ATTENTION: ALL BIDDERS AND PLAN HOLDERS

RE: C 3486 – Pioneer Way Bridge #70 – Bridge Replacement Project

ADDENDUM NO. 2

You are hereby notified that the plans and specifications for the above referenced project are amended as explained below.

Remove and replace Special Provisions pages 57 – 69 with the enclosed replacement pages.

The change modifies the specification from the standard WSDOT Special Provision requiring monthly reporting to the standard Local Agency Special Provision requiring quarterly reporting of DBE’s.

All bidders shall be required to furnish the Yakima County Engineer with evidence of the receipt of this Addendum on the Proposal form in the Bid Documents. This Addendum shall be incorporated in and made a part of the contract when awarded and formally executed.

Gary Ekstedt, P.E.
County Engineer
16. Additional assistance for Federal Construction Contractors on contracts administered by
Washington State Department of Transportation or by Local Agencies may be found at:

Washington State Dept. of Transportation
Office of Equal Opportunity
PO Box 47314
310 Maple Park Ave. SE
Olympia WA
98504-7314
Ph: 360-705-7090
Fax: 360-705-6801
http://www.wsdot.wa.gov/equalopportunity/default.htm

(April 1, 2013)
Disadvantaged Business Enterprise Condition of Award Participation
The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 apply to this
Contract. Demonstrating compliance with these specifications is a Condition of Award (COA) of
this Contract. Failure to comply with the requirements of this specification may result in your bid
being found to be nonresponsive and may be rejected.

DBE COA Goal
The Contracting Agency has established a COA Contract goal in the amount of: nine percent
(9%) of the contract total for COA DBE goals.

DBE Eligibility/Selection of DBEs
A Directory of Certified DBE Firms denoting the Description of Work the DBE Contractors
are certified to perform is available at:


The directory provides plain language on the Description of Work that the listed DBE’s
have been certified by the Office of Minority and Women’s Business Enterprises
(OMWBE) to perform. The Bidder shall use the Directory of Certified DBE Firms to
confirm if a DBE is certified for the “Description of Work” the Bidder lists on the DBE
Utilization Certification form # 272-056 EF (see form instructions) and therefore
qualifies for credit towards the COA goal.

Crediting DBE Participation
Joint Venture
When a DBE performs as a participant in a joint venture, only that portion of the total
dollar value of the Contract equal to the distinct, clearly defined portion of the Work that
the DBE performs with its own forces shall be credited.

DBE Prime Contractor
A DBE Prime Contractor may only take credit for that portion of the total dollar value of
the Contract equal to the distinct, clearly defined portion of the Work that the DBE Prime
performs with its own forces.

PIONEER WAY BRIDGE #70 REPLACEMENT
COUNTY PROJECT NO. C 3486 / FEDERAL AID PROJECT NO. BROS-9939(022)
SPECIAL PROVISIONS
57
DBE Subcontractor

When a DBE firm participates as a Subcontractor only that portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work that the DBE performs with its own forces shall be credited.

- Include the cost of supplies and materials obtained by the DBE for the Work in the Contract including supplies purchased or equipment leased by the DBE.
  
  o However, you may not take credit for supplies, materials, and equipment the DBE Subcontractor purchases or leases from the Prime Contractor or its affiliate. In addition, Work performed by a DBE, utilizing resources of the Prime Contractor or its affiliates shall not be credited.

- In very rare situations, a DBE firm may utilize equipment and/or personnel from a non-DBE firm other than the Prime Contractor or its affiliates. Should this situation arise the arrangement must be short-term and have prior written approval from the Office of Equal Opportunity (OEO).

- Count the entire value of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, managerial services, or for providing bonds or insurance.

- When a DBE subcontracts to another firm, the value of the subcontracted Work may be counted as participation only if the DBE's lower tier Subcontractor is also a DBE. Work that a DBE subcontracts to a non-DBE firm shall not be credited.

