap shall be kept moist and securely fastened until the roots are covered to finish grade. All burlap and fastening material shall be removed from the roots before covering. All roots 1-inch or smaller in diameter, which are damaged, shall be pruned with a sharp saw or pruning shear. Damaged, torn, or ripped bark shall be removed as ordered by the Engineer at no additional cost to the Contracting Agency.

Any pruning activity required to complete the Work as specified shall be performed by persons qualified as a Certified Arborist at the direction of the Engineer.

If due to, or for any reason related to the Contractor's operation, any tree, shrub, ground cover or herbaceous vegetation designated to be saved is destroyed, disfigured, or damaged to the extent that continued life is questionable as determined by the Engineer, it shall be removed by the Contractor at the direction of the Engineer.

The Contractor will be assessed damages equal to triple the value of the vegetation as determined in the *Guide for Plant Appraisal*, Current Edition, published by the International Society of Arboriculture or the estimated cost of restoration with a similar species. Shrub, ground cover, and herbaceous plant values will be determined using the Cost of Cure Method. Any damage so assessed will be deducted from the monies due or that may become due the Contractor.

#### **1-07.16(3) Fences, Mailboxes, Incidentals**

The Contractor shall maintain any temporary fencing to prevent pedestrians from entering the worksite and to preserve livestock, crops, or property when working through or adjacent to private property. The Contractor is liable for all damages resulting from not complying with this requirement.

The usefulness of existing mail or paper boxes shall not be impaired. If the Contract anticipates removing and reinstalling the mail or paper boxes, the provisions of [Section 8-18](#) will apply. If the mail or paper boxes are rendered useless solely by acts (or inaction) of the Contractor or for the convenience of the Contractor, the Work shall be performed as provided in [Section 8-18](#) at the Contractor's expense.

**1-07.16(4) Archaeological and Historical Objects**

Archaeological or historical objects, such as ruins, sites, buildings, artifacts, fossils, or other objects of antiquity that may have significance from a historical or scientific standpoint, which may be encountered by the Contractor, shall not be further disturbed. The Contractor shall immediately notify the Engineer of any such finds.

The Engineer will determine if the material is to be salvaged. The Contractor may be required to stop Work in the vicinity of the discovery until such determination is made. The Engineer may require the Contractor to suspend Work in the vicinity of the discovery until salvage is accomplished.

If the Engineer finds that the suspension of Work in the vicinity of the discovery increases or decreases the cost or time required for performance of any part of the Work under this Contract, the Engineer will make an adjustment in payment or the time required for the performance of the Work in accordance with [Sections 1-04.4](#) and [1-08.8](#).

**1-07.16(5) Payment**

All costs to comply with this section and for the protection and repair specified in this section, unless otherwise stated, are incidental to the Contract and are the responsibility of the Contractor. The Contractor shall include all related costs in the unit Bid prices of the Contract.

**1-07.17 Utilities and Similar Facilities**

The Contractor shall protect all private and public utilities from damage resulting from the Work. Among others, these utilities include: telephone, telegraph, and power lines; pipelines, sewer and water lines; railroad tracks and equipment; and Highway lighting and signing systems. All costs required to protect public and private utilities shall be at the Contractor's expense, except as provided otherwise in this section.

Chapter 19.122 of the Revised Code of Washington (RCW) relates to underground utilities. In accordance with this RCW, the Contractor shall call the One-Number Locator Service for field location of utilities. If no locator service is available for the area, notice shall be provided individually to those owners of utilities known to, or suspected of, having underground facilities within the area of the proposed excavation.

**1-07.17(1) Utility Construction, Removal or Relocation by the Contractor**

If the Work requires removing or relocating a utility, the Contract will assign the task to the Contractor or the utility owner. When the task is assigned to the Contractor it shall be performed in accordance with the Plans and Special Provisions. New utility construction shall be performed according to the appropriate Contract requirements.

