

1-09 MEASUREMENT AND PAYMENT**1-09.1 Measurement of Quantities**

In measuring all acceptably completed Bid items of Work, the Engineer will:

1. Use United States standard measure,
2. Make all measurements as described in this section, unless individual Specifications require otherwise,
3. Follow methods generally recognized as conforming to good engineering practice,
4. Conform to the usual practice of the Contracting Agency by carrying measurements and computations to the proper significant figure or fraction of units for each item, and
5. Measure horizontally or vertically (unless otherwise specified).

The terms listed below shall be defined as follows in all measurements under this section:

“Lump Sum” (when used as an item of payment): complete payment for the Work described for that item in the Contract.

“Gage” (in measurement of plates): the U.S. Standard Gage.

“Gage” (in measurement of galvanized sheets used to manufacture corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing): that specified in AASHTO M 36, M 167, M 196, M 197, or M 219.

“Gage” (in measurement of wire): that specified in AASHTO M 32.

“Ton”: 2,000-pounds of avoirdupois weight.

For each basis of measurement listed below, the Engineer will use the method of measurement described. For Bid items or materials measured on the basis of:

Hour - measured for each hour that Work is actually performed. Portions of an hour will be rounded up to a half hour.

Square Yard or Square Foot — the measurement shall be a calculation from the neat dimensions shown in the Plans or as altered by the Engineer. If there is an exception within the measured area where the item of Work is not performed (such as a drainage vault within a measured sidewalk) and if the exception area is greater than 9-square feet, then the area of the exception will be subtracted from the payment area calculated from the neat dimensions.

Linear Foot (pipe culverts, guard rail, underdrains, etc.) — measured parallel to the Structure’s base or foundation, unless the Plans require otherwise.

Weight — weighed as required in [Section 1-09.2](#).

Volume (of excavation and embankment) — measured by the average-end-area method or by the finite element analysis method utilizing digital terrain modeling techniques. All or some computations may be based on ground elevations and other data derived photogrammetrically. The Engineer may correct for curvature.

Volume (in the hauling vehicle) — measured at the point of delivery. Hauling vehicles may be of any size or type the Engineer approves provided that the body is of such shape that the actual contents may be readily and accurately determined. If the Engineer requires, the Contractor shall level loads at the delivery point to facilitate measurement.

For each item listed below, the Engineer will use the method of measurement described.

Structures — measured on the neat lines shown in the Plans or as altered by the Engineer. When a complete Structure or structural unit is specified as the unit of measurement, the unit shall include all fittings and accessories.

Timber — measured by the thousand board feet (MBM) actually used in the Structure. Measurements will be based on nominal widths and thicknesses and the extreme length of each piece.

Standard Manufactured Items (fence, wire, plates, rolled shapes, pipe conduit, etc., when specified) — measured by the manufacturer's identification of gage, unit weight, section dimension, etc. The Engineer will accept manufacturing tolerances set by each industry unless cited Specifications require more stringent tolerances.

Cement — measured by the pound, ton, or sack. A sack shall be 94-pounds.

Asphalt — measured by the gallon or ton. If measured by gallon, measurement will be made at 60 F (or will be corrected to the volume at 60 F in keeping with ASTM D 1250). If shipped by rail, truck, or transport, measurement will be by net certified scale masses or certified volumes (corrected for material lost en route or not actually incorporated into the Work).

No measurement will be made for:

1. Work performed or materials placed outside lines shown in the Plans or set by the Engineer;
2. Materials wasted, used, or disposed of in a manner contrary to the Contract;
3. Rejected materials (including those rejected after placement if the rejection resulted from the Contractor's failure to comply with the Contract);
4. Hauling and disposing of rejected materials;
5. Material remaining on hand after the Work is completed, except as provided in Sections 1-09.5 and 1-09.10; or
6. Any other Work or material contrary to any Contract Provision.

1-09.2 Weighing Equipment

1-09.2(1) General Requirements for Weighing Equipment

Any Highway or bridge construction materials to be proportioned or measured and paid for by weight shall be weighed on a scale. These materials include natural, manufactured or processed materials obtained from natural deposits, stockpiles, or bunkers.

Scales

Scales shall:

1. Be accurate to within 0.5-percent of the correct weight throughout the range of use;
2. Not include spring balances;
3. Include beams, dials, or other reliable readout equipment;
4. Be arranged so that operators and Inspectors can safely and easily see the dials, beams, rods, and operating scale mechanisms;
5. Be built to prevent scale parts from binding, vibrating, or being displaced and to protect all working parts from falling material, wind, and weather; and

6. Be carefully maintained, with bunkers and platforms kept clear of accumulated materials that could cause errors and with knife edges given extra care and protection.

Weighers

The Contractor shall provide, set up, and maintain the scales necessary to perform this Work. "Contractor provided scale operations" are defined as operations where a scale is set up specifically for the project and most, if not all, material weighed on the scale is utilized for Contract Work. In this situation, the Contracting Agency will provide a person to operate the scale, write tickets, perform scale checks and prepare reports.

The Contractor may also utilize permanently installed, certified, commercial scales. "Commercial scale operations" include the use of established scales used to sell materials to the public on a regular basis. In addition, for the purposes of this Specification, all batch, hopper, and belt scales are considered to be commercial scales. Commercial scales shall meet the same requirements as Contractor-provided scales. When a commercial scale is used, the Contractor may utilize a commercial scale operator provided it is at no additional cost to the Contracting Agency. In addition, the Contractor shall ensure that:

1. the Engineer is allowed to observe the weighing operation and check the daily scale weight record;
2. scale verification checks are performed at the direction of the Contracting Agency (see "1-09.2(5) Measurement");
3. several times each day, the commercial scale operator records and makes certain the platform scale balances and returns to zero when the load is removed; and
4. test results and scale weight records for each day's hauling operations are provided to the Engineer daily. Unless otherwise approved, reporting shall utilize form 422-027, Scaleman's Daily Report.

Trucks and Tickets

Each truck to be weighed shall bear a unique identification number. This number shall be legible and in plain view of the scale operator. Each vehicle operator shall obtain a weigh or load ticket from the scale operator. The Contractor shall provide tickets for self-printing scales. All tickets shall, at a minimum, contain the following information:

1. Date of haul;
2. Contract number;
3. Contract unit Bid item;
4. Unit of measure;
5. Identification of hauling vehicle; and
6. Weight delivered
 - a. Net weight in the case of batch and hopper scales
 - b. Gross weight, tare and net weight in the case of platform scales (tare may be omitted if a tare beam is used)
 - c. Approximate load out weight in the case of belt conveyor scales

The vehicle operator shall deliver the ticket in legible condition to the material receiver at the material delivery point. The material delivery point is defined as the location where the material is incorporated into the permanent Work.

1-09.2(2) Specific Requirements for Batching Scales

Each batching scale shall be designed to support a weighing container. The arrangement shall make it convenient for the operator to remove material from the weighing container while watching readout devices. Any weighing container mounted on a platform scale shall have its center of gravity directly over the platform centerline. Batching scales used for Portland or asphalt cement shall not be used for batching other materials.

