

## ADMINISTRATION TEAM MINUTES

**Date:** February 20, 2009  
**Time:** 9:00 am  
**Place:** Tacoma AGC Building

<b>Attending:</b>	✓	Mark Borton	✓	Dave Mariman		Anthony Sarhan
		Jerry Brais	✓	Darrel McCallum	✓	Glenn Schneider
		Forrest Dill		Craig McDaniel		Mark Scoccolo
	✓	Paul Gonseth	✓	Tina Nelson		Dave Standahl
	✓	Mike Hall		Roger Palfenier		Andy Thompson
	✓	Tim Hayner	✓	Mark Rohde	✓	Greg Waugh

**Guests:** Pete Welch, *Granite Northwest Inc.* (for Andy Thompson)  
Ken Walker, *WSDOT Contract Ad and Award Manager*

### Opening Comments:

- The Team welcomed new member Darrel McCallum, WSDOT Construction Project Engineer from Eastern Region. Darrel replaces Ken Olson. A brief round of introductions followed, and an updated Team membership list was distributed (attached). Please note that Mark Rohde's email address is now [mrohde@penhall.com](mailto:mrohde@penhall.com).
- The minutes of the last meeting will be revised with corrections from Walt Isler regarding the scope of OCPI coverage.
- Greg Waugh attended the AGC/ODOT Annual Meeting. The meeting featured a mock bid with about 200 persons participating. The simulation included addenda, and other features that made it very realistic. Most bids were rejected for technicalities, and the reasons for rejection were explained. Only one team submitted a timely bid. The purpose of this exercise was to educate the Contracting Agency about what it really takes to assemble a bid, and to illustrate that the bidding process should be evaluated for process improvements. Would this type of exercise be worthwhile at WSDOT? Greg plans to take this suggestion to the Lead Team.
- Greg mentioned that new bills in the house (HB1837) and senate (SB 5969) require contractors to name all subcontractors at the time of bid. Failure to do so would cause bids to be determined nonresponsive. This bill has come around before, and is still undergoing changes. For example, there is a proposal to exempt the requirement to list an electrical sub for de-minimus electrical work

(such as a small piece of conduit installed without conductors for future use).

Van Collins has testified against the bill on behalf of the AGC. WSDOT is no more in favor of this bill than AGC is, because it would result in more bids being rejected. WSDOT rejects very few bids, but failure to complete the subcontractor list is one of the most common reasons for rejection.

- Glenn Schneider mentioned that the statewide stimulus project list is out, and the money should be allocated soon. Southwest Region has lots of paving work, an interchange, and a truck climbing lane on the list. WSDOT has a very short amount of time to deliver these projects. Southwest Region (not statewide) is looking for ways to reduce the bid period to 2-½ weeks, and is looking at holding pre-advertisement meetings (not pre-bid) to give contractors additional time to think about the projects.
- Glenn stated that Southwest Region is looking at seeking a \$1000 credit for contractor-proposed no-cost change orders. The idea of a no-cost change is a misnomer because administrative costs are a reality. This sparked a lively discussion, with several different perspectives offered. On one hand, no-cost changes work well as they exist today. Contractors lose money on them, the same as WSDOT. Changing this is not in the spirit of partnering, and will cause adversarial relationships. On the other hand, this change can drive efficiencies by combining or eliminating less critical change orders. Yet another opinion was that either party should have a right to recover their cost.
- Tina mentioned the APWA Bidder Responsibility Criteria workshop for local agencies that is scheduled for April 7 in Tacoma. A draft specification has been created and will be unveiled at the workshop. Ten contractors are participating. The intent of the workshop is to educate local agencies about how to correctly specify and evaluate bidder responsibility.
- Contractors are seeing continued misapplication of the Lump Sum Traffic Control provisions. Contractors state that this used to be only a local agency issue, but has gotten out of control on WSDOT projects lately. The LS provisions originally required HQ approval, but have been delegated to Region Construction Managers. Two specific contracts were cited as improper applications; one complex job was LS and one simple job that had unit items; each should have been the other. WSDOT HQ did contact the Region about the projects in question, and the Region felt that the provisions were correctly applied. One Region Construction Manager stated that the Region should be empowered to make the decision, but might not be aware of the criteria. It was noted that there has been no formal evaluation of variability among bidders when LS provisions are applied, but it has been observed that bids do vary quite a bit.

Action Item: Greg requested that application of LS Traffic Control be elevated to active status on the Teams to-do list. This will be scheduled for a future meeting.

### **Old Business – Review of action items from last meeting**

- Deletion of OCPI: Contractors can still send comments to Streator Johnson at [johnsst@wsdot.wa.gov](mailto:johnsst@wsdot.wa.gov).
- The APWA Bidder Responsibility workshop: invitation is being extended to other teams through distribution of the January meeting minutes today.
- Rock scaling survey: status unknown.
- Steel Cost Adjustments: Mark S. (not attending) to bring Florida specs.
- Weighing specs: still scheduled for April 17.
- PMRS implementation: still scheduled for March 20.

### **Old Business – Electronic Bidding**

Ken Walker, WSDOT Contract Ad and Award Manager attended the meeting to announce that, after about 10 years of working on it, electronic bidding is soon to occur at WSDOT. Bid Express has been selected as the on-line bidding software. It was designed specifically for bidding highway work, and is currently used by 30 states.