To ease or streamline the Work for its own convenience, the Contractor may desire to ask utility owners to move, remove, or alter their equipment in ways other than those listed in the Plans or Special Provisions. The Contractor shall make the arrangements and pay all costs that arise from work performed by the utility owner at the Contractor's request. Two weeks prior to implementing any such utility work, the Contractor shall submit plans and details to the Project Engineer for approval describing the scope and schedule of all work performed at the Contractor's request by the utility owner.

In some cases, the Plans or Special Provisions may not show all underground facilities. If the Work requires these to be moved or protected, the Engineer will assign the task to others or issue a written change order requiring the Contractor to do so as provided in [Section 1-04.4](#).

#### **1-07.17(2) Utility Construction, Removal or Relocation by Others**

Any authorized agent of the Contracting Agency or utility owners may enter the Highway right-of-way to repair, rearrange, alter, or connect their equipment. The Contractor shall cooperate with such effort and shall avoid creating delays or hindrances to those doing the work. As needed, the Contractor shall arrange to coordinate work schedules.

If the Contract provides notice that utilities will be adjusted, relocated, replaced, or constructed by others during the prosecution of the Work, the Special Provisions will establish the utility owners anticipated completion. The Contractor shall carry out the Work in a way that will minimize interference and delay for all forces involved. Any costs incurred prior to the utility owners anticipated completion (or if no completion is specified, within a reasonable period of time) that results from the coordination and prosecution of the Work regarding utility adjustment, relocation, replacement, or construction shall be at the Contractor's expense as provided in [Section 1-05.14](#).

When others delay the Work through late removal or relocation of any utility or similar facility, the Contractor shall adhere to the requirements of [Section 1-04.5](#). The Contracting Agency will either suspend Work according to [Section 1-08.6](#), or order the Contractor to coordinate the Work with the work of the utility owner in accordance with [Section 1-04.4](#). When ordered to coordinate the Work with the work of the utility owner, the Contractor shall prosecute the Work in a way that will minimize interference and delay for all forces involved.

#### **1-07.18 Public Liability and Property Damage Insurance**

The Contractor shall obtain and keep in force the following policies of insurance. The policies shall be with companies or through sources approved by the State Insurance Commissioner pursuant to Chapter 48.05, RCW. Unless otherwise indicated below, the policies shall be kept in force from the execution date of the Contract until the date of acceptance by the Secretary ([Section 1-05.12](#)).

1. Owners and Contractors Protective Insurance providing bodily injury and property damage liability coverage with limits of \$3,000,000 per occurrence and in the aggregate for each policy period, written on Insurance Services Office (ISO) form CG0009 together with Washington State Department of Transportation Amendatory Endorsement No. CG 29 08, specifying the State of Washington as a named insured.

The Contractor may choose to terminate this insurance after the date of Substantial Completion as determined by the Engineer or, should Substantial Completion not be achieved, after the date of Physical Completion as determined by the Engineer. In the event the Contractor elects to terminate this coverage, prior to acceptance of the Contract, the Contractor shall first obtain an endorsement to the Commercial General Liability Insurance described below that establishes the Contracting Agency on that policy as an additional insured.

2. Commercial General Liability Insurance written under ISO Form CG0001 or its equivalent with minimum limits of \$3,000,000 per occurrence and in the aggregate for each policy period. This protection may be a CGL policy or any combination of primary, umbrella or excess liability coverage affording total liability limits of not less than \$3,000,000. Products and completed operations coverage shall be provided for a period of one year following final acceptance of the Work.
3. Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and nonowned vehicles assigned to or used in the performance of the Work with a combined single limit of not less than \$1,000,000 each occurrence with the State named as an additional insured in connection with the Contractor's Performance of the Contract.

The Owners and Contractors Protective Insurance policy shall not be subject to a deductible or contain provisions for a deductible. The Commercial General Liability policy and the Commercial Automobile Liability Insurance policy may, at the discretion of the Contractor, contain such provisions. If a deductible applies to any claim under these policies, then payment of that deductible will be the responsibility of the Contractor, notwithstanding any claim of liability against the Contracting Agency. However in no event shall any provision for a deductible provide for a deductible in excess of \$50,000.00.