- When non-DBE Subcontractor further subcontracts to a lower-tier Subcontractor or supplier who is a certified DBE, then that portion of the Work further subcontracted may be credited as DBE participation, provided it is a distinct clearly defined portion of the Work that the DBE is certified to perform and the DBE Subcontractor performs the Work with its own forces.

- If a firm is not certified as a DBE at the time of the execution of the contract, their participation cannot be counted toward any DBE goals.

Trucking

Use the following factors in determining DBE credit and whether a DBE trucking company is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which credit is being claimed.

2. The DBE must itself own and, with its own workforce, operate at least one fully licensed, insured, and operational truck used on the Contract.

3. The DBE receives credit only for the value of the transportation services it provides on the Contract using trucks it owns or leases, licenses, insures, and operates with drivers it employs. For purposes of this requirement a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others provided it is with the consent of the DBE and the lease provides the DBE first priority for
use of the leased truck. Leased trucks must display the name and
identification number of the DBE.

4. The DBE may lease trucks from another DBE firm including an owner-operator
provided they are certified as a DBE for trucking. The DBE who leases trucks
from another DBE may claim participation for the total value of the
transportation services the lessee DBE provides on the Contract.

5. The DBE may also lease trucks from a non-DBE firm and may enter into an
agreement with an owner-operator who is a non-DBE. The DBE shall only
receive credit for the number of additional non-DBE trucks equal or less than
the number of DBE trucks the firms owns or has leased/subcontracted through
another DBE trucking company. The DBE must control the work of the non-
DBE trucks. If the non-DBE is performing the work without supervision of that
work by the DBE, the DBE is not performing a Commercially Useful Function
(CUF).

6. In any lease or owner-operator situation, as described in requirement #4 and
#5 above, the following rules shall apply:

   a. A written lease/rental agreement is required for all trucks leased or
      rented; documenting the ownership and the terms of the agreement.
The agreements must be submitted and approved by the Contracting
Agency prior to the beginning of the Work. The agreement must
show the lessee's name, truck description and agreed upon amount
and method of payment (hour, ton, or per load). All lease agreements
shall be for a long-term relationship, rather than for the individual
project. (This requirement does not apply to owner-operator
arrangements.)

   b. Only the vehicle, (not the operator) may be leased or rented. (This
      requirement does not apply to owner-operator arrangements).

7. Credit may only be claimed for DBE trucking firms operating under a
subcontract or a written agreement approved by the Contracting Agency prior
to performing Work.

Expenditures paid to other DBEs
Expenditures paid to other DBEs for materials or supplies may be counted toward DBE
goals as provided in the following:

Manufacturer
You may claim DBE credit for 100 percent of value of the materials or supplies
obtained from a DBE manufacturer.

A manufacturer is a firm that operates or maintains a factory or establishment that
produces, on the premises, the materials, supplies, articles, or equipment required
under the contract. A manufacturer shall include firms that produce finished goods
or products from raw or unfinished material or that purchases and substantially
alters goods and materials to make them suitable for construction use before
reselling them.
In order to receive credit as a DBE Manufacturer, the firm must be certified by
OMWBE as a manufacturer in a NAICS code that falls within the 31XXXX to
33XXXX classification.

Regular Dealer
You may claim credit for 60 percent of the value of the materials or supplies
purchased from a DBE regular dealer. Rules applicable to regular dealer status are
contained in 49 CFR Part 26.55.e.2.

To be considered a regular dealer you must meet the following criteria:

- WSDOT considers and recognizes a regular dealer, as a firm that owns,
  operates, or maintains a store, warehouse, or other establishment in which
  the materials or supplies required for the performance of the Contract and
described by the specifications of the Contract are bought, kept in stock and
regularly sold or leased to the public in the usual course of business.

- Sixty percent (60%) of the cost of materials or supplies purchased from an
approved regular dealer may be credited as DBE participation.

Regular dealer status is granted on a contract-by-contract basis. A firm wishing to
be approved as a regular dealer for WSDOT contracted projects or Highways &
Local Program administered projects must submit a request in writing to OEO for
approval, no later than seven days prior to bid opening.

Once the OEO has received the request, an onsite review will be set up with the
firm and a review conducted to determine the firm’s qualifications. If it is determined
that the firm qualifies as a regular dealer the OEO will list the firm on an Approved
Regular Dealers List. The list may be accessed through the OEO Home website is
at:

www.wsdot.wa.gov/equalopportunity.

Note: Requests to be listed as a regular dealer will only be processed if the
requesting firm is certified by the Office of Minority and Women’s
Business Enterprises in a NAICS code that fall within the 42XXXX NAICS
Wholesale code section.

Materials or Supplies Purchased from a DBE
With regard to materials or supplies purchased from a DBE who is neither a
manufacturer nor a regular dealer you may claim credit for the following:

1. Fees or commissions charged for assistance in the procurement of the
materials and supplies.

2. Fees or transportation charges for the delivery of materials or supplies.

In either case you may not take credit for any part of the cost of the materials and
supplies.

Commercially Useful Function (CUF)
The Prime Contractor has a responsibility and must treat the working relationship with
the DBE such that the DBE is performing a commercially useful function. The Prime
Contractor may only take credit for Work performed by a DBE that is determined to be performing a commercially useful function.

- A DBE performs a commercially useful function when it is responsible for execution of a distinct element of Work and is carrying out its responsibilities by performing, managing and supervising the Work involved. The DBE must also be responsible with respect to materials and supplies used on the Contract. For example; negotiating price, determining quality, determining quantities, ordering, installing (if applicable) and paying for the material itself.

- A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed.

Joint Checking Allowance
Prime Contractors and DBEs must receive pre-approval by the OEO before using a joint check. Joint check requests shall be submitted by the Prime Contractor to the Contracting Agency for approval.

When requesting approval for use of a joint checking allowance, the Contractor must distribute a written joint check agreement among the parties (including the suppliers involved) providing full and prompt disclosure of the expected use of the joint checks. The agreement shall contain all the information concerning the parties' obligations and consequences or remedies if the agreement is not fulfilled or a breach occurs. The joint check request shall be submitted to the Contracting Agency for approval prior to signing the contract agreement.

The following are some general conditions that must be met by all parties regarding joint check use:

a. It is understood that the Prime Contractor acts solely as the guarantor of a joint check.

b. The DBE's own funds are used to pay supplier of materials. The Prime Contractor does not make direct payment to supplier. In order to be performing a Commercially Useful Function (CUF), the DBE must release the check to the supplier (paying for the materials it-self and not be an extra participant in a transaction).

c. If the Prime Contractor makes joint checks available to one DBE Subcontractor, the service must be made available to all Subcontractors (DBE and non-DBE).

d. The relationship between the DBE and its suppliers should be established independently of and without interference by the Prime Contractor. The DBE has final decision-making responsibility concerning the procurement of materials and supplies, including which supplier to use.

e. The Prime Contractor and DBE shall be able to provide receipts, invoices, cancelled checks and/or certification statements of payment if requested by the Contracting Agency.

f. The DBE remains responsible for all other elements of 49 CFR 26.55(c)(1).
Failure by the Prime Contractor to request and receive prior approval of a joint check arrangement will result in the joint check amount not counting towards the Prime Contractor’s DBE goal.

Disadvantaged Business Enterprise Utilization Certification FORM # 272-056 EF

To be eligible for award of the Contract, the Bidder shall properly complete and submit a Disadvantaged Business Enterprise Utilization Certification with the Bidder’s sealed Bid Proposal, as specified Section 1-02.9 Delivery of Proposal. The Bidder’s Disadvantaged Business Enterprise Utilization Certification must clearly demonstrate how the Bidder intends to meet the DBE COA goal. A Disadvantaged Business Enterprise Utilization Certification (form # 272-056 EF) is included in your Proposal package for this purpose as well as instructions on how to properly fill out the form.