Readout devices used for batching or hopper scales shall be marked at intervals evenly spaced throughout and shall be based on the scale's nominal rated capacity. These intervals shall not exceed one-tenth of 1-percent of the nominal rated capacity. Before use at a new site and then at 6-month intervals, all batching and hopper scales shall be: approved under rules of the Weights and Measures Section of the Washington State Department of Agriculture, or serviced and tested with at least 10,000-pounds by an agent of its manufacturer. In either case, the Contractor shall provide the Engineer with a copy of the final test results.

1-09.2(3) Specific Requirements for Platform Scales

Each platform scale shall be able to weigh the entire hauling vehicle or combination of connected vehicles at one time. No part of the vehicle or vehicle combination will be permitted off the platform as it is weighed. A tare weight shall be taken of each hauling vehicle at least twice daily.

Any platform scale shall be installed and maintained with the platform level and with rigid bulkheads at either end to prevent binding or shifting. The readout device shall be marked at intervals of no more than 40-pounds. Test records shall show results to the nearest 20-pounds. During weighing operations, weights shall be read and recorded to the nearest 100-pounds. Before use at a new site and then at 6-month intervals, any platform scale shall be: approved under rules of the Washington State Department of Agriculture's Weights and Measures Section, or serviced and tested with at least 10,000-pounds by an agent of its manufacturer. In either case, the Contractor shall provide the Engineer with a copy of the final test results.

Any Contractor-supplied scale shall include a scale house with a floor space of at least 6 by 10-feet. The scale house shall be wind and weather tight, shall have windows for light and ventilation, shall include a door, and shall be lockable. It shall include a table, a chair, electrical power, and a space heater. The Contractor shall provide a rest room near the scale house.

1-09.2(4) Specific Requirements for Belt Conveyor Scales

The Engineer may approve conveyor-belt weighing of untreated materials if the method and device meet all general requirements for weighing equipment. The recording tape, odometer, totalizer, calibration adjustment, and clock-time imprinter shall be kept locked and the Engineer shall retain all keys. All belt-conveyor scales shall comply with the requirements for Belt-Conveyor Scales in the National Institute of Standards and Technology (NIST) Handbook No. 44, except where these Specifications modify those requirements.

A static load test shall be made: each day after the belt-conveyor has run continuously for about 30-minutes, and again, immediately after the air temperature changes significantly. If the static load test reveals a need for adjustment, the Contractor shall perform a chain test. The Contractor shall make the computation of the test chain

calibration, the calibration procedures and results, and related records available for the Engineer's review. The test chain shall be clearly marked with its calibration, carried in a suitable container, and kept immediately available for testing.

1-09.2(5) Measurement

Scale Verification Checks

Regardless of the type of scale used, a scale verification test shall be performed daily. The Contractor shall designate a separate, certified, platform scale or a separate commercial platform scale, independent of the scale used for weighing construction materials, to be used for scale verification checks. Each batch, hopper or platform scale will be tested by routing a loaded truck onto a separate certified platform scale or a separate commercial platform scale and comparing the weights. If such a separate scale is not reasonably available, the Engineer may approve a Contractor request to use an alternate method of scale verification checks as described on Form 422-027, "Scaleman's Daily Report" and as appropriate for the type of scale.

To test the accuracy of a belt-conveyor scale, the Contractor shall weigh five or more payloads from sequential hauling units and compare these weights with weights of the same payloads taken on a separate certified platform scale. If the test results fluctuate, the Engineer may require more than five check loads. Conveyor weights will be based on tonnage values taken from the sealed odometer at the beginning and end of each check period.

If scale verification checks shows the scale has been under weighing, it shall be adjusted immediately. The Contractor shall not be compensated for any loss from under weighing.

If scale verification checks show the scale has been overweighing, its operation will cease immediately until adjusted. The Contracting Agency will calculate the combined weight of all materials weighed after the last verification check showing accurate results. This combined weight will then be reduced for payment by the percentage of scale error that exceeds 0.5-percent.

Minor Construction Items

If the Specifications and Plans require weight measurement for minor construction items, the Contractor may request permission to convert volume to weight. If the Engineer approves, an agreed factor may be used to make this conversion and volume may be used to calculate the corresponding weight for payment.

1-09.2(6) Payment

The Contracting Agency will pay for no materials received by weight unless they have been weighed as required in this section or as required by another method the Engineer has approved in writing.

Unit Contract prices for the various pay items of the project cover all costs related to weighing and proportioning materials for payment. These costs include but are not limited to:

1. Furnishing, installing, certifying, and maintaining scales;
2. Furnishing a scale house;
3. Providing a weigher with a commercial scale, if necessary;
4. Providing self-printing tickets, if necessary;
5. Rerouting a truck for verification weighing;

6. Assisting the Engineer with scale verification checks; and
7. Any other related costs associated with meeting the requirements of this section.

1-09.3 Scope of Payment

The payment provided for in the Contract shall be full payment to the Contractor for:

1. Furnishing all materials and performing all Work under the Contract (including changes in the Work, materials, or Plans) in a complete and acceptable manner;
2. All risk, loss, damage, or expense of whatever character arising out of the nature or prosecution of the Work; and
3. All expense incurred resulting from a suspension or discontinuance of the Work as specified under the Contract.

The payment of any estimate or retained percentage shall not relieve the Contractor of the obligation to make good any defective Work or materials.

Unless the Plans and Special Provisions provide otherwise, the unit Contract prices for the various Bids items shall be full payment for all labor, materials, supplies, equipment, tools, and all other things required to completely incorporate the item into the Work as though the item were to read "In Place."

If the "Payment" clause in the Specifications, for an item included in the Proposal, covers and considers all Work and material essential to that item, then the Work or materials will not be measured or paid for under any other item that may appear elsewhere in the Proposal or Specifications.

Certain payment items appearing in these Specifications may be modified in the Plans and Proposal to include:

1. The words "For Structure," "For Concrete Barrier," "For Bridge," etc. with the intent of clarifying specific use of the item; or
2. The words "Site (Site Designation)," with the intent of clarifying where a specific item of Work is to be performed.

Modification of payment items in this manner shall in no way change the intent of the Specifications relating to these items.

1-09.4 Equitable Adjustment

The equitable adjustment provided for elsewhere in the Contract shall be determined in one or more of the following ways:

1. If the parties are able to agree, the price will be determined by using:
 - a. Unit prices, or
 - b. Other agreed upon prices;
2. If the parties cannot agree, the price will be determined by the Engineer using:
 - a. Unit prices, or
 - b. Other means to establish costs.

The following limitations shall apply in determining the amount of the equitable adjustment:

1. The equipment rates shall be actual cost but shall not exceed the rates set forth in the AGC/WSDOT Equipment Rental Agreement in effect at the time the Work is performed as referred to in [Section 1-09.6](#), and

2. To the extent any delay or failure of performance was concurrently caused by the Contracting Agency and the Contractor, the Contractor shall be entitled to a time extension for the portion of the delay or failure of performance concurrently caused, provided it make such a request pursuant to [Section 1-08.8](#); however, the Contractor shall not be entitled to any adjustment in Contract price.
3. No claim for anticipated profits on deleted, terminated, or uncompleted Work will be allowed.
4. No claim for consequential damages of any kind will be allowed.

1-09.5 Deleted or Terminated Work

The Engineer may delete Work by change order as provided in [Section 1-04.4](#) or may terminate the Contract in whole or part as provided in [Section 1-08.10\(2\)](#). When the Contract is terminated in part, the partial termination shall be treated as a deletion change order for payment purposes under this section.

Payment for completed items will be at unit Contract prices.

When any item is deleted in whole or in part by change order or when the Contract is terminated in whole or in part, payment for deleted or terminated Work will be made as follows:

1. Payment will be made for the actual number of units of Work completed at the unit Contract prices unless the Engineer determines the unit prices are inappropriate for the Work actually performed. When that determination is made by the Engineer, payment for Work performed will be as mutually agreed. If the parties cannot agree the Engineer will determine the amount of the equitable adjustment in accordance with [Section 1-09.4](#);
2. Payment for partially completed lump sum items will be as mutually agreed. If the parties cannot agree, the Engineer will determine the amount of the equitable adjustment in accordance with [Section 1-09.4](#);
3. To the extent not paid for by the Contract prices for the completed units of Work, the Contracting Agency will pay as part of the equitable adjustment those direct costs necessarily and actually incurred by the Contractor in anticipation of performing the Work that has been deleted or terminated;
4. The total payment for any one item in the case of a deletion or partial termination shall not exceed the Bid price as modified by approved change orders less the estimated cost (including overhead and profit) to complete the Work and less any amount paid to the Contractor for the item;
5. The total payment where the Contract is terminated in its entirety shall not exceed the total Contract price as modified by approved change orders less those amounts paid to the Contractor before the effective date of the termination; and
6. No claim for damages of any kind or for loss of anticipated profits on deleted or terminated Work will be allowed because of the termination or change order.

Contract time shall be adjusted as the parties agree. If the parties cannot agree, the Engineer will determine the equitable adjustment for Contract time.

Acceptable materials ordered by the Contractor prior to the date the Work was terminated as provided in [Section 1-08.10\(2\)](#) or deleted as provided in [Section 1-04.4](#) by the Engineer, will either be purchased from the Contractor by the Contracting Agency at the actual cost and shall become the property of the Contracting Agency, or the Contracting Agency will reimburse the Contractor for the actual costs connected with returning these materials to the suppliers.

1-09.6 Force Account

The terms of the Contract or of a change order may call for Work or material to be paid for by force account. If so, then the objective of this Specification is to reimburse the Contractor for all costs associated with the Work, including costs of labor, small tools, supplies, equipment, specialized services, materials, applicable taxes and overhead and to include a profit commensurate with those costs. The amount to be paid shall be determined as described in this section.

1. **For Labor:** Labor reimbursement calculations shall be based on a "Project Labor List" (List,) prepared and submitted by the Contractor and by any Subcontractor before that firm commences force account Work. Once a List is approved by the Engineer, it shall be used to calculate force account labor payment until a new List is submitted and approved. The Engineer may compare the List to payrolls and other documents and may, at any time, require the Contractor to submit a new List. The Contractor may submit a new List at any time without such a requirement. Prior payment calculations shall not be adjusted as a result of a new List.

To be approved, the List must be accurate and meet the requirements of this section. It shall include regular time and overtime rates for all employees (or work classifications) expected to participate in force account Work. The rates shall include the basic wage and fringe benefits, the current rates for Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA) and State Unemployment Tax Act (SUTA), the company's present rates for Medical Aid and Industrial Insurance premiums and the planned payments for travel and per diem compensation.

In the event that an acceptable initial List or requested revised List is not received by the time that force account calculations are begun, the Engineer will develop a List unilaterally, utilizing the best data available, that will be used until a Contractor's List is received and approved. Again, prior calculations, prepared using the Engineer's List, will not be revised as a result of differences with the Contractor's List.

In addition to compensation for direct labor costs defined above, the Contracting Agency will pay Contractor 29-percent of the sum of the costs calculated for labor reimbursement to cover project overhead, general company overhead, profit, bonding, insurance required by [Section 1-07.10](#) and [1-07.18](#), Business & Occupation tax, and any other costs incurred. This amount will include any costs of safety training and health tests, but will not include such costs for unique force account Work that is different from typical Work and which could not have been anticipated at time of Bid.

2. **For Materials:** The Contracting Agency will reimburse invoice cost for Contractor-supplied materials. For the purpose of this provision, “Materials” shall include those items incorporated into the Work, supplies used during the Work and items consumed. This cost shall include freight and handling charges and applicable taxes. Before Work is started, the Engineer may require the Contractor to obtain multiple quotations for the materials to be utilized and select the vendor with prices and terms most advantageous to the Contracting Agency.

The Contracting Agency will provide a list of the types and quantities of Contractor-supplied materials witnessed by the Contracting Agency as being utilized in force account Work. The list will be furnished promptly after the material is incorporated, on a daily basis unless agreed otherwise. The Contractor may propose corrections to the list and will supply prices for the materials and other costs and return the list to the Contracting Agency. To support the prices, the Contractor shall attach valid copies of vendor invoices. If invoices are not available for materials from the Contractor’s stocks, the Contractor shall certify actual costs (at a reasonable level) by affidavit. The Engineer will review the prices and any Contractor-proposed corrections and, if reasonable, approve the completed list. Once approved, the prices will be utilized in the calculation of force account reimbursement for materials.

If, in the case of non-invoiced materials supported by Contractor affidavit, the price appears to be unreasonable, the Engineer will determine the cost for all or part of those materials, utilizing the best data available.

The Contracting Agency reserves the right to provide materials. In this case, the Contractor will receive no payment for any costs, overhead, or profit arising from the value of the materials themselves. Additional costs to handle and place the Agency-furnished material shall be compensated as described in this Specification.

In addition to compensation for direct materials cost, the Contracting Agency will pay the Contractor 21-percent of the sum of the costs calculated for materials reimbursement to cover project overhead, general company overhead, profit, bonding, insurance, required by [Section 1-07.10](#) and [1-07.18](#), Business & Occupation tax, and any other costs incurred.

3. **For Equipment:** The Contracting Agency will reimburse the Contractor for the cost of equipment utilized in the Work. The equipment provided by the Contractor shall be of modern design and in good working condition. For the purpose of this provision, “provided” shall mean that the equipment is owned (either through outright ownership or through a long-term lease) and operated by the Contractor or Subcontractor or that the equipment is rented and operated by the Contractor or Subcontractor. Equipment that is rented with operator shall not be included here, but shall be considered a service and addressed according to subsection 4 of this provision.

The amount of payment for any Contractor-owned equipment that is utilized shall be determined according to the version of the AGC/WSDOT Equipment Rental Agreement which is in effect at the time the force account is authorized. The rates listed in the Rental Rate Blue Book (as modified by the current AGC/WSDOT Equipment Rental Agreement) shall be full compensation for all fuel, oil, lubrication, ordinary repairs, maintenance, and all other costs incidental to furnishing and operating the equipment except labor for operation.

