

ADMINISTRATION TEAM MINUTES

Date: September 21, 2007
Time: 9:00 am
Place: Tacoma AGC Building

<u>Attending:</u>	Mark Borton	<u>✓</u>	David Mariman	<u>✓</u>	Mark Rohde	<u>✓</u>
	Jerry Brais	<u>✓</u>	Craig McDaniel	<u>✓</u>	Glenn Schneider	<u>✓</u>
	Forrest Dill	—	Tina Nelson	<u>✓</u>	Mark Scoccolo	<u>✓</u>
	Paul Gonseth	—	Cathy Nicholas	<u>✓</u>	Joe Spink	<u>✓</u>
	Tim Hayner	<u>✓</u>	Ken Olson	<u>✓</u>	Dave Standahl	<u>✓</u>
	David Jones	<u>✓</u>	Roger Palfenier	—	Greg Waugh	<u>✓</u>

Misc. Business

Representatives from Sound Transit attended and observed the later portion of the meeting. Sound Transit is working on their partnering efforts with industry, and is observing this forum in order to learn and better understand what benefits are gained.

Old Business – Data Files Provided to Bidders

The Team was updated on the status of this effort. Craig McDaniel, Greg Waugh and Dave Mariman presented this subject to the Project Development Engineer’s conference in Vancouver this spring and the proposal was well received. WSDOT management supports the effort and has chartered a multi-disciplinary committee to provide recommendations for implementation. Dave Mariman is a committee member. APWA has been informed of this and has a lot of concerns about sharing this information. It was also acknowledged that some design offices have this type of data, but not all do.

Action Item: Dave Mariman will solicit feedback from the Team as needed, and bring information as work progresses.

Old Business – Standing Disputes Review Board (DRB)

The Team was updated on the status of this work. The DRB provisions are being incorporated into the 2008 Standard Specifications as recommended by this Team. Last minute edits are still being made, and FHWA approval still needs to be obtained, so a final version is not yet available for the Team to view. A brief recap of the provision was provided to the Team as follows:

A General Special Provision is created to require that a DRB is formed at execution of the contract for all projects estimated at \$10 million and above, or projects of lesser value with State Construction Office approval. If no DRB is required by the contract, then the Standard Specifications provide that a DRB may be formed by agreement of both parties.

Discussions on this topic included acknowledgement that many local agencies are opposed to providing this option in the Standard Specifications. There is little understanding among local agencies of the function or benefits that this process provides. Some agencies fear giving up control over the issues, and that the decisions of the Board will be used against the local agency in litigation.

Tina Nelson is attending an upcoming conference where she will present information on the function of Disputes Review Boards. A panel discussion is proposed, and Tina is looking for volunteers to be a part of the panel.

It was stated that the function of a DRB is very similar to that of the ADR process defined in Section 1-09.13(2), and further that the language of Section 1-09.13(3) is poorly written, and that \$250K is too low.

Craig mentioned that he will be attending a meeting of the DRB Foundation this fall and will bring info gained from that meeting back to the Team.

Action Item: Dave Mariman will provide a copy of the DRB specifications to the Team when they are finalized.

Old Business – Lump Sum Traffic Control and Force Account

The Team was updated on the status of this work. Dave Jones has been working with Jim Spaid on this as it is related to Roadway items of work such as plant establishment and erosion/water pollution control. He suggested that we look at a revision to Section 1-04.6 – Variation in Estimated Quantities to incorporate force account work. This suggestion is one that needs to be further discussed and input solicited from the Regions. This proposal was not well received by some members of the Team. The discussion that ensued was turbulent.

It was stated that the contract needs to define what is expected under the lump sum bid for Traffic control. Section 1-10 states that the LS payment covers all costs for traffic control, and Section 1-09.6 states that the objective is to provide reimbursement for all costs associated with the work. Which one is correct? Bidders don't consider the traffic control effort required for force account work in their bids.

Dave provided a rundown of the frequency of force account items of work being included in WSDOT contracts, with a statement of how each force account item may affect traffic control costs. He concluded that the majority of force account items do not impact traffic

control costs. The question of whether change orders for erosion control overruns were included in this evaluation and the response was that they were not.

It was proposed that an overrun in a force account item be treated the same as any other change to the contract. There is inconsistent administration of this event during construction. Some cases occur where the force account work is materially different but it goes unrecognized. Responses from the Team included:

- Force account estimates will need to be precise.
- What about when a force account is underran or deleted?
- How can the traffic control effort associated with a force account item be estimated?

The question was posed, how real is this problem? Are there real occurrences of this? It was noted that project engineers managing these projects are not seeing some of these issues. Force account overruns are not a big deal. Some problems are occurring where owners are adding work at unit price within 125% of the plan quantity and not writing change orders.

It was stated that the real problems lie at the local level with agencies applying the LS item where it should not be applied. Lack of coordination of the work by some contractors may result in additional traffic control costs. Work after substantial completion accounts for a lot of cost and takes forever.

WSDOT has made a concerted effort during plans review to look at the application of the LS item and challenge whether it is appropriate when a large amount of force account is included in the contract. WSDOT cannot control misapplication of the LS item by local agencies.

The discussion ended with a conclusion that plant establishment is a problem, and that we will focus on traffic control related to force account during plant establishment periods.

Action Item: Dave Jones will continue to work on specifications to address this concern and bring them to the Team.

New Business – Focus areas for future meetings

The Team spent some time brainstorming issues for future consideration.

1. Buy America – Greg proposed that the Team look into whether the allowance for foreign steel can be changed. However, the Buy America requirements are mandated by FHWA and are not within the control of WSDOT. Changing the allowance for foreign steel would require Congressional approval.

The buy America provisions are the subject of a WSDOT/FHWA process review to see how the rule is working.

There is a process that allows a waiver of these requirements, but the request for a waiver should really occur during the design phase. Greg identified some of the items for which a waiver should be considered. These items included CSL tubes, proprietary items (not dowel bars), permanent parts of structures such as fall arrest systems, conduit, bolts and small fabricated items that are no longer produced domestically, fracture critical tube steel (there is only one domestic producer), and water distribution items.

Conclusion: This is not within the Team's ability to change. No further action is required.

2. Release of retainage to subcontractors in Section 1-08.1(1) - These requirements are a surprise to some. The specifications that require release of retainage to subs was included in the 2002 Standard Specifications, but the Admin Team did not participate in the implementation of the new requirements. [Editors note: the requirements of section 1-08.1(1) were added as a March 6, 2000 Amendment to the 2000 Standard Specifications.]

The 10 day time frame is problematic. What about Owner input on whether the sub has completed all of their requirements? Deficiencies in certified payrolls and other nonconformance can be overlooked until long after the sub is released. How does the acceptability of a subcontractors work affect Acceptance of the Work under Section 1-05.12? WSDOT does not Accept the Work until everything is completed. The onus is on the prime contractor to make sure that the subcontractors work is completed.

State law allows for a reduction of retainage. Other states have reduced or eliminated retainage. Why has WSDOT not done the same? Retainage requirements are subject to state and federal law.

Several courses of action were identified. A 50% retainage bond is one possible solution; eliminating retainage totally and increasing the performance bond is another. Federal Lands does not withhold retainage. Some contractors bond everything, but not all local agencies will accept a bond (nor do they have to). Performance bonding with DBE subs is a problem in that it increases risk for the prime. The industry might need to pursue a change in state law or a waiver with FHWA to make any meaningful changes. Can we look at expanding the use of partial Acceptance of the Work? The process for release of retainage except for landscaping was cited as a good example.

Conclusion: More work is needed on this subject. The Team agreed to tackle the issue.

3. New Membership – A new member was proposed. It was noted that the Team is currently lopsided, with Owners outnumbering Contractors.

Conclusion: Decisions on Team membership is the prerogative of the Lead Team. No further action is required.