Handouts from the Bid Express website were provided (attached). A few of the basics were explained. Contractors download bidding data from the server and can import it directly into their bidding software. Bids are encrypted and uploaded to a server, where the contracting agency can view and print read-only bids after bid-opening time. The official bid clock is provided by Bid Express. Access is controlled through an electronic key, but it was not known whether that is a physical device or a code. Bids can be submitted early, and any changes that are uploaded then overwrite the previous submittal. Bid bonds can be provided either electronically or physically. DBE Good Faith Efforts cannot be uploaded with bids - WSDOT is not yet sure how that will work. Additional description and fee information is available on the Bid Express website.

Only WSDOT Olympia Headquarters will accept electronic bids, not Regions, and WSDOT will continue to accept bids physically. WSDOT would like to go all electronic in the future, but doing so would require changes in state law. Contractors expressed concern over bids being lost or delayed by forces beyond their control (power failures, internet outages, etc). However, it was noted that this is no less a concern with traditional bidding (flat tires, slow traffic, wrong turns, etc). Bid Express' liability for lost bids was not known, but will be known by implementation time.

The Bid Express software appears to be the best that is available. It has been proven in 30 other states, including Oregon and Idaho. Yes, it could add cost (there are fees for the software and electronic keys). However, the expected benefits include a potential time savings for contractors, reduction in math errors, and nearly simultaneous posting of bid results.

It will take several more months before WSDOT is ready to implement electronic bidding. The target implementation date is July, 2009. Before going live, WSDOT would like to present a mock bid to test and demonstrate the system.

Action Item: WSDOT is seeking a maximum of 20 individuals to participate in a mock bid for demonstration and testing purposes, some time in May or June. Interested parties may contact Ken Walker, WSDOT Contract Ad & Award Manager to sign up (first come, first served). Ken may be contacted by phone at (360) 705-7017 or email at [walkeke@wsdot.wa.gov](mailto:walkeke@wsdot.wa.gov).

### **Old Business – Price Adjustment Clauses**

At the January meeting, this Team accepted the challenge to evaluate fuel and steel price adjustment clauses for improvements. The Structures Team has suggested that the steel escalator be optional, and members of this Team have suggested that fuel consumption factors in the fuel escalator are incorrect.

A copy of the WSDOT Steel Cost Adjustment spec was distributed (attached). There has been no formal evaluation of how well the steel clause is working since it was introduced in August 2008. The primary complaint is that costs are falling and contractors face credits, rather than payments, under the provision. Oregon (and a few other states) provisions allow the contractor to opt-out of the adjustment at bid time. A copy of the Oregon steel cost adjustment was distributed (attached) although it was missing the cost basis information. Greg Waugh described the function of that spec, and stated that it works pretty well.

The Team concluded that more research is necessary before diving into this issue.

Action Item: Mark S will bring info on Florida's steel adjustment specs to the Team. Mark R. volunteered to bring info on Montana and Idaho. Mark B. offered to check Alaska's provisions and provide that information. Dave M. will bring the rest of the Oregon provision.

### **New Business – Disputes Review Boards**

When this Team added Disputes Review Boards provisions to the 2008 Standard Specs, the specifications were purposely written to require mutual agreement before a DRB can be formed and a dispute can be submitted to the Board. This creates a condition where, once a DRB is created, one party can bypass the DRB and push an issue directly to a claim. Copies of the Disputes Review Board GSP's were distributed (attached).

The Team discussed this, and concluded that this circumvents the entire reason for having a DRB, and was an unintended consequence. The Team unanimously affirmed that, once a DRB is formed, all disputes should go before the Board regardless of whether it is WSDOT or a local agency administering the contract.

Action Item: Glenn offered to draft a change to the DRB specs to require that, once the Board is established, either party may submit a dispute to the Board.

### **New Business – Construction Access**

The Team was asked to look at possible inconsistencies in the application of access control requirements between design-build projects and design-bid-build projects. The issue was forwarded to the WSDOT Work Zone Safety Task Force from the Structures Team, but was not acted on. Minutes of the May 23, 2008 Structures Team meeting and copies of WSDOT General Special Provisions for access control were distributed (attached).

It is recognized that breaking limited access requires FHWA approval. There is a process for this to occur, and specifications that WSDOT applies to design-bid-build projects. Does a process exist for obtaining this approval in the design-build arena?

It was stated that a more costly issue is that work hour restrictions are too restrictive. Not enough productive hours are provided. Constructability reviews by the owner are helpful; local agencies don't do enough of these. Do the requirements for a closed lane apply during periods that prohibit lane closures? This would be a problem.

The Team concluded that there is not enough information to evaluate this issue until we know whether limited access was broken.

Action Item: Dave Mariman will bring more info on this issue to the Team (whether limited access was broken, and any work completed by the WZSTF).

**The meeting adjourned at 12:00 pm.**

**Future Meetings:** Mar. 20, Apr. 17, May 15

### **Team's "Round Tuit" List**

1. Lump Sum Traffic Control application
2. Bid Item for On-site Overhead
3. Joint Training—Documentation
4. Payroll, Wage Administration procedures
5. DBE Good Faith Efforts – inconsistent evaluation
6. AFAD flagger backup



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**Agencies Using Bid Express**



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Scheduled System Maintenance - Feb. 20th - 21st

Updated Bid Express Subscriber Agreement



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**Basic Service**

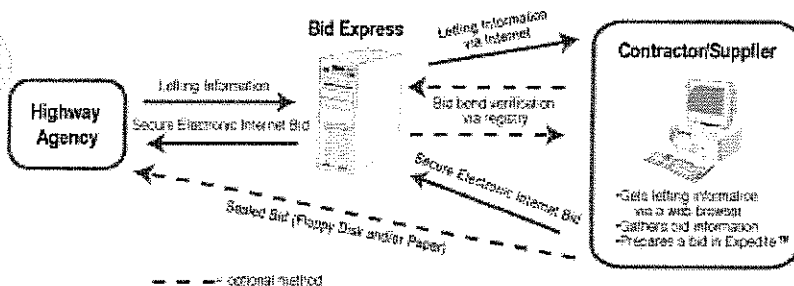
Basic Service from Bid Express allows you to view and download letting information from all Bid Express states. A search function allows you to quickly find information. Bid Express also provides a complete schedule of items for each contract and the eligible bidders and plan holders lists. If you work with subcontractors often, you'll find a subcontractor quote form that makes it easy to communicate with them. Simply select the items you want to sub-out and send the form with just a few clicks.

When you subscribe to Bid Express, you'll also gain access to Expedite™, an application that allows you to prepare your bids electronically. With Expedite, you just need to enter unit prices because the quantities come across automatically and the computation is done for you. Expedite has built-in error checking functions that make your bids virtually error-free. You can save your bid to a floppy disk or CD-ROM, or print it for submission.

**Internet Bidding**

When your bid is prepared in Expedite, you can use the Bid Express Internet Bidding service to submit it over the Internet. Your bid is encrypted and held in a lockbox until the bid opening by the state agency. You can withdraw or replace your bid up to the last minute. Redundant power sources, file back-ups and duplicate hardware set-ups help to ensure that your bid is secure. Bid Express uses the latest digital signature and encryption technology. The system is built, maintained, and constantly monitored to ensure the reliability you would expect for this critical service.

Bid Express also conducts on-line verification of bid bonds through surety agencies. When preparing your bid in Expedite, you can obtain a bid bond verification code and avoid having to submit a paper bond. The code is embedded in the bid and backed by a participating surety bond processing agency.



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**Bid Tab Analysis**

When preparing bids, contractors often find themselves having difficulty determining what to charge for an item. There are many variables that can affect an item's cost and there is often little time to do research. Bid Express offers Bid Tab Analysis service to allow you to view past bid prices and low, average and high prices for items in a variety of formats including by proposal, items and contractor. With this service, you can perform many different analyses quickly and easily and access bid tabs data from most Bid Express states. You can view a demo [movie](#) of the Bid Tab Analysis service and/or [order](#) the service at any time.

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**On-line Plan Room**

By subscribing to the on-line plan room service from Bid Express, you gain access to plan sheets from any computer. They can be viewed on-line, printed in your office, or ordered and shipped to you. With this service, you can:

- Download all of the sheets in a set, or a smaller selection
- View plan sheets for a job in different locations
- Pay one flat fee for viewing all plan sheets and printing them in your office
- Access plan sheets from all participating Bid Express states for no additional cost
- Order custom sets of printed plans in any size and have them delivered to your door (via our printing partners)

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**Small Business Network**

The Small Business Network facilitates the interaction between prime contractors and subcontractors. It allows them to exchange subquotes and communicate about projects. The network is especially helpful in bringing prime contractors and disadvantaged business enterprise (DBE) contractors together to meet specific agency requirements.

With the Small Business Network, prime contractors can:

Access a business center in Bid Express that can help meet Disadvantaged Business Enterprise (DBE) goals

Post an unlimited number of solicitations for items to quote

Create and post an electronic notice that lists the items to be quoted, and send an alert e-mail about the post

View all outstanding sub-quote requests at a glance

Easily locate pre-qualified and certified small and disadvantaged businesses

Advertise to small and disadvantaged businesses more efficiently and cost effectively

Take a step to demonstrate good faith effort in reaching disadvantaged businesses

Quickly obtain and analyze bid tab data from past bids, including the high, average and low prices of items. This data can be viewed by item, by proposal or by contractor to give a clear picture of recent bids for that item.

With the Small Business Network, DBEs can:

View subquote requests that prime contractors have posted for projects they are bidding

Use a key word search function to find bidding opportunities in seconds

Create an electronic quote form that lists the items the DBE wants to quote, and e-mail it to a prime

Look up plan holders and eligible bidders for each proposal so the DBE can send quotes directly to those who need them

View Bid Tab Analysis data from past bids, including the high, average and low prices of items. View this data by item, by proposal or by contractor to get a clear picture of recent bids for that item.

View important notices and publications from your state agency targeted to small and disadvantaged businesses

If the agency you are bidding with has activated the Small Business Network, you can view a demo/training movie about it. Visit your agency's page to see if this option is available.

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Note: Not all services are available for all state agencies. Please check with Bid Express customer support or the agency(ies) which you do business for a list of available services. [View fee schedule.](#)

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**(August 4, 2008)**

**Scope of Payment**

Section 1-09.3 is supplemented with the following:

***Steel Cost Adjustment***

**General**

The Contracting Agency will make a steel cost adjustment, either a credit or a payment, for qualifying changes in the index price of raw steel used in the production of specified materials that are incorporated into the permanent Work. The adjustment will be applied to partial payments made according to Section 1-09.9. The adjustment will be applied to the following materials:

- Reinforcing steel conforming to Section 9-07 used in non-proprietary walls, and pedestrian and vehicular bridge Substructure and Superstructure.
- Structural steel conforming to Section 6-03.2 used in pedestrian and vehicular bridge Substructure and Superstructure.

The adjustment is not a guarantee of full compensation for steel price changes. Any adjustment provided by this provision shall not obligate the Contracting Agency for any costs due solely to changes in steel costs beyond the amount adjusted by this provision. The Contracting Agency does not guarantee that steel will be available at the base steel cost or monthly steel cost. No additional adjustment will be made for changes in the cost of manufacturing, fabrication, shipping, or storage.