Payment for rented equipment will be made on the basis of a valid invoice, covering the time period of the Work. Before Work is started, the Engineer may require the Contractor to obtain multiple quotations for the rental of equipment to be utilized and select the vendor with prices and terms most advantageous to the Contracting Agency. In the event that prior quotations are not obtained and the vendor is not a firm independent from the Contractor or Subcontractor, then after-the-fact quotations may be obtained by the Engineer from the open market in the vicinity and the lowest such quotation may be used in place of submitted invoice.

In addition to the payments for Contractor-owned and rented equipment, one or more lump-sum payments may be made for small tools. The amount to be paid shall be determined as outlined in the AGC/WSDOT Equipment Rental Agreement.

The Contracting Agency will add 21-percent to equipment costs to cover project overhead, general company overhead, profit, bonding, insurance, required by Section 1-07.10 and 1-07.18, Business & Occupation tax, and any other costs incurred. This markup will be over and above those equipment costs and will not be adjusted for any equipment overhead amounts included in the Blue Book rates.

Copies of the AGC/WSDOT Equipment Rental Agreement will be maintained on the Contracting Agency's web site at www.wsdot.wa.gov.

4. **For Services:** Compensation under force account for specialized services shall be made on the basis of an invoice from the providing entity. A "specialized service" shall be one that is typically billed through invoice in standard industry practice. Before Work is started, the Engineer may require the Contractor to obtain multiple quotations for the service to be utilized and select the provider with prices and terms most advantageous to the Contracting Agency. In the event that prior quotations are not obtained and the service invoice is submitted by a Subcontractor, then after-the-fact quotations may be obtained by the Engineer from the open market in the vicinity and the lowest such quotation may be used in place of the submitted invoice.

Except as noted below, the Contracting Agency will pay the Contractor an additional 21-percent of the sum of the costs included on invoices for specialized services to cover project overhead, general company overhead, profit, bonding, insurance, required by Section 1-07.10 and 1-07.18, Business & Occupation tax, and any other costs incurred.

When a supplier of services is compensated through invoice, but acts in the manner of a Subcontractor, as described in subsection 6 of this provision, then markup for that invoice shall be according to subsection 6, "Contractor Markup on Subcontractors' Work".

5. **For Mobilization:** Force account mobilization is defined as the preparatory Work performed by the Contractor including procurement, loading and transportation of tools and equipment, and personal travel time (when such travel time is a contractual obligation of the Contractor or a customary payment for the Contractor to all employees). Mobilization also includes the costs incurred during demobilization. Pro-rata adjustments may be made when the mobilization applies to both force account and other Contract Work. The

Contracting Agency will pay for mobilization for off-site preparatory Work for force account items provided that notice has been provided sufficiently in advance to allow the Engineer to witness the activity, if desired.

Any costs experienced during mobilization activities for labor, equipment, materials or services shall be listed in those sections of the force account summary and paid accordingly.

6. **For Contractor Markup on Subcontractor's Work:** When Work is performed on a force account basis by one or more approved Subcontractors, by lower-tier subcontractors or suppliers, or through invoice by firm(s) acting in the manner of a Subcontractor, the Contractor will be allowed an additional markup, from the table below, applied to the costs computed for Work done by each Subcontractor through subsections 1, 2, 3, and 4, to compensate for all administrative costs, including project overhead, general company overhead, profit, bonding, insurance required by Section 1-07.10 and 1-07.18, Business & Occupation tax, and any other costs incurred.

A firm may be considered to be acting as a Subcontractor when the Engineer observes one or more of the following characteristics:

- a. The person in charge of the firm's activities takes an active role in managing the overall project, including extensive coordination, interpretation of Plans, interaction with the Contracting Agency or management of a complex and interrelated operation.
- b. Rented equipment is provided fueled, operated and maintained by the firm. Operators of rented equipment are supervised directly by the firm's representative. There is little interaction between the Contractor and the employees of the firm.
- c. The firm appears to be holding the risk of performance and quality of the Work.
- d. The firm appears to be responsible for liability arising from the Work.

Markups on Work Performed by Subcontractor(s):

(1) On amounts paid for Work performed by each Subcontractor on each force account and calculated through subsections 1-4,	up to \$25,000	12 percent
(2) On amounts greater than	\$25,000 up to \$100,000	10 percent
(3) On amounts greater than	\$100,000	7 percent

The amounts and markup rates shall be calculated separately for each Subcontractor on each force account item established.

The payments provided above shall be full payment for all Work done on a force account basis. The calculated payment shall cover all expenses of every nature, kind, and description, including those listed above and any others incurred on the Work being paid through force account. Nothing in this provision shall preclude the Contractor from seeking an extension of time or time-related damages to unchanged Work arising as a result of the force account Work. The amount and costs of any Work to be paid by force account shall be computed by the Engineer, and the result shall be final as provided in Section 1-05.1.

An item that has been Bid at a unit price or lump sum in the Proposal will not be paid as force account unless a change as defined in [Section 1-04.4](#) has occurred and the provisions require a payment adjustment. Items which are included in the Proposal as Force Account or which are added by change order as Force Account may, by agreement of the parties at any time, be converted to agreed unit prices or lump sums applicable to the remaining Work.

1-09.7 Mobilization

Mobilization consists of preconstruction expenses and the costs of preparatory Work and operations performed by the Contractor which occur before 10-percent of the total original Contract amount is earned from other Contract items. Items which are not to be included in the item of Mobilization include but are not limited to:

1. Any portion of the Work covered by the specific Contract item or incidental Work which is to be included in a Contract item or items.
2. Profit, interest on borrowed money, overhead, or management costs.
3. Any costs of mobilizing equipment for force account Work.

Based on the lump sum Contract price for “Mobilization,” partial payments will be made as follows:

1. When 5-percent of the total original Contract amount is earned from other Contract items, excluding amounts paid for materials on hand, 50-percent of the amount Bid for mobilization, or 5-percent of the total original Contract amount, whichever is the least, will be paid.
2. When 10-percent of the total original Contract amount is earned from other Contract items, excluding amounts paid for materials on hand, 100-percent of the amount Bid for mobilization, or 10-percent of the total original Contract amount, whichever is the least, will be paid.
3. When the Substantial Completion Date has been established for the project, payment of any amount Bid for mobilization in excess of 10-percent of the total original Contract amount will be paid.

Nothing herein shall be construed to limit or preclude partial payments otherwise provided by the Contract.

1-09.8 Payment for Material on Hand

The Contracting Agency may reimburse the Contractor for materials purchased before their use in the Work if they:

1. Meet the requirements of the Plans and Specifications;
2. Are delivered to or stockpiled near the project or other Engineer-approved storage sites; and
3. Consist of: sand, gravel, surfacing materials, aggregates, reinforcing steel, bronze plates, structural steel, machinery, piling, timber and lumber (not including forms or falsework), large signs unique to the project, prestressed concrete beams or girders, or other materials the Engineer may approve.

The Contracting Agency may reimburse the Contractor for traffic signal controllers as follows:

1. Fifty percent when the traffic signal controller and all components are received and assembled into a complete unit at the State Materials Laboratory.