4. Charter/Mission – It was proposed that we take a look at the objective of this Team, and what we are here to accomplish. A copy of the Charter was distributed (see attached). It was noted that the Charter still contains mention of the Marine Team, which no longer exists. Are we still on target with our mission?

The discussion included recognition that the focus of the Team should remain on issues common to the AGC and WSDOT. Local agencies and APWA are represented on this Team and they provide input on how the WSDOT specifications affect them, but we should not overload the Team with issues that are exclusive to local agencies. An APWA Committee already exists, and AGC/WSDOT issues that affect APWA are taken to them through existing representation.

Conclusion: No changes to the Team charter were proposed.

5. Review of Sections 1-08.6 and 1-08.7 – These sections remain from our overall review of Section 1-08. Are they still in need of review?

Conclusion: Elevate these to active status on a future agenda.

New Business – Progress Schedules

WSDOT has adopted Primavera P5 as the scheduling component of our overall project management process. Electronic schedules that are submitted under the Type C Progress Schedule specifications are required to be in P3 format. WSDOT is considering a change to the specifications to require electronic schedules in a P5 format so that the submittal is compatible with the Departments chosen platform. The input of this Team is requested.

In addition, WSDOT is beginning to experience problems with obtaining required schedule updates. This is being attributed to the payment regimen specified for a type C schedule. Too much of the lump sum amount is paid upon approval, leaving no incentive for submittal of updates.

Contractors stated that they get by just fine with Sure Track and other less complex scheduling software. There is some value to providing schedules with more detail in other types of work, but not necessarily so for highway work. For example, a current project requires a cost loaded Type C schedule, which results in additional cost but no additional value to the Contractor. Also, P5 is expensive (about \$2500 for a stand alone copy). Specifying a sole source tool is problematic. Contractors find that the look-ahead schedules are the most useful product of the scheduling specifications.

Many questioned the need for a more advanced submittal. If the requirements of the contract can be met with any basic scheduling tool, then why does WSDOT need the

higher level software? What does WSDOT use the electronic schedule for? Can Contractors just provide the data and have WSDOT enter it? Can P3 schedules just be converted to P5 without additional manipulation? Have we considered requiring, “P5 or approved equal”? Did WSDOT know that P5 is already replaced by P6?

WSDOT uses the electronic schedules to evaluate the impacts of changes and potential changes. From the information WSDOT has gathered, conversion from P3 to P5 presents problems and does require considerable manipulation. Because P5 is an enterprise tool, information is rolled up into higher level reports. WSDOT management sees this as necessary for use in computing Earned Value.

What is Earned Value? Doesn't WSDOT already know the Earned Value by paying for actual quantities of work completed? Can the experts come and explain this to the Team?

Craig explained that the decision to use P5 has already been made and implementation is under way.

Action Item: Craig will take the lead on bringing additional information to the Team, and that WSDOT will move forward with specification changes requiring P5 for Type C schedules.

New Business – Disadvantaged Business Enterprises

Dave Jones distributed a work category list of construction activities that is intended to improve contractor's ability to identify available DBE firms. Currently the Office of Minority and Women Business Enterprises (OMWBE) lists available firms by NAICS code. WSDOT is working with OMWBE to change from a system of codes to a system where firms are identified by the type of work they perform. This is based on a model that works well for the Alaska DOT.

Action Items: Team members will provide feedback on any work categories that don't make sense. Dave Jones will distribute the list electronically.

Another change being developed affects how the final COA amount is established. WSDOT currently compares the DBE Certification to the DBE breakdown and raises the COA amount if the breakdown shows a higher attainment. This practice is proposed to be eliminated.

A question arose whether WSDOT is planning to move to a lump sum goal instead of a percentage of the contractor bid amount. There is no plan to do so. It was stated that local agencies think this would be a good change, but the Office of Equal Opportunity does not. Some cautioned that such a change could result in bidding “games” or could result in a higher than necessary goal if the Engineers Estimate is higher than the bid amount.

Administration Team

Minutes

Page7

The meeting adjourned at 12:00 noon.

Future Meetings: Every third Friday
Oct. 19, Nov. 16, Dec. 21, Jan 18.

Subject Area	Sponsor
Section 1-08.6 Suspension of Work	Dave Jones / David Mariman
Section 1-08.7 Maintenance During Suspension	Joe Spink

Team's "Round Tuit" List

1. Bid Item for On-site Overhead
2. Joint Training—Documentation
3. Payroll, Wage Administration procedures
4. Web-Based Construction Management
5. DBE Good Faith Efforts – inconsistent evaluation

AGC-WSDOT JOINT COOPERATIVE COMMITTEE

CELEBRATING 69 YEARS OF PARTNERING

Mission

Deliver quality, cost-effective transportation improvements through a working partnership of contractors and the Washington State Department of Transportation.

Objectives

To continuously improve:

- open communication and cooperation within the partnership.
- the constructed product.
- the processes of design, contract administration and construction.

To increase our customers' awareness of the partnership's effectiveness.

Organization

Lead Team: Coordinates and monitors activities of all other teams, providing resources and guidance. Schedules full committee activities. Anticipates trends and future technologies and commissions teams to research their practical applications.

Administration Team: Addresses contract administration issues.

Marine Team: Addresses all aspects of marine facilities including construction specifications and contract administration.

Roadway Team: Addresses earthwork, drainage and pavement specifications.

Structures Team: Addresses structural specifications including structural steel, concrete and foundations.

1-04.5 Procedure and Protest by the Contractor

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is not protested as provided in this section shall be full payment and final settlement of all claims for Contract time and for all costs of any kind, including costs of delays, related to any Work either covered or affected by the change. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the Engineer any written or oral order (including directions, instructions, interpretations, and determinations).

If in disagreement with anything required in a change order, another written order, or an oral order from the Engineer, including any direction, instruction, interpretation, or determination by the Engineer, the Contractor shall:

1. Immediately give a signed written notice of protest to the Project Engineer or the Project Engineer's field Inspectors before doing the Work;
2. Supplement the written protest within 7-calendar days with a written statement and supporting documents providing the following:
 - a. The date and nature of the protested order, direction, instruction, interpretation or determination;
 - b. A full discussion of the circumstances which caused the protest, including names of persons involved, time, duration and nature of the Work involved, and a review of the Plans and Contract Provisions referenced to support the protest;
 - c. The estimated dollar cost, if any, of the protested Work and a detailed breakdown showing how that estimate was determined; and
 - d. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption; and
 - e. If the protest is continuing, the information required above shall be supplemented upon request by the Project Engineer until the protest is resolved.

Throughout any protested Work, the Contractor shall keep complete records of extra costs and time incurred. The Contractor shall permit the Engineer access to these and any other records related to the protested Work as determined by the Engineer.

The Engineer will evaluate all protests provided the procedures in this section are followed. If the Engineer determines that a protest is valid, the Engineer will adjust payment for Work or time by an equitable adjustment in accordance with Section 1-09.4. Extensions of time will be evaluated in accordance with Section 1-08.8. No adjustment will be made for an invalid protest.

If the Engineer determines that the protest is invalid, that determination and the reasons for it will be provided in writing to the Contractor. The determination will be provided within 14-calendar days after receipt of the Contractor's supplemental written statement described in item 2 above, unless additional information is needed for the Engineer to make a decision.

If the Contractor does not accept the Engineer's determination then the Contractor shall pursue the dispute and claims procedures set forth in Section 1-09.11. In spite of any protest or dispute, the Contractor shall proceed promptly with the Work as the Engineer orders.

By failing to follow the procedures of this Section 1-04.5 and Section 1-09.11, the Contractor completely waives any claims for protested Work.

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.