Prior to Contract execution, the Contractor shall file with the Department of Transportation, Contract Payment Section, P.O. Box 47420, Olympia, WA 98504-7420, ACORD Form Certificates of Insurance evidencing the minimum insurance coverages required under these Specifications.

All insurance policies and Certificates of Insurance shall include a requirement providing for a minimum of 45-days prior written notice to the Contracting Agency of any cancellation or reduction of coverage. All insurance coverage required by this section shall be written and provided by "occurrence-based" policy forms rather than by "claims made" forms.

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of Contract upon which the Contracting Agency may, after giving 5-working days notice to the Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Contracting Agency on demand, or at the sole discretion of the Contracting Agency, offset against funds due the Contractor from the Contracting Agency.

All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the unit Contract prices and no additional payment will be made.

#### **1-07.19 Gratuities**

The Contractor shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee or officer of the Contracting Agency; nor will the Contractor rent or purchase any equipment or materials from any employee or officer of the Contracting Agency. Before payment of the final estimate will be made, the Contractor shall execute and furnish the Contracting Agency an affidavit certifying compliance with these provisions of the Contract.

The Contractor shall comply with all applicable sections of the State Ethics law, RCW 42.52, which regulates gifts to State officers and employees. Under that statute, any Contracting Agency officer or employee who has or will participate with the Contractor regarding any aspect of this Contract is prohibited from seeking or accepting any gift, gratuity, favor or anything of economic value from the Contractor. Accordingly, neither the Contractor nor any agent or representative shall offer anything of economic value as a gift, gratuity, or favor directly or indirectly to any such officer or employee.

#### **1-07.20 Patented Devices, Materials, and Processes**

The Contractor shall assume all costs arising from the use of patented devices, materials, or processes used on or incorporated in the Work, and agrees to indemnify, defend, and save harmless the State, Governor, Commission, Secretary, and their duly authorized agents and employees from all actions of any nature for, or on account of the use of any patented devices, materials, or processes.

#### **1-07.21 Rock Drilling Safety Requirements**

It shall be the Contractor's responsibility to maintain safe working conditions during rock drilling, by keeping dust concentration below the threshold limit value or by providing those protective devices that may be required by the State Department of Labor and Industries.

#### **1-07.22 Use of Explosives**

When using explosives, the Contractor shall use the utmost care to protect life and property, to prevent slides, and to leave undisturbed all materials, outside the neat lines of the cross-section.

Explosives shall be handled, marked, stored, and used in compliance with WAC 296-52 and such local laws, rules, and regulations that may apply. The stricter provisions shall apply.

All explosives shall be stored securely as required by all laws and ordinances that apply. Each storage place shall be clearly marked: "Dangerous-Explosives." No explosives shall be left unprotected.

If public utilities or railroads own equipment near the blast site, the Contractor shall notify the owners of the location, date, time, and approximate duration of the blasting. This notice shall be given sufficiently in advance to enable all owners to take any steps as they deem necessary to protect their property from injury.

Blasting near proposed Structures shall be completed before Work on them begins. When the use of explosives is necessary for the prosecution of the Work, the Contractor's insurance shall contain a special clause permitting the blasting.

#### **1-07.23 Public Convenience and Safety**

##### **1-07.23(1) Construction Under Traffic**

The Contractor shall conduct all operations with the least possible obstruction and inconvenience to the public. The Contractor shall have under construction no greater length or amount of Work than can be prosecuted properly with due regards to the rights of the public. To the extent possible, the Contractor shall finish each section before beginning Work on the next. The Contractor shall enter interstate Highways only through legal movements from existing roads, streets, and through other access points specifically allowed by the Contract documents.

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

1. Remove or repair any condition resulting from the Work that might impede traffic or create a hazard.
2. Keep existing traffic signal and Highway lighting systems in operation as the Work proceeds. (The Contracting Agency will continue the routine maintenance on such system.)
3. Maintain the striping on the Roadway at the Contracting Agency's expense. The Contractor shall be responsible for scheduling when to renew striping, subject to the approval of the Engineer. When the scope of the project does not require Work on the Roadway, the Contracting Agency will be responsible for maintaining the striping.
4. Maintain existing permanent signing. Repair of signs will be at the Contracting Agency's expense, except those damaged due to the Contractor's operations.
5. Keep drainage Structures clean to allow for free flow of water. Cleaning of existing drainage Structures will be at the Contracting Agency's expense when approved by the Engineer, except when flow is impaired due to the Contractor's operations.