2. One hundred percent when the traffic signal controller is approved for shipment to the project by the State Materials Laboratory.

The Contractor shall provide sufficient written evidence of production costs to enable the Engineer to compute the cost of Contractor-produced materials (such as sand, gravel, surfacing material, or aggregates). For other materials, the Contractor shall provide invoices from material suppliers. Each invoice shall be detailed sufficiently to enable the Engineer to determine the actual costs. Payment for materials on hand shall not exceed the total Contract cost for the Contract item.

If payment is based upon an unpaid invoice, the Contractor shall provide the Engineer with a paid invoice within 60-calendar days after the Contracting Agency's initial payment for materials on hand. If the paid invoice is not furnished in this time, any payment the Contracting Agency had made will be deducted from the next progress estimate and withheld until the paid invoice is supplied.

The Contracting Agency will not pay for material on hand when the invoice cost is less than \$2,000. As materials are used in the Work, credits equaling the partial payments for them will be taken on future estimates. Partial payment for materials on hand shall not constitute acceptance. Any material will be rejected if found to be faulty even if partial payment for it has been made.

1-09.9 Payments

The basis of payment will be the actual quantities of Work performed according to the Contract and as specified for payment.

Payments will be made for Work and labor performed and materials furnished under the Contract according to the price in the Proposal unless otherwise provided.

Partial payments will be made once each month, based upon partial estimates prepared by the Engineer. Unless otherwise provided, payments will be made from the Motor Vehicle Fund.

Failure to perform any of the obligations under the Contract by the Contractor may be decreed by the Contracting Agency to be adequate reason for withholding any payments until compliance is achieved.

Upon completion of all Work and after final inspection ([Section 1-05.11](#)), the amount due the Contractor under the Contract will be paid based upon the final estimate made by the Engineer and presentation of a Final Contract Voucher Certification signed by the Contractor. Such voucher shall be deemed a release of all claims of the Contractor unless a claim is filed in accordance with the requirements of [Section 1-09.11](#) and is expressly excepted from the Contractor's certification on the Final Contract Voucher Certification. The date the Secretary signs the Final Contract Voucher Certification constitutes the final acceptance date ([Section 1-05.12](#)).

If the Contractor fails, refuses, or is unable to sign and return the Final Contract Voucher Certification or any other documentation required for completion and final acceptance of the Contract, the Contracting Agency reserves the right to establish a Completion Date (for the purpose of meeting the requirements of RCW 60.28) and unilaterally accept the Contract. Unilateral final acceptance will occur only after the Contractor has been provided the opportunity, by written request from the Engineer, to voluntarily submit such documents. If voluntary compliance is not achieved, formal notification of the impending establishment of a Completion Date and unilateral final acceptance will be provided by certified letter from the Secretary to the Contractor,

which will provide 30-calendar days for the Contractor to submit the necessary documents. The 30-calendar day period will begin on the date the certified letter is received by the Contractor. The date the Secretary unilaterally signs the Final Contract Voucher Certification shall constitute the Completion Date and the final acceptance date ([Section 1-05.12](#)). The reservation by the Contracting Agency to unilaterally accept the Contract will apply to Contracts that are Physically Completed in accordance with [Section 1-08.5](#), or for Contracts that are terminated in accordance with [Section 1-08.10](#). Unilateral final acceptance of the Contract by the Contracting Agency does not in any way relieve the Contractor of their responsibility to comply with all Federal, State, tribal, or local laws, ordinances, and regulations that affect the Work under the Contract.

Payment to the Contractor of partial estimates, final estimates, and retained percentages shall be subject to controlling laws.

1-09.9(1) Retainage

Pursuant to RCW 60.28, a sum of 5-percent of the monies earned by the Contractor will be retained from progress estimates. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to Title 82, RCW, and (2) the claims of any person arising under the Contract.

Monies retained under the provisions of RCW 60.28 shall, at the option of the Contractor, be:

1. Retained in a fund by the Contracting Agency, or
2. Deposited by the Contracting Agency in an escrow (interest-bearing) account in a bank, mutual saving bank, or savings and loan association (interest on monies so retained shall be paid to the Contractor). Deposits are to be in the name of the Contracting Agency and are not to be allowed to be withdrawn without the Contracting Agency's written authorization. The Contracting Agency will issue a check representing the sum of the monies reserved, payable to the bank or trust company. Such check shall be converted into bonds and securities chosen by the Contractor as the interest accrues.

At the time the Contract is executed the Contractor shall designate the option desired. The Contractor in choosing option (2) agrees to assume full responsibility to pay all costs that may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities. The Contracting Agency may also, at its option, accept a bond in lieu of retainage.

Release of the retainage will be made 60-days following the Completion Date (pursuant to RCW 39.12, and RCW 60.28) provided the following conditions are met:

1. On Contracts totaling more than \$20,000, a release has been obtained from the Washington State Department of Revenue.
2. Affidavits of Wages Paid for the Contractor and all Subcontractors are on file with the Contracting Agency (RCW 39.12.040).
3. A certificate of Payment of Contributions Penalties and Interest on Public Works Contract is received from the Washington State Employment Security Department.
4. Washington State Department of Labor and Industries (per [Section 1-07.10](#)) shows the Contractor is current with payments of industrial insurance and medical aid premiums.

5. All claims, as provided by law, filed against the retainage have been resolved. In the event claims are filed and provided the conditions of 1, 2, 3 and 4 are met, the Contractor will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by the Contracting Agency sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.

1-09.10 Payment for Surplus Processed Materials

After the Contract is completed, the Contractor will be reimbursed actual production costs for surplus processed material produced by the Contractor from Contracting Agency-provided sources if its value is \$3,000 or more (determined by actual production costs).

The quantity of surplus material eligible for reimbursement of production costs shall be the quantity produced (but an amount not greater than 110-percent of Plan quantity or as specified by the Engineer), less the actual quantity used. The Contracting Agency will determine the actual amount of surplus material for reimbursement.

The Contractor shall not dispose of any surplus material without permission of the Engineer. Surplus material shall remain the property of the Contracting Agency without reimbursement to the Contractor if it is not eligible for reimbursement.

1-09.11 Disputes and Claims

When protests occur during a Contract, the Contractor shall pursue resolution through the Project Engineer. The Contractor shall follow the procedures outlined in [Section 1-04.5](#).

If the negotiations using the procedures outlined in [Section 1-04.5](#) fail to provide satisfactory resolution of protests, then the Contractor shall provide the Project Engineer with written notification that the Contractor will continue to pursue the dispute in accordance with the provisions of [Section 1-09.11](#). The written notification shall be provided within 7-calendar days after receipt of the Engineer's written determination that the Contractor's protest is invalid pursuant to [Section 1-04.5](#). The Contractor's written notice of dispute shall indicate whether the Contractor prefers to resolve the dispute through the use of a Disputes Review Board as outlined in [Section 1-09.11\(1\)](#), or to submit a formal claim directly to the Contracting Agency pursuant to [Section 1-09.11\(2\)](#).

If a Disputes Review Board is requested by the Contractor, the Contracting Agency will notify the Contractor in writing whether the use of a Disputes Review Board is agreed upon within 7-calendar days after receiving the Contractor's written notice of dispute. If both parties to the dispute agree, then the dispute will be referred to a Disputes Review Board according to [Section 1-09.11\(1\)](#). If the parties do not mutually agree to establish a Disputes Review Board then none shall be used, and the Contractor shall submit a formal claim directly to the Contracting Agency as outlined in [Section 1-09.11\(2\)](#), Claims.

In spite of any protest or dispute, the Contractor shall proceed promptly with the Work as the Engineer orders.

1-09.11(1) Disputes Review Board

In order to assist in the resolution of disputes arising out of the Work of this project, the Contract provides for the establishment of a Disputes Review Board, hereinafter called the “Board.” The Board is created when negotiations using the procedures outlined in [Section 1-04.5](#) fail to provide a satisfactory resolution and the Contracting Agency and Contractor mutually agree to use a Board as part of the disputes resolution process prior to the Contractor filing a formal claim pursuant to [Section 1-09.11\(2\)](#).

The Board will consider disputes referred to it and furnish recommendations to the Contracting Agency and Contractor to assist in the resolution of the differences between them. The purpose of the Board response to such issues is to provide nonbinding findings and recommendations designed to expose the disputing parties to an independent view of the dispute.

The Board members will be especially knowledgeable in the type of construction involved in the Project and shall discharge their responsibilities impartially and independently considering the facts and conditions related to the matters under consideration and the provisions of the Contract

1-09.11(1)A Disputes Review Board Membership

The Board shall consist of 1 member selected by the Contracting Agency and 1 member selected by the Contractor, with these 2 members to select the third member. The first 2 members shall be mutually acceptable to both the Contracting Agency and the Contractor. If 1 or both of the 2 members selected are not acceptable to the Contracting Agency or Contractor, another selection shall be made.

The Contracting Agency and Contractor shall each select their respective Board member and negotiate an agreement, separate and apart from this Contract, with their respective Board member within 14-calendar days after the parties have agreed to establish a Board, as outlined in [Section 1-09.11\(1\)](#).

The agreements with these 2 Board members shall contain language imposing the “Scope of Work” and “Suggested Administrative Procedures” for Disputes Review Boards available at www.wsdot.wa.gov/Consulting/. These negotiated agreements shall also include clauses that require the respective selected members to immediately pursue selection of a third member. The goal is to obtain a third Board member who will complement the first 2 by furnishing a needed expertise, which will facilitate the Board’s operations.

In case a member of the Board needs to be replaced, the replacement member will be appointed in the same manner as the replaced member was appointed. The appointment of a replacement Board member will begin promptly upon determination of the need for replacement and shall be completed within 30-calendar days.

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

1. The Contracting Agency may terminate service of the Contracting Agency appointed member.
2. The Contractor may terminate service of the Contractor appointed member.
3. The third member’s services may be terminated by agreement of the other 2 members.
4. By resignation of the member.

Termination of a member will be followed by appointment of a substitute as specified above.

No member shall have a financial interest in the Contract, except for payments for services on the Board. The Contracting Agency-selected member and the Contractor-selected member shall not have been employed by the party who selected them within a period of 1-year; except that, service as a member of other Disputes Review Boards on other contracts will not preclude a member from serving on the Board for this Contract.

Compensation for the Board members, and the expenses of operation of the Board, shall be shared by the Contracting Agency and Contractor in accordance with the following:

1. The Contracting Agency will compensate directly the wages and travel expense for its selected member.
2. The Contractor shall compensate directly the wages and travel expense for its selected member.
3. The Contracting Agency and Contractor shall share equally in the third member's wages and travel expense, and all of the operating expenses of the Board. These equally shared expenses shall be billed to and paid by the Contracting Agency. The Contractor's share will be deducted from monies due or coming due the Contractor.
4. The Contracting Agency, through the Engineer, will provide administrative services, such as conference facilities and secretarial services, to the Board and the Contracting Agency will bear the costs for this service.

1-09.11(1)B Disputes Review Board Procedures

The Board, the Contracting Agency, and the Contractor shall develop by agreement the Board's rules of operation and procedures to be followed for the Project. In developing the Agreement, the parties shall take into consideration their respective duties and responsibilities set forth in the "Scope of Work" section of their agreements.

The parties may also consider the "Suggested Administrative Procedures" for the Board's operation included in their agreements. These Procedures express, in general terms, the policy for the creation and operation of the Board.

No dispute shall be referred to the Board unless the Contractor has complied with the requirements of [Section 1-04.5](#) and [Section 1-09.11](#) and the parties have mutually agreed to refer the dispute to the Board in an attempt to resolve the dispute prior to the Contractor filing a claim according to [Section 1-09.11\(2\)](#). If the dispute is referred to the Board, then the Board will consider the matter in dispute and provide recommendations concerning:

1. The interpretation of the Contract
2. Entitlement to additional compensation or time for performance
3. The amount of additional compensation or time for performance following a recommendation of entitlement by the Board provided that; (1) the parties were not able to reach a resolution as to the amount of the equitable adjustment or time; (2) the Engineer has made a unilateral determination of the amount of compensation for time; and (3) the Contractor has protested the Engineer's unilateral determination.
4. Other subjects mutually agreed by the Contracting Agency and Contractor to be a Board issue.

Once the Board is established, the dispute resolution process shall be as follows:

1. Board hearing dates will be scheduled by agreement of the parties.
2. The Contractor and the Contracting Agency shall each be afforded an opportunity to be heard by the Board and to offer evidence. Either party furnishing any written evidence or documentation to the Board must furnish copies of such information to the other party a minimum of 15-calendar days prior to the date the Board sets to convene the hearing for the dispute. Either party shall produce such additional evidence as the Board may deem necessary to an understanding and determination of the dispute and furnish copies to the other party.
3. After the hearing is concluded, the Board shall meet in private and reach a conclusion supported by 2 or more members. Its findings and recommendations, together with its reasons shall then be submitted as a written report to both parties. The recommendations shall be based on the pertinent Contract Provisions and facts and circumstances involved in the dispute. The Contract shall be interpreted and construed in accordance with the laws of the State of Washington. The Board shall make every effort to reach a unanimous decision. If this proves impossible, the dissenting member may prepare a minority report.
4. Within 30-calendar days of receiving the Board recommendations, both the Contracting Agency and the Contractor shall respond to the other in writing signifying that the dispute is either resolved or remains unresolved. Although both parties should place weight upon the Board recommendations, the recommendations are not binding.

In the event the Board's recommendations do not lead to resolution of the dispute, all Board records and written recommendations, including any minority reports, will be admissible as evidence in any subsequent litigation.

If the Board's assistance does not resolve the dispute, the Contractor must file a claim according to [Section 1-09.11\(2\)](#) before seeking any form of judicial relief.