WORK CATEGORY LIST

CONSTRUCTION

Aggregate Crushing/Production
Asphalt Paving – Bike Paths
Asphalt Paving – Curb/Gutter/Sidewalks/Driveways
Asphalt Paving – Parking Lots
Asphalt Paving – Patching/Crack Sealing/Pavement Repair
Asphalt Paving – Rumble Strips
Asphalt Paving – Roadways
Asphalt Paving – Rotomilling/Planing/Grinding
Bridges – Construction
Bridges – Painting
Bridges – Sandblasting/Sealants
Bridges – Steel Erection
Buildings – Steel Erection
Carpentry – Finish
Carpentry – Rough/Framing/Forms
Clearing/Grubbing
Concrete – Cast In Place
Concrete – Curb/Gutter/Sidewalk/Driveways
Concrete – Finishing/Special Coatings
Concrete – Foundations/Slabs
Concrete – Grinding/Repair
Concrete – Masonry/Stonework
Concrete – Paving
Concrete – Precast
Concrete – Retaining Walls/Noise Abatement Walls
Concrete – Shot Crete Facing
Concrete – Waterproofing
Culverts (Concrete, Steel, Aluminum, Plastic)
Demolition – Structures
Drainage Structures
Dump Trucking (Side-dump, Belly-dump, End-dump)
Earthwork – Blasting
Earthwork – Excavation & Embankment
Earthwork – Site Work
Electrical – Airport Lighting
Electrical – Buildings
Electrical – Directional Boring
Electrical – Highway Signals / Illumination/Traffic Loop Replacement
Electrical – Intelligent Transportation Systems (ITS)
Electrical – Underground Power/Cable
Erosion Control (Environment Protection/Ground Stabilization)
Erosion Control – Hydroseeding
Erosion Control – Rip Rap
Erosion Control – Slope Protection
Erosion Control – Soil Sampling/ Water Sampling
Erosion Control – Soil Stabilization
Erosion Control – Topsoil Application
Exterior Buildings – Painting
Exterior Buildings – Sandblasting/Sealants
Exterior Buildings – Roofing
Fencing – Chain Link
Fencing – Wire
Flooring
Foundations – Drilled Shafts

CONSTRUCTION (continued)

Gabion Construction
Glass/Glazing
Guardrail – Beam
Guardrail – Cable
Hazardous Material – Remediation
Hazardous Material – Removal
Interior Finishing – Insulation
Interior Finishing – Painting
Interior Finishing – Wallpaper/Tile
Interior Finishing – Sheetrock/Drywall
Interior Finishing – Tape/Texture
Irrigation Systems
Landscaping (Area Beautification/Grounds Keeping/Maintenance)
Landscaping – Fertilizing
Landscaping – Herbicide Application
Landscaping – Insecticide Application
Landscaping – Liming
Landscaping – Mowing
Landscaping – Mulching
Landscaping – Roadside Restoration
Landscaping – Seeding
Landscaping – Sodding
Landscaping – Soil Binder
Landscaping – Topsoil
Landscaping – Weed Control
Mailbox – Installation
Mechanical HVAC
Metal Buildings – Erection
Planting – Trees/Shrubs/Plants
Pile-driving
Plumbing
Permanent Signs
Retaining Walls - Concrete
Retaining Walls – Structural Earth Walls
Retaining Walls – Geosynthetic
Retaining Walls – (Soil Nail, Soldier Pile)
Retaining Walls – Noise Abatement (Wood/Concrete/Masonry)
Slope Protection – Wire Mesh
Steel Fabrication
Steel Reinforcement/Installation/Rebar
Street Cleaning (Roadside Cleanup)
Storm Sewers
Sanitary Sewers
Surveying – Roadway
Surveying – Structures
Telecommunications – Fiber Optics (General)
Telecommunications – Fiber Optics (Transmission Lines)
Telecommunications – Line Voltage
Telecommunications – Low Voltage
Tie Back Anchors
Traffic Control – Flagger/Other Labor/Spotter
Traffic Control – Traffic Control Supervisor (TCS)
Traffic Markings – Methylmethacrylate
Traffic Markings – Painted

CONSTRUCTION (continued)

Traffic Markings – Thermoplastic
Transportation – Aircraft
Transportation – Barge
Transportation – Truck (Freight/Equipment)
Tunnel – Shaft Excavation/Tiling
Tunnel – Construction
Underground – Concrete/Water Proofing
Underground – Culvert/Drainage/Structures/Storm Line
Underground – Sanitation/Sewer/Water Line Installation/Drainage
Water Lines
Wetlands – Restoration/Rehabilitation

CONSULTANTS

Architect
Blueprinting
Business Services
Civil Engineer
Construction Administration – Office Engineering Services
Construction Administration – Project Management
Construction Administration – Inspection Services
Construction Administration – Materials Testing
Cost Estimations
Drafting & Reprographic Services
Electrical Engineer
Engineering/Economic Analysis
Environmental
Geotechnical Engineer
Graphics
Hazardous Materials Investigation/Remediation
Hazardous Materials Testing
Interior Design
Landscape Architect
Landscape Planning & Design
Maintenance Management Systems (Computerized)
Mechanical Engineer
Permitting
Photogrammetry & Mapping
Public Involvement
ROW – Acquisition & Negotiation
ROW – Appraiser
Transportation Planning

MARINE VESSELS

Cash Register Systems
Commercial Equipment
Communication System – Satellite
Communication System - Wireless
Communication System - VOIP
Computer Systems - Design
Computer Systems - Programming
Marine Deck Coverings
Marine Electrical Systems
Elevators

MARINE VESSELS (continued)

Fire Safety – Alarm Systems
Fire Safety – Suppression Systems
Flooring
Furnishings (Marine Vessels)
Hazardous Materials - Removal
Hazardous Materials - Remediation
Hazardous Materials - Testing
Hydraulics (Marine Vessels)
Insulation (Marine Vessels)
Interior Design
Joiner Systems
Marine Engineer
Mechanical Systems
Naval Architect
Painting
Pile Driving
Public Announcement Systems
Refrigeration Equipment
Special Coatings (Marine Vessels)

SUPPLIERS

Additives (Concrete, Asphalt)
Aggregates
Asphalt
Barricades/Devices - Concrete
Barricades/Devices - Plastic
Barricades/Devices - Metal
Coatings/Sealants
Computer Systems
Concrete – Precast
Concrete – Ready Mix
Corrugated Pipe/Accessories
Doors/Windows
Electrical
Equipment Rental – Buildings/ATCO Units (Trailers)
Equipment Rental – Heavy Equipment
Equipment Rental – Light Duty Vehicles
Erosion Control Materials – Armor Mat
Erosion Control Materials – Rip Rap
Explosives
Furniture
Fencing
Geotextile Materials
Guardrail
Iron Products
Barriers - Precast
Landscaping
Lumber
Masonry
Mechanical
Metal Buildings
Millwork
Pavement Markings – Thermoplastic/Paint
Plumbing

SUPPLIERS (continued)

Roofing
Siding
Signs – Permanent/Temporary
Steel
Telecommunications - Fiber Optics
Telecommunications - Controls/Electronics
Timber/Beams/Logs
Traffic Signals and Lighting

MANUFACTURERS

Additives (Concrete, Asphalt)
Aggregates
Asphalt
Barricades/Devices
Coatings/Sealants
Concrete – Precast
Concrete – Ready Mix
Corrugated Pipe/Accessories
Doors/Windows
Electrical
Equipment Rental – Buildings/ATCO Units
Equipment Rental – Heavy Equipment
Equipment Rental – Light Duty Vehicles
Erosion Control Materials – Armor Mat
Erosion Control Materials – Rip Rap
Explosives
Fencing
Geotextile Materials
Guardrail
Iron Products
Barriers - Precast
Landscaping
Lumber
Masonry
Mechanical
Metal Buildings
Millwork
Pavement Markings – Thermoplastic/Paint
Plumbing
Roofing
Siding
Signs – Permanent/Temporary
Steel
Telecommunications Fiber Optics
Telecommunications Controls/Electronics
Timber/Beams/Logs
Traffic Signals and Lighting

Draft