To protect the rights of abutting property owners, the Contractor shall:

1. Conduct the construction so that the least inconvenience as possible is caused to abutting property owners;
2. Maintain ready access to driveways, houses, and buildings along the line of Work;
3. Provide temporary approaches to crossing or intersecting roads and keep these approaches in good condition; and
4. Provide another access before closing an existing one whenever the Contract calls for removing and replacing an abutting owner's access.

When traffic must pass through grading areas, the Contractor shall:

1. Make cuts and fills that provide a reasonably smooth, even Roadbed;
2. Place, in advance of other grading Work, enough fill at all culverts and bridges to permit traffic to cross;
3. Make Roadway cuts and fills, if ordered by the Engineer, in partial-width lifts, alternating lifts from side to side to permit traffic to pass on the side opposite the Work;
4. Install culverts on half the width of the Traveled Way, keeping the other half open to traffic and unobstructed until the first half is ready for use;

5. After rough grading or placing any subsequent layers, prepare the final Roadbed to a smooth, even surface (free of humps and dips) suitable for use by public traffic; and
6. Settle dust with water, or other dust palliative, as the Engineer may order.

If grading Work is on or next to a Roadway in use, the Contractor shall finish the grade immediately after rough grading and place surfacing materials as the Work proceeds.

The Contractor shall conduct all operations to minimize any drop-offs (abrupt changes in roadway elevation) left exposed to traffic during nonworking hours. Unless otherwise specified in the Traffic Control Plan, drop-offs left exposed to traffic during nonworking hours shall be protected as follows:

1. Drop-offs up to 0.20 foot, unless otherwise ordered by the Engineer, may remain exposed with appropriate warning signs alerting motorists of the condition.
2. Drop-offs more than 0.20-foot that are in the Traveled Way or Auxiliary Lane will not be allowed unless protected with appropriate warning signs and further protected as indicated in 3b or 3c below.
3. Drop-offs more than 0.20 foot, but no more than 0.50 foot, that are not within the Traveled Way shall be protected with appropriate warning signs and further protected by having one of the following:
  - a. A wedge of compacted stable material placed at a slope of 4:1 or flatter.
  - b. Channelizing devices (Type I barricades, plastic safety drums, or other devices 36 inches or more in height) placed along the traffic side of the drop-off and a new edge of pavement stripes placed a minimum of 3 feet from the drop-off. The maximum spacing between the devices in feet shall be the posted speed in miles per hour. Pavement drop-off warning signs shall be placed in advance and throughout the drop-off treatment.
  - c. Temporary concrete barrier or other approved barrier installed on the traffic side of the drop-off with 2-feet between the drop-off and the back of the barrier and a new edge of pavement stripe a minimum of 2-feet from the face of the barrier. An approved terminal, flare, or impact attenuator will be required at the beginning of the section. For night use, the barrier shall have standard delineation such as paint, reflective tape, lane markers, or warning lights.
4. Drop-offs more than 0.50-foot not within the Traveled Way or Auxiliary Lane shall be protected with appropriate warning signs and further protected as indicated in 3a, 3b, or 3c if all of the following conditions are met:
  - a. The drop-off is less than 2-feet;
  - b. The total length throughout the project is less than 1 mile;
  - c. The drop-off does not remain for more than 3-working days;
  - d. The drop-off is not present on any of the holidays listed in [Section 1-08.5](#); and
  - e. The drop-off is only on one side of the Roadway.
5. Drop-offs more than 0.50 foot that are not within the Traveled Way or Auxiliary Lane and are not otherwise covered by No. 4 above shall be protected with appropriate warning signs and further protected as indicated in 3a or 3c.

6. Open trenches within the Traveled Way or Auxiliary Lane shall have a steel-plate cover placed and anchored over them. A wedge of suitable material, if required, shall be placed for a smooth transition between the pavement and the steel plate. Warning signs shall be used to alert motorists of the presence of the steel plates.