1-09.11(2) Claims

If the Contractor claims that additional payment is due and the Contractor has pursued and exhausted all the means provided in [Sections 1-04.5](#) and [Section 1-09.11\(1\)](#) to resolve a dispute, including the use of a Disputes Review Board if one was established, the Contractor may file a claim as provided in this section. The Contractor agrees to waive any claim for additional payment if the written notifications provided in [Section 1-04.5](#) are not given, or if the Engineer is not afforded reasonable access by the Contractor to complete records of actual cost and additional time incurred as required by [Section 1-04.5](#), or if a claim is not filed as provided in this section. The fact that the Contractor has provided a proper notification, provided a properly filed claim, or provided the Engineer access to records of actual cost, shall not in any way be construed as proving or substantiating the validity of the claim. If the claim, after consideration by the Engineer, is found to have merit, the Engineer will make an equitable adjustment either in the amount of costs to be paid or in the time required for the Work, or both. If the Engineer finds the claim to be without merit, no adjustment will be made.

All claims filed by the Contractor shall be in writing and in sufficient detail to enable the Engineer to ascertain the basis and amount of the claim. All claims shall be submitted to the Project Engineer as provided in [Section 1-05.15](#). As a minimum, the following information must accompany each claim submitted:

1. A detailed factual statement of the claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the claim.
2. The date on which facts arose which gave rise to the claim.
3. The name of each Contracting Agency individual, official, or employee involved in or knowledgeable about the claim.
4. The specific provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim.
5. If the claim relates to a decision of the Engineer which the Contract leaves to the Engineer's discretion or as to which the Contract provides that the Engineer's decision is final, the Contractor shall set out in detail all facts supporting its position relating to the decision of the Engineer.
6. The identification of any documents and the substance of any oral communications that support the claim.
7. Copies of any identified documents, other than Contracting Agency documents and documents previously furnished to the Contracting Agency by the Contractor, that support the claim (manuals which are standard to the industry, used by the Contractor, may be included by reference).
8. If an extension of time is sought:
 - a. The specific days and dates for which it is sought,
 - b. The specific reasons the Contractor believes a time extension should be granted,
 - c. The specific provisions of [Section 1-08.8](#) under which it is sought, and
 - d. The Contractor's analysis of its progress schedule to demonstrate the reason for a time extension.
9. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:
 - a. Labor;
 - b. Materials;
 - c. Direct equipment. The actual cost for each piece of equipment for which a claim is made or in the absence of actual cost, the rates established by the AGC/WSDOT Equipment Rental Agreement which was in effect when the Work was performed. In no case shall the amounts claimed for each piece of equipment exceed the rates established by that Equipment Rental Agreement even if the actual cost for such equipment is higher. The Contracting Agency may audit the Contractor's cost records as provided in [Section 1-09.12](#) to determine actual equipment cost. The following information shall be provided for each piece of equipment:
 - (1) Detailed description (e.g., Motor Grader Diesel Powered Caterpillar 12 "G," Tractor Crawler ROPS & Dozer Included Diesel, etc.);
 - (2) The hours of use or standby; and
 - (3) The specific day and dates of use or standby;
 - d. Job overhead;
 - e. Overhead (general and administrative);

- f. Subcontractor's claims (in the same level of detail as specified herein is required for any Subcontractor's claims); and
- g. Other categories as specified by the Contractor or the Contracting Agency.
10. A notarized statement shall be submitted to the Project Engineer containing the following language:

Under the penalty of law for perjury or falsification, the undersigned,

_____, _____
 (name) (title)

of _____
 (company)

hereby certifies that the claim for extra compensation and time, if any, made herein for Work on this Contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the Contract between the parties.

Dated _____/s/_____

Subscribed and sworn before me this _____ day of _____

 Notary Public

My Commission Expires: _____

It will be the responsibility of the Contractor to keep full and complete records of the costs and additional time incurred for any alleged claim. The Contractor shall permit the Engineer to have access to those records and any other records as may be required by the Engineer to determine the facts or contentions involved in the claim. The Contractor shall retain those records for a period of not less than three years after final acceptance.

The Contractor shall pursue administrative resolution of any claim with the Engineer or the designee of the Engineer.

Failure to submit with the Final Contract Voucher Certification such information and details as described in this section for any claim shall operate as a waiver of the claims by the Contractor as provided in [Section 1-09.9](#).

Provided that the Contractor is in full compliance with all the provisions of this section and after the formal claim document has been submitted, the Contracting Agency will respond, in writing, to the Contractor as follows:

1. Within 45-calendar days from the date the claim is received by the Contracting Agency if the claim amount is less than \$100,000;
2. Within 90-calendar days from the date the claim is received by the Contracting Agency if the claim amount is equal to or greater than \$100,000; or

3. If the above restraints are unreasonable due to the complexity of the claim under consideration, the Contractor will be notified within 15-calendar days from the date the claim is received by the Contracting Agency as to the amount of time which will be necessary for the Contracting Agency to prepare its response.

Full compliance by the Contractor with the provisions of this section is a contractual condition precedent to the Contractor's right to seek judicial relief.

1-09.11(3) Time Limitation and Jurisdiction

For the convenience of the parties to the Contract it is mutually agreed by the parties that any claims or causes of action which the Contractor has against the State of Washington arising from the Contract shall be brought within 180-calendar days from the date of final acceptance ([Section 1-05.12](#)) of the Contract by the State of Washington; and it is further agreed that any such claims or causes of action shall be brought only in the Superior Court of Thurston County. The parties understand and agree that the Contractor's failure to bring suit within the time period provided, shall be a complete bar to any such claims or causes of action. It is further mutually agreed by the parties that when any claims or causes of action which the Contractor asserts against the State of Washington arising from the Contract are filed with the State or initiated in court, the Contractor shall permit the State to have timely access to any records deemed necessary by the State to assist in evaluating the claims or action.

1-09.12 Audits

1-09.12(1) General

The Contractor's wage, payroll, and cost records on this Contract shall be open to inspection or audit by representatives of the Contracting Agency during the life of the Contract and for a period of not less than 3-years after the date of final acceptance of the Contract. The Contractor shall retain these records for that period. The Contractor shall also guarantee that the wage, payroll, and cost records of all Subcontractors and all lower tier Subcontractors shall be retained and open to similar inspection or audit for the same period of time. The audit may be performed by employees of the Contracting Agency or by an auditor under contract with the Contracting Agency. The Contractor, Subcontractors, or lower tier subcontractors shall provide adequate facilities, acceptable to the Engineer, for the audit during normal business hours. The Contractor, Subcontractors, or lower tier subcontractors shall make a good faith effort to cooperate with the auditors. If an audit is to be commenced more than 60-calendar days after the final acceptance date of the Contract, the Contractor will be given 20-calendar days notice of the time when the audit is to begin. If any litigation, claim, or audit arising out of, in connection with, or related to this Contract is initiated, the wage, payroll, and cost records shall be retained until such litigation, claim, or audit involving the records is completed.

1-09.12(2) Claims

All claims filed against the Contracting Agency shall be subject to audit at any time following the filing of the claim. Failure of the Contractor, Subcontractors, or lower tier subcontractors to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of the Contractor, Subcontractors, or lower tier subcontractors shall constitute a waiver of a claim and shall bar any recovery thereunder.

