

# PIERCE COUNTY SMALL PUBLIC WORKS ROSTER (SWR)

## INVITATION TO BID NO. 2027

PROJECT TITLE: HERITAGE RECREATION CENTER NETTING  
REPLACEMENT

**All Bids are to be returned via email to:**

[pccpurchasing@co.pierce.wa.us](mailto:pccpurchasing@co.pierce.wa.us) or to:

Pierce County Purchasing Main Offices:  
950 Fawcett Ave Suite 100, Tacoma, WA 98402

### PROCUREMENT CONTACT:

Leeann Snyder, Pierce County Procurement & Contract Services

Phone: 253-798-7138

Email: [lsnyde1@co.pierce.wa.us](mailto:lsnyde1@co.pierce.wa.us)

Address: 950 Fawcett Ave Suite 100, Tacoma, WA 98402

### **Small Public Works BID Procurement Dates:**

SWR BID Issue Date:	March 14, 2018	
Project Walk-Thru Date/Time:	March 21, 2018	10:00 AM
Questions Cut-off Date/Time:	March 23, 2018	4:00 PM
<b>Bid Due Date/Time:</b>	<b>March 30, 2018</b>	<b>2:00 PM</b>

\*Bids for Small Works Roster Advertised projects will **ONLY** be accepted from contractors who are both listed on Pierce County's Small Works Roster and have a certificate of registration in compliance with RCW 18.27 for the performance of the Work at the time of bid opening.\*

INVITATION TO BID NO. 2027  
HERITAGE RECREATION CENTER NETTING REPLACEMENT

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**BID FORM**

**BIDDER REGISTERED NAME:** \_\_\_\_\_

**BID DATE:** \_\_\_\_\_

Having carefully examined all drawings & specifications prepared by Pierce County, as well as the premises and conditions affecting the work, the Undersigned proposes to furnish all labor, equipment, and materials and perform all work, in accordance with the terms & conditions and prevailing wage requirements attached, which price is hereby designated as to the total proposal price for all necessary work.

#	Description	Quantity:	Extended Price
1	Contractor to provide demolition, disposal and replacement of Soccer Top Netting and Playground protective netting at Heritage Recreation Center (9010 – 128 <sup>th</sup> St E, Puyallup 98373). The work will include but not be limited to demolition and legal disposal of current nets, replacement of Soccer Top Netting (#36 Treated 1-3/4" knotted Black Nylon barrier netting, Rope Barrier border, heavy duty cable ties, UV bonded and weather resistant); replacement of playground netting (#36 Treated 1-3/4" knotted Black Nylon barrier netting, Rope Barrier border, heavy duty cable ties, UV bonded and weather resistant).	1 LS	\$
<b>TOTAL BID:</b>			<b>\$</b>

*Washington State Sales tax will be added to above amounts - rate applicable to this work: 9.9%*

**ADDENDA:** Bidder acknowledges review of all Addenda through No. \_\_\_\_\_

**CONTACT INFORMATION:**

NAME OF MAIN CONTACT FOR THIS BID:

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

**SIGNATURE OF AUTHORIZED PERSON\*:** \_\_\_\_\_

**PRINT NAME & TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Complete the tax status information for one of the following business entity types. **Individual or Corporate name must match exactly as registered with either Social Security Administration or Internal Revenue Service.**

Identification of Contractor as a sole proprietor, a partnership, a joint venture, a corporation or another described form of legal entity: \_\_\_\_\_

Federal Tax ID# (EIN or SSN – as applicable): \_\_\_\_\_

*\* If a corporation, bid must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, bid must be executed by a partner.*

**BIDDER RESPONSIBILITY INFORMATION FORM (TO BE SUBMITTED WITH BID):**

State of Washington Contractor's License No:

\_\_\_\_\_

Unified Business Identifier (UBI) No:

\_\_\_\_\_

Employment Security Department No:

\_\_\_\_\_

**BIDDER FIRM REGISTERED FOR PIERCE COUNTY'S SMALL WORKS ROSTER:**  YES  NO

*Bids for Small Works Roster Advertised projects will ONLY be accepted from contractors who are registered on Pierce County's Small Works Roster maintained by [MRSCRosters.org](http://MRSCRosters.org)*

**BIDDER HAS SUBMITTED ALL REQUIRED BIDDER REFERENCE INFORMATION, AS REQUIRED BY THE SPECIFICATIONS OF THIS BID:**  YES  NO

*New Bidder Responsibility Criteria: As of July 23, 2017 per [RCW 39.04.350\(1\)\(g\)](http://RCW 39.04.350(1)(g)) all bidders must certify to the below statement to be considered a responsible bidder on public works projects:*

**CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES**

The bidder hereby certifies that, within the three-year period immediately preceding the bid due date, the bidder is not a "willful" violator, as defined in RCW [49.48.082](http://49.48.082), of any provision of [chapters 49.46, 49.48, or 49.52](http://chapters 49.46, 49.48, or 49.52) [RCW](http://RCW), as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the State of Washington that the statement regarding Certification of Compliance with Wage Payment Statutes is true and correct.

**\*SIGNATURE OF AUTHORIZED PERSON:** \_\_\_\_\_

**PRINT NAME & TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

*\*to determine 'authorized' person reference [RCW 9A.72.085](http://RCW 9A.72.085)*

**JOB SITE:** Heritage Recreation Center (9010 – 128<sup>th</sup> Street E, Puyallup, WA 98373)

**PROJECT CONTACTS:**

- Procurement Officer: Jana Prince, Senior Buyer, [jprince@co.pierce.wa.us](mailto:jprince@co.pierce.wa.us)
- Contracting Department: Parks and Recreation Services

**PRE-BID MEETING:** To be held **Wednesday March, 21 at 10:00 am**. Meet at Heritage Recreation Center Soccer Field A Parking Lot (9010 – 128<sup>th</sup> St E, Puyallup 98373). Bidders are strongly encouraged to attend. No other such opportunity is anticipated or planned.

**PRE-BID QUESTIONS:** All questions must be submitted to [PCPURCHASING@CO.PIERCE.WA.US](mailto:PCPURCHASING@CO.PIERCE.WA.US) not later than 4:00 PM, March 23, 2018

**PROJECT ESTIMATE:** \$40,000 - \$50,000 + tax

**HOLDER'S LIST:** Email Jana Prince, [jprince@co.pierce.wa.us](mailto:jprince@co.pierce.wa.us), to have your firm added to the Holder's List for this Bid.

**COMPLETION TIME:** The successful bidder will be required to complete all basic bid work within 90 calendar days of Notice to Proceed.

Please Note: Oral explanations, interpretations, or instructions given by anyone before award of a contract will not be binding on the County.

**PART 1 – GENERAL**

1.1 DESCRIPTION

- Contractor will remove and install replacement nets at Soccer Fields A-D and the central playground (see Items B and C below). Bid will be one lump sum with no restrictions or reservations.
- Contractor will remove and legally dispose of existing Soccer top netting on Soccer Fields A-D. Contractor will install eight (8) barrier soccer nets, each net approximately 120' feet long and 1200 sq./ft., for a total of approx. 9,600 sq./ft. of cut to fit netting. Netting is #36 Treated 1-3/4" knotted Black Nylon Barrier Netting with 3/8" Rope Border. Netting should be bonded for UV and weather resistance. Rope Barrier border around entire perimeter and vertically on each pole; custom fit and tailored for tight fit on framing wires. Cable ties at 6"inch vertical and 12"inch horizontal. This netting extends from 8'foot cyclone fence to 20'feet above the field; netting is 12' at center and slopes to approximately 4'feet on each end
- Contractor will remove and legally dispose of existing netting above central playground structure. Contractor will install (replace) netting with #36 Gauge Treated 1-3/4" knotted Baseball/Softball Black Nylon netting with 3/8" Rope Barrier to protect playground from surrounding ballfields. Netting should be bonded for UV and weather resistance. Rope barrier border/perimeter around the entire perimeter and vertically on each pole; custom fit and tailored for tight fit on framing wires. Netting is on four 16' posts covered by out of round circle approximately (2,240 sq./ft.) 40'ft by 56'ft on each side with cables crossed in an X in middle and on the perimeter. Cable ties at 6" inches on perimeter and interior crossed cable systems.
- Contractor will furnish all permits, fees, labor, materials, equipment and all other appurtenances needed to furnish a complete system.

- E. No work shall occur prior to issuance of the notice to proceed from the Pierce County Project Manager and the contractor’s participation in an onsite preconstruction meeting.
- F. Contractor will control all conditions which may cause adverse responses from patrons or local residents.
- G. Contractor shall provide a safe construction site for all workers and public during project construction. All debris generated by this project is the contractor’s responsibility and shall be promptly removed and legally disposed.

**1.2 EXISTING CONDITIONS:**

- A. Examine the site to determine existing conditions and extent of work required. The contractor is responsible for all necessary measurements of the work. Failure of contractor to visit the site and familiarize themselves with the existing conditions shall in no way relieve them from obligations with respect to their bid or contract.
- B. Site is a popular public park/athletic complex under high usage. Work may have to be scheduled around usage in order to protect the public and workers.

**1.3 QUALITY ASSURANCE:**

- A. All work performed shall be in accordance with all applicable codes, regulations, ordinances, rules, and regulations of all public, municipal, and local and state jurisdictional codes that have bearing on the project. All products shall be installed per the manufacturer’s instructions.
- B. Contractor shall provide three representative projects, with contact names and phone numbers, similar in size and scope to this project with his bid. Bids submitted without references may be considered non-responsive.
- C. Thoroughly inspect the site, related work, and notify the County before bidding of any conditions adversely affecting the performance of the installation.
- D. As part of Contract Close-Out, Contractor shall provide written guarantee covering all materials, labor, equipment and related items in addition to any product and/or manufacturer warranties for a period of one (1) year from Final Acceptance of the contract. Any defects that develop within one year from the date of physical completion shall be replaced at the expense of the Contractor.

**PART 2 – MATERIALS**

**2.1 GENERAL**

Materials are to be as specified below or County approved equal. If bidding other than the specified material, include descriptive literature with your quote. It shall be Pierce County’s sole decision as to determining if an item is approved as an equal.

**2.2 MATERIALS:**

<b>Description</b>
Ball Control Netting; #36 Gauge Twine Diameter, DuPont Type 66 – 728 high grade nylon, U.V. treated Yarn, 3 Strand twisted & Knotted construction, 1-1/2” square mesh dyed black, Urethane Bonded – Water Repellant.

Perimeter/Border Rope; Dyed black, Urethane Bonded - Water Repellant, UV treated, 3,600lb Tensile Strength.
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Cable Ties; Black heavy duty, 120lb tensile strength, U.V. resistant.
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**PART 3 – EXECUTION****3.1 SITE PREPARATION:**

- A. Field availability for replacement netting work will be restricted or not available from June 15, 2018 to August 26, 2018
- B. The daily schedule of field use will/may also restrict replacement netting work to one field at a time or one end of a field at a time.
- C. Do not work until a pre-construction meeting with the Owner is held. The meeting will be held on site prior to issuance of Notice to Proceed.
- D. Contractor is responsible for providing protection of adjacent property and existing work.

**3.2 CLEAN UP:**

- A. Job site shall be cleaned of all excess materials; all area impacted by construction shall be restored to original condition, as approved by the Owner.



## **SAMPLE PIERCE COUNTY CONTRACTING FORMS**

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The below listed documents / forms must be returned by the successful bidder no later than 10 days after date of Notice of Award:

- Contract (2 Pages)
- Certificate of Insurance with liability limits not less than those specified in the Bid (3 Pages)
- Contract Bond including Power of Attorney (1 Page)
- Subcontractor's Participation Form (1 Page)
- Personnel Workforce Data Form (1 Page)
- Certification of Nonsegregated Facilities and Non-Collusion & Debarment Affidavit (1 Page)

COUNTY OF PIERCE  
PUBLIC WORKS CONTRACT

Contract No. SC-#####

Project: Title or Contract Services Project

Agency: Main Department Requesting Services

THIS CONTRACT, made and entered into by and between

**PIERCE COUNTY**

950 Fawcett Avenue Ste 100  
Tacoma WA 98402

hereinafter referred to as the Owner, and

**ALL CAPS BUSINESS NAME**

Address Line  
City, WA 98###

hereinafter referred to as the Contractor shall be the agreed basis of performing the work identified herein.

**FIRST:** The Contractor agrees to furnish all material, labor, tools, equipment, apparatus, facilities, etc. necessary to perform and complete in a workmanship like manner the work called for in the contract documents entitled:

Bid No. #### – Title Project; Contract No. SC-#####

Prepared by Pierce County Purchasing according to the terms of such contract documents which documents are incorporated herein by reference. The contract documents shall include, but shall not be limited to, the accepted Proposal, General and Special Conditions, Specifications, Drawings, Addenda, Bond, Advertisement for Bids, and this Contract.

**SECOND:** Time for Completion: The work to be performed under this contract shall commence as soon as the Contractor been officially received the Notice to Proceed by the Department and shall be substantially completed within ### calendar days with an additional ## calendar days available to Final Completion of the project.

The Contractor further agrees that, from the compensation otherwise to be paid, the Owner may retain the sum calculated according to the liquidated damages formula in paragraph 1.08.9 of General Provisions - Construction for each calendar day thereafter that the work remains uncompleted, which sum is agreed upon as the liquidated damages which the Owner will sustain in case of the failure of the Contractor to complete the work at the time stipulated, and this sum is not to be construed as in any sense a penalty.

**THIRD:** In consideration of the Contract Documents and the Contractor's submitted bid, dated Month, XX, XXXX, herein contained on the part of the Contractor, the Owner hereby agrees to pay the Contractor for said work completed according to the Contract Documents, the sum of \*\*\*spell out contract dollar amount\*\*\* (\$#,###,###.##), plus Washington State Sales Tax.

PROGRESS PAYMENTS shall be made, not more often than monthly, on amounts earned by the Contractor and certified by the Contract Manager/Project Coordinator for the work period specified in the application for payment, [[less 5% retainage]] \*\*OR\*\* [[less 15% retainage to be held in lieu of the payment and performance bond]] as set forth in the contract documents. Release of retained percentage will be made as required by law after date of final acceptance, and receipt of all necessary releases and settlement of any liens.

This contract shall be construed and governed by the laws and statutes of the State of Washington.



**CERTIFICATE OF INSURANCE**

This is to certify to the County of Pierce, Tacoma, Washington, that the following policies are in force for:

**ALL CAPS BUSINESS NAME**  
**Address one**  
**City, ST 98###**

Contract Title and/or Description of Job:

**Bid No. XXXX** – Title of Project or Contract; Contract No. **SC-#####**

1. Commercial General Liability Insurance

A. Commercial General Liability Insurance and Commercial Automobile Liability Insurance with limits of not less than:

<u>Coverages</u>	<u>Limits of Liability</u>
<u>Commercial General:</u>	
Bodily Injury Liability and Property Damage Liability Insurance	\$2,000,000 each occurrence \$4,000,000 aggregate
<u>Commercial Automobile:</u>	
Bodily Injury Liability and Property Damage Liability Insurance	\$2,000,000 each occurrence or combined single limit coverage of \$2,000,000

B. Excess/Umbrella Liability Coverage \_\_\_\_\_

C. The following coverages shall be included in both Primary and Excess Liability contracts:

- |   |  |
|---|--|
| 1. Broad form Property Damage Coverage                    | yes <input checked="" type="checkbox"/> no _____ |
| 2. Blanket Broad Form Contractual                         | yes <input checked="" type="checkbox"/> no _____ |
| 3. Stop-Gap Employer's Contingent Liability               | yes <input checked="" type="checkbox"/> no _____ |
| 4. Independent Contractors Liability                      | yes <input checked="" type="checkbox"/> no _____ |
| 5. Personal Injury Liability (Libel, Slander, Defamation) | yes <input checked="" type="checkbox"/> no _____ |
| 6. Products and Completed Operations                      | yes <input checked="" type="checkbox"/> no _____ |
| 7. Non-owned and Hired Car Coverage                       | yes <input checked="" type="checkbox"/> no _____ |

D. General Requirements of Policy(ies)

1. Pierce County is named as an additional insured as respects this contract and such insurance as is carried by the contractor is primary (over any insurance carried by Pierce County).
2. In the event of nonrenewal, cancellation or material change in the coverage provided, thirty (30) days written notice will be furnished the County of Pierce prior to the date of nonrenewal, cancellation or change, such notice to be sent to the County Risk Manager, 955 Tacoma Ave S, Room 303, Tacoma, Washington, 98402.
3. Pierce County has no obligation to report occurrences unless a claim is filed with the County Risk Manager and Pierce County has no obligation to pay premiums.



4. The contractor's insurance policies contain a "cross liability" endorsement substantially as follows:

The inclusion of more than one Insured under this policy shall not affect the rights of any insured as respects any claim, suit or judgement made or brought by or for any other Insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy had been issued to each, except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the company would have been liable had only one Insured been named.

<u>Insurance Company(ies)</u>	<u>Policy #</u>	<u>Effective</u>	<u>Expires</u>

I, \_\_\_\_\_, hereby certify that I am an Authorized Representative of the above named insurance company(ies); that I and said company are licensed to do business in the State of Washington; that I have read the foregoing Certificate of Insurance and know the contents thereof; and that the policies of insurance listed above provide the insurance coverage required by this Certificate of Insurance.