For the purpose of determining the adjustment, the Base Steel Cost shall be the *Engineering News-Record Materials Cost Index for Steel \$/CWT* index value for the month prior to the month that Bids are opened. The Base Steel Cost is fixed for the duration of the Contract and will be used for determining all adjustments.

The Monthly Steel Cost shall be the *Engineering News-Record Materials Cost Index for Steel \$/CWT* index value for the month that the steel is actually shipped from the producing mill. If the specified index ceases to be available for any reason, the Contracting Agency at its discretion will select and begin using a substitute price source or index to establish the Monthly Steel Cost.

For each month that steel material that is specified in this Section is incorporated into the permanent Work or paid for as Materials on Hand, the Contractor shall provide the Engineer with written documentation (such as bills of lading, invoices, or purchase orders) of the actual date and quantity of steel in pounds shipped from the producing mill to the manufacturer and the Contracting Agency contract number that the steel is used in.

**Measurement**

No adjustment will be made if the Monthly Steel Cost is within 10 percent of the Base Steel Cost. No adjustment will be made for Work performed after the authorized time for completion. No adjustment will be made for any products manufactured from steel having a mill shipping date prior to the date the contract is executed.

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If the Monthly Steel Cost is greater than or equal to 110% of the Base Steel Cost, then:

$$\text{Adjustment} = \frac{(\text{Monthly Steel Cost} - (1.1 \times \text{Base Steel Cost})) \times Q}{100}$$

If the Monthly Steel Cost is less than or equal to 90% of the Base Steel Cost, then:

$$\text{Adjustment} = \frac{(\text{Monthly Steel Cost} - (0.90 \times \text{Base Steel Cost})) \times Q}{100}$$

Where Q = total pounds of reinforcing steel and structural steel paid in the current month's progress payment. No adjustment will be provided for quantities of steel exceeding the estimated quantity shown in the Contract, even though the actual quantities required may deviate from those listed. If the Contract provides no estimated quantities, then the maximum quantity of reinforcing steel or structural steel shall be the quantity determined by the Engineer using WSDOT approved shop drawings and a unit weight of 490-pounds per cubic foot of steel.

**Payment**

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

"Steel Cost Adjustment", by calculation.

To provide a common proposal for all bidders, the Contracting Agency has entered an amount in the proposal to become a part of the Contractor's total bid.

No adjustment payment will be provided until the Contractor provides written documentation of the actual date and quantity of steel in pounds shipped from the producing mill to the manufacturer. If the Contractor fails to provide the required documentation, then adjustment credits will be calculated using a shipment date determined by the Engineer in accordance with Section 1-05.1.

## Section 00195 - Payment

### Description

#### 00195.00 Scope and Limit:

(a) **General** - The Agency will pay only for measured Pay Item quantities incorporated into the Work or performed according to the terms of the Contract. The Contractor understands and agrees that Pay Item quantities listed in the Schedule of Items do not govern payment.

Payment constitutes full compensation to the Contractor for furnishing all Materials, Equipment, labor, and Incidentals necessary to complete the Work; and for risk, loss, damage, and expense arising from the nature or prosecution of the Work or from the action of the elements, subject to the provisions of 00170.80. The Contractor shall include the costs of bonds and insurance for the Project in the unit price for each Pay Item of Work to be performed.

(b) **Essential or Incidental Materials or Work** - When the Specifications state that the unit price for a Pay Item is compensation for certain Materials or Work essential or Incidental to the Pay Item, the same Materials or Work will not be measured or paid under any other Pay Item.

### Provisions and Requirements

**00195.10 Payment For Changes in Materials Costs** - On certain projects, as identified in the Special Provisions, an escalation/de-escalation clause with respect to certain materials will be in effect during the life of the Contract.

**00195.12 Steel Material Price Escalation/De-Escalation Clause** - Subsections 00195.12, 00195.12(a), 00195.12(b), 00195.12(c), and 00195.12(d) contain the price escalation/de-escalation clause relating to steel materials (as defined in 00195.12(d)) that is included in this Contract. This exclusive steel material price escalation/de-escalation clause, and the steel escalation/de-escalation program described in 00195.12 through 00195.12(d), are in effect for the life of this Contract regardless of the number of steel material Pay Items, if any, that are included, and whether or not the Contractor elects to participate in the steel escalation/de-escalation program according to 00195.12(d).

(a) **Steel Material Price Escalation/De-Escalation Participation** - The Contractor may select individual Pay Items to include in the steel escalation/de-escalation program from those Pay Items listed for this Project under 00195.12(d) by following the directions provided in 00195.12(d). The Contractor is not obligated to select any Pay Items. Before or within five business days after the date of the preconstruction conference, the Contractor shall submit in writing to the Project Manager the Pay Items selected by the Contractor to be included in the steel escalation/de-escalation program, in the manner required under 00195.12(d). If the Contractor fails to inform the Project Manager of Pay Items to include in the steel escalation/de-escalation program in the manner and within the time limits stated in 00195.12(d) (or the Contractor otherwise elects not to participate in the program), the Contractor thereby elects not to participate in the program and forfeits all present and future rights to participate in the program for this Project.

The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this steel material price escalation/de-escalation provision will not limit those rights. Adjustment for fluctuations in the cost of steel material will apply only to the Pay Items individually selected by the Contractor from the Pay Items listed under 00195.12(d), and will be made using the respective steel cost basis (CB) listed.

(b) **Monthly Steel Materials Value (MV) and Base Steel Materials Value (BV)** - The Monthly Steel Materials Value (MV) will be established by the Agency from the IDWPUSISTEEL1 Bureau of Labor

00195.12(b)

Statistics (BLS), Producer Price Indexes (PPI) using non-seasonally adjusted indexes only. Preliminary numbers may be referenced on the IDWPUSISTEEL1 BLS PPI for six months or more before IDWPUSISTEEL1 BLS PPI determines they are final numbers.

The Base Steel Materials Value (BV) for this Project will be the MV published on the Agency website for the month of the bid opening for this Project. The agency will only publish values on the ODOT website for use after the IDWPUSISTEEL1 BLS PPI establishes the numbers as final numbers. The final values of MV and BV will be available at the Agency website. See the ODOT web site page included with the Special Provisions for the web site address where the final values of MV and BV are available.

The Agency has no control of when the IDWPUSISTEEL1 BLS PPI establishes final values. The Agency steel material price escalation/de-escalation adjustments made under 00195.12 through 00195.12(d) may not be reflected on payments made to the Contractor for up to two months after the IDWPUSISTEEL1 BLS PPI applicable values become final. This timing for steel material price escalation/de-escalation adjustments is an agreed term of this Contract and shall not constitute late payment under ORS 279C.570, nor shall the Agency be responsible to pay interest on any such steel material price adjustments.

If the Agency-selected index ceases to be available for any reason, the Agency in its discretion will select and begin using a substitute price source or index to establish the MV each month. The MV will only apply to Pay Items selected by the Contractor and provided in writing to the Project Manager from the Pay Item list contained under, and in the manner and within the time limits required by 00195.12(d). The Agency does not guarantee that steel material will be available at any stated or implied materials price.

**(c) Monthly Steel Materials Price Adjustment** - If the Contractor has properly informed the Project Manager of Pay Items to include in the steel escalation/de-escalation program as required by 00195.12(a) and 00195.12(d), a price adjustment evaluation will be made for the Pay Items individually selected. No adjustments will be made using the BV or MV until such time as they are listed as final values by the IDWPUSISTEEL1 BLS PPI. The price adjustment as calculated in this provision for a given Pay Item will use the MV for the month the Work associated with that Pay Item is performed and added to the monthly progress estimate. A price adjustment for that Pay Item will only be made if the MV for the month the Work associated with the Pay Item is performed and added to the monthly progress estimate differs by more than 10% from the BV. A price adjustment will be made, as and when required by 00195.12 through 00195.12(d), only for the Pay Items, if any, that were selected by the Contractor in the manner and within the time limits required under 00195.12(a) and 00195.12(d).

The Monthly Steel Materials Price Adjustment will be determined as follows:

- If the MV is within 10% ± of the BV, there will be no adjustment.
- If the MV is more than 110% of the BV, then:  
$$PA = (((MV-BV) \div BV) - 0.10) \times (CB \times PIP)$$
- If the MV is less than 90% of the BV, then:  
$$PA = (((MV-BV) \div BV) + 0.10) \times (CB \times PIP)$$

Where:

- PA = Price Adjustment, dollars
- MV = Monthly Steel Materials Value from BLS PPI for the month determined above (after becomes final)
- BV = Base Steel Materials Value from month of the bid opening (after becomes final)
- PIP = Amount paid for the Pay Item for the month for which the adjustment is made
- CB = Cost Basis for the applicable steel material, in percent (see 00195.12(d))

**(d) Steel Materials Pay Item Selection** - The Agency has a process using estimated quantities to determine which Pay Items containing steel material qualify for the steel escalation/de-escalation program by meeting a minimum threshold, and are therefore included in the eligible Pay Items listed in the Special Provisions.

For purposes of 00195.12 through 00195.12(d), "steel material" means structural and reinforcing steel, steel studs, sheet piling, guardrail, ductile iron pipe and other steel products used for the construction, reconstruction or major renovation of a road or highway.

The Contractor may elect to participate in the steel escalation/de-escalation program for this Project by marking the list in the Special Provisions checking each box next to each Pay Item the Contractor wants included in the program and submitting this information in writing, signed and dated by the Contractor, to the Project Manager before or within seven Calendar Days after the date of the preconstruction conference. The steel material price escalation/de-escalation clause for price adjustments for fluctuations in the cost of steel material will apply only to the Pay Items selected by the Contractor, from the Pay Item list included in the Special Provisions, and provided in writing to the Project Manager in the manner and within the time limits stated above.

If the Contractor fails to inform the Project Manager of Pay Items to include in the steel escalation/de-escalation program in the manner and within the time limits stated above (or the Contractor otherwise elects not to participate in the program), the Contractor thereby elects not to participate in the program and forfeits all present and future rights to participate in the program for this Contract and this Project.

#### **00195.20 Changes to Plans or Character of Work:**

**(a) Insignificant Changed Work** - If the changes made under 00140.30 do not significantly change the character or unit cost of the Work to be performed under the Contract, the Agency will pay for such work at the Pay Item price.

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

- As described in the applicable Section of the Specifications;
- If not described there, on a theoretical unit price determined by dividing the Contractor's lump sum price by the estimated quantity of the Pay Item listed in the Special Provisions; or
- If neither of the above apply, the Engineer will make an equitable adjustment.

**(b) Significant Changed Work** - If the changes made under 00140.30 significantly alter the character, unit cost, or lump sum cost of the Work, the Agency will adjust the Contract. Adjustments will exclude any loss of anticipated profits. The parties shall agree upon the basis for payment and the amount of adjustment prior to the Contractor commencing the Changed Work. If the basis and amount cannot be agreed upon, the Engineer will make an equitable adjustment, which may increase or decrease the Contract Amount and Contract Time.

Any such adjustments will not be more than the amount justified by the Engineer on the basis of the established procedures set out in Section 00197 for determining rates.

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

**00195.30 Differing Site Conditions** - Upon written notification, as required in 00140.40, the Engineer will investigate the identified conditions. If the Engineer determines that the conditions materially differ

## SECTION 00195 - PAYMENT

*(Follow all instructions. If there are no instructions above a subsection, paragraph, or sentence, then use the subsection, paragraph, or sentence on all projects. All other modifications to this Section will require Department of Justice approval. (See the Specification Manual, Chapter 3.) Remove all instructions before preparing the final document)*

Comply with Section 00195 of the Standard Specifications modified as follows:

*(Use the following subsection .10 on projects that have at least 150 tons of liquid asphalt.)*

*[ Begin subsection .10 ]*

**00195.10 Payment for Changes in Materials Costs** - Replace this subsection with the following subsection:

**00195.10 Asphalt Cement Material Price Escalation/De-escalation** - An asphalt cement escalation/de-escalation clause will be in effect during the life of the Contract.

The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision shall not limit those rights.

**(a) Monthly Asphalt Cement Material Price (MACMP)** - The Monthly Asphalt Cement Material Price (MACMP) will be established by the Agency each month. For information regarding the calculation of the MACMP, and for the actual MACMP, go to the Agency website at:

[http://www.oregon.gov/ODOT/HWY/ESTIMATING/asphalt\\_fuel.shtml](http://www.oregon.gov/ODOT/HWY/ESTIMATING/asphalt_fuel.shtml)

If the Agency selected index ceases to be available for any reason, the Agency in its discretion will select and begin using a substitute price source or index to establish the MACMP each month. The MACMP will apply to all asphalt cement including but not limited to paving grade, polymer modified, and emulsified asphalts, and recycling agents. The Agency does not guarantee that asphalt cement will be available at the MACMP.

**(b) Base Asphalt Cement Material Price (Base)** - The Base asphalt cement material price for this Project is the MACMP published on the Agency website for the month immediately preceding the bid opening date.

**(c) Monthly Asphalt Cement Adjustment Factor** - The Monthly Asphalt Cement Adjustment Factor will be determined each month as follows:

- If the MACMP is within  $\pm 5\%$  of the Base, there will be no adjustment.
- If the MACMP is more than 105% of the Base, then:

Adjustment Factor = (MACMP) - (1.05 x Base)

- If the MACMP is less than 95% of the Base, then:

Adjustment Factor = (MACMP) - (0.95 x Base)

**(d) Asphalt Cement Price Adjustment** - A price adjustment will be made for the items containing asphalt cement listed below. The price adjustment as calculated in (c) above will use the MACMP for the month the asphalt is incorporated into the Project. The price adjustment will be determined by multiplying the asphalt incorporated during the month for subject Pay Items by the Adjustment Factor.

The Pay Items for which price adjustments will be made are:

**Pay Item(s)**

*(List all pay items in which price adjustments apply. Add or delete pay items as appropriate.)*

\_\_\_\_\_ Asphalt in \_\_\_\_\_ HMAC  
Emulsified Asphalt in Fog Coat  
Asphalt in Tack Coat  
Asphalt in Emulsified Asphalt Surface Treatment  
Asphalt in Multiple Application Emulsified Asphalt Surface Treatment  
Emulsified Asphalt in Mixture  
Recycling Agent

*[ End subsection .10 ]*

*(Use the following lead-in paragraph and subsection .11 on projects with estimated fuel usage in excess of 25,100 gallons. The estimated fuel usage is for the major items that are listed for coverage under this specification. The Fuel Escalation Worksheet is available at:*

*[http://www.oregon.gov/ODOT/HWY/ESTIMATING/manuals\\_forms\\_etc.shtml](http://www.oregon.gov/ODOT/HWY/ESTIMATING/manuals_forms_etc.shtml)*

Add the following subsection:

*[ Begin subsection .11 ]*

**00195.11 Fuel Cost Price Escalation/De-escalation** - A fuel escalation/de-escalation clause will be in effect during the life of the Contract.

The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision shall not limit those rights.

**(a) Monthly Fuel Price (MFP)** - A Monthly Fuel Price (MFP) will be established by the Agency each month. For the actual MFP, go to the Agency website at:

[http://www.oregon.gov/ODOT/HWY/ESTIMATING/asphalt\\_fuel.shtml](http://www.oregon.gov/ODOT/HWY/ESTIMATING/asphalt_fuel.shtml)

The MFP for a given month will be the average weekly price obtained from the OPIS weekly listing dated the first Monday of that month for No. 2 diesel fuel for Portland, Oregon. Prices are based solely on rack and resellers' prices exclusive of freight, taxes, and special discounts. If the average weekly price is not posted by OPIS or is otherwise not available to the Agency for the first Monday of any month for any reason, the Agency may use the average weekly price posted by OPIS immediately before or after the first Monday of that month. If the average weekly prices cease to be available from OPIS for any reason, the Agency in its discretion will select and begin using a substitute price source or index to establish the MFP each month. The Agency does not guarantee that fuel will be available at the MFP.

**(b) Base Fuel Price (Base)** - The Base fuel price for this Project is the MFP published on the Agency website for the month immediately preceding the bid opening date.

**(c) Monthly Fuel Adjustment Factor** - A Monthly Fuel Adjustment Factor will be determined each month as follows:

- If the MFP is within  $\pm 25\%$  of the Base, there will be no adjustment.
- If the MFP is more than 125% of the Base, then:

$$\text{Adjustment Factor} = (\text{MFP}) - (1.25 \times \text{Base})$$

- If the MFP is less than 75% of the Base, then:

$$\text{Adjustment Factor} = (\text{MFP}) - (0.75 \times \text{Base})$$

**(d) Fuel Price Adjustment** - A fuel price adjustment for fluctuations in the cost of fuel will apply only to the major fuel usage Pay Items shown in the following list and at the respective fuel factors listed:

*(Use the Fuel Escalation Worksheet to determine the types of work in which fuel factors apply. From the worksheet, determine all the appropriate pay items and, except for bridges and structures, list them by pay item under the "Item" column. All associated pay items for each bridge and each structure are included in individual "Bridge No." and/or "Structure No." line items. (Do not break out individual bridge or structure bid items.) List each bridge and structure separately. Also include units for the fuel factor value such as xx gallons/ton, xx gallons/sq. ft) and xx gallons/cu. ft., where xx is the fuel factor.)*

**Item**

**Fuel Factor**

\_\_\_\_\_ Gal/\_\_\_\_\_  
\_\_\_\_\_ Gal/\_\_\_\_\_

*(Use the following paragraph and list for bridges and structures. Copy and paste the list as necessary. Delete what does not apply.)*

All pay items associated with the following bridges and structures:

Bridge No. _____	_____ Gal/\$ _____
Bridge No. _____	_____ Gal/\$ _____
Structure No. _____	_____ Gal/\$ _____
Structure No. _____	_____ Gal/\$ _____

The Contractor is cautioned to consider that its operations may require more or less fuel.

A price adjustment ( $\pm$ ) to the Contractor for fuel cost changes will be made monthly if the Monthly Fuel Price differs 25% or more from the Base Fuel Price. This adjustment will be the product of the Monthly Fuel Adjustment Factor and the estimated Monthly Fuel Used. The Monthly Fuel Used will be determined by multiplying the quantities of Work accomplished during the month for subject Pay Items, by the appropriate Fuel Factors.

*(Use the Fuel Escalation Worksheet to determine fuel requirements.)*

Fuel requirements for constructing the Project have been estimated at \_\_\_\_\_ gallons, based on fuel factors shown.

If the Contractor elects to use an alternate fuel (natural gas, wood pellets, propane, or other), the estimated fuel requirements will not be revised. Fuel cost adjustments will continue to be made as specified and will not be revised.

*[ End subsection .11 ]*

**00195.12(a) Steel Material Price Escalation/De-Escalation Participation** - In the sentence that begins "Before or within..." of the paragraph that begins "The Contractor may select...", replace the words "five business days" with "seven Calendar Days".

*(Use the following subsection .12(d) when there are qualifying Pay Items to list under this subsection. The Cost Estimator/Designer will determine which items are eligible from the Steel Escalation/De-Escalation Worksheet. The worksheet is available at:*

*[http://www.oregon.gov/ODOT/HWY/ESTIMATING/manuals\\_forms\\_etc.shtml](http://www.oregon.gov/ODOT/HWY/ESTIMATING/manuals_forms_etc.shtml)*

*Fill in the table with only those Pay Items which the Cost Estimator/Designer has determined are eligible from the Steel Escalation/De-Escalation Worksheet.)*

**00195.12(d) Steel Materials Pay Item Selection** - Add the following to the end of this subsection:

The Contractor may elect to participate in the steel escalation/de-escalation program for this Project under 00195.12 through 00195.12(d) by marking each check box for each Pay Item in the list below the Contractor is selecting for participation in the program. The completed list must be submitted in writing, signed and dated by the Contractor, to the Project Manager before or within five business days after the date of the preconstruction conference.

<b>PARTICIPATE</b>	<b>PAY ITEM DESCRIPTION</b>	<b>COST BASIS (CB)</b>
--------------------	-----------------------------	------------------------

- Pay Item Name (from the Worksheet) CB (from the Worksheet)
- Pay Item Name (from the Worksheet) CB (from the Worksheet)
- Pay Item Name (from the Worksheet) CB (from the Worksheet)
- Pay Item Name (from the Worksheet) CB (from the Worksheet)

*(Copy and paste the above list to add additional items.)*

Regardless of the number of Pay Items listed by the Agency or selected by the Contractor, or if no Pay Items qualify for the steel escalation/de-escalation program for this Project or the Contractor elects not to participate in the steel escalation/de-escalation program for this Project, the steel price escalation/de-escalation clause (and program) contained in 00195.12 through 00195.12(d) are included in this Contract and are the only steel price escalation/de-escalation clause (and program) that apply to this Contract.

\_\_\_\_\_  
Contractor's Signature

\_\_\_\_\_  
Date

*(Use the following subsection .12(d) on projects which do not have any qualifying Pay Items.)*

**00195.12(d) Steel Materials Pay Item Selection** - Add the following to this subsection:

No Pay Items under this Contract qualify for the steel escalation/de-escalation program for this Project.

**00195.50(c-1) Cash, Alternate A** - In the paragraph that begins "Any retainage withheld on...", replace "00195.90(d)" with "00195.50(d)".

**(January 7, 2008)**

**Disputes Review Board Membership**

The second paragraph of Section 1-09.11(1)A is revised to read:

The Contracting Agency and Contractor shall each select their member and negotiate an agreement, separate and apart from this contract, with their respective Board member within 60-calendar days of contract execution.

Section 1-09.11(1)A is supplemented with the following:

In the event of an impasse in selection of the third member, either the Contracting Agency or the Contractor or both may appeal to the Thurston County Superior Court for selection of a third member by the court from a list or lists submitted to the court by the Contracting Agency and/or the Contractor. An impasse shall be considered to have been reached if the two members appointed by the Contracting Agency and the Contractor to the Board have been unable to appoint the third member in a period of 60-calendar days after the approval of the last of such two members.