1-09.12(3) Required Documents for Audits

As a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets and supervisor's daily reports.
2. Collective Bargaining Agreements.
3. Insurance, welfare, and benefits records.
4. Payroll registers.
5. Earnings records.
6. Payroll tax forms.
7. Material invoices and requisitions.
8. Material cost distribution worksheet.
9. Equipment records (list of company equipment, rates, etc.).
10. Vendors', rental agencies', Subcontractors', and lower tier subcontractors' invoices.
11. Contracts between the Contractor and each of its Subcontractors, and all lower-tier subcontractor contracts and supplier contracts.
12. Subcontractors' and lower tier subcontractors' payment certificates.
13. Canceled checks (payroll and vendors).
14. Job cost reports, including monthly totals.
15. Job payroll ledger.
16. General ledger.
17. Cash disbursements journal.
18. Financial statements for all years reflecting the operations on this Contract. In addition, the Contracting Agency may require, if it deems appropriate, additional financial statements for 3-years preceding execution of the Contract and 3-years following final acceptance of the Contract.
19. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others.
20. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
21. All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim.
22. Worksheets or software used to prepare the claim establishing the cost components for items of the claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.
23. Worksheets, software, and all other documents used by the Contractor to prepare its Bid.

An audit may be performed by employees of the Contracting Agency or a representative of the Contracting Agency. The Contractor and its Subcontractors shall provide adequate facilities acceptable to the Contracting Agency for the audit during normal business hours. The Contractor and all Subcontractors shall cooperate with the Contracting Agency's auditors.

1-09.13 Claims Resolution**1-09.13(1) General**

Prior to seeking claim resolution through nonbinding alternative dispute resolution processes, binding arbitration, or litigation, the Contractor shall proceed under the administrative procedures in Sections [1-04.5](#), [1-09.11](#) and any Special Provision provided in the Contract for resolution of disputes. The provisions of these sections must be complied with in full, as a condition precedent to the Contractor's right to seek claim resolution through any nonbinding alternative dispute resolution process, binding arbitration or litigation.

1-09.13(2) Nonbinding Alternative Disputes Resolution (ADR)

Nonbinding ADR processes are encouraged and available upon mutual agreement of the Contractor and the Contracting Agency for all claims submitted in accordance with [Section 1-09.11](#), provided that:

1. All the administrative remedies provided for in the Contract have been exhausted;
2. The Contracting Agency has been given the time and opportunity to respond to the Contractor as provided in [Section 1-09.11\(2\)](#); and
3. The Contracting Agency has determined that it has sufficient information concerning the Contractor's claims to participate in a nonbinding ADR process.

The Contracting Agency and the Contractor mutually agree that the cost of the nonbinding ADR process shall be shared equally by both parties with each party bearing its own preparation costs.

The type of nonbinding ADR process shall be agreed upon by the parties and shall be conducted within the State of Washington at a location mutually acceptable to the parties.

The Contractor agrees that the participation in a nonbinding ADR process does not in any way waive the requirement that binding arbitration or litigation proceedings must commence within 180-calendar days of final acceptance of the Contract, the same as any other claim or causes of action as provided in [Section 1-09.11\(3\)](#).

1-09.13(3) Claims \$250,000 or Less

The Contractor and the Contracting Agency mutually agree that those claims which total \$250,000 or less, submitted in accordance with [Section 1-09.11](#) and not resolved by nonbinding ADR processes, shall be resolved through mandatory and binding arbitration as described herein.

1-09.13(3)A Administration of Arbitration

Arbitration shall be as agreed by the parties or, if the parties cannot agree, arbitration shall be administered through the American Arbitration Association (AAA) using the following arbitration methods:

1. The current version of the Northwest Region Expedited Commercial Arbitration Rules shall be used for claims with an amount less than \$25,000.
2. The current version of the Expedited Procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than \$25,000 and less than \$50,000.

3. The current version of the standard procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than \$50,000 and not greater than \$250,000.

The Contracting Agency and the Contractor mutually agree the venue of any arbitration hearing shall be within the State of Washington and any such hearing shall be conducted within the State of Washington.

The Contracting Agency and the Contractor mutually agree to be bound by the decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of Thurston County. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

1-09.13(3)B Procedures to Pursue Arbitration

If the dispute cannot be resolved through administrative procedures provided in Sections [1-04.5](#), [1-09.11](#), and any Special Provision provided in the Contract for resolution of disputes or through a mutually agreed upon nonbinding ADR process, the Contractor shall advise the Engineer, in writing, that mandatory and binding arbitration is desired. The parties may agree on an arbitration process, or, if the parties cannot agree a demand for arbitration shall be filed by the Contractor, in accordance with the AAA rules, with the Contracting Agency, and with the AAA. Selection of the arbitrator and the administration of the arbitration shall proceed in accordance with AAA rules using arbitrators from the list developed by the AAA, except that: for claims under \$25,000 using the Northwest Region Expedited Commercial Arbitration Rules, arbitration selection shall proceed pursuant to Section 55 of the Expedited Procedure of the Construction Industry Arbitration Rules. Arbitration shall proceed utilizing the appropriate rule of the AAA as determined by the dollar amount of the claim as provided in [Section 1-09.13\(3\)A](#).

Unresolved disputes which do not involve delays or impacts to unchanged Work may be brought to binding arbitration prior to Physical Completion of the project, provided that:

1. All the administrative remedies provided for in the Contract have been exhausted;
2. The dispute has been pursued to the claim status as provided in [Section 1-09.11\(2\)](#); and
3. The Contractor certifies in writing that claims for delays or impacts to the Work will not result from the dispute.

Unless the Contracting Agency and the Contractor agree otherwise, all other unresolved claims (disputes which have been pursued to the claim status) which arise from a Contract must be brought in a single arbitration hearing and only after Physical Completion of the Contract. The total of those unresolved claims cannot be greater than \$250,000 to be eligible for arbitration.

In addition, the Contractor agrees arbitration proceedings must commence, by filing of the aforementioned demand for arbitration, within 180 calendar days of final acceptance of the contract, the same as any other claim or causes of action as provided in [Section 1-09.11\(3\)](#).

The scope and extent of discovery shall be determined by the arbitrator in accordance with AAA rules. In addition, each party for claims greater than \$25,000 shall serve upon the other party a “statement of proof.” The statement of proof shall be served, with a copy to the AAA, no less than 20-calendar days prior to the arbitration hearing and shall include:

1. The identity, current business address, and residential address of each witness who will testify at the hearing,
2. The identity of a witness as an expert if an expert witness is to be called, a statement as to the subject matter and the substance of the facts and opinions on which the expert is expected to testify, a summary of the grounds for each opinion, and a resume of the expert’s qualifications, and
3. A list of each document that the party intends to offer in evidence at the arbitration hearing. Either party may request from the other party a copy of any document listed. If such a request is made, a copy of the document shall be provided within five calendar days from the date the request is received.

The arbitrator may permit a party to call a witness or offer a document not shown or included in the statement of proof only upon a showing of good cause.

1-09.13(4) Claims in Excess of \$250,000

The Contractor and the Contracting Agency mutually agree that those claims in excess of \$250,000, submitted in accordance with [Section 1-09.11](#) and not resolved by nonbinding ADR processes, shall be resolved through litigation unless the parties mutually agree to resolve the claim through binding arbitration.