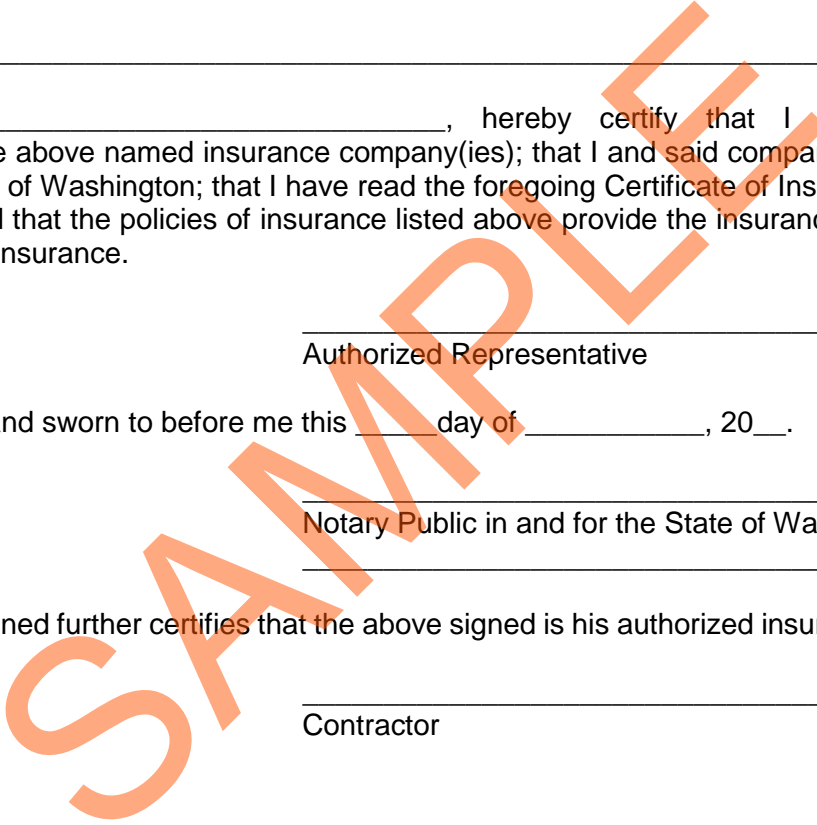
\_\_\_\_\_  
Authorized Representative

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Washington, residing at \_\_\_\_\_.

The undersigned further certifies that the above signed is his authorized insurance representative.

\_\_\_\_\_  
Contractor





2. Property Insurance

A. The following coverages are provided as indicated:

- 1. Builders/Installation Floater/All Risk      yes\_\_\_\_\_ no\_ x\_\_
- 2. Earthquake and Flood                            yes\_\_\_\_\_ no\_ x\_\_

B. General Requirements of Policy(ies)

- 1. Provisions of paragraph 1(c), (1,2,3) above
- 2. Pierce County is not obligated to notify the insurance company(ies) if all or part of the building or structure is occupied by Pierce County.

<u>Insurance Company(ies)</u>	<u>Policy #</u>	<u>Effective</u>	<u>Expires</u>

I, \_\_\_\_\_, hereby certify that I am an Authorized Representative of the above named insurance company(ies); that I and said company are licensed to do business in the State of Washington; that I have read the foregoing Certificate of Insurance and know the contents thereof; and that the policies of insurance listed above provide the insurance coverage required by this Certificate of Insurance.

\_\_\_\_\_  
Authorized Representative

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Washington, residing at \_\_\_\_\_.

The undersigned further certifies that the above signed is his authorized insurance representative.

\_\_\_\_\_  
Contractor

3. Compensation Insurance

The following coverages are provided as indicated:

- A. Workmen's Compensation Act of the State of Washington (Account No. \_\_\_\_\_)
- B. Washington State Certified Workers Compensation Self Insurance (Account No. \_\_\_\_\_)
- C. Federal Compensation Insurance as required by law.

**CONTRACT BOND FORM**

PUBLIC WORKS CONTRACT BOND PIERCE COUNTY

Bond No: \_\_\_\_\_

KNOW ALL BY THESE PRESENTS, That we, \_\_\_\_\_, as Principal, and the \_\_\_\_\_, a corporation, organized and existing under and by virtue of the laws of the State of \_\_\_\_\_, as surety, are held and firmly bound and obligated unto PIERCE COUNTY, 950 Fawcett Avenue, Ste 100, Tacoma Washington 98402 in the full and just sum of **spell out contract amount (\$XXX,XXX.XX)**, plus Washington State Sales Tax, lawful money of the United States, for the payment of which sum well and truly to be made, we do bind ourselves, our and each of our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

This bond is executed in pursuance of Chapter 39.08, Revised Code of Washington. THAT CONDITIONS OF THIS OBLIGATION ARE SUCH, that WHEREAS, the Principal entered into a certain contract with PIERCE COUNTY

dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ for

**Contract Number SC-##### – XXXTitle of Project or Contract ServicesXXX**

NOW, THEREFORE, if the Principal shall faithfully perform all the provisions of such contract and pay all laborers, mechanics and subcontractors and materialmen, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, then this obligation is void; otherwise to remain in full force and effect.

Provided, however, that the conditions of this obligation shall not apply to any money loaned or advanced to the Principal or to any subcontractor or other person in the performance of any such work.

**IMPORTANT:** Surety companies executing bonds must have an A.M. Best Rating of B+ FSC of (6) or higher, have an underwriting limitation of not less than the Contract Sum, and be authorized to transact business in the State of Washington.

Signed and Sealed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SURETY**

**CONTRACTOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

Power of Attorney attached.

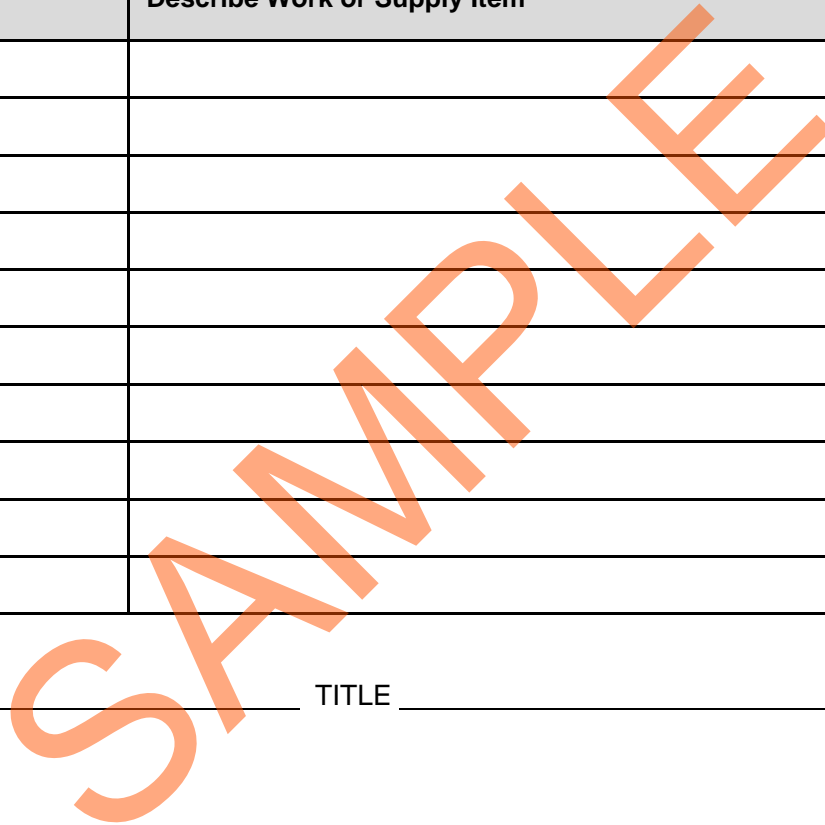
**END OF SECTION**

## SUBCONTRACTING PARTICIPATION FORM

[ ] As the authorized representative of (Bidder's Firm) \_\_\_\_\_ the Bidder does not intend to sublet any portion of this contract.

Firm Name, Address and Phone Number	Describe Work or Supply Item	Subcontract Amount	Sub	Sup	MFG

BY \_\_\_\_\_ TITLE \_\_\_\_\_ DATE \_\_\_\_\_







## CERTIFICATION OF NONSEGREGATED FACILITIES

The contractor certifies that no segregated facilities are maintained and will not be maintained during the execution of this contract at any of contractor's establishments.

The contractor further certifies that none of the contractor's employees are permitted to perform their services at any location under the contractor's control during the life of this contract where segregated facilities are maintained. The contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained.

The contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color or national origin, because of habit, local custom, or otherwise.

The contractor agrees that identical certifications from proposed contractors will be obtained prior to the award of any subcontracts. Contractor will retain a copy of any subcontractor's certification and will send original to Contract Compliance Division.

## NON-COLLUSION & DEBARMENT AFFIDAVIT

I, the undersigned, having carefully examined the Invitation to Bid, propose to furnish materials, equipment, supplies and/or services as set forth herein.

Being first duly sworn, on my oath, I hereby certify that this proposal is genuine and not a sham or collusive proposal, or made in the interests or on behalf of any person not therein named; and I have not directly or indirectly induced or solicited any contractor or supplier on the above work to put in a sham proposal or any person or corporation to refrain from submitting a proposal; and that I have not in any manner sought by collusion to secure to myself an advantage over any other contractor(s) or person(s).

I further certify that, except as noted below, the firm, association or corporation or any person in a controlling capacity associated therewith or any position involving the administration of federal funds; is not currently under suspension, debarment, voluntary exclusion, or determination of eligibility by any federal agency; has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years; does not have a proposed debarment pending; and has not been indicted, convicted or had a civil judgement rendered against said person, firm, association or corporation by a court of competent jurisdiction in any matter involving fraud or official misconduct within the last three years. Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate above to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

"A suspending or debaring official may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular transaction upon a written determination by such official stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549..." (49CFR Part 29 Section 29.215).

Signature: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

PIERCE COUNTY  
GENERAL PROVISIONS FOR SMALL WORKS CONSTRUCTION CONTRACTS

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## 1. GENERAL REQUIREMENTS

### 1.01 DEFINITIONS

#### 1.01.1 BLANK

#### 1.01.2 BLANK

#### 1.01.3 Definitions

##### **Addendum**

A written or graphic document, issued to all bidders and identified as an addendum prior to bid opening, which modifies or supplements the bid documents and becomes a part of the contract.

##### **Award**

The formal decision of the County to notify the lowest responsible responsive bidder to execute and return a contract for execution by the County.

##### **Bid, Proposal**

The offer of a bidder on a properly completed proposal form to perform the contract.

##### **Bidder**

An individual, partnership, firm, corporation, or joint venture, submitting a proposal or bid.

##### **Bid Documents**

The component parts of the proposed contract which may include, but are not limited to, the proposal form, the proposed contract provisions, the proposed contract plans, addenda, and subsurface boring logs (if any).

##### **Contract**

The written agreement between the County and the Contractor. It describes, among other things:

1. What work will be done, and by when,
2. Who provides labor and materials, and
3. How Contractors will be paid.

The contract includes the contract (agreement) form, bidder's completed proposal form, contract general provisions, contract plans, standard specifications, standard plans, addenda, various certifications and affidavits, supplemental agreement, change orders and subsurface boring logs (if any).

##### **Contract Bond**

The approved form of security furnished by the Contractor and the Contractor's Surety as required by the contract that guarantees performance of all the work required by the contract and payment to anyone who provides supplies for the performance of the work.

##### **Contract Form (Agreement Form)**

The form provided by the County that requires the authorized signatures of the Contractor and the County to result in formal execution of the contract.

##### **Contracting Officer**

The County official charged with the responsibility for administration of the construction contract and determination of matters arising under or related to the contract. The Contracting Officer shall be the person identified as such in the Contract Documents. Provided, that for decisions, determinations, change orders or other actions involving a change in the amount payable under the contract which exceed \$250,000 in the aggregate over the contract price previously approved by the Executive, the term Contracting Officer shall mean the Pierce County Executive.

##### **Contractor**

The individual, partnership, firm, corporation, or joint venture, contracting with the County to do prescribed work.

##### **Contract Plans**

A publication addressing the work required for an individual project. At the time of the call for bids, the contract plans may include, but are not limited to, the following: a vicinity map, a summary of quantities, structure notes, signing information, traffic control plans, and detailed drawings; all for a specific individual project. After the contract execution date the contract plans include any addenda.

**Contract Provisions**

A publication addressing the work required for an individual project. At the time of the call for bids, the contract provisions may include, for a specific individual project, the general provisions, the special provisions, a listing of the applicable standard plans, the prevailing minimum hourly wage rates, and an informational proposal form with the listing of bid items. The proposed contract provisions may also include, for a specific individual project, the required contract provisions federal aid construction contracts, and various required certifications or declarations. After the contract execution date the contract provisions include the proposed contract provisions and include any addenda, a copy of the contract form, and a copy of the proposal form with the contract prices and extensions.

**Inspector**

The Contracting Officer's representative who inspects contract performance in detail.

**Plans**

The contract plans or standard plans which show location, character, and dimensions of prescribed work including layouts, profiles, cross -sections, and other details.

**Proposal Form**

The form provided to bidders by the County for submittal of a proposal or bid to the County for a specific project. The form includes the item number, estimated plan quantity, and item description of the bid items along with blank spaces to be completed by the bidder for the unit prices, extensions, the total bid amount, signatures, date, acknowledgment of addenda, and the bidder's address. The required certifications and declarations are part of the form.

**Special Provisions**

Supplemental specifications and modifications to the standard specifications and the amendments to the standard specifications that apply to an individual project.

**Specifications**

Provisions and requirements for the prescribed work.

**Subcontractor**

An individual, partnership, firm, corporation, or joint venture who is sublet part of the contract by the Contractor.

**Surety**

A company that is bound with the Contractor to ensure performance of the contract, payment of all obligations pertaining to the work, and fulfillment of such other conditions as are specified in the contract, contract bond, or otherwise required by law.

**Titles (or Headings)**

The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

**Work**

The provision of all labor, materials, tools, equipment, and everything needed to successfully complete a project according to the contract.

**Working Drawings**

Shop drawings, shop plans, erection plans, false work plans, framework plans, cofferdam, cribbing and shoring plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data, including a schedule of submittal dates for working drawings where specified, which the Contractor must submit to the Contracting Officer for approval.

**1.02 BID PROCEDURES AND SPECIFICATIONS****1.02.1 BLANK****1.02.3 BLANK****1.02.4 Examination of Plans, Specifications, and Site of Work****1.02.4(l) General**

The bidder shall carefully examine the bid documents as defined in Section 1.01.3. Submittal of a bid shall be conclusive evidence that the bidder has made these examinations and understands all requirements for the performance of the completed work. The bidder further warrants, agrees, and acknowledges by submitting a bid that it:

1. Has taken steps reasonably necessary to ascertain the nature and location of the work;
2. Has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:
  - a. Conditions bearing upon acquisition, transportation, disposal, handling and storage of materials,
  - b. The availability of labor, materials, water, electric power, and roads,
  - c. Uncertainties of weather, river stages, tides, or similar physical conditions at the site,
  - d. The conformation and condition of the ground and site, and
  - e. The character of equipment and facilities needed preliminary to and during work performance, and
  - f. The extent to which continued operation of existing facilities at the site limits construction and staging;
3. Has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the work site (including material sites) as well as from the bid documents and other information made a part of this contract; and
4. Has satisfied itself as to the adequacy of time allowed for completion of the contract.

Any failure of the bidder to take the actions described and acknowledged in this clause shall not relieve the bidder from responsibility for estimating properly the difficulty and cost of successfully performing the work, or from proceeding to successfully perform the work without additional expense to the County.

The bidder agrees that the County shall not be liable to it on any claim for additional payment or additional time or any claim whatsoever if the claim directly or indirectly results from the bidder's failure to investigate and familiarize itself sufficiently with the conditions under which the contract is to be performed.

The bidder shall be familiar and comply with all Federal, State, and local laws, ordinances, and regulations which might affect those engaged in the work. Pierce County need not consider any plea of misunderstanding or ignorance of such requirements.

Bid prices shall reflect what the bidder anticipates to be the cost of completing the work, including methods, materials, labor, and equipment. Except as the contract may provide, the bidder shall receive no payment for any costs that exceed those in the bid prices accepted by the County.

Prospective bidders are advised that work on or adjacent to water may require insurance coverage in compliance with:

1. The Longshoremen's and Harbor Worker's Compensation Act (administered by the U.S. Department of Labor), or
2. The State Industrial Insurance Act (administered by the Washington State Department of Labor and Industries), or
3. Both.

The Contractor shall bear all cost for all insurance required by the Contract.

Any prospective bidder desiring an explanation or interpretation of the bid documents, must request the explanation or interpretation in writing soon enough to allow a written reply to reach all prospective bidders before the submission of their bids. Oral explanations, interpretations, or instructions given by anyone before award of a contract will not be binding on the County. Any information given a prospective bidder concerning any of the bid documents will be furnished to all prospective bidders as an addendum, if that information is deemed by the County to be necessary in submitting bids, or if the County concludes that the lack of the information would be prejudicial to other prospective bidders.



#### **1.02.4(2) Subsurface Information**

If the County has made subsurface investigation of the site of the proposed work, the boring log data and soil sample test data accumulated by it will be made available for inspection by bidders. The boring logs shall be considered as part of the contract. However, the County makes no representation or warranty expressed or implied that:

1. The bidders' interpretations from the boring logs are correct;
2. Moisture conditions and indicated water tables will not vary from those found at the time the borings were made; and
3. The ground at the location of the borings has not been physically disturbed or altered after the boring was made.

Pierce County specifically makes no representations, guarantees, or warranties as to the condition, materials, or proportions of the materials between the specific borings regardless of any subsurface information the County may make available to the prospective bidders.

The availability of subsurface information from the County shall not relieve the bidder or Contractor from any risks or of any duty to make examinations and investigations as required by paragraph 1.02.4(l) or any other responsibility under the contract or as may be required by law.

#### **1.02.5 Proposal Forms**

All proposals shall be submitted on proposal forms supplied by the County with the Small Works Roster Bid.

The proposal form will identify the project and its location and describe the work. It will also list estimated quantities, units of measurement, the items of work, and any materials to be furnished at unit bid prices. The bidder shall complete spaces on the proposal form that call for unit prices, extensions, the total bid amount, signatures, date, acknowledgement of addenda, the bidders Washington Contractor's registration number, and the bidder's address. The required certifications are included as part of the proposal form.

Pierce County reserves the right to arrange the Proposal Forms with Alternatives, Additives, or Deductives, if such be to its advantage. The Bidder shall bid on all Alternatives, Deductives, or Alternates set forth in the Proposal Forms unless otherwise specified in the Special Provisions.

#### **1.02.6 Preparation of Proposal**

Pierce County will accept only those proposals properly executed on forms it provides.

All prices shall be in legible figures (not words) written in ink or typed. The proposal shall include:

1. A unit price for each item where requested (omitting digits more than 4 places to the right of the decimal point),
2. An extension for each unit price where requested, or the total price for each item for which no unit price is requested, including all alternative bid items,
3. The total contract price (the sum of all extensions and non-unit price items).

The bidder shall confirm that all addenda have been received.

The bidder shall include with the proposal all submittals required by the paragraph entitled Contract and Procurement Assistance, if any.

Any firm doing business under an assumed name shall submit a certified copy of a "Certificate of Assumed Name". The legal name of the bidder shall be included.

The bidder shall include with his/her bid the names of all proposed subcontractors with whom the bidder, if awarded the contract will subcontract for performance of the categories of work designated on the list to be submitted with the bid or to indicate by naming itself that a category of work on the list shall not be subcontracted

Proposals shall be signed by the person or persons having authority to sign them. Pierce County may require bidders to furnish duly authenticated copies of resolutions, or minutes or power-of-attorney from each person or entity to be bound, evidencing that authority. If a bidder is a corporation the proposal shall be signed on behalf of the corporation by such an authorized person. If a bidder is a copartnership, the proposal shall be signed by an authorized member of the copartnership. When the bidder is a joint venture, the proposal shall be signed by one or more individuals as authorized by the Joint Venture,

**1.02.7 BLANK**

**1.02.8 BLANK**

**1.02.9 Delivery of Proposal**

Each proposal shall be sealed in an envelope, or FAXED, and shall bear the name of the project as set forth in the Small Works Roster Bid, the bid number, the name, address and telephone number of the bidder and the most recent date set forth in the Small Works Roster Bid or any addendum thereto for opening of bids.

The envelope containing all bid proposals and documents shall be addressed and delivered to the Pierce County Purchasing, 615 S 9th St, Suite 100, Tacoma WA 98405 or FAXED to 253-798-6699. Bids received after the time stated in the most recent Small Works Roster Bid as amended will not be accepted and will be returned, unopened, to the Bidder or rejected if the FAX time is later than the time stated in the Small Works Roster Bid. There will be no exceptions or waivers of this requirement.

**1.02.10 Withdrawal or Revision of Proposal**

After submitting a bid proposal to the County, the bidder may withdraw or revise it if

1. The bidder submits a written request signed by an authorized person, and
2. Pierce County receives the request before the time for opening bids. The original bid proposal may be revised and resubmitted as the official bid proposal if the County receives it before the time for opening bids.

**1.02.11 BLANK**

**1.02.12 Public Opening of Proposals**

Proposals will be opened in the Pierce County Purchasing Office and publicly read at the time indicated in the Small Works Roster Bid unless the bid opening has been delayed or canceled. Bidders, their authorized agents, and other interested parties may be present.

**1.02.13 Irregular Proposals**

1. A proposal will be considered irregular and will be rejected if:
  - a. The authorized proposal form is not used or is altered;
  - b. The completed proposal form contains any unauthorized additions, deletions, alternate bids, or conditions;
  - c. The bidder adds provisions reserving the right to reject or accept the award, or enter into the contract;
  - d. The proposal form is not properly executed;
  - e. A price per unit cannot be determined, where required.
2. A proposal may be considered irregular and may be rejected if:
  - a. The proposal does not include a unit price for every bid item, where required;
  - b. Any of the unit prices are excessively unbalanced (either above or below the amount of a reasonable bid) to the potential detriment of the County;
  - c. Receipt of addenda is not acknowledged;
  - d. A member of a joint venture and the joint venture submit proposals for the same project (in such an instance both bids may be rejected); or
  - e. If proposal form entries are not made in ink.

#### **1.02.14 Disqualification of Bidders**

1. A bidder will be deemed not responsible and the proposal rejected if the bidder does not meet the requirements of RCW 39.04.
2. A bidder may be deemed not responsible and the proposal rejected if:
  - a. More than one proposal is submitted for the same project from a bidder under the same or different names;
  - b. Evidence of collusion exists with any other bidder or potential bidder. Participants in collusion will be restricted from submitting further bids;
  - c. The bidder, in the opinion of the County, is not qualified for the work or to the full extent of the bid, or to the extent that the bid exceeds the authorized prequalification amount as may have been determined by an authorized prequalification of the bidder;
  - d. An unsatisfactory performance record exists based on past or current work with the County or for work done for others as judged from the standpoint of conduct of the work, workmanship, progress, affirmative action, equal employment opportunity practices, or Disadvantaged Business Enterprise, Minority Business Enterprise, or Women's Business Enterprise, or Women's Business Enterprise utilization;
  - e. There is uncompleted work (Pierce County or otherwise) which might hinder or prevent the prompt completion of the work bid upon;
  - f. The bidder has failed to settle bills for labor or materials on past or current projects;
  - g. The bidder has failed to complete a written public contract or has been convicted of a crime arising from a previous public contract;
  - h. The bidder is unable, financially or otherwise, to perform the work; or
  - i. There are any other reasons deemed proper by the County.
3. The apparent low bidder must supply requested information regarding responsibility within two (2) business days of request by the County. Withholding of information or failure to submit all information requested within the time provided shall render the bid non-responsive.
4. If the County preliminarily determines that the apparent low bidder is not responsible, the County will provide the bidder written notice of the reasons for its determination. Within two (2) business days after receipt of the preliminary determination, the bidder may withdraw its bid or file an appeal with the Contracting Officer for the County. The County, through its Contracting Officer, County Executive, and its Prosecuting Attorney, or their designees, will consider the material submitted by an appellant before issuing its final determination upon the appeal. If the final determination affirms that the bidder is not responsible, the County will not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination. Notice of the final determination will be deemed received by the bidder three days after the date on which written notice was placed in the US mail, first class mail, postage prepaid, addressed to the bidder at the address set forth in the bid document submitted, unless evidence of actual receipt is established prior thereto.

#### **1.02.15 Pre-Award Information**

Before awarding any contract, the County may require one or more of these items or actions of the bidder:

1. A complete statement of the origin, composition, and manufacture of materials to be used,
2. Samples of these materials for quality and fitness tests,
3. A progress schedule (in a form the County requires) showing the order of and time required for the various phases of the work,
4. A breakdown of costs assigned to any bid item, or
5. Attendance at a conference with the Contracting Officer,
6. Such additional information as may be specified as will permit the Contracting Officer to determine the bidder's general ability to perform the work.

## **1.03 AWARD AND EXECUTION OF CONTRACT**

### **1.03.1 Consideration of Bids**

After opening and reading proposals, the County will check them for correctness of extensions of the prices per unit and the total price. If a discrepancy exists between the price per unit and the extended amount of any bid item, the price per unit will control. The total of extensions, corrected where necessary, will be used by the County for award purposes and to fix the amount of the contract bond.

The right is reserved by the County to waive informalities in the bidding, accept a proposal of the lowest responsible bidder, reject any or all bids, reissue the Small Works Roster Bid, revise or cancel the work, or require the work to be done in another way if the best interest of the County is served.

### **1.03.2 Award of Contract**

Normally, contract award or bid rejection will occur within 60 calendar days after bid opening. All bids shall remain irrevocable during this 60 day period. Unless a bidder submits a written withdrawal of bid, to become effective after the elapse of the 60 day period, its bid shall remain effective until the County has executed a written contract or announced that all bids have been rejected. The County will notify in writing the apparent lowest responsible bidder of its proposal, to award the contract.

### **1.03.3 Execution of Contract**

Within 20 calendar days after the notice of proposed award, the apparent successful bidder shall return the signed contract prepared by the County, insurance certification as required by Section 1.07.9, a satisfactory bond as required by law and Section 1.03.4, any other submittals required before contract execution elsewhere in the Invitation for Bids and Contract Documents, and any other pre-award information the County requires under Section 1.02.15.

Until the County executes a contract, no proposal shall bind the County to execute a contract, nor obligate it to bear any expense pursuant to the Small Works Roster Bid. Neither shall any work begin within the project limits or within the County furnished sites. The Contractor shall bear all risks for any work begun outside such areas and for any materials ordered before the contract is executed by the Contracting Agency, and the Contractor is given written Notice to Proceed.

The time to sign and return the contract and furnish other documents may be extended if requested by the bidder and the County deems the circumstances warrant an extension.

Pierce County - is prohibited by RCW 39.06.010 from executing a contract with a Contractor who is not registered or licensed as required by the laws of the state. In addition, Pierce County may require persons doing business with the County to possess a business license prior to award.

When the Proposal Form provides spaces for a business license number, a Washington State Contractor's registration number, or both, the bidder shall insert such information in the spaces provided. The County may at its option, require legible copies of the Contractor's Registration and/or business license be submitted to the Contracting Officer as part of the County's pre-award information and evaluation activities.

### **1.03.4 Contract Bond**

The successful bidder shall provide an executed contract bond for the full contract amount. This contract bond shall:

1. Be on a Pierce County-furnished form,
2. Be signed by an approved surety (or sureties) that:
  - a. Is registered with the Washington State Insurance Commissioner, and
  - b. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner,
3. Be conditioned upon the faithful performance of the contract by the Contractor within the prescribed time,
4. Guarantee that the surety shall indemnify, defend, and protect the County against any claim of direct or indirect loss resulting from the failure:
  - a. Of the Contractor (or any employees, subcontractors, or agents of the Contractor) to faithfully perform the contract, or

- b. Of the Contractor (or subcontractors or agents of the Contractor) to pay all laborers, mechanics, subcontractors, agents, materialmen, or any other person who provides supplies or provisions for carrying out the work.

5. Be subject to the approval by the Pierce County Risk Manager.

The surety shall have a Best Guide Rating of B+ or better. Pierce County may require sureties or surety companies on the contract bond to appear and qualify themselves. Whenever the County deems the surety or sureties to be inadequate, it may, upon written demand, require the Contractor to furnish additional surety to cover any remaining work. Until the added surety is furnished, payments on the contract will stop.

If the contract amount is less than \$35,000, the contractor may, at his/her option, request 50% of total contract amount be paid upon completion of work and the remainder be held in lieu of performance bond for a period of forty-five days after date of final acceptance, or until receipt of all necessary releases and settlement of any liens, whichever is later.

#### **1.03.5 Failure to Execute Contract**

Failure to return the signed contract and documents as required by Section 1.03.3 shall result in a cancellation of the contract award and potential removal from the Small Works Roster. If this should occur, the County may then award the contract to the second lowest responsible bidder. If the second lowest responsible bidder fails to return the required documents as stated above within the time provided after notice of proposed award, the contract may then be awarded successively in a like manner to the remaining lowest responsible bidders until the above requirements are met or the remaining proposals are rejected.

#### **1.03.6 Blank**

### **1.04 SCOPE OF THE WORK**

#### **1.04.1 Intent of the Contract**

The intent of the contract is to prescribe a complete work. The Contractor shall provide all labor, materials, tools, equipment, transportation, supplies, and incidentals required to complete all contract work. Omissions from the contract of details of work which are necessary to carry out the intent of the contract, or which are customarily performed, shall not relieve the Contractor from performing the omitted work, but they shall be performed as if fully and correctly set forth and described in the contract. The unit contract bid prices shall be full pay for all work and materials required to complete the work.

The Contractor shall include all costs of doing the work within the bid prices. If the contract plans, contract provisions, addenda, or my other part of the contract requires work that has no unit price in the proposal form, the cost of such work shall be incidental and included within the unit bid prices in the contract.

#### **1.04.2 Coordination of Contract Documents, Plans, Special Provisions, Specifications and Addenda**

The complete contract includes these parts: the contract form, bidder's completed proposal form, contract plans, general provisions, special provisions, specifications, plans, addenda, various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any are provided). These parts complement each other in describing a complete work. Any requirement in one part binds as if stated in all parts. The Contractor shall provide any work or materials clearly implied in the contract even if the contract does not mention it specifically.

Any inconsistency in the parts of the contract shall be resolved by this following order of precedence (e.g. 1 presiding over 2, 3,4,5,6, and 7; 2 presiding over 3,4,5,6, and 7: and so forth):

1. Addenda, Certifications, Change Orders, supplemental agreements,
2. Proposal Form,
3. Contract form,
4. General Provisions, except to the extent amended by express reference, in Special Provisions, to the subsection in question,
5. Special Provisions,
6. Specifications,

## 7. Contract Plans.

On the contract plans, working drawings, and standard plans, figured dimensions shall take precedence over scaled dimensions.

This order of precedence shall not apply when work is required by one part of the contract but omitted from another part or parts of the contract. The work required in one part must be furnished even in not mentioned in other parts of the contract.

If any part of the contract requires work that does not include a description for how the work is to be performed, the work shall be performed in accordance with standard trade practice(s). For purposes of the contract, a standard trade practice is one having such regularity of observance in the trade as to justify an expectation that it will be observed by the Contractor in doing any work.

In case of any ambiguity or dispute over interpreting the contract, the decision of the County will be final as provided in Section 1.05.1.

### **1.04.3 BLANK**

### **1.04.4 Changes**

Pierce County may at any time change the work within the general scope of the contract. Among others, these changes include

1. Deleting any part of the work,
2. Increasing or decreasing quantities,
3. Altering specifications, designs, or both,
4. Revising the way the work is to be done,
5. Adding new work,
6. Altering Pierce County-provided facilities, equipment, material, services, or sites, or
7. Ordering the Contractor to speed up or delay the work.

The Contracting Officer will issue a written change order for any change unless the remainder of this section provides otherwise.

For Item 1, an equitable adjustment for deleted work will be made as provided in Section 1.09.5.

For Item 2, if the actual quantity of any item increases or decreases by more than 25 percent from the original plan quantity, the unit contract price for that item will be adjusted in accordance with Section 1.04.6.

For any other change, the Contracting Officer will determine if the change should be paid for at unit contract prices. If the Contracting Officer determines that the change increased or decreased the Contractor's costs or time to do any of the work including unchanged work, the Contracting Officer will make an equitable adjustment to the contract. The equitable adjustment shall be with the agreement of the Contractor, unless the parties are unable to agree, in which case the Contracting Officer will determine the amount of the equitable adjustment in accordance with Section 1.09.4, and adjust the time as the Contracting Officer deems appropriate. Extensions of time will be evaluated in accordance with Section 1.08.8. The Contracting Officer's decision concerning equitable adjustment and extension of time shall be final as provided in Section 1.05.1.

The Contractor shall proceed with the work upon receiving:

1. A written change order approved by the Contracting Officer, or
2. An oral order from the Contracting officer before actually receiving the written change order.

Changes normally noted on field stakes will not require a written change order. These changes shall be made at the unit prices that apply. The Contractor shall respond immediately to changes shown on field stakes without waiting for further notice.

The Contractor shall obtain written consent of the surety or sureties to any change order if (1) changed work increases the total cost of the project by more than 25 percent of the original total contract price, or (2) the Contracting Officer requests such consent and a performance bond is required.

#### **1.04.5 Procedures and Protest by the Contractor**

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

1. Immediately, and in any case by the end of the first working day after the occurrence of the event giving rise to the disagreement, give a signed written notice of protest to the Contracting Officer or the Field Inspectors before doing the work;
2. Supplement the written protest within 15 calendar days with a written statement providing the following:
  - a. The date of the protested order,
  - b. The nature and circumstances which caused the protest,
  - c. The contract provisions which caused the protest,
  - d. The estimated dollar cost, if any, of the protested work and how that estimate was determined, and
  - e. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption; and
3. If the protest is continuing, the information required above shall be supplemented as requested by the Contracting Officer. In addition, the Contractor shall provide the Contracting Officer, before final payment, a written statement of the actual adjustment requested.

Throughout any protested work, the Contractor shall keep complete records of extra costs and time incurred. The Contractor shall permit the Contracting Officer access to these and any other records needed for evaluating the protest,

The Contracting Officer will evaluate all protests provided the procedures in this section are followed. If the Contracting Officer determines that a protest is valid, the Contracting Officer 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 1.08.9. No adjustment will be made for an invalid protest.

In spite of any protest, the Contractor shall proceed promptly with the work as the Contracting Officer orders.

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 direct, indirect, and consequential costs, including the cost 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 entitlements and accepts from the County any written or oral order (including directions, instructions, and interpretations).

By failing to follow the procedures of this section and Section 1.09.11, the Contractor completely waives any claims for protested work.

#### **1.04.6 Increased or Decreased Quantities**

Payment to the Contractor will be made only for the actual quantities of work performed and accepted in conformance with the contract. When the accepted quantities of work vary from the original bid quantities, payment will be at the unit contract prices for accepted work, unless the total quantity of any contract item, using the original bid quantity, increases or decreases by more than 25 percent. In that case that part of the increase or decrease exceeding 25 percent will be adjusted as follows:

1. Increased Quantities

Either party to the contract will be entitled to an equitable adjustment for that portion of the actual quantity in excess of 125 percent of the original bid quantity except as limited in subparagraph 3 in this section.

2. Decreased Quantities

Either party to the contract will be entitled an equitable adjustment if the actual quantity of work performed is less than 75 percent of the original bid quantity except as limited in subparagraph 3 in this section.

3. Adjustment Limits.

The equitable adjustment for increased or decreased quantities will be determined in accordance with Section 1.09.4, except as limited by the following provisions:

- a. No payment for loss of anticipated profits will be allowed because of any decrease from the estimated quantities shown in the proposal form, contract provisions, and contract plans,
- b. The total payment for the item will be limited to not more than 75 percent of the amount originally bid,
- c. No payment will be made for extended or unabsorbed home office overhead and field overhead expenses to the extent that there is an unbalanced allocation of such expense among the contract bid items and other operations of the Contractor,
- d. No payment for consequential damages will be allowed because of any variance in quantities from those originally shown in the proposal form, contract provisions, and contract plans,
- e. No adjustment in the unit contract prices will be made for any item unless the increase or decrease in quantity results in a change of \$10,000 or more as measured by the original bid quantities and unit prices for that item.

When ordered by the Contracting Officer, the Contractor shall proceed with the work pending determination of the cost or time adjustments for the change.

The Contracting Officer will not adjust for increases or decreases if the County has entered the amount for that item in the proposal form only to provide a common basis for bidders.

**1.04.7 Changed Conditions (Differing Site Conditions)**

The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (1) preexisting subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) preexisting unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Contracting Officer will promptly investigate the conditions. If the Contracting Officer finds that the conditions are materially different and cause a material increase or decrease in the Contractor's cost of, or the time required for performance of any part of the work under this contract whether or not changed as a result of such conditions, the Contracting Officer will make an equitable adjustment in the payment or the time required for the performance of the work. Extensions of time will be evaluated in accordance with Section 1.08.8. The equitable adjustment will be by agreement with the Contractor, unless the parties are unable to agree, in which case the Contracting Officer will determine the amount of the equitable adjustment in accordance with Section 1.09.4. If the Contracting Officer determines that changed conditions do not exist or no adjustment in costs or time is warranted, such determination shall be final as provided in Section 1.05.1.