The Contractor shall be responsible for providing adequate safeguards, safety devices, protective equipment, and any other needed actions to protect the life, health, and safety of the public, and to protect property in connection with the performance of the Work covered by the Contract. The Contractor shall perform any measures or actions the Engineer may deem necessary to protect the public and property. The responsibility and expense to provide this protection shall be the Contractor's except that which is to be furnished by the Contracting Agency as specified in other sections of these Specifications. Nothing contained in this Contract is intended to create any third-party beneficiary rights in favor of the public or any individual utilizing the Highway facilities being constructed or improved under this Contract.

#### **1-07.23(2) Construction and Maintenance of Detours**

Unless otherwise approved, the Contractor shall maintain two-way traffic during construction. The Contractor shall build, maintain in a safe condition, keep open to traffic, and remove when no longer needed:

1. Detours and detour bridges that will accommodate traffic diverted from the Roadway or bridge during construction,
2. Detour crossings of intersecting Highways, and
3. Temporary approaches.

Unit Contract prices will cover construction, maintenance, and removal of all detours shown in the Plans or proposed by the Contracting Agency.

The Contractor shall pay all costs to build, maintain, and remove any other detours, whether built for the Contractor's convenience or to facilitate construction operations. Any detour proposed by the Contractor shall not be built until the Engineer approves. Surfacing and paving shall be consistent with traffic requirements.

Upon failure of the Contractor to immediately provide, maintain, or remove detours or detour bridges when ordered to do so by the Engineer, the Contracting Agency may, without further notice to the Contractor or the Surety, provide, maintain, or remove the detours or detour bridges and deduct the costs from any payments due or coming due the Contractor.

#### **1-07.24 Rights of Way**

All rights of way for the completed facility will be provided by the Contracting Agency in advance of construction. Any exceptions will be noted in the Special Provisions. Should the necessary Right of Way not be available as provided in the Contract, an extension of time will be considered in accordance with [Section 1-08.8](#).

#### **1-07.25 Opening of Sections to Traffic**

The Contracting Agency reserves the right to use and open to traffic any portion of the Work before the Physical Completion Date of the entire Contract without constituting acceptance of any of the Work. This action will not cause the Contracting Agency to incur any liability to the Contractor except as may otherwise be provided in the Contract.

If the Contracting Agency opens any portion of the Work prior to the Physical Completion Date of the entire Contract because early opening is specified in the Contract or when the Contractor has failed to prosecute the Work continuously and efficiently, any Work remaining shall be performed by the Contractor at the unit Contract prices for the items of Work involved. No additional payment will be made for costs incurred by the Contractor because of: (1) inconvenience, additional length of travel to conform to established traffic patterns and planned access features; (2) compliance with statutes governing traffic regulations and limitations of loads; or (3) additional flagging costs necessary to protect the operations and the traveling public. The Contractor shall take all costs due to traffic using portions of the Work into account when submitting the Bid Proposal, and the unit Contract prices for the various items of Work involved shall include these costs.

#### **1-07.26 Personal Liability of Public Officers**

Neither the Governor, the Commission, the Secretary, the Engineer, nor any other officer or employee of the State shall be personally liable for any acts or failure to act in connection with the Contract, it being understood that in such matters, they are acting solely as agents of the State.

#### **1-07.27 No Waiver of State's Legal Rights**

The State shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefore from showing the true amount and character of the Work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Contract. The State shall not be precluded or estopped, not with standing any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Contractor and the Sureties such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Secretary, nor any payment for the whole or any part of the Work, nor any extension of time, nor any possession taken by the State shall operate as a waiver of any portion of the Contract or of any power herein reserved or any right to damages herein provided, or bar recovery of any money wrongfully or erroneously paid to the Contractor. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor and the State recognize that the impact of overcharges to the State by the Contractor resulting from antitrust law violations by the Contractor's suppliers or Subcontractors adversely affects the State rather than the Contractor. Therefore, the Contractor agrees to assign to the State any and all claims for such overcharges.