In the event of arithmetic errors in completing the Disadvantaged Business Enterprise Utilization Certification the amount listed to be applied towards the goal for each DBE shall govern and the DBE total amount shall be adjusted accordingly.

Note: The Contracting Agency shall consider as non-responsive and shall reject any Bid Proposal submitted that does not contain a Disadvantaged Business Enterprise Utilization Certification that accurately demonstrates how the Bidder intends to meet the COA goal.

Disadvantaged Business Enterprise (DBE) Written Confirmation Document(s) FORM # 422-031 EF

The Bidder shall submit a complete and accurate Disadvantaged Business Enterprise (DBE) Written Confirmation Document for each DBE firm listed in the Bidder’s completed Disadvantaged Business Enterprise Utilization Certification as submitted with the bid. Failure to do so will result in the associated participation being disallowed, which may result in bid rejection.

A Disadvantaged Business Enterprise (DBE) Written Confirmation Document (form No. 422-031 EF) is included in your Proposal package for this purpose.

The form(s) shall be received as specified in the special provisions for Section 1-02.9 Delivery of Proposal.

It is prohibited for the Bidder to require a DBE to submit a Written Confirmation Document with any part of the form left blank. Should the Contracting Agency determine that a Written Confirmation Document was signed by a DBE that was not complete; the validity of the document comes into question and the associated DBE Participation may not receive credit.

Selection of Successful Bidder/Good Faith Efforts (GFE)
The successful Bidder shall be selected on the basis of having submitted the lowest responsive Bid, which demonstrates a good faith effort to achieve the DBE COA goal. Achieving the goal may be accomplished in one of two ways, as follows:

1. By meeting the goal
   The best indication of good faith efforts is to document, through submission of the Disadvantaged Business Enterprise Utilization Certification and supporting Disadvantaged Business Enterprise (DBE) Written Confirmation Document(s) that the Bidder has obtained enough DBE participation to meet or exceed the
assigned DBE COA contract goal. That being the case no additional GFE documentation is required. Or;

2. By documentation that it made adequate GFE to meet the goal
   The Bidder may demonstrate a GFE in whole or part through GFE documentation ONLY IN THE EVENT a Bidder's efforts to solicit sufficient DBE participation have been unsuccessful. In this case, the Bidder must supply GFE documentation in addition to the Disadvantaged Business Enterprise Utilization Certification, and supporting Disadvantaged Business Enterprise (DBE) Written Confirmation document(s).

Note: In the case where the Bidder was awarded the contract based on demonstrating adequate GFE the advertised DBE goal will not be reduced to the Bidder's partial commitment. The Bidder shall demonstrate a GFE during the life of the Contract to attain the DBE Condition of Award (COA) Goal as assigned to the project.

Good Faith Efforts (GFE) Documentation
GFE documentation shall be received, as specified in the special provisions for Section 1-02.9 Delivery of Proposal.

Based upon all the relevant documentation submitted in Bid or as supplement to Bid, the Contracting Agency shall determine whether the Bidder has demonstrated a sufficient GFE to achieve DBE participation. The Contracting Agency will make a fair and reasonable judgment of whether a Bidder that did not meet the goal through participation, made adequate good faith efforts as demonstrated by the GFE documentation.

The following is a list of types of actions, which would be considered as part of the Bidder’s GFE to achieve DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

1. Attendance by the Bidder at any pre-solicitation or pre-Bid meetings that were scheduled by the Contracting Agency to inform DBEs of contracting and subcontracting or material supply opportunities available on the project;

2. Contacting local Tribes, Tribal Employment Rights Offices (TERO) concerning the subcontracting or supply opportunities in sufficient time to allow the enterprises to participate effectively;

3. Selection by the Bidder of specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs even if the Bidder preferred to perform these Work items as the Prime Contractor;

4. Advertising by the Bidder in general circulation, trade association minority and trade oriented, women focus publications, concerning the subcontracting or supply opportunities;

5. Providing written notice from the Bidder to a reasonable number of specific DBEs, identified from the OMWBE Directory of Certified DBE Firms for the selected subcontracting or material supply Work, in sufficient time to allow the enterprises to participate effectively;
6. Follow-up by the Bidder of initial solicitations of interest by contacting the DBEs to determine with certainty whether they were interested. Documentation of this kind of action shall include the information outlined below:

   a. The names, addresses, telephone numbers of DBEs who were contacted, the dates of initial contact, and whether initial solicitations of interest were followed-up by contacting the DBEs to determine with certainty whether the DBEs were interested;

   b. A description of the information provided to the DBEs regarding the plans, specifications, and estimated quantities for portions of the Work to be performed;

   c. Documentation of each DBE contacted but rejected and the reason(s) for that rejection;

7. Providing, to interested DBEs, adequate information about the plans, specifications, and requirements for the selected subcontracting or material supply Work;

8. Negotiating in good faith with the DBE firms, and not, without justifiable reason, rejecting as unsatisfactory, Bids that are prepared by any DBE. The DBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations - union vs. non-union employee status - are not legitimate causes for the rejection or non-solicitation of bids in the Prime Contractor's efforts to meet the project goal;

9. Advertising and making efforts to obtain DBE participation that were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of the Contracting Agency;

10. Making any other efforts to obtain DBE participation that were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of the Contracting Agency;

11. Using the services of minority community organizations, minority contractor groups, local, State, and federal minority business assistance offices and other organizations identified by WSDOT and advocates for disadvantaged, minority, and women businesses that provide assistance in the recruitment and placement of disadvantaged, minority, and women business enterprises; and

12. Using the WSDOT OEO DBE Supportive Services to assist you. For more information please contact the OEO by calling toll free at (888) 259-9143 or emailing dbess@wsdot.wa.gov.

Administrative Reconsideration of GFE Documentation
Any Bidder has the right to reconsideration but only for the purpose of reassessing their GFE documentation that was determined to be inadequate.
• The Bidder must request and schedule a reconsideration hearing within seven calendar days of notification of being nonresponsive or forfeit the right to reconsideration.

• The reconsideration decision on the adequacy of the Bidder's GFE documentation shall be made by an official who did not take part in the original determination.

• The Bidder shall have the opportunity to meet in person with the official for the purpose of setting forth the Bidder's position as to why the GFE documentation demonstrates a sufficient effort.

• The reconsideration official shall provide the Bidder with a written decision on reconsideration within five business days of the hearing explaining the basis for their finding.

Procedures between Award and Execution
After Award and prior to Execution the Bidder shall provide the additional information described below. Failure to comply shall result in the forfeiture of the Bidder's Proposal bond or deposit.

1. Additional information for all successful DBE's as shown on the Disadvantaged Business Enterprise Utilization Certification:

   a. Correct business name, federal employee identification number (if available), and mailing address.

   b. List of all Bid items assigned to each successful DBE firm, including unit prices and extensions.

   c. Description of partial items (if any) to be sublet to each successful DBE firm specifying the distinct elements of Work under each item to be performed by the DBE and including the dollar value of the DBE portion.

      Total amounts shown for each DBE shall not be less than the amount shown on the Disadvantaged Business Enterprise Utilization Certification. A breakdown that does not conform to the Disadvantaged Business Enterprise Utilization Certification or that demonstrates a lesser amount of DBE participation than that included in the Disadvantaged Business Enterprise Utilization Certification will be returned for correction.

2. A list of all firms who submitted a Bid or quote in an attempt to participate in this project whether they were successful or not. Include the business name and a mailing address.