**(January 7, 2008)**

**Disputes Review Board Procedures**

The first paragraph of Section 1-09.11(1)B is supplemented with the following:

The Agreement shall include the frequency of the Board's visits to the Project and its interactions with the Contracting Agency and the Contractor to keep abreast of the construction development and potential disputes.

**11. Construction Access**

Scott Ayers discussed a recent freeway Design-Build project which required a full lane closure for construction vehicle ingress and egress. Just using the shoulders was not acceptable. This required a lane closure and night work for any construction activities requiring ingress or egress from the freeway. Scott asked why shoulders could not be used for the D/B contracts while their access is allowed for the DBB contracts.

On a different recent freeway project the number of accidents was far higher at night even though most work was done during the day.

If shoulders are not adequate for ingress and egress, most work will need to be done at night and costs will increase. Also, no information is provided on the access plans for the contractor to determine the limitations.

**Action Item:** Mo will pass on concerns to appropriate teams. Topic will be discussed at a future meeting.

0723013.GR1

(Temporary Access Breaks)

(December 6, 2004)

Use on limited access non-interstate facilities to prohibit temporary access to the traveled way except from established legal movements. Consider use with 0723014.GR1 to allow regulated access at other locations.

Requires Region and Headquarters Project Development Office Approval. Consult with the Region Traffic Office, or contact the Headquarters Design Office, Access and Hearings Engineer for guidance.

0723014.GR1

(Temporary Access Breaks)

(December 6, 2004)

Use to allow temporary access to the traveled way at locations other than those defined in Standard Specifications 1-07.23(1). Consider for use on all limited access interstate facilities, and on non-interstate limited access facilities that contain **0723013.GR1**.

Requires Region Approval for all projects. Requires FHWA Approval for use on limited access interstate facilities (allow 30 days minimum for approval). Requires Headquarters State Design Engineer approval for use on non-interstate limited access facilities. Region Project Development shall insure that site conditions meet the criteria contained in the provision. Region Construction and Traffic Offices should concur with projects selected for use. Contact Headquarters Design, Access and Hearings Engineer for guidance.

0723015.FR1

(Lane Closure Restrictions)

(August 7, 2006)

Use in projects that prohibit lane closures prior to a holiday, and where traffic volumes require that lane closures are restricted.

(1 Fill-in) Fill-in describes the specific facility or location and the hours that closures are allowed.

072302.GR1

### **Construction and Maintenance of Detours**

0723021.GR1

(Pedestrian Control and Protection)

(December 1, 2008)

Use in projects where existing pedestrian routes are closed or modified, and where pedestrian access must be maintained during construction. Requires that an ADA accessible pedestrian pathway design and Traffic Control Plan is provided in the contract for those pathways that are impacted by construction.

- 1 (December 6, 2004)
- 2 The Contractor shall enter the highway only through legal movements from existing
- 3 roads, streets and through other access points specifically allowed by the contract
- 4 documents.

1 (December 6, 2004)  
2 The portion of Section 1-07.16(1) that prohibits the merging of construction  
3 vehicles with public traffic from an access gained through adjacent properties is  
4 rescinded, provided the Contractor's submittal is approved as required below.  
5

#### 6 **Access for Construction**

7 The Contractor may enter and leave the traveled way, auxiliary lanes or  
8 shoulders at approved locations other than established legal movements. To  
9 obtain approval of such an access location, the Contractor shall submit a  
10 request to the Engineer. The Contractor's request shall be submitted to the  
11 Engineer at least 30 calendar days prior to the time the use of the access will  
12 be required. This submittal shall include a vicinity map indicating the interstate  
13 stationing at the centerline of the access, distances from the end of ramp  
14 tapers of existing interchanges and a traffic control plan conforming with the  
15 requirements specified in Section 1-10.2(2). The access shall meet the  
16 following requirements:  
17

- 18 • Access to and from the worksite adjacent to a multi-lane facility will  
19 only be allowed to and from a closed lane.
- 20
- 21 • The merging point of construction vehicles and public traffic shall  
22 provide a Decision Sight Distance for the traveling public of 1,640 ft in  
23 urban areas and 1,360 ft in rural areas.
- 24
- 25 • In urban areas the access shall not be located within 3,280 ft of the  
26 end of a ramp taper, or the centerline of a road approach. In rural  
27 areas the access shall not be located within 2,720 ft of the end of a  
28 ramp taper or the centerline of a road approach.
- 29
- 30 • Median crossings within 1.5 miles of the access point shall not be  
31 used in conjunction with the access.
- 32
- 33 • No new median crossings shall be created for use in conjunction  
34 within 1.5 miles of the access point.
- 35
- 36 • Short-duration shoulder stops in the construction zone, utilizing light  
37 vehicles properly equipped with warning flashers, will be allowed  
38 without a lane closure.
- 39
- 40 • When in use the access location shall have traffic control in place as  
41 per Section 1-10. Unauthorized use of the access from adjacent  
42 property is to be prohibited by the use of signing and/or flaggers as  
43 conditions warrant.
- 44
- 45 • The continuity of the existing drainage system shall be maintained  
46 through the access site.
- 47
- 48 • Air borne particulates created as a result of using the access shall be  
49 effectively controlled.  
50

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- The access location shall not adversely affect wetlands or other sensitive areas.

At the completion of the project, the Contractor shall restore the area of the access site to its original, pre-contract, condition. Any damage to the traveled way, shoulders, auxiliary lanes, side slopes or other items caused by the access shall be repaired. All work to comply with this provision or to build, maintain, provide erosion control, control airborne particulates, ensure that drainage continues through the access site, provide traffic control when necessary, remove the temporary access and restore the surrounding area when no longer required for use are the responsibility of the Contractor. The Contractor shall include all related costs in the bid prices of the contract.