No claim of the Contractor, under this clause, shall be allowed unless the Contractor has given the notice required above; provided, however, the time for giving notice may be extended by the Contracting Officer for good cause shown. The time for giving notice will not be extended beyond the first working day after the time that the Contractor knew or should have known of the existence of the changed conditions. If there is a decrease in the costs or time required to perform the, work, failure of the Contractor to notify the Contracting Officer of the changed condition shall not affect Pierce County's right to make an adjustment in the costs or time.

Additionally, no claim by the Contractor shall be allowed unless the Contractor has followed the procedures provided in Section 1.04.5 and 1.09.11.



#### **1.04.8 Progress Estimates and Payments**

Contracting Officer-issued estimates or payments for any part of the work shall not be used as evidence of performance or quantities, Progress estimates serve only as the basis for partial payments. The Contracting Officer may revise progress estimates anytime before final acceptance. If the Contracting Officer deems it proper to do so, changes may be made in progress estimates and in the final estimate.

#### **1.04.9 Use of Buildings or Structures**

The Contracting Officer will decide whether any buildings or structures of Pierce County may remain during the work and whether the Contractor may use such a building or structure.

#### **1.04.10 Use of Materials Found on the Project**

With the Contracting Officer's written approval, the Contractor may use on the project: stone, gravel, sand, other materials from on-site excavation, or timbers removed in the course of the work. Approval will not be granted if:

1. The excavated material or timber fails to meet contract requirements,
2. The excavated materials or timber are required for other use under the contract,
3. Such use is not in the best interests of Pierce County as determined by the Contracting Officer, whose decision shall be final as provided in Section 1.05.1.

Any material disturbed by, but not used in the work shall be disposed of as provided elsewhere in the contract or as directed by the Contracting Officer.

#### **1.04.11 Final Cleanup**

The Contractor shall perform final cleanup as provided in this section to the Contracting Officer's satisfaction. The Contracting Officer will not establish a date of completion until this is done. Material sites, affected highway rights of way, and all ground the Contractor occupied to do the work shall be left neat and presentable.

The Contractor shall at its expense, remove to locations authorized by law and by the owners thereof all rubbish, surplus materials, discarded materials, falsework, camp buildings, temporary structures, equipment and debris.

In the event that the Contracting Officer determines that cleanup is not accomplished as required under this section, or that material removed has been deposited in other than lawfully authorized locations, he/she may require, or cause removal and deposit of the material in appropriate locations, charging the expense thereof to the Contractor. The decision of the Contracting Officer on this issue shall be final as provided in Section 1.05.1.

The Contractor shall not remove warning, regulatory, or guide signs unless the Contracting Officer approves.

### **1.05 CONTROL OF WORK**

#### **1.05.1 Authority of the Contracting Officer**

The Contracting Officer shall be satisfied that all the work is being done in accordance with the requirements of the contract. The contract and specifications give the Contracting Officer authority over the work. Notices to the County shall be submitted to the Contracting Officer, who after any necessary investigation and analysis will recommend action which he/she deems appropriate and propose and prepare any necessary written decisions, determinations, interpretations and notices for review and action by the Contracting Officer in sufficient time to meet the requirements of the situation and of the contract. Whenever it is so provided in this contract, the decision of the Contracting Officer shall be final: provided, however, that if an action is brought within the time allowed in this contract challenging the Contracting Officer's decision, that decision shall be subject to the scope of judicial review provided in such cases under Washington case law and the conditions of the contract.

The Contracting Officer's decisions will be final on all questions including, but not limited to the following:

1. Quality and acceptability of materials and work,
2. Measurement of unit price work,
3. Acceptability of rates of progress on the work,

4. Interpretation of plans and specifications,
5. Determinations as to the existence of changed or differing site conditions,
6. Fulfillment of the contract by the Contractor,
7. Payments under the contract, including equitable adjustments,
8. Suspension(s) of work,
9. Termination of the contract for default or public convenience,
10. Determination as to non-working days, and
11. Approval of working drawings.

If the Contractor fails to respond promptly to the requirements of the contract or orders from the Contracting Officer:

1. The Contracting Officer may use Pierce County resources, other contractors, or other means to accomplish the work, and
2. Pierce County will not be obligated to pay the Contractor, and will deduct from the Contractor's payments any costs that result when any other means are used to carry out the contract requirements or Contracting Officer orders.

At the Contractor's risk, the Contracting Officer may suspend all or part of the work if

1. The Contractor fails to fulfill contract terms, to carry out the Contracting Officer's orders, or
2. The weather or other conditions are unsuitable, or
3. It is in the public interest.

Nothing in these Specifications or in the contract requires the Contracting Officer to provide the Contractor with direction or advice on how to do the work. If the Contracting Officer approves or recommends any method or manner for doing the work or producing materials, the approval or recommendation shall not:

1. Guarantee that following the method or manner will result in compliance with the contract,
2. Relieve the Contractor of any risks or obligations under the contract, or
3. Create any liability to Pierce County.

#### **1.05.2 Authority of Assistants and Inspectors**

The Contracting Officer may appoint assistants and inspectors to assist in determining that the work and materials meet the contract requirements. Assistants and inspectors have the authority to reject defective material and suspend work that is being done improperly, subject to the final decisions of the Contracting Officer.

Assistants and inspectors are not authorized to accept work, to accept materials, to issue instructions, or to give advice that is contrary to the contract. Work done or material furnished which does not meet the contract requirements shall be at the Contractor's risk and shall not be a basis for a claim even if the inspectors or assistants purport to change the contract.

Assistants and inspectors may advise the Contractor of any faulty work or materials or infringements of the terms of the contract; however, failure of the Contracting Officer or his/her assistants or inspectors to advise the Contractor does not constitute acceptance or approval.

#### **1.05.3 Plans and Working Drawings**

The contract plans are defined in Section 1.01.3. Any proposed alterations by the Contractor affecting the requirements and information in the contract plans shall be in writing and will require approval of the Contracting Officer.

To detail and illustrate the work, the Contracting Officer may furnish to the Contractor additional plans and explanations consistent with the original plans. The Contractor shall perform the work according to these additional plans and explanations.

The Contractor shall submit supplemental working drawings as required for the performance of the work. The drawings shall be on sheets measuring 24 by 36 inches or on sheets with dimensions in multiples of 8-1/2 by 11 inches. The drawings shall be provided far enough in advance of actual needs to allow for the review process by the County and other agencies. This may involve resubmittals because of revisions or rejections. Unless otherwise stated in the contract, the Contracting Officer will require up to 30 calendar days from the date of submittals or resubmittals are received until they are sent to the Contractor. This time will increase if the drawings submitted to not meet the contract requirements or contain insufficient details.

If more than 30 calendar days are required for the Contracting Officer's review of any individual submittal or resubmittal, an extension of time will be considered in accordance with Section 1.08.8.

The Contractor shall obtain the Contracting Officer's written approval of the drawings before proceeding with the work they represent. This approval shall neither confer upon the County nor relieve the Contractor of any responsibility for the accuracy of the drawings or their conformity with the contract. The Contractor shall bear all risk and all costs of any work delays caused by non-approval of these drawings or plans.

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**1.05.6 Inspection of Work and Materials**

The Contracting Officer, and any assistants or inspectors authorized by the Contracting Officer, may inspect all work and materials for conformity with contract terms. To insure the Contracting Officer's safety and access during these inspections, the Contractor shall provide any equipment needed, such as walk-ways, railings, ladders, and platforms.

When the Contracting Officer requests, the Contractor shall, (without charge) provide samples of materials used or to be used in the work. If the Contractor uses materials tested and approved for one project in an unrelated project, the County may deduct its testing and inspection costs from payments due the Contractor. The Contracting Officer may order the Contractor to remove and replace, and bear the cost of doing so, any materials used without inspection.

Any inspections, tests, measurements, or other actions by the County employees serve only one purpose: to assure the Contracting Officer that work, materials, progress rate, and quantities comply with contract terms. Such work by Pierce County employees shall not relieve the Contractor from doing any contract-assigned work or from determining whether contract requirements are being met. The Contractor shall correct any substandard work or materials. The Contracting Officer will reject unsuitable work or materials even though inspected or paid for in a progress estimate.

If the Contracting Officer requests, the Contractor shall remove or uncover any area of the completed work. After the Contracting Officer inspects it, the Contractor shall restore the area to the standard the contract requires. The Contractor shall bear the cost of uncovering, removing, and restoring the exposed work: a. if it proves unacceptable or b. if it was placed without authority or without due notice to the Contracting Officer.

The Contractor, if advised to do so by the Contracting Officer, shall permit representatives from other agencies to inspect the work when it is to be done:

1. On any utility, or facility of a public agency, or
2. To the satisfaction of any federal, state, or municipal agency.

**1.05.7 Removal of Defective or Unauthorized Work**

Pierce County will not pay for unauthorized or defective work. Unauthorized or defective work includes: work and materials that do not conform to contract requirements; work done beyond the lines and grades set by the plans or the Contracting Officer, and extra work and materials furnished without the Contracting Officer's written approval. At the Contracting Officer's order, the Contractor shall immediately remedy, remove, replace, or dispose of unauthorized or defective work or materials and bear all costs of doing so.

### **1.05.8 County's Right to Correct Defective or Unauthorized Work**

If the Contractor fails to remedy defective or unauthorized work with the time specified in a written notice from the Contracting Officer, or fails to perform any part of the work required by the Contract Documents, the Contracting Officer may correct and remedy such work as may be identified in the written notice with County forces or by such other means as the County may deem necessary.

If the Contractor fails to comply with a written order to remedy what the Contracting Officer determines to be an emergency situation, the Contracting Officer may have the defective or unauthorized work corrected immediately, have the defective or unauthorized work removed and replaced, or have the work the Contractor refuses to perform completed by using County or other forces. An emergency situation is any situation which, in the opinion of the Contracting Officer, a delay in its remedy could be potentially unsafe, or might cause serious risk of loss or damage to the public.

Direct or indirect costs incurred by the County attributable to correcting and remedying defective or unauthorized work, or work the Contractor failed or refused to perform, shall be paid by the Contractor. Payment will be deducted by the Contracting Officer from monies due, or to become due the Contractor. Such direct and indirect costs shall include in particular, but without limitation, compensation for additional professional services required, and costs for repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective or unauthorized work. No extension of time or compensation will be allowed because of the delay in the performance of the work attributable to exercise of the County's rights provided herein.

The rights exercised under the provisions of this section shall not diminish the County's ability to pursue any other avenue for additional remedy or damages with respect to the Contractor's failure to perform the work as required

immediately take such corrective measures and are necessary to remedy the listed deficiencies. Corrective work shall be pursued vigorously, diligently and without interruption until completion.

If action to correct deficiencies is not initiated within 7 days after receipt of the written notice listing the deficiencies, the Contracting Officer may, upon written notice to the Contractor, take whatever steps are necessary to correct those deficiencies. Such steps may include the correction of defects by Pierce County forces or others. In such case, the direct and indirect costs incurred by the County shall be deducted from monies due or becoming due the Contractor. Such indirect or direct costs shall include in particular, but without limitation, compensation for additional professional services required and the costs of repair and replacement of the work of others which is destroyed or damaged by correction, removal, or replacement of the Contractor's deficient work.

The Contractor will not be allowed an extension of contract time because of a delay in the performance of the work attributable to the exercise of the County's rights hereunder.

Upon correction of all deficiencies, the Contracting Officer will notify the Contractor, in writing, of the date upon which the work was considered complete.

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### **1.05.10 Guarantees**

The Contractor shall furnish to the County any guarantee or warranty furnished as a normal trade practice in connection with the purchase of any equipment, materials, or items used in the construction of the project.

#### **1.05.10(1) Warranty of Title**

The Contractor shall warrant good title to all materials, supplies, and equipment purchased for, or incorporated in the work. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor, to recover under any bond given by the Contractor for their protection, or any rights under any law permitting such persons to look to funds due the Contractor in the hands of the County.

#### **1.05.10(2) Guarantee of the Work**

The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of the work unless a longer period is specified. The County will give notice of observed defects with reasonable promptness.

The guarantee period shall be suspended from the time a significant defect is first documented by the County until the work or, equipment is repaired or replaced by the Contractor and accepted by the County. In the event that fewer than 90 days remain in the guarantee period after acceptance of such repair or replacement (after deducting the period of suspension above), the guarantee period shall be extended to allow for at least 90 days guarantee of the work from the date of acceptance of such repair or replacement.

**1.05.10(3) Assignment of Manufacturer's Warranty**

The Contractor hereby assigns to the County the contractor's right to enforce all manufacturer's warranties for materials or systems incorporated into the work, to the extent defects which are not corrected by the Contractor under their guarantee. The contractor shall provide evidence of all manufacturers' warranties prior to acceptance.

**1.05.11 Final Inspection**

The Contracting Officer will not make the final inspection until the work required by the contract, including final cleanup and all extra work ordered by the Contracting Officer, has been completed. The completion date for the contract will be determined as provided in Section 1.08.5.

**1.05.11(1) Substantial Completion Date**

When the Contractor considers the entire work ready for its intended use, the Contractor shall notify the Contracting Officer in writing that the entire work is substantially complete (except for such items as are specifically listed by the Contractor as incomplete) and request the Contracting Officer to establish a Substantial Completion Date. The Contracting Officer will schedule an inspection of the work with the Contractor to determine the status of completion.

If, after this inspection, the Contracting Officer concurs with the Contractor that the work is substantially complete and ready for its intended use, the Contracting Officer, by written notice to the Contractor, will set the Substantial Completion Date. If, after this inspection the Contracting Officer does not consider the Work substantially complete and ready for its intended use, the Contracting Officer will, by written notice, so notify the Contractor, giving the reasons therefore.

Upon receipt of written notice concurring in or denying substantial completion, whichever is applicable, the Contractor shall vigorously, diligently, and without unauthorized interruption, perform the work necessary to reach Substantial or Actual Completion. The Contracting Officer will not schedule the final inspection until the entire work, including final cleanup and extra work as may have been ordered by the Contracting Officer, has been completed by the Contractor. The Contractor shall provide the Contracting Officer with a revised schedule indicating when the work necessary to reach Substantial Completion or Actual Completion, whichever is applicable, will be finished

**1.05.11(2) Final Inspection Date**

When the Contractor considers the work complete and ready for Final Inspection, the Contractor by written notice shall request the Contracting Officer to schedule a final inspection. The Contracting Officer will set a date for Final Inspection. The Contracting Officer and Contractor will then make a Final Inspection and the Contracting Officer will notify the Contractor in writing of all particulars in which the Final Inspection reveals the work incomplete or unacceptable.

**1.05.11(3) Operational Testing**

It is the intent of the County to have at final acceptance a complete and operable system. Therefore, when the work involves the installation of machinery or other mechanical equipment; lighting, electrical distribution or other electrical or electronic systems; or other equipment or facilities, it may be desirable for the Contracting Officer to have the Contractor operate and test the work for a period of time after final inspection, but prior to acceptance. Whenever items of work are listed in the Contract Documents for operational testing, they shall be fully tested under operating conditions for the time period specified to ensure their acceptability prior to final acceptance. During and following the test period, the Contractor shall correct any items of workmanship, materials, or equipment which proves faulty, or that are not in first class operating condition, Equipment, electrical controls, meters, or other devices and equipment to be tested during this period, shall be tested under the observation of the Contracting Officer, so that the Contracting Officer may determine their suitability for the purpose for which they were installed.

The costs for power, gas, labor, material, supplies, and everything else needed to successfully complete operational testing shall be included in the various contract prices related to the system being tested, unless otherwise specifically set forth in the Proposal Form.

Operation and test periods, when required by the Contracting Officer, shall not affect a manufacturer's guaranties or warranties furnished under the terms of the contract.

#### **1.05.12 Final Acceptance**

A Certificate of Final Acceptance for the work submitted by the Contracting Officer and approved by the County shall constitute Final Acceptance of the work. Final acceptance shall not constitute acceptance of any unauthorized or defective work or material. The County shall not be barred by Final Acceptance from requiring the Contractor to remove, replace, repair, or dispose of any unauthorized or defective work or material or from deducting from any payment due or to become due the Contractor the cost thereof if not accomplished by the Contractor, or of recovering damages for any such work or material.

#### **1.05.13 Superintendents, Labor, and Equipment of Contractor**

At all times, the Contractor shall keep at the work site a set of the plans, specification, Contract Documents, and addenda. The Contractor shall devote the attention required to make reasonable progress on the work and shall cooperate fully with the Contracting Officer and his/her assistants and inspectors.

Either the Contractor in person or an authorized representative shall remain on site whenever the work is underway. Before the work begins, the Contractor shall name in writing an experienced superintendent who understands the contract and is able to supervise the work. This superintendent shall have full authority to represent and act for the Contractor. Any superintendent who repeatedly fails to follow the Contracting Officer's written and oral orders, directions, instructions, or determinations, shall be subject to removal from the project. Upon written request of the Contracting Officer, the Contractor shall immediately remove such superintendent and name a replacement in writing.

Competent supervisors experienced in the task being performed shall continuously oversee the contract work. At the Contracting Officer's written request, the Contractor shall immediately remove and replace any incompetent, careless, or negligent employee.

Noncompliance with the Contracting Officer's request to remove and replace personnel at any level shall be grounds for terminating the contract under the terms of Section 1.08.10.

The Contractor shall keep all machinery and equipment in good workable condition, It shall be adequate for its purpose and used by competent operators.

The Contracting Officer will rate the Contractor's performance and contract compliance in these categories:

1. Progress of Work,
2. Quality of Work,
3. Equipment,
4. Administration/Management/Supervision, and
5. Coordination and Control of Subcontractors.

#### **1.05.13 (1)Emergency Contact List**

The Contractor shall submit an Emergency Contact List to the Contracting Officer no later than five calendar days after the date the contract is executed. The list shall include, at a minimum, the Prime Contractor's Project Manager, or equivalent, and the Prime Contractor's Project Superintendent. The list shall identify a representative with delegated authority to act as the emergency contact on behalf of the Prime Contractor and include one or more alternates. The emergency contact shall be available upon the Contracting Officer's request at other than normal working hours. The Emergency Contact List shall include 24-hour telephone numbers for all individuals identified as emergency contacts or alternates.

#### **1.05.14 Cooperation with Other Contractors**

The County may perform other work at or near the site, including any material site, with other forces than those of the Contractor. This work may be done with or without a contract. If such work takes place within or next to this project the Contractor will cooperate with all other contractors or forces. The Contractor shall carry out work under this project in a way that will minimize interference and delay for all forces involved. The Contracting Officer will resolve any disagreements that may arise among the other forces and the Contractor over the method or order of doing the work. The Contracting Officer's decision in these matters will be final, as provided in Section 1.05. 1.

The coordination of the work shall be taken into account by the Contractor as part of the site investigation in accordance with Section 1.02.4 and any resulting costs shall be incidental and included within the unit bid prices in the contract.

#### **1.05.15 Method of Serving Notices**

Except as set forth elsewhere in these Specifications, for all purposes under this contract, except service of process, notice by the Contractor to Pierce County shall be in person, by mail or telefax to the delivered to the Contracting Officer at the address stated in the Contract Documents with a duplicate copy to the County Purchasing Agent, 615 South 9th Street, Suite 100, Tacoma, WA 98405-4673.

Notice to the Contractor for all purposes under this Agreement, except service of process, shall be given to the address reflected in the contract form. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

#### **1.05.16 Water, Power and Utilities**

The Contractor shall make necessary arrangements, and shall bear the cost for power, water and utilities necessary for the performance of this work.

#### **1.05.17 Oral Agreements**

No oral agreement or conversation with any officer, agent or employee of Pierce County, either before or after execution of the contract, shall affect or modify any of the terms or obligation contained in any of the documents comprising the contract. Such oral agreements or conversations shall be considered as unofficial information and in no way binding upon the County, unless subsequently placed in writing.

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### **1.07 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC**

#### **1.07.1 Laws to be Observed**

The Contractor shall always comply with all laws, ordinances, and regulation--Federal, State, or local--that affect work under the contract. The Contractor shall indemnify and save harmless the Pierce County, and any officers, agents, and employees) against any claims that may arise because the Contractor (or any employee of the Contractor or subcontractor or materialman) violated a legal requirement.

The Contractor shall be responsible for the safety of his/her workers and shall comply with safety and health standards such as Safety Standards for Construction Workers (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), General Occupational Health Standard (Chapter 296-62 WAC), and any other appropriate safety and health codes.

Without usurping the authority of other agencies, the County will cooperate with them in their efforts to enforce legal requirements. On noticing any violation of legal requirements, the Contracting Officer will notify the Contractor in an effort to achieve voluntary compliance. The Contracting Officer may also notify the agency responsible for enforcement if he/she deems that action necessary to achieve compliance with the legal requirements. The Contracting Officer will also help the agency obtain Contractor compliance to the extent such help is consistent with the provisions of this contract.

1. Changes in Laws. The County will not adjust payment to compensate the Contractor for changes in legal requirements unless those changes are specifically within the scope of RCW 39.04.120. For changes under RCW 39.04.120, the County will compensate the Contractor by change order as provided in Section 1.04.4.

2. Changes in Taxes. Under certain conditions, the County will adjust payment to compensate for tax changes. First, the changes shall involve federal or state taxes on materials used in or consumed for the project. Second, the changes shall increase or decrease Contractor-paid taxes by more than \$100. For items in the original contract, the tax change must occur after the bid opening date. For negotiated contracts or items in a supplemental agreement or change order, the tax change must take place after the execution date of the contract or agreement. Within these conditions, the County will adjust compensation by the actual dollar amounts of increase or decrease caused by the tax changes.

If the Contracting Officer requests it, the Contractor shall certify in writing that the contract does not include any extra amount to cover a possible change in taxes. The County may audit the records of the Contractor as provided in Section 1.09.12 to verify any claim for compensation because of changes in laws or taxes.

#### **1.07.2 Safety**

The Contractor shall, at all times, exercise adequate precautions of all persons, including employees, in the performance of this contract, and shall comply with all applicable provisions of federal, state, county and municipal safety laws and regulations.

The Contracting Officer or Inspector may advise the Contractor and the Safety Officer of any safety violations. It is the Contractor's responsibility to make the necessary corrections. Failure to correct safety violations shall be grounds for suspension of work by the County until the condition is corrected.

#### **1.07.3 Taxes**

The Contractor will pay all taxes arising under or related to the contract except as set forth herein. The County will not adjust its payment if the Contractor bases a bid on a misunderstood tax liability.

The Washington State Department of Revenue has issued special rules on the state sales tax. Sections 1.07.3(l) through 1.07.3(2) are meant to clarify those rules.

The Contractor shall include all Contractor-paid taxes in the unit bid prices or other contract amounts. In some cases, however, state retail sales tax will not be included.

The County will pay the retained percentage only if the Contractor has obtained from the State Department of Revenue a certificate showing that all contract-related taxes have been paid. (RCW 60.20.050). The County may deduct from its payments to the Contractor any amounts the Contractor may owe the State Department of Revenue, whether the amount owed relates to this contract or not. Any amounts so deducted will be paid into the proper state fund.

##### **1.07.3(l) State Sales Tax: Work Performed on Non-Public Lands**

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

The special provisions of the contract will identify those parts of the project that require work on land owned by:

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

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

##### **1.07.3(2) Services**

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

##### **1.07.3(3) Federal Excise Tax**

The County is exempt from Federal Excise Tax. Where applicable, the County shall furnish a Federal Excise Tax Exemption Certificate upon request.



#### **1.07.4 Notification of Other Governmental Agencies**

The Contractor shall notify all other affected governmental agencies and utilities and locator services whenever underground work is done under the terms of this contract. It is the Contractor's responsibility to fully comply with the Underground Utility Locate Law, Chapter 19.122 RCW. If the conditions are "changed or differing", as defined under RCW 19.122.040(l), the Contractor may pursue the party responsible for not properly marking or identifying the underground facility. The Contractor agrees not to file any claim or action against the County for said "changes or differing" conditions unless the County is solely responsible for the delay or damages to the Contractor and the remaining requirements of the contract have been met by the Contractor. The Contractor is required to obtain permission of the appropriate public and private utilities before performing underground work pursuant to the terms of this Contract.

The Contractor shall be responsible for making reports to other governmental agencies which may be required by occurrences or conditions upon the project prior to acceptance, whether or not known to the County, and shall hold harmless and indemnify the County from all cost or expense arising from failure to report as required by law.

#### **1.07.5 Labor Provisions**

All bidders and the Contractor shall comply with the requirements of the Pierce County Contract and Procurement Assistance Program, covering labor requirements and prevailing wage determinations, which are attached to these Specifications and made a part hereof by reference.

#### **1.07.6 Responsibility for Damage**

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elected officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and for damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, his/her Subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected officials or employees.

The preceding paragraph is valid and enforceable only to the extent of the Contractor's negligence where the damages arise out of services or work in connection with or collateral to, a contract or agreement relative to construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, a contract or agreement for architectural, landscape architectural, engineering, or land surveying services, or a motor carrier transportation contract and where the damages are caused by or result from the concurrent negligence of (i) the County or its agents or employees, and (ii) the Contractor or the Contractor's agents or employees."

With respect to the performance of this Agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this Agreement.

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

In addition to any other remedy authorized by law, the County may retain so much of the money otherwise due the Contractor as deemed necessary by the Contracting Officer to ensure indemnification until disposition has been made of such suits or claims under subject to the provisions of this section.

**1.07.7 Trench Excavation**

In the event that "trench excavation" in excess of 4 feet requires a safety system pursuant to Washington State law, normally the specifications will contain provisions for safety shoring, sheeting, or bracing, and a separate bid item for such work will be included in the proposal form. If a separate bid item is not set forth in the proposal form, the installed safety system shall be paid at \$1.00 per lineal foot of trench, which unit price includes both sides of the trench.

**1.07.8 Protection and Restoration of Property**

**1.07.8(1) Private/Public Property**

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

Property includes lands, utilities, trees, landscaping, improvements legally on County property, markers, monuments, buildings, structures, pipe, conduit, sewer or water lines, signs and other property of all description whether shown on the plans or not.

If the Contracting Officer requests in writing, or if otherwise necessary, the Contractor shall install protection, acceptable to the Contracting Officer, for property such as that listed in this section. The Contractor is responsible for locating all property that is subject to damage by the construction operation.

If the Contractor (or agent/employees of the Contractor or of subcontractors or suppliers) damages, destroys, or interferes with the use of such property, the Contractor shall restore it to original condition. The Contractor shall also halt any interference with the property's use. If the Contractor refuses or does not respond immediately, the Contracting Officer may have such property restored by other means and subtract the cost from money that will be or is due the Contractor.

**1.07.8(2) Tree Restoration**

Existing trees, where shown in the plans or where designated, by the Contracting Officer shall be saved and protected throughout the life of the contract to the satisfaction of the Contracting Officer.

The Contractor's operations shall be conducted so vehicles and equipment do not operate, haul, park, or perform any other activity with the dripline of each tree designated to be saved.

When large roots of trees designated to be saved are exposed by the Contractor's operation, they shall be wrapped with heavy burlap for protection and to prevent excessive drying. The burlap shall be kept moist and securely fastened until the roots are covered to finish grade. All roots one inch or smaller in diameter, which are damaged, shall be pruned with a sharp saw or pruning shear. Damaged, torn, or ripped bark shall be removed as directed by the Contracting Officer.

If due to, or for any reason related to the Contractor's operation, any tree designated to be saved is destroyed, disfigured, or damaged to the extent that continued life is questionable, as determined by the Contracting Officer, it shall be removed and replaced in kind by the Contractor. Restoration shall be of the same species and shall be from approved nursery stock. In addition to the approved restoration, the Contractor will be assessed damages equal to triple the value of the tree as determined according to the most current version of the Guide For Establishing Tree and Plant Values published by the International Society of Arboriculture. Any damage so assessed will be deducted from monies due or that may become due the Contractor. The replacement planting shall be in accordance with all contract provisions for new planting, and the trees shall be planted during the first fall or spring planting period after the damage occurs to the existing trees.

**1.07.8(3) Utilities and Similar Facilities**

The Contractor shall protect all public and private utilities from damage resulting from the work. Among other, these utilities include: telephone, telegraph, cable TV and power lines; sewer, gas and water lines; railroad tracks and equipment; and streets, alleys and highways and lighting and signing systems therefore.

If the work requires removing or relocating a utility, the contract will assign the task to the Contractor or utility owner. When this task is assigned to the utility owner, it should be completed before the Contractor begins work. If the utility owner has not done so by the time work begins, the Contractor shall immediately notify the Contracting Officer in writing.

Any authorized agent of the County or utility owners may enter the project promises to repair, rearrange, alter, or connect their equipment. The Contractor shall cooperate with such efforts and shall avoid creating delays or hindrance to those doing the work. As needed, the Contractor shall arrange to coordinate work to those doing the work. As needed, the Contractor shall arrange to coordinate work schedules.

In some cases, the plans or contract documents may not show all underground facilities. If the work requires those to be moved, the Contracting Officer will provide for other forces to move them or issue written change order requiring the Contractor to do so as provided in Section 1.04.4.

All costs required to protect public and private utilities as provided in this section shall be at the Contractor's expense. When utility owners or their contractors delay the work through late removal or relocation of any utility or similar facility, after reasonable notice and scheduling by the Contractor, the Contractor's loss of time may be adjusted by extending contract time in keeping with Section 1.08.8.

If the contract provides notice that utilities will be adjusted, relocated, replaced, or constructed during the prosecution of the work, the Contractor shall carry out the work in a way that will minimize interference and delay for all forces involved. Any costs resulting from the coordination and prosecution of the work regarding utility adjustment, relocation, replacement, or construction shall be at the Contractor's expense.

### **1.07.9 Public Liability and Property Damage Insurance**

The contractor shall not commence work under this contract until he/she has obtained all insurance required under these General Provisions, and evidence of such insurance has been approved by the County.

#### **1.07.9(l) Insurance Required**

Compensation Insurance: The Contractor shall comply with, the Workmen's Compensation Act of the State of Washington and the United States Longshoremen's and Harborworkers' Compensation Act during the life of this contract, and in case any work is sublet, the contractor shall require any and all subcontractors to comply with said acts.

Liability Insurance: The contractor shall procure and maintain during the life of this contract Commercial General Liability insurance, with an insurance carrier licensed or eligible under RCW Chapter 48.15 to do business in the State of Washington, which includes but is not limited to operations of contractor, with limits of not less than:

1. Commercial General Liability Insurance:
  - a. Bodily injury Liability and Property Damage Liability  
\$2,000,000 each occurrence  
\$4,000,000 aggregate
2. Commercial Automobile Liability Insurance
  - a. Bodily Injury Liability and Property Damage Liability  
\$2,000,000 each occurrence; Or,  
Combined single limit coverage of \$2,000,000
3. The following coverages shall be included in both Primary and Excess Liability contracts:
  - a. Broad form Property Damage Coverage
  - b. Blanket Broad Form Contractual
  - c. Stop-Gap Employer's Contingent Liability
  - d. Independent Contractor's Liability
  - e. Personal Injury Liability (Libel, Slander, Defamation)
  - f. Products and Completed Operations
  - g. Non-owned and Hired Car Coverages

Property Insurance: The contractor shall effect and maintain insurance as stated below naming Pierce County as an additional assured upon the entire work done at any time under this contract to 100% of insurable value thereof, including items of labor and materials connected therewith, whether in or adjacent to the structure insured, materials in place or to be used as a part of the permanent structure. Any loss shall be payable to the contractor and Pierce County as their interests may appear at the time of such loss.

Type of Insurance

- a. Builders/Installation Floater/All Risk - NA
- b. Earthquake and Flood - NA

Pierce County shall not be obligated to notify the insurance company(ies) if all or part of the building or structure is occupied by Pierce County.

#### **1.07.9(2) General Requirements**

1. The contractor's insurance policies shall also contain a "cross liability" endorsement substantially as follows: The inclusion of more than one Insured under this policy shall not affect the rights of any Insured as respects any claim, suit or judgment made or brought by or for any other Insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy had been issued to each, except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the company would have been liable had only one Insured been named.
2. Pierce County shall be named as an additional insured as respects this contract, and such insurance as is carried by the contractor shall be primary (over any insurance carried by Pierce County). The contractor shall provide a certificate of insurance to be approved by the County Risk Manager prior to contract execution.
3. Contractor agrees to assume the risk of loss or damage regardless of cause, whether or not insured, until the job is accepted by the County Executive or his designee.
4. Pierce County shall have no obligation to report occurrences unless a claim is filed with the Pierce County Auditor, nor shall Pierce County have an obligation to pay premiums.
5. In the event of nonrenewal or cancellation of or material change in the coverage required, thirty (30) days written notice will be furnished Pierce County prior to the date of cancellation, change or nonrenewal, such notice to be sent to the Pierce County Risk Manager, 955 Tacoma Avenue South, Suite 303, Tacoma WA, 98402.
6. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

#### **1.07.10 Gratuities**

The Contractor shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee or officer of the County nor will the Contractor rent or purchase any equipment, materials or services from any employee or officer of the County. Before final payment, the Contractor shall furnish the Contracting Officer an affidavit certifying compliance with these provisions of the contract.

#### **1.07.11 Patented Devices, Materials and Processes**

Contractor will defend, indemnify and hold harmless the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

1. That Contractor shall be notified promptly in writing by County of any notice of such claim.
2. The Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the product or information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

#### **1.07.12 Personal Liability of Public Officers**

Neither the County nor any other officer or employee thereof shall be personally liable for any acts or failure to act in connection with the contract, it being understood that in such matters, they are acting solely in a representative capacity.

#### **1.07.13 No Waiver of County's Legal Rights**

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

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

#### **1.07.14 Severability**

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

#### **1.07.15 Permits and Licenses**

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

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

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

#### **1.07.16 Contractor's Responsibility for Work**

##### **1.07.16(l) General**

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

The Contractor shall rebuild, repair, restore, and make good all damages to any portion of the permanent or temporary work occurring before final acceptance and shall bear all the expense to do so, except damage to the permanent work caused by: (a) acts of God, such as earthquake, floods, or other cataclysmic phenomenon of nature, or (b) acts of the public enemy or of governmental authorities; Provided, however, that these exceptions shall not apply should damages result from the Contractor's failure to take reasonable precautions or to exercise sound engineering and construction practices in conducting the work.

If the performance of the work is delayed as a result of damage by others, an extension of time will be evaluated in accordance with Section 1.08.8.

Nothing contained in this section shall be construed as relieving the Contractor of responsibility for, or damage resulting from, the Contractor's operations or negligence, nor shall the Contractor be relieved from full responsibility for making good any defective work or materials as provided for under Section 1.05.

#### **1.07.16(2) Relief of Responsibility for Completed Work**

Upon written request, the Contractor may be relieved of the duty of maintaining and protecting certain portions of the work, as described below, which have been completed in all respects in accordance with the requirements of the contract. If the Contracting Officer provides written approval, the Contractor will be relieved of the responsibility for damage to said completed portions of the work resulting from use by public traffic or from the action of the elements or from any other cause, except damage resulting from the Contractor's operations or negligence,

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

1. A building which is functionally complete and open to the public,
2. Any contract proposal item.

#### **1.07.16(3) Relief of Responsibility for Damage by Public Traffic**

When it is necessary for public traffic to utilize during construction items constructed by the Contractor, the Contractor will be relieved of responsibility for damages to permanent work by public traffic under the following circumstances:

1. The work is in accordance with the contract plans or approved stage construction plans, and
2. The traffic control is in accordance with the approved traffic control plans.

If traffic is relocated to another section of the project, the Contractor shall resume responsibility for the work until such time as the section is required to be and again open to public traffic, or where relief is granted under Section 1.07.16(2).

#### **1.07.16(4) Repair of Damage**

The Contractor shall promptly repair all damage to either temporary or permanent work as directed by the Contracting Officer. For damage qualifying for relief under Section 1.07.16(2) or 1.07.16(3), payment shall be made in accordance with Section 1.04.4. Payment will be limited to repair of damaged work only. No payment will be made for delay or disruption to the work.

The Contracting Officer may elect to accomplish repair by County forces or other means.

### **1.08 PROSECUTION AND PROGRESS**

#### **1.08.1 Subcontracting**

Work done by the Contractor's own organization shall account for at least 30 percent of the total original cost of the contract. Before computing this percentage, however, the Contractor may subtract (from the contract's total original cost) the costs of any subcontracted work on items the contract designates as specialty items.

The Contractor shall not subcontract work unless the Contracting Officer approves in writing. Each request to subcontract shall be on the form the Contracting Officer provides. If the Contracting Officer requests, the Contractor shall provide proof that the subcontractor has the experience, ability, and equipment the work requires. The Contractor shall require each subcontractor to comply with the provisions of the Pierce County Contract and Procurement Program Labor Standards and Prevailing Wage requirements, to furnish all certificates and statements required by the contract, and to require each subcontractor of every tier to meet the responsibility requirements of RCW 39.04, and to include these requirements in every subcontract of every tier.

Along with the request to sublet, the Contractor shall submit the names of any contracting firms the subcontractor proposes to use as agents. Collectively, these agents shall not do work that exceeds 25 percent of the total amount subcontracted to a subcontractor. When a subcontractor is responsible for construction of a specific structure or structures, the following work may be performed by agents without being subject to the 25 percent limitation:

1. Furnish and driving of piling, or

2. Furnishing and installing concrete reinforcing and post-tensioning steel.

Except for the 25 percent limit, agents shall meet the same requirements as subcontractors.

The Contracting Officer will approve the request only if satisfied with the proposed subcontractor's record, equipment, experience, and ability. Approval to subcontract shall not:

1. Relieve the Contractor of any responsibility to carry out the contract,
2. Relieve the Contractor of any obligations or liability under the contract and the Contractor's bond,
3. Create any contract between the County and the subcontractor, or
4. Convey to the subcontractor any rights against the County.

The County will not consider as subcontracting: (1) purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mix concrete, fabricated structural steel, and any other materials supplied by established and recognized commercial plants; or delivery of these materials to the work site in vehicles owned or operated by such plants or by recognized commercial haulings.

If dissatisfied with any part of the subcontracted work, the Contracting Officer may request in writing that the subcontractor be removed. The Contractor shall comply with this request at once and shall not employ the subcontractor for any further work under the contract.

#### **1.08.1(1) Reimbursement for Overtime Work of Contracting Agency Employees**

Where the Contractor elects to work on a Saturday, Sunday, or other holiday, or longer than an 8-hour work shift on a regular working day, as defined in the Standard Specification, such work shall be considered as overtime work. Prior notice shall be given by the Contractor to the Contracting Officer in sufficient time to schedule necessary inspection services, or the Contracting Officer may prohibit overtime work until such time as an inspector can be made available. On all such overtime work the Contracting Officer may require an inspector to be present, and a survey crew may be required at the discretion of the Contracting Officer. The Contractor shall reimburse the County for the full amount of the straight time plus overtime costs for employees of the County and any of its agents to work overtime hours.

The Contractor by these Specifications does hereby authorize the Contracting Officer to deduct such costs from the amount due or to become due herein. The decision of the Contracting Officer of the amount so due shall be final as set forth in Section 1.05.1.

#### **1.08.2 Assignment**

The Contractor shall not assign all or any part of the work unless the Pierce County Executive and the Surety approve in writing. The County Executive will not approve any proposed assignment that would relieve the original Contractor or Surety of responsibility under the contract.

Money due or that will become due to the Contractor may be assigned. If given written notice, the County will honor such assignments to the extent authorized by then existing law. Any assignment of funds due shall, however, be subject to all setoffs, withholdings, and deductions required by law and permitted under the contract.

#### **1.08.3 Progress Schedule**

The Contractor shall submit a preliminary progress schedule (first 30 working days) to the Contracting Officer within five calendar days of the award date of the contract. This schedule and any supplemental schedule shall show: (1) completion of all work within the specified contract time, (2) the proposed order of work, and (3) projected starting and completion times for major phases of the work and for the total project. The schedule shall be developed by a critical path method. The Contractor shall provide sufficient material, equipment and labor to meet the completion times in this schedule.

The County allocates its resources to a contract based on the total time allowed in the contract. The County will accept a progress schedule indicating an early completion, but cannot guarantee that the County's resources will be available to meet an accelerated schedule. No additional compensation will be allowed if the Contractor is not able to meet their accelerated schedule due to unavailability of County resources or for other reasons beyond the County's control.

The Contractor shall submit supplement progress schedules when requested by the Contracting Officer or as required by any provision of the contract. These supplemental schedules shall reflect any changes in the proposed order of the work, any construction delays, or other conditions that may affect the progress of the work. The Contractor shall provide the Contracting Officer with the supplemental progress schedules within ten calendar days of receiving written notice of the request or within such other time as the contract may provide.

The original and all supplemental progress schedules shall not conflict with any time and order-of-work requirements in the contract.

If the Contracting Officer deems that the original or any necessary supplemental progress schedule does not provide the information required in this section, the County may withhold progress payments until a schedule information has been submitted by the Contractor and approved by the Contracting Officer.

The Contracting Officer's approval of any schedule shall not transfer any of the Contractor's responsibilities to the County. The Contractor alone shall remain responsible for adjusting forces, equipment and work schedules to ensure completion of the work within the time(s) specified in the contract.

#### **1.08.4 Notice to Proceed and Prosecution of Work**

Notice to Proceed will be given after the contract has been executed and the contract bond and evidence of insurance have been approved and filed by the County. The Contractor shall not commence the work until the Notice to Proceed has been given by the Contracting Officer. The Contractor shall begin work on the project site within 10 calendar days from the date specified in the Notice to Proceed. The Contractor shall diligently pursue the work to completion within the time specified in the contract. Voluntary shutdown or slowing of operations by the Contractor shall not relieve the Contractor of the responsibility to complete the work within the time(s) specified in the contract.

#### **1.08.5 Time for Completion**

The Contractor shall complete all contract work within the number of "working days" dated in the special provisions or as extended by the Contracting officer in accordance with Section 1.08.8. Every day is a "working day" unless it is a Saturday, a Sunday, a day on which the contract specifically suspends work, or one of these holidays: January 1, the third Monday of January, the third Monday of February, Memorial Day, July 4, Labor Day, November 11, Thanksgiving Day, and Christmas Day.

When any of these holidays falls on a Sunday, the following Monday shall be counted a nonworking day. When the holiday falls on a Saturday, the preceding Friday shall be counted a non-working day.

Contract time shall begin on the first working day following the 10th calendar day after the date the County executes the contract. The Special provisions may specify another starting date for contract time in which case, time will begin on the starting date specified.

During the life of the contract, each working day (except any partial or whole day the Contracting Officer declares as nonworking) shall be charged to the contract as it occurs. Each week the Contracting Officer will provide the Contractor a statement that shows the number of working days: (1) charged to the contract the week before; (2) specified for contract completion; and (3) remaining for contract completion. This weekly report will be correlated with the Contractor's current approved progress schedule. If the Contractor elects to work 10 hours a day and 4 days a week (a 4-10 schedule) and the fifth day of the week in which a 4-10 shift is worked would ordinarily be charged as a working day, then the fifth day of that week will be charged as a working day whether or not the Contractor works on that day.

Within 10 calendar days after the date of each statement, the Contractor shall file a written protest of any alleged discrepancies in it. To be considered by the Contracting Officer, the protest shall be in sufficient detail to enable the Contracting Officer to ascertain the basis and amount of time disputed. By not filing such detailed protest in that period, the Contractor shall be deemed as having accepted the statement as correct.

The Contracting Officer will give the Contractor written notice of the completion date for all work the contract requires. That date shall constitute the date of completion of the contract, but shall not imply the County's acceptance, of the work or the contract.



### **1.08.6 Suspension of Work**

The Contracting Officer may order suspension of all or any part of the work if:

1. Unsuitable weather and such other conditions beyond the control of the Contractor that prevent satisfactory and timely performance of the work; or
2. The Contractor does not comply with the contract or the Contracting Officer's orders.

When ordered by the Contracting Officer to suspend or resume work, the Contractor shall do so immediately.

If the work is suspended for reason (1) above, the period of work stoppage will be counted as nonworking days. But if the Contracting Officer believes the Contractor should have completed the suspended work before the suspension, all or part of the suspension period may be counted as working days. The Contracting Officer will set the number of nonworking days (or parts of days) by deciding how long the suspension delayed the entire project.

If the work is suspended for reason (2) above, the period of work stoppage will be counted as working days. The lost work time, however, shall not relieve the Contractor from any contract responsibility.

If the performance of all or any part of the work is suspended, delayed, or interrupted for an unreasonable period of time by an act of the County in the administration of the contract, or by failure to act within the time specified in the contract (or if no time is specified, within a reasonable time), the Contracting Officer will make an adjustment for any increase in the cost or time for the performance of the contract (excluding profit) necessarily caused by the suspension, delay, or interruption. However, no adjustment will be made for any suspension, delay, or interruption if (1) performance would have been suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or (2) an equitable adjustment is provided for or excluded under any other provision of the contract.

If the Contractor believes that the performance of the work is suspended, delayed or interrupted, and that it is the responsibility of the County, the Contractor shall immediately submit written notice of protest to the Contracting Officer as provided in Section 1.04.5. No adjustment shall be allowed for any costs incurred more than 10 calendar days before the date the Contracting Officer receives the Contractor's written notice of protest. If the Contractor contends that damages have been suffered as a result of such suspension, delay, or interruption, the protest shall not be allowed unless the protest (stating the amount of damages) is asserted in writing as soon as practicable, but no later than the date of the Contractor's signature on the Final Contract Voucher Certification. The Contractor shall keep full and complete records of the costs and additional time of such suspension, delay, or interruption and shall permit the Contracting Officer to have access to those records and any other records as may be deemed necessary by the Contracting Officer to assist in evaluating the protest.

The Contracting Officer will determine if an equitable adjustment in cost or time is due as provided in this section. The equitable adjustment for increase in costs, if due, shall be subject to the limitations provided in Section 1.09.4, provided that no profit of any kind will be allowed on any increase in cost necessarily caused by the suspension, delay or interruption.

Request for extensions of time will be evaluated in accordance with Section 1.08.8.

The Contracting Officer's determination as to whether an adjustment should be made will be final as provided in Section 1.05.1.

No claim by the Contractor under this clause shall be allowed unless the Contractor has followed the procedures provided in this Section 1.04.5 and in Sections 1.04.5 and 1.09.11.

### **1.08.7 Maintenance During Suspension**

Before and during any suspension (as described in Section 1.08.6) the Contractor shall protect the work from damage or deterioration. Suspension shall not relieve the Contractor from anything the contract requires unless this section states otherwise.

At no expense to the County, the Contractor shall provide through the construction area a safe, smooth, and unobstructed way for public use during suspension if the contract requires the Contractor to provide public access during construction.

If the Contracting Officer determines that the Contractor failed to pursue the work diligently before the suspension, or failed to comply with the contract or orders, then the cost of providing such public access shall be born by the Contractor. If the Contractor fails to maintain such public access, the County will do the work and deduct all resulting costs from amounts due or which may become due the Contractor.

If the Contracting Officer determines that the Contractor has pursued the work diligently before the suspension, then the County will bear the expense of maintaining public access which is required, provided the Contractor has complied with the contract provisions governing notice, claim and protest of any dispute.

After any suspension during which the County has done the routine maintenance, the Contractor shall accept the traveled public area as is when work resumes. The Contractor shall make no claim against the County for the condition of the public access areas.

After any suspension, the Contractor shall retain all responsibilities the contract assigns for repairing or restoring the work to the requirements of the plans.

#### **1.08.8 Extensions of Time**

The Contractor shall submit any requests for time extension to the, Contracting Officer in writing no later than 10 working days after the delay commences. To be considered by the Contracting Officer, the request shall be in sufficient detail (as determined by the Contracting Officer) to enable the Contracting Officer to ascertain the basis and amount of the time requested. If a request, combined with previous extension requests, equals 20 percent or more of the original contract time, or if the Contracting Officer so requires, the Contractor's request must bear the consent of the Surety. In evaluating the request, the Contracting Officer will consider how well the Contractor used the time from contract execution up to the point of the delay and the effect the delay has on any completion times included in the special provisions.

The contract's completion time will be extended for a period equal to the time the Contracting Officer determines the work was delayed because of.

1. Unsuitable weather, provided that:
  - a. The Contracting Officer had not already allowed it as a nonworking day under another section, and
  - b. The Contractor had timely filed a written protest asserting that time the Contracting Officer charged as a working day should have been allowed as a nonworking day, and
  - c. The weather condition could not have been reasonably anticipated by the Contractor, and
  - d. The Contractor could not reasonably have avoided the delay.
2. Any action, neglect, or default of the Contracting Agency, its officers, or employees, or of any other contractor employed by the County, provided that delays in acting or in reviewing, or determining matters raised by the Contractor shall not be counted to the extent that such delay is contemplated by the contract or is reasonable considering the time the matter was submitted by the Contractor.
3. Fire or other casualty for which the Contractor is not in part responsible.
4. Strikes,
5. Any other conditions for which these Specifications permit time extensions.
6. Exceptional causes not specifically identified in items 1-5, provided the request proves that the Contractor had no control over the cause of the delay and could have done nothing to avoid or shorten it.

The Contracting Officer will not allow a time extension for any cause listed above if it results from the Contractor's default, collusion, action or inaction, or failure to comply with the terms of the contract.

The parties consider the time specified in the special provisions sufficient to do all the work.

The reasons for any times of extensions shall be determined by the Contracting Officer, and such determination will be final as provided in Section 1.05.1.

**1.08.9 Liquidated Damages**

Time is of the essence of the contract. Delays inconvenience the public, and the County, and may increase the risk to the public and to the County during construction. Delays also cost taxpayers unwarranted sums of money, adding time needed for administration, engineering, inspection and supervision.

Because the County finds it impractical to calculate the actual cost of delays, it has adopted the following formula, to calculate liquidated damages for failure to complete the contract on time.

Accordingly the Contractor agrees:

1. To pay (according to the following formula) liquidated damages for each working day beyond the number of working days established for completion, and
2. To authorize the Contracting Officer to deduct these liquidated damages from any money due or to become due the Contractor,

**LIQUIDATED DAMAGES FORMULA**

$$LD = \frac{.15 C}{T}$$

Where:

- LD = Liquidated damages per working day (rounded to the nearest dollar)
- C= Original contract amount.
- T= Original time for completion in days.

When the contract work is completed to the extent that the County has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, and only minor incidental work, or minor correction or repairs remains to complete the total contract, the Contracting Officer may determine the contract work is substantially complete. The Contracting Officer will notify the Contractor in writing of the substantial completion date. For overruns in contract time occurring after the date so established, the formula for liquidated damages shall be reduced to the following:

$$LD = \frac{.075 C}{T}$$

The Contractor shall complete the remaining work as promptly as possible. Upon request by the Contracting Officer, the Contractor shall furnish a written schedule for completing the contract.

Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire contract.

**1.08.10 Termination of Contract**

**1.08.10(I) Termination for Default**

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, deposit written notice of its intention to terminate the Contract unless such violation shall cease and an arrangement satisfactory to Pierce County for correction thereof shall be made within 10 days of the mailing of notice. If within said 10 day period the defaults have not ceased and the Contractor has not executed an agreement satisfactory to the County to correct the defaults, the Surety shall have the right to take over and perform the Contract, provided that the Surety gives written notice of its intention to the County within 15 calendar days from the date of mailing of the original notice of intention by the County.

If neither the Contractor nor Surety execute said writings and proceed diligently to perform the Contract and correct the defaults, the County may treat the Contract as terminated for default. Pierce County may take over the work and prosecute the same to completion by any method it deems advisable for the account of and at the expense of the Contractor, and the Contractor and the Surety shall be liable to the County for all costs occasioned to the County thereby. Pierce County may without liability for doing so, take possession of and utilize in completing the work, such materials, equipment, plant and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default, The, Contractor shall in addition be liable for liquidated damages for delay until such reasonable time as may be required for completion of the work. After all work contemplated by the contract has been completed, the Contracting Officer will calculate the total expenses and damages for the completed work. If the total expenses and damages are less than any unpaid balance due the Contractor, the excess will be paid by the County to the Contractor. If the total expenses and damages exceed the unpaid balance, the Contractor (and the Surety to the extent of its bond) shall be jointly and severally liable to the County and shall pay the difference to the County upon demand.

In exercising the County's right to prosecute the completion of the work, the County shall have the right to exercise its sole discretion as to the manner, method, and reasonableness of the costs of completing the work. In the event that the County takes bids for remedial work or completion of the contract work, the Contractor shall not be eligible for the award of such contracts.

In the event the contract is terminated, the termination shall not affect any rights of the County against the Contractor. The rights and remedies of the County under this clause are in addition to any other rights and remedies provided by law or under this contract. Any retention or payment of monies to the Contractor by the County will not release the Contractor from liability.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience Section 1.08.10(2) hereof.

#### **1.08.10(2) Termination for Public Convenience**

The County may terminate the contract in whole or in part whenever the Contractor is prevented from proceeding with the work by reason of a temporary restraining order, or a preliminary or permanent injunctive order of a court of competent jurisdiction, where the issuance of such order is primarily caused by acts or omissions of persons or agencies other than the Contractor; or the County determines, in its sole discretion, that such termination is in the best interests of the County. Whenever the contract is terminated in accordance with this Section, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work.

#### **1.08.10(3) Arbitration of Disputed Termination Expense**

After receipt of a notice of Termination for Public Convenience, the Contractor shall submit to the Contracting Officer a claim for the cost associated with the termination. To enable the Contracting Officer to ascertain the basis and amount of the claim, it shall be in such detail as provided in Section 1.09.11. The claim shall be submitted promptly, but in no event later than 30 calendar days from the effective date of termination. The Contractor shall pursue resolution of the claim through established administrative channels. In the event the claim is not resolved and an agreement reached, the Contractor may appeal to the Contracting Officer for a determination. The decision of the Contracting Officer shall be final as provided in Section 1.05.1.

The Contractor agrees to make all records available to the extent deemed necessary by the Contracting Officer to verify the claim.

#### **1.08.10(4) Responsibility of Contractor and Surety**

Termination of a contract shall not relieve the Contractor of any responsibilities under the contract for work performed. Nor shall termination of the contract relieve the Surety or Sureties of obligations under the contract bond or retainage bond for work performed.

### **1.09 MEASUREMENT AND PAYMENT**

**1.09.1 Blank**

**1.09.2 Blank**

**1.09.3 Scope of Payment**

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

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

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

Unless the plans and special provisions provide otherwise, the unit contract price for the various bid items shall be full payment for all labor, materials, supplies, equipment, tools, and other things required to completely incorporate the item into the work as though the item were to read "In Place."

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

#### **1.09.4 Equitable Adjustment**

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

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

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

The equipment rates shall be actual cost, but shall not exceed the rates set forth in the AGC/WSDOT Equipment Rental Agreement in effect at the time the work is performed as referred to in Section 1.09.6, and

No claim for loss of anticipated profits on deleted or uncompleted work or consequential damages of any kind will be allowed.

#### **1.09.5 Deleted or Terminated Work**

The Contracting Officer may delete work by change order as provided in Section 1.04.4 or may terminate the contract in whole or part as provided in Section 1.08.10(2). When the contract is terminated in part, the partial termination shall be treated as a deletion change order for payment purposes under this section.

Payment for completed items will be at unit contract prices.

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

1. Payment will be made for the actual number of units of work completed at the unit contract price unless the Contracting Officer determines the unit prices are inappropriate for the work actually performed. When that determination is made by the Contracting Officer, payment for work performed will be as mutually agreed, unless the parties cannot agree, in which case the Contracting Officer will determine the amount of the equitable adjustment in accordance with Section 1.09.4;
2. Payment for partially completed lump sum items will be as mutually agreed, unless the parties cannot agree, in which case the Contracting Officer will determine the amount of the equitable adjustment in accordance with Section 1.09.4;
3. To the extent not paid for by the contract prices for the completed units of work, the County will pay as part of the equitable adjustment those direct costs necessarily and actually incurred by the Contractor in anticipation of performing the work that has been deleted or terminated;

4. The total payment for any one item in the case of a deletion or partial termination shall not exceed the bid price as modified by approved change orders less the estimated costs (including overhead and profit) to complete the work and less any amount paid to the Contractor for the item;
5. The total payment where the contract is terminated in its entirety shall not exceed the total contract price as modified by approved change orders less those amounts paid to the Contractor before the effective date of termination; and
6. No claim for damages of any kind or loss of anticipated profits on deleted or terminated work will be allowed because of the termination or change order.

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

Acceptable materials ordered by the Contractor prior to the date the work was terminated as provide in Section 1.08.10 (2) or deleted as provided in Section 1.04.4 by the Contracting Officer, will either be purchased from the Contractor by the County at the actual cost and shall become the property of the County, or the County will reimburse the Contractor for the actual costs connected with returning these materials to the suppliers.

#### **1.09.6 Force Account**

If the contract calls for work or materials to be paid for by force account, payment amounts will be determined as shown below:

1. For Labor:

The County will reimburse the Contractor for labor and for supervision by foremen dedicated solely to the particular force account item of work (but not for supervision by general superintendents or general foremen). The Contracting Officer will compute the labor payment on the basis of these four factors:

- a. Weighted Wage Rate.

The Weighted Wage Rate combines:

- (1) the current basic wage and fringe benefits the Contractor is required and has agreed to pay,
- (2) Federal Insurance Compensation (FICA),
- (3) Federal Unemployment Tax Act (FUTA), and
- (4) State Unemployment Compensation Act (SUCA).

- b. Travel Allowance and Subsistence.

This includes the actual costs of allowances for travel or subsistence paid to employees in the course of their work on the item. This reimbursement will be made only if such allowances are required by a regional labor agreement or are normally paid by the Contractor to comparable labor for performing other work.

- c. Industrial Insurance and Medical Aid Premiums.

The County will reimburse Contractor-paid premiums and Marine Industrial Insurance, for State of Washington Industrial Insurance and Medical Aid Premiums which become an obligation of the Contractor and are chargeable to the force account work. The County will not pay the Contractor for Medical Aid premiums that are paid by the employees.

- d. Overhead and Profit.

The County will pay the Contractor 20 percent of the sum of the costs listed in a, b, and c above to cover project, overhead, general company overhead, profit, and any other costs incurred.

2. For Materials

The County will reimburse actual invoice cost for Contractor-supplied materials. This cost includes actual freight and express charges and taxes as described in Section 1.07.3 provided that these costs have not been paid in some other manner under the contract. A deduction will be made for any offered or available discounts or rebates if the County has provided the Contractor with the means to comply with the provisions allowing the discount. The County will then add 15 percent of the balance to cover project overhead, general company overhead, profit, and any other cost of supplying materials.

To support charges for materials, the Contractor shall provide the Contracting Officer with valid copies of vendor invoices, including freight and express bills. If invoices are not available for materials from the Contractor's stocks, the Contractor shall certify actual costs by affidavit.

If claims for material costs are too high, inappropriate, or unsupported by satisfactory evidence, the Contracting Officer may determine the cost for all or part of the materials. When determined in this manner, the cost will be the lowest current wholesale price from a source that can supply the required quantity (including delivery costs).

The County reserves the right to provide materials. In this case the Contractor will receive no payment for any costs, overhead, or profit.

3. For Equipment

The approval of the Contracting Officer shall be required for the selection of machine-power tools or equipment prior to their use on force account.

The payment for any machine-power tools or equipment shall be made according to the current AGC/WSDOT Equipment Rental Agreement which is in effect at the time the force account is authorized. The rates as set forth in the Rental Rate Blue Book (as modified by the current AGC/WSDOT Equipment Rental Agreement) are the maximum rates allowable for equipment of modern design and in good working condition. These rates shall be full compensation for all fuel, oil, lubrication, repairs, maintenance, and all other costs incidental to furnishing and operating the equipment except labor for operation.

The County will add 15 percent to equipment costs to cover project overhead, general company overhead (excluding equipment overhead included in the Rental Rate Blue Book), and profit.

Current copies of the Rental Rate blue Book and the AGC/WSDOT Equipment Rental Agreement are maintained at each district office of the Department of Transportation and at each of the offices of the Associated General Contractors of America (in Seattle, Spokane, Tacoma, and Wilsonville, Oregon) where they are available for inspection.

4. Force Account Mobilization

Force account mobilization is defined as the preparatory work performed by the Contractor including transportation of tools, equipment, and personal travel time (when included in a bargaining agreement). The County may pay for mobilization of equipment and labor of the force account item is not an item included in the original contract proposal or such other contract items as may be included in the special provisions as being eligible for reimbursement for mobilization. Off-site work in preparation for the travel to the project, costing \$300 or less will not be paid. The County will not pay for mobilization for off-site preparatory work force account items under any circumstances unless the Contractor specifically makes a request in writing in advance of any such mobilization work. The written request shall include an estimate for mobilization costs involving off-site preparatory work, and the basis for reimbursement. The approval of the Contracting Officer will be required prior to commencing the mobilization for all force account. To the agreed final amount of mobilization for the force account shall be added an amount equal to 15 percent of that sum for all other costs, including project overhead, general company overhead and profit.

5. Subcontractors

The subcontractors will be allowed a 5 percent markup of the total cost computed from 1, 2, 3 and 4, incurred by the subcontractor, for insurance, B&O tax and bonding.

6. Contractor Markup on Subcontractors

When work is performed on a force account basis by approved subcontractors, the Contractor will be allowed an additional markup equal to 5 percent of the total cost computed for 1, 2, 3, 4 and 5, for all administrative costs.

7. Insurance, B&O Tax and Bonding

The Contractor will be allowed an additional markup equal to 5 percent of the total cost computed for 1, 2, 3, 4, 5, and 6, for insurance, B&O tax and bonding.

The payments provided above shall be full payment for all work done on a force account basis. The payment shall cover all expenses of every nature, kind, description, including overhead expenses, profit, occupational tax, any Federal or State revenue acts, premiums on public liability and property damage insurance policies, and for the use of small tools and equipment for which no rental is allowed.

No claim for force account shall be allowed except upon written order by the Contracting Officer prior to the performance of the work. No work shall be construed as force account work which can be measured under the specifications and paid for at the prices named in the contract.

The amount and costs of any work to be paid by force account shall be computed by the Contracting Officer, and the amount certified by the Contracting Officer shall be final as provided in Section 1.05.1.

The Contractor's wage, payroll, and cost records pertaining to work claimed to be payable on a force account basis shall be open to inspection or audit as provided in Section 1.09.12.

**1.09.7 Mobilization**

1. Any portion of the work covered by the specific bid item or incidental work which is to be included in a bid item or items,
  - a. Any portion of the work covered by the specific bid item or incidental work which is to be included in a bid item or items,
  - b. Profit, interest on borrowed money, overhead, or management costs.
2. If the contract requires bidders to provide a separate bid for "Mobilization," partial payments based on the lump sum contract price for "Mobilization," will be made as follows:
  - a. When 5 percent of the total original contract amount is earned from other bid items, excluding amounts paid for materials on hand, 50 percent of the bid for mobilization, or 5 percent of the total original contract amount, whichever is less, will be paid.
  - b. When 10 percent of the total original contract amount is earned from other bid items, excluding amounts paid for materials on hand, 100 percent of the amount bid for mobilization, or 10 percent of the total original contract amount, whichever is less, will be paid.
  - c. Upon completion of all work on the project, payment of any amount bid for mobilization in excess of 10 percent of the total original contract amount will be paid.

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

**1.09.8 Payment for Material on Hand**

The County may reimburse the Contractor for materials purchased before their use in the work if they:

1. Meet the requirements of the plans and specifications,
2. Are delivered to or stockpiled or other Contracting Officer approved storage sites within the control of the County, and
3. Consist of sand, gravel, surfacing materials, aggregates, reinforcing steel, bronze plates, structural steel, machinery, piling, timber and lumber (not including forms or falsework), large signs unique to the project, prestressed concrete beams or girders, or other materials the Contracting Officer may approve.



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

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

The County will not pay for any individual item on hand with a cost of less than \$500. As materials are used in the work, credits equaling the partial payments for them will be taken on future estimates. Partial payment for materials on hand shall not constitute acceptance. Any material will be rejected if found to be faulty even if partial payment for it has been made.

## **1.09.9 Payments**

### **1.09.9(l) Progress Payments**

Progress payments for completed work and materials on hand will be based upon progress estimates prepared by the Contracting Officer. A progress estimate cutoff date will be established at the preconstruction meeting.

Within 3 days after the progress estimate cutoff date (but no more often than once a month) the Contractor shall submit to the Contracting Officer for review an Application for Payment, filled out and signed by the Contractor, covering the work completed prior to the progress estimate cutoff date. The Application for Payment shall be accompanied by the documentation supporting the Contractor's Application for Payment. All progress payment requests (whether prepared by the Contractor or project manager) must be accompanied by a statement from the Contractor certifying that the prevailing wages for all work have been paid in accordance with the approved Statement(s) of Intent To Pay Prevailing Wages on file with the public agency. (RCW 39.12.040).

The initial progress estimate will be made not later than 30 days after the Contractor commences the work, and successive progress estimates will be made every month thereafter until Acceptance. Progress estimates made during progress of the work are tentative, and made only for the purpose of determining progress payment. The progress estimates are subject to change at any time prior to Acceptance Date.

The value of the progress estimate will be the sum of the following:

1. Unit Price Items in the Bid Form -- the approximate quantity of acceptable units of work completed multiplied by the Unit Price.
2. Lump Sum Items in the Bid Form -- the estimated percentage completion multiplied by the Bid Forms amount for each Lump Sum Item.
3. Materials on Hand -- 90 percent of invoiced cost of material delivered to jobsite, or other storage area within the control of the County approved by the Contracting Officer.
4. Change Orders -- entitlement for approved extra cost or completed extra work as determined by the Contracting Officer.

Progress payments will be in accordance with the progress estimate less:

1. Five (5) percent for retained percentage.
2. The amount of Progress Payments previously made.
3. Funds withheld by the County for disbursement in accordance with the Contract Documents, including but not limited to the provisions of the Contract and Procurement Assistance Program for Locally Funded Public Works.

Progress payments for work performed shall not be evidence of acceptable performance or an admission by the County that any work has been satisfactorily completed.

Payments will be made by warrants, issued by the County's fiscal officer, against the appropriate fund source for the project.

**1.09.9(2) Retainage**

Pierce County shall reserve and retain or withhold from monies earned by the Contractor on estimates during the progress of the work amounts as authorized by RCW 60.28 and this contract. Retainage shall be used for the purposes authorized by RCW 60.28.

Any designation by the Contractor setting forth the manner in which retainage shall be held shall be delivered to the Contracting Officer and constitutes the agreement of the Contractor to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities.

Release of retained percentage will be made as required by RCW 60.28 and the provisions of this contract.

In the event that claims are filed or amounts are withheld by the County, the Contractor will be paid such retained percentage less an amount determined by the Contracting Officer sufficient to pay the cost of foreclosing on claims and to cover attorney's fees, not to exceed amounts authorized by RCW 60.28.

Retainage will not be reduced for any reason below the minimum limit provided by law.

**1.09.9(3) County's Right to Withhold and Disburse Certain Amounts**

The Contractor authorizes the Contracting Officer to withhold progress payments due or deduct an amount from any payment or payments due the Contractor which, in the Contracting Officer's opinion, may be necessary to cover the County's costs for or to remedy the following situations, provided the County gives notice required by RCW 60.28:

1. Failure of the Contractor to submit and obtain approval of a progress schedule,
2. Failure of the Contractor to remedy defective work,
3. Failure of the Contractor to provide the Contracting Officer a field office when required by the Special Provisions,
4. For overtime work performed by County personnel,
5. Lack of construction progress based upon the Contracting Officer's review of the Contractor's approved progress schedule which, indicates that the work will not be completed with the contract time. When calculating an anticipated time overrun, the Contracting Officer will make allowances for weather delays, approved unavoidable delays, and suspensions of the work. The amount withheld under this subparagraph will be based upon the liquidated damages amount per day set forth in the Contract Documents multiplied by the number of days the Contractor's approved progress schedule, in the opinion of the Contracting Officer may exceed the contract time,
6. Damage to another contractor where there is evidence thereof and a claim has been filed,
7. Failure to submit certified weekly payrolls or correct underpayments to Contractor's or subcontractor's employees,
8. Where the Contractor has not paid fees or charges to public authorities or municipalities which the Contractor is obligated to pay, and
9. Failure of the Contractor to perform any of the Contractor's other obligations under the contract.

The Contractor authorizes the Contracting Officer to act as agent for the Contractor disbursing such funds as have been withheld pursuant to this paragraph to a party or parties who are entitled to such payment. Disbursement of such funds, if the Contracting Officer elects to do so, will be made only after giving the Contractor 15 calendar days prior written notice of the County's intent to do so, and if prior to the expiration of the 15 calendar day period,

1. no legal action has been commenced and filed to resolve the validity of the claims, and
2. the Contractor has not delivered written notice to the Contracting Officer protesting such payment and making specific reference to this Section.

A proper accounting of all funds disbursed on behalf of the Contractor in accordance with this section will be made. A payment made pursuant to this section shall be considered as payment made under the terms and conditions of the Contract. The County will not be liable to the Contractor for such payment

If legal action is instituted to determine the validity of the claims prior to expiration of the 15 day period mentioned above, the Contracting Officer will hold the funds until determination of the action or written settlement agreement of the parties.

#### **1.09.9(4) Final Payment**

Upon Acceptance of the Work by the County the final amount to be paid the Contractor will be calculated based upon a Final Progress Estimate made by the Contracting Officer.

Acceptance by the Contractor of the Final Payment shall be and shall operate as a release:

1. to the County of all claims and all liabilities of the Contractor, other than claims in stated amounts as may be specifically excepted in writing by the Contractor,
2. for all things done or furnished in connection with the work;
3. for every act and neglect by the County; and
4. for all other claims and liability relating or arising out of the work.

A payment (monthly, final, retainage, or otherwise) shall not release the Contractor or the Contractor's Surety from any obligation required under the terms of the Contract Documents or the Contract Bond; nor shall such payment constitute a waiver of the County's ability to investigate and act upon findings of non-compliance with the Contract Documents; nor shall such payment preclude the County from recovering damages, setting penalties or obtaining such other remedies as may be permitted by law.

Before the work will be accepted by the County, the Contractor shall submit those items required by the Pierce County Contract and Procurement Assistance Program which is a part of this contract, demonstrating compliance by the Contractor and all subcontractors of any tier with the provisions governing labor standards, Equal Employment Opportunity.

If the Contractor fails, refuses, or is unable to sign and return the Final Progress Estimate or any other documents required for the final acceptance of the contract the County reserves the right to estimate and determine the amount required to provide the benefit to the public or a segment thereof which performance of the contract would have provided. Upon such a determination by the Contracting Officer, the Contractor authorizes the County to expend the sums so determined upon such projects or for such purposes as the County, in its sole judgment, shall determine will best correct the loss caused by the Contractor's failure. Disbursement of such funds shall be made by the County for its own purposes or those of another may only be made upon the terms for making payments under Section 1.09.9(3).

#### **1.09.10 Blank**

#### **1.09.11 Disputes and Claims**

##### **1.09.11(1) Disputes**

Any dispute arising under or related to the contract shall be brought to the attention of the County at the earliest possible time so that appropriate action may be taken and adverse impacts minimized. When disputes occur during a contract, the Contractor shall pursue resolution through the Contracting Officer. The Contractor shall follow the procedures outlined in Section 1.04.5. If the negotiation using the procedures outlined in that Section fails to provide satisfactory resolution, the Contractor shall pursue the more formalized method outlined in Section 1.09.11(2) for submitting and resolving claims. Unless submitted and disposed of in the manner required by this Section, the determinations, decisions and instructions of the Contracting Officer shall be final and conclusive.

### 1.09.11(2) Claims

If the Contractor claims that additional payment is due and the Contractor has pursued and exhausted all means provided in Section 1.09.11(l) to resolve a dispute, 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 Contracting Officer 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 Contracting Officer 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 Contracting Officer, is found to have merit, the Contracting Officer 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 Contracting Officer 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 Contracting Officer to ascertain the basis and amount of the claim. All claims shall be submitted to the Contracting Officer 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 County individual, official, employee, or agent 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 Contracting Officer which the contract leaves to his/her discretion or as to which the contract provides that his/her decision is final, the Contractor shall set out in detail all facts supporting its position relating to the decision of the Contracting Officer.
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 County documentation and documents previously furnished to the County 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 the 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 the claim is made or in the absence of actual cost, the rates established by the AGC/WSDOT Equipment Rental Agreement, or if not listed there, the rate established by the Rental Rate Blue Book, 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 County may audit the Contractor's cost records as provided in Section 1.09.12 to determine the actual equipment cost. The following information shall be provided for each piece of equipment:

- (1) Detailed description (e.g., Motor Grader Diesel Powered Caterpillar 1 "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).
  - g. Other categories as specified by the Contractor or the County.
  - h. A notarized statement shall be submitted to the Contracting Officer containing the following language:

Under penalty of law for perjury or falsification, the undersigned, 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 computed as in the contract provided, and is fully documented and supported under the contract between the parties,

It will be the responsibility of the Contractor to keep full and complete records of the costs and additional time incurred, and of the facts and reasons for any alleged claim. The Contractor shall permit the Contracting Officer to have access to those records and any other records as may be required by the Contracting Officer 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, or the conclusion of litigation arising out of the contract, whichever is longer.

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

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 the provisions of this section and after the formal claim document has been submitted, the County will respond, in writing, to the Contractor as follows:

1. Within 45 calendar days from the date the claim is received by the County if the claim amount is less than \$100,000.
2. Within 90 calendar days from the date the claim is received by the County if the claim amount is equal to or greater than \$100,000.
3. If the above restraints are unreasonable due to the complexity of the claim under consideration, the Contractor will be notified with 15 calendar days from the date the claim is received by the County as to the amount of time which will be necessary for the County to prepare its response. Failure by the County to respond within the time provided in this section shall not be evidence that the Contractor is entitled to the relief requested, nor shall it estop the County from denying that relief requested is proper, but shall only allow the Contractor to proceed with arbitration, litigation or other remedies authorized by the contract without awaiting a decision by the County, if all other requirements of the contract have been met by the Contractor.

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 that any claims or causes of action which the Contractor has against the County 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 County; and it is further agreed that any such claims or causes of action shall be brought in any of the three superior courts authorized by RCW 36.01.050. 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 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 County arising from the contract are filed with the County or commenced in court, the Contractor shall permit the County to have timely access, in Pierce County to any records deemed necessary by the County to assist in evaluating the claims or action.

**1.09.12 Audits**

**1.09.12(l) General**

The Contractor's wage, payroll, and cost records on this contract shall be open for inspection or audit by representatives of the County during the life of the contract and for a period of not less than three years after the date of final acceptance of the contract, or final conclusion of audit, arbitration or litigation arising out of the contract, whichever is later. 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 agents to the 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 County or by an auditor under contract with the County. The Contractor, subcontractors, or agents of the subcontractors shall provide adequate facilities, acceptable to the Contracting Officer, within Pierce County, for the audit during normal business hours. The Contractor, subcontractors, or agents of the 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 commenced, within 3 years after final acceptance, the wage, payroll, and cost records shall be retained until such litigation, claim, or audit involving the records is complete.

**1.09.12(2) Claims**

All claims filed against the County shall be subject to audit at any time following the filing of the claim. Failure of the Contractor, subcontractor, or agents of the 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 agents of the subcontractors shall constitute a waiver of claim and shall bar any recovery thereunder.

**1.09.12(3) Required Documents for Audits**

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

1. Daily time sheets and supervisor's daily reports.
2. Union agreements.
3. Insurance, welfare, and benefits records.
4. Payroll registers.
5. Earnings records.
6. Payroll tax forms.
7. Material invoices and requisitions,
8. Material cost distribution worksheet.
9. Equipment records (List of company equipment, rates, etc.).
10. Vendor's, rental agencies', subcontractors', and agents' invoices.
11. Subcontractors' and agents' payment certificates.
12. Canceled checks (payroll and vendors).
13. Job cost report.

14. Job payroll ledger.
15. General ledger.
16. Cash disbursements journal.
17. Financial statements for all years reflecting the operations on this contract. In addition, the County may require, if it deems appropriate, additional financial statements for 3 years preceding execution of the contract and 3 years following final acceptance of the contract.
18. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others.
19. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
20. All documents which relate to each and every claim, together with all documents which support the amount of damages as to each claim.
21. Worksheets used to prepare the claim establishing the cost components for the items of the claim, including but not limited to labor, benefits and insurance, materials equipment, subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.
22. Any other documents required to be kept by other provisions of this contract.

### **1.09.13 Arbitration**

#### **1.09.13(l) General**

Prior to seeking claim resolution through arbitration, disputes arising during a contract shall proceed under the present administrative provisions in Section 1.04.5, 1.09.11(1), and any special provision provided in the contract for the resolution of disputes. The provisions of these sections and the special provisions must be complied with, in full, as a condition precedent to the Contractor's right to seek claims resolution through arbitration or litigation.

The Contractor may file for arbitration of a contract dispute with the County, provided that (1) the formal claim document has been submitted, (2) all the contract administrative remedies have been exhausted, and (3) the County has been given the time and opportunity to respond to the Contractor as provided in Section 1.09.11(1), and 1.09.11(2) the Contractor has complied with all limitations of the contract for resolution of disputes, including time limitations and notices.

The parties to the contract mutually agree that the only recourse for the Contractor for unresolved claims of less than \$35,000 is through mandatory and binding arbitration. Claims equal to or greater than \$35,000 may be arbitrated by mutual agreement of the County and the Contractor.

#### **1.09.13(2) Administration of Arbitration**

Arbitration shall be administered through the American Arbitration Association (AAA) using the following arbitration methods:

1. The current version of the Northwest Region Expedited Commercial Arbitration Rules shall be used for claims with an amount less than \$25,000.
2. The current version of the Expedited Procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than \$25,000 and less than \$35,000.
3. These procedures shall also be used when claims with an amount equal to or greater than \$35,000 are to be arbitrated by mutual agreement.

The County and the Contractor mutually agree the venue of any arbitration hearing shall be within Pierce County and that any such hearing shall be conducted within Pierce County.

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

### **1.09.13(3) Procedures to Pursue Arbitration**

If the dispute cannot be resolved through administrative procedures in Sections 1.04.5, 1.09.11 (I), and any special provision provided in the contract for resolution of disputes, the Contractor shall advise the Contracting Officer that mandatory and binding arbitration is desired. A demand for arbitration shall be filed by the Contractor in accordance with AAA rules, with the County, and with the AAA, except that for claims under \$25,000 using the Northwest Region Expedited Commercial Arbitration Rules, arbitration selection shall proceed pursuant to Section 55 of the Expedited of the Construction Industry Arbitration Rules. Arbitration shall proceed utilizing the appropriate rule of the AAA as determined by the dollar amount of the claim as provided in Section 1.09.13(2).

Unresolved disputes which do not involve delay or impacts to unchanged work may be brought to arbitration during the course of the project, provided that: the administrative procedures have been exhausted and the dispute has been pursued by claim as provided in Section 1.09.11(2).

Unless the County and the Contractor agree otherwise, all other unresolved claims (disputes which have been pursued by claim) which arise from a contract must be brought in a single arbitration hearing and only after completion of the contract. The total of those unresolved claims must be less than \$35,000 to be eligible for arbitration, except by mutual agreement of the County and the Contractor.

In addition, the Contractor agrees arbitration proceedings must commence, by filing of the aforementioned demand for arbitration, within 180 calendar days of final acceptance of the contract, the same as any other claim or cause of action as provided in Section 1.09.11(3).

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

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

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



**CONTRACT COMPLIANCE REQUIREMENTS  
FOR LOCAL PUBLIC WORKS PROJECTS**

**PROJECT:** Heritage Recreation Center Netting Replacement

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PREVAILING WAGE RATE INFORMATION

This project requires the payment of prevailing wages per chapter 39.12 RCW. Workers shall receive no less than the prevailing rate of wage for their work on this locally funded project.

To find applicable wage rates please follow the following steps:

1. Access the L & I website  
at: <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>
2. Look up applicable wages/benefit codes using the project bid due date of **March 30, 2018**
3. This project will be located in Pierce County. If work will be performed outside of Pierce County, select the county appropriate to the location of work.
4. A copy of prevailing wage rates for this project are available at the Pierce County Procurement & Contract services office for review. A copy may also be mailed to you upon request. Please contact Pierce County Contract Compliance for additional information at 253-798-7456.

Requirements for this public works project are listed in the following sections:

<b>Section I</b>	<b>General Information</b>
<b>Section II</b>	<b>MWBE Requirements</b>
<b>Section III</b>	<b>Labor Standards Requirements</b>
<b>Section IV</b>	<b>Documentation Requirements</b>

## **SECTION I. GENERAL INFORMATION**

It is the policy of the Pierce County Executive and County Council to foster an environment that encourages economic growth and diversification, business development and retention, increases competition and reduces unemployment.

In accordance with Initiative 200 and RCW [49.60](#), bidders seeking to do business with Pierce County shall not give preference in the award of subcontracts to any person or firm or discriminate against any person or firm on the basis of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

Pierce County will take measures necessary to ensure nondiscrimination in all contracts, programs and activities to help remedy the effects of discrimination against minorities and women, and to prevent the County from directly or indirectly participating in or perpetuating the effects of such discrimination.

All parties doing business with Pierce County are encouraged to utilize local businesses and County residents where qualifications and cost effectiveness are deemed competitive.

## **SECTION II. MBE & WBE PARTICIPATION**

### **A. GENERAL INFORMATION**

1. Pierce County has analyzed the engineer's estimate for this project and has determined that opportunities for subcontracting are available within the scope of work. Bidders are encouraged to solicit proposals from MWBEs and award subcontracts to MWBEs whenever possible.
2. Participation may be on a direct basis in response to this Invitation to Bid or as a Subcontractor to a Bidder. No minimum level of MWBE participation shall be required as a condition for receiving an award. Bids will not be rejected or considered non-responsive if they do not include MWBE participation. It is incumbent upon all Bidders to ensure that Subcontractors/suppliers are selected in a manner that is fair and equitable based on competitive and cost effective bids received in the solicitation process.

### III. Labor Standards Requirements

#### A. MINIMUM WAGE RATES FOR LABORERS, WORKMEN AND MECHANICS

1. This section specifies the Minimum Prevailing Wage requirements and other Labor Standards requirements, which are applicable to this County public works project. Prevailing wage rates and fringe benefits established by the State Department of Labor and Industries pursuant to RCW 39.12 are applicable to this locally-funded public works project.
2. Provisions of Prevailing Wage law (RCW 39.12) state in part that: "The hourly wages to be paid laborers, workman or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall not be less than the prevailing rate of wages for an hour's work in the same trade or occupation in the locality within the state where such labor is performed...".
3. The Contractor and each Subcontractor shall, on or before the date of commencement of work, file an Intent to Pay Prevailing Wage form. The form must be approved by the Washington State Department of Labor and Industries prior to first payment.
4. The Contractor and its subcontractors shall pay all required fees for submittal and processing of such statements directly to the Department of Labor and Industries.
5. Questions concerning prevailing wages shall be referred to the Contract Compliance Office located in the Pierce County Finance department at (253) 798-7456 or the state Department of Labor and Industries-Prevailing Wage Division in Olympia at (360) 902-5335.

#### B. UNDERPAYMENT OF WAGES OR BENEFITS

1. If employees are improperly paid prevailing wages, wage restitution will be promptly made for underpayment of and/or benefits by the Contractor, or any Subcontractor, to such laborers or mechanics when directed to do so by Pierce County or by the State of Washington Department of Labor & Industries.

#### C. PAYROLLS

1. Certified payroll records will be maintained by each and every contractor, subcontractor and sub-tier on the project for three years from the date of acceptance of the project.
2. Records will be kept in accordance with WAC 296-127-320 and submitted to the Pierce County upon request for inspection at any time.
3. Submission of certified payrolls includes the submission of any approved 4/10 agreement that may exist for employees employed on the project.

#### D. PAYROLL DEDUCTIONS

1. Deductions shall be made in compliance with the requirements of federal, state, and local laws, such as federal income and social security taxes.

E. EMPLOYMENT OF APPRENTICES

1. Apprentices and trainees will be permitted to work at less than the prevailing rate for the work they perform when they are employed and individually registered in an approved apprenticeship or training program registered with the Washington State Apprenticeship Training Council.
2. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not an apprentice or is not registered or otherwise employed as stated above, shall be paid the full journeyman wage rate determined by the classification of work he/she actually performed.

F. CONTRACTORS AND SUBCONTRACTORS WHO ARE THEMSELVES PERFORMING WORK AS LABORERS AND MECHANICS

1. Owners-operators, partners, sole proprietors and/or officers of firms providing labor on public works contracts, must keep accurate records of the time they work on the public works in accordance with WAC 296-127-320.

G. POSTING WAGE DETERMINATIONS AND POSTERS ON JOBSITE

1. The approved Statement of Intent to Pay Prevailing Wage forms for all contractors, subcontractors and sub-tiers employed on this public works project are to be visibly posted where all employees have ready and free access to inspect their contents.
2. Forms to be posted on projects over \$10,000:
  - Approved copy of prime and all subcontractors Intent to Pay Prevailing Wages accessible to all employees.
  - Copy of the wage rates applicable to the project if Intent is not yet approved AND a phone number and address of the Industrial Statistician of Department of Labor and Industries where a complaint or inquiry may be made.
  - If not feasible to post on jobsite, other posting procedures may be used as outlined in [RCW 39.12.020](#)
3. Other posters as required by state, federal or local law or ordinance.
  - Information about State and Federal posting requirements can be found here: <http://www.lni.wa.gov/FormPub/questions.asp>
  - Link to State and Federal Agency poster list: <http://www.lni.wa.gov/IPUB/101-054-000.pdf>
  - Contractors should be aware of potential additional posting requirements for local jurisdictions.

H. PAY REQUESTS

1. No payment request will be approved until an approved copy of the Statement of Intent to Pay Prevailing Wages has been received by Contract Compliance for the contractor and each subcontractor performing work under the contract.
2. All progress payment requests (whether prepared by the contractor or project manager) must be accompanied by a statement from the contractor certifying that the prevailing wages for all work have been paid in accordance with the approved Statement(s) of Intent To Pay Prevailing Wages on file with the public agency. (RCW 39.12.040)

I. BREACH OF LABOR STANDARDS PROVISIONS

1. In addition to any other causes for termination, Pierce County reserves the right to terminate this public works contract if the Contractor or any Subcontractor breaches any of these Labor Standards Provisions.

J. RESPONSIBILITY OF PRIME CONTRACTOR

1. It is incumbent upon the prime Contractor to read, understand, and comply with the project requirements as stated in the contract specifications. Any contractor of any tier performing work on this public works site is subject to these contract requirements and should be so informed by the prime contractor. Timely progress payments can be dependent upon the submittal of required documentation. Contact the Contract Compliance Office if you have questions at (253) 798-7456.

**SECTION IV. DOCUMENTATION REQUIREMENTS**

1. The Contractor and each Subcontractor shall submit the required documentation listed below. Failure to submit documentation may result in withholding of all or a portion of any progress payment or a timely release of retainage.
2. Closeout of this public works contract and the subsequent release of the Contractor's retainage may not be authorized until all of the requirements of the Contract Compliance program, including the submittal of required documentation, have been fulfilled.
3. Required documents list:
  - Statement of Intent to Pay Prevailing Wage and Affidavit of Wages Paid - Prime and all Subcontractors
  - Dept. of Revenue Release for projects over \$35,000
  - L&I Industrial Insurance Release for projects over \$35,000
  - Employment Security Release for projects over \$35,000
  - Pierce County Required forms

## **PIERCE COUNTY E-VERIFY PROGRAM:**

### **E-VERIFY REQUIREMENTS:**

- A. As a condition for the award of any County contract for public works in excess of \$100,000.00 or any other County contract in excess of \$25,000.00, the business entity or contractor shall enroll in the E Verify program, or its successor, and thereafter shall provide the County documentation affirming its enrollment and participation in the program. The conditions of this Section shall not apply to contracts that:
  1. Are only for work that will be performed outside the United States;
  2. Are for a period of performance of less than 120 days; or
  3. Are only for:
    - a. Commercially available off-the-shelf items (COTS) as defined by federal law;
    - b. Items that would be COTS items, but for minor modifications;
    - c. Items that would be COTS items if they were not bulk cargo; or
  4. Provide commercial services that are:
    - a. Part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications);
    - b. Performed by the COTS provider; and
    - c. Are normally provided for that COTS item.
- B. Contractors shall be required to continue participation in the E-Verify program throughout the course of their business relationship with the County.
- C. If a Contractor described in subsection A. uses a subcontractor whose work in connection with the performance of the contract would be subject to the requirements of subsection A. were the contract to be with Pierce County, the subcontractor shall, as a condition of contract, certify to the contractor in a manner that does not violate federal law that the subcontractor has registered and is participating in the E-Verify program and will not knowingly employ or contract with an unauthorized alien.

### **Enforcement of E-Verify Contract Terms.**

- A. The Contractor must provide certification of enrollment with bid submittal. The Contractor is responsible for verification of every applicable subcontractor. Pierce County reserves the right to require a copy of a Memorandum of Understanding between the contractor or any Subcontractor and Department of Homeland Security upon request at any time during the project verifying the contractor's enrollment.
- B. The County shall suspend a contract with any business entity or contractor that the United States Attorney General or the Secretary of Homeland Security has found to have been in violation of 8 U.S.C. § 1324a should the business entity or contractor fail to correct the violation within 30 business days of receiving notice of the violation from the United States Attorney General or the Secretary of Homeland Security.
- C. Any suspension for E Verify noncompliance shall terminate one business day after a legal representative of the business entity or contractor submits, at a County office designated by the Executive, a declaration signed under penalty of perjury of the laws of the state, in the form provided by the County, stating with specificity that the violation has ended.

The Federal E-Verify Program is a web-based application that can be accessed at [www.dhs.gov/everify](http://www.dhs.gov/everify).