Note: The firms identified by the Prime Contractor may be contacted by the Contracting Agency to solicit general information as follows: age of the firm and average of its gross annual receipts over the past three-years.
Procedures after Execution

Crediting DBE Participation toward Meeting the Goal

Reporting
All DBE work whether COA or race neutral participation is reported. The Prime Contractor shall submit a Quarterly Report of Amounts Credited as DBE Participation form (422-102 EF) on a quarterly basis for any calendar quarter in which DBE has accomplished Work or upon completion of the project, as appropriate. The dollars are to be reported as specified herein.

In the event that the payments to a DBE have been made by an entity other than the Prime Contractor, as in the case of a lower-tier Subcontractor or supplier, then the Prime Contractor shall obtain the quarterly report, including the signed affidavit, from the paying entity and submit the report to the Contracting Agency.

Changes in DBE COA participation

Owner initiated Change Orders
The Prime Contractor shall demonstrate a GFE to substitute COA DBE participation when the Contracting Agency deletes Work items by change order that impact a COA DBE’s Work.

When the Contract allows alternate Work methods which serve to delete or create under-runs in COA DBE Work then the Prime Contractor must provide documentation of negotiating the change with the DBE that was to perform the reduced Work and demonstrate a GFE to substitute other DBE COA participation.

Original Quantity Under runs
In the event that Work committed to a DBE firm as part of the COA under runs the original planned quantities the Prime Contractor shall demonstrate a GFE to substitute other DBE COA participation.

Contractor-Initiated Proposals—General
The Contractor cannot reduce the amount of work committed to a DBE firm at contract award without good cause and only with written concurrence from the OEO. Reducing a COA DBE’s Work is viewed as a partial DBE termination, subject to the procedures below.

DBE Termination
A COA DBE Subcontractor may only be terminated in whole or part with the approval of the Contracting Agency (in coordination with OEO). Approval will be granted provided the Prime Contractor demonstrates that the termination is based on good cause.

Good cause typically includes situations where the DBE Subcontractor is unable or has failed to perform the work of its subcontract in accordance with normal industry standards. While not all inclusive, some examples of good cause include the following circumstances:

Good cause may exist if:

- The listed DBE Subcontractor fails or refuses to execute a written contract.
• The listed DBE Subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards.

• The listed DBE Subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements.

• The listed DBE Subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.

• The listed DBE Subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law.

• The listed DBE Subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal.

• The listed DBE is ineligible to receive DBE credit for the type of work required.

• A DBE owner dies or becomes disabled with the result that the listed DBE is unable to complete its work on the contract.

Good cause does not exist if:

• The Prime Contractor seeks to terminate a COA DBE so that the Prime can self-perform the Work.

• The Prime Contractor seeks to terminate a COA DBE so the Prime Contractor can substitute another DBE or non-DBE after contract award.

• The failure or refusal of the DBE Subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Prime Contractor (e.g., the failure of the Prime Contractor to make timely payments or the unnecessary placing of obstacles in the path of the DBE's Work).

Prior to requesting termination, the Prime Contractor must give notice in writing to the DBE Subcontractor with a copy to the Contracting Agency of its intent to request to terminate DBE work and the reasons for doing so. The DBE Subcontractor shall have five (5) days to respond to the prime Contractor's notice. The DBE's response shall either support the termination or advise the Contracting Agency and the Prime Contractor of the reasons it objects to the termination of its subcontract.

When a COA DBE firm is "terminated" from a Contract (or fails to complete its Subcontract for any reason), the Prime Contractor shall make every good faith effort to substitute another DBE Firm (ref.to 49 CFR 26.53(g)).
Graduation
When a DBE firm "graduates" from the DBE program (during the course of an executed subcontract), the DBE participation of that firm "may" continue to count towards the contract DBE goal.

Decertification
When a COA DBE firm who has a signed subcontract in place with a Prime, later becomes "decertified" (during the course of that subcontract) – the DBE participation of that firm "may" continue to count towards the Contract DBE goal.

Counting payments
Payments to a DBE firm will count toward DBE goals only if the participation is in accordance with these specifications.

Prompt Payment
Prompt payment to all Subcontractors shall be in accordance with Section 1-08.1(1) of these Contract special provisions.

Payment
Compensation for all costs involved with complying with the conditions of this specification and any other associated DBE requirements is included in payment for the associated Contract items of Work.

Damages for Noncompliance
The Prime Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Prime Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Contracts, which contain funding assistance from the United States Department of Transportation. Failure by the Prime Contractor to carry out these requirements is a material breach of this Contract, which may result in the Termination of this Contract or such other remedy as the Contracting Agency deems appropriate.

If the Prime Contractor does not comply with any part of its Contract as required under 49 CFR part 26, and/or any other applicable law or regulation regarding DBE, the Contracting Agency may withhold payment, suspend the ability of the Prime Contractor to participate in future Contracting Agency contracts, impose sanctions or Terminate the Contract, and subject the Prime Contractor to civil penalties of up to ten percent of the amount of the Contract for each violation. In the case of WSDOT Contracts, prequalification may be suspended pursuant to WAC 468-16-180, and continuous violations (exceeding a single violation) may also disqualify the Prime Contractor from further participation in WSDOT Contracts for a period of up to three years.

An apparent low Bidder must be in compliance with these Contract Provisions as a condition precedent to the granting of a notice of award by the Contracting Agency. The Prime Contractor is entitled to request an adjudicative proceeding with respect to the Contracting Agency's determination of Contract violation and assessed penalties by filing a written application within thirty days of receipt of notification. The adjudicative proceeding, if requested, will be conducted by an administrative law judge pursuant to the procedures set forth in RCW 34.05 and Chapter 10.08 of the Washington Administrative Code.
1-07.12 Federal Agency Inspection

Section 1-07.12 is supplemented with the following:

(July 30, 2012)

Required Federal Aid Provisions

The Required Contract Provisions Federal Aid Construction Contracts (FHWA 1273) Revised May 1, 2012 supersede any conflicting provisions of the Standard Specifications and are made a part of this Contract; provided, however, that if any of the provisions of FHWA 1273 are less restrictive than Washington State Law, then the Washington State Law shall prevail.

The provisions of FHWA 1273 included in this Contract require that the Contractor insert the FHWA 1273 in each Subcontract, together with the wage rates which are part of the FHWA 1273. Also, a clause shall be included in each Subcontract requiring the Subcontractors to insert the FHWA 1273 thereto in any lower tier Subcontracts, together with the wage rates. The Contractor shall also ensure that this section, REQUIRED FEDERAL AID PROVISIONS, is inserted in each Subcontract for Subcontractors and lower tier Subcontractors. For this purpose, upon request to the Project Engineer, the Contractor will be provided with extra copies of the FHWA 1273, the applicable wage rates, and this Special Provision.

1-07.13(4) Repair of Damage

Section 1-07.13(4) is revised to read:

(August 6, 2001)

The Contractor shall promptly repair all damage to either temporary or permanent work as directed by the Engineer. For damage qualifying for relief under Sections 1-07.13(1), 1-07.13(2) or 1-07.13(3), payment will be made in accordance with Section 1-04.4. Payment will be limited to repair of damaged work only. No payment will be made for delay or disruption of work.

1-07.16 Protection and Restoration of Property

Section 1-07.16(4) is supplemented with the following:

1-07.16(4) Archaeological And Historical Objects

(December 6, 2004)

The project area potentially contains archaeological or historical objects that may have significance from a historical or scientific standpoint. To protect these objects from damage or destruction, the Contracting Agency, at its discretion and expense, may monitor the Contractor's operations, conduct various site testing and perform recovery and removal of such objects when necessary.