

1-03 Interpretation of Contract Documents

1-03.1 Contract Documents

Each of the Contract Documents identified in the Contract Form is an essential part of this Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete contract.

Unless provided otherwise in the Contract, Reference Documents are for information purposes only and the Design-Builder shall rely upon Reference Documents at its own risk.

In the event that a Reference Document or Cited Reference is called out in the Contract Documents as a mandatory requirement then the Reference Document or Cited Reference shall be deemed incorporated in the Contract Documents to the extent that it is so referenced, with the same order of precedence as the highest-level Contract Document in which the reference occurs. Addenda and approved, incorporated ATCs shall be addressed at the same order of precedence as the Contract Document to which the addendum or ATC applies.

1-03.2 Order of Precedence

Should conflicts appear between any of the following parts of the Contract, a listed part shall take precedence over all those listed below it:

1. Change Orders
2. Design-Build Contract (Contract Form), excluding Exhibit B - WSDOT Identified Betterments
3. WSDOT Identified Betterments (Exhibit B), from the Design-Builder's Proposal
4. General Provisions – Contract Chapter 1
5. Technical Requirements – Contract Chapter 2
6. All other documents listed as Contract Documents in Contract Appendix A1
7. Design-Builder's Proposal

Notwithstanding the order of precedence listed above:

1. Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher-level document.
2. In the event of a conflict among any Mandatory Standards, the order of precedence designated in the Technical Requirements regarding said standards shall prevail. The Technical Requirements shall take precedence over all Mandatory Standards listed within the Technical Requirements.
3. If the Proposal includes statements or incorporates approved ATC(s) that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms that are more advantageous to WSDOT than the requirements of the Contract Documents, Design-Builder's

obligations hereunder shall include compliance with all such statements, offers, and terms.

On plans, Working Drawings, and Standard Plans, calculated dimensions shall take precedence over scaled dimensions.

1-03.3 *Integration of Standard Specifications and Cited References into Contract*

The Standard Specifications Divisions 2 through 9, excluding measurement and payment Sections, are incorporated by reference into the Contract. Any cross-references to provisions of Division 1 contained therein shall instead be deemed to refer to the appropriate provisions of these *General Provisions* and other Contract Documents.

References to “plan(s)” or “Contract Documents” in the Standard Specifications and Cited References shall be deemed to refer to the Final Design Documents. References to the Project owner shall mean WSDOT, or where Work is being performed on facilities owned by a Governmental Body other than WSDOT, such Governmental Body. References to “bid,” “proposal,” or “bid proposal” shall be deemed to refer to the Proposal. References to the “Contractor” shall be deemed to refer to the Design-Builder. References to the Engineer in the context of provider of compliance judgment may mean an appropriate representative of the Design-Builder, or it may mean a WSDOT representative, depending on the context, as determined by WSDOT in its sole discretion, or as defined in the Contract.

If any question arises regarding how to apply any provision of the Standard Specifications to this Contract, WSDOT’s interpretation regarding such matter shall control. WSDOT may, in its sole discretion, allow a deviation from the requirements of the Standard Specifications, pursuant to the process described in the Section 1-04.4 of these *General Provisions*.

1-03.4 *Contract Bond*

The Design-Builder shall provide an executed Contract Bond in an amount equal to 100 percent of the Contract Price.

This Contract Bond shall:

1. Be on WSDOT Form 272-002B, *Contract Bond - Highway Construction*, provided in Appendix F
2. Be signed by an approved Surety (or Sureties) that:
 - (a) Is registered with the Washington State Insurance Commissioner
 - (b) Appears on the current Authorized Insurance List in the State published by the Office of the Insurance Commissioner
3. Be conditioned upon the faithful performance of the Contract by the Design-Builder within the prescribed time
4. Be conditioned upon the payment of taxes, increases, and penalties incurred on the Project under titles 50, 51, and 82 RCW
5. Guarantee that the Surety shall indemnify, defend, and protect WSDOT against any claim of direct or indirect loss resulting from the failure of:

- (a) The Design-Builder (or any of the employees, Subcontractors, or lower tier Subcontractors of the Design-Builder) to faithfully perform the Contract
- (b) The Design-Builder (or the Subcontractors or lower tier Subcontractors of the Design-Builder) to pay all laborers, mechanics, Subcontractors, lower tier Subcontractors, material, or any other Person who provides supplies or provisions for carrying out the Work

WSDOT may require Sureties or Surety companies on the Contract Bond to appear and qualify themselves. Whenever WSDOT deems the Surety or sureties to be inadequate, it may, upon Written demand, require the Design-Builder to furnish additional Surety with the required A.M. Best Co. rating of at least "A" or better and Financial Size Category VIII or better to cover any remaining Work. Until the added Surety is furnished, payments on the Contract will stop.

1-03.5 *Ambiguities*

The Design-Builder acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and conditions of the Contract Documents and to bring to the attention of WSDOT any conflicts or ambiguities contained therein. The Design-Builder further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, said documents shall not be interpreted or construed against the Person that prepared them and instead other rules of interpretation and construction shall be used.

WSDOT's final answers to the questions posed during the procurement process for the Contract shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

In the event of any ambiguity or uncertainty over any design requirements set forth in the Contract Documents, the Contract shall be interpreted and construed, insofar as is reasonably possible, to be consistent with the standards and criteria for the performance of the Project.

The Design-Builder shall not take advantage of any apparent error, omission, inconsistency, or other defect in the Contract Documents. The Design-Builder shall promptly notify WSDOT of any error, omission, inconsistency, or other defect that the Design-Builder may discover in the Contract Documents, and shall obtain specific instructions in writing from the WSDOT Engineer regarding any such error, omission, inconsistency, or other defect before proceeding with the Work affected thereby.

The Design-Builder may, from time-to-time, request in writing that WSDOT provide information, clarifications, and interpretations of ambiguous or uncertain design requirements set forth in the Contract Documents (an Interpretive Engineering Decision). WSDOT may issue a Written approval of the Design-Builder's proposed Interpretive Engineering Decision (if any), may issue its own Interpretive Engineering Decision or may disapprove any Interpretive Engineering Decision the Design-Builder proposes.

WSDOT shall within 14 Calendar Days respond in writing to any such application for an Interpretive Engineering Decision, including explanation of any disapproval of such application or any differing interpretation; provided that (a) no presumption of approval or disapproval shall arise by reason of delay by WSDOT in issuing its Written determination and (b) no Interpretive Engineering Decision by WSDOT shall form the basis for an increase in the Contract Price or extension of the Contract Time, unless WSDOT expressly provides otherwise in writing. If the Design-Builder disputes WSDOT's disposition of the application, such dispute shall be subject to resolution in accordance with the Contract Documents. In any dispute over Interpretive Engineering Decisions, the Design-Builder shall bear the burden of proving that WSDOT's interpretation is incorrect or unreasonable.

1-03.6 *Interpretations*

In the Contract Documents, where appropriate:

1. The singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to.
2. The words "including," "included," "includes," and "include" are deemed to be followed by the words "without limitation."
3. Unless otherwise indicated, references to Sections, appendices and exhibits are to the document which contains such references; words such as "herein," "hereof," and "hereunder" refer to the entire document in which they are contained and not to any particular provision or Section.
4. Words not otherwise defined which have well-known technical or construction industry meanings are used in accordance with such recognized meanings.
5. References to Persons include their respective permitted successors and assigns and, in the case of Governmental Bodies, Persons succeeding to their respective functions and capacities.
6. Words of any gender used herein include each other gender where appropriate.

Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive.

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.

1-03.7 *Approvals and Acceptances*

The terms "approved" and "approval," when used in the context of obtaining WSDOT's approval of a specific approach, proposal, plan, schedule, analysis, or design submitted by the Design-Builder, means that WSDOT's representative is in agreement with the specific approach, proposal, plan, schedule, analysis, or design and that the submittal itself and its contents appear to conform to the respective requirements of the Contract Documents for that submittal. In all cases where approvals are required to be provided by WSDOT or the Design-Builder under the Contract Documents, such approvals shall not

1 be withheld unreasonably except in cases where a different standard (such as sole
2 discretion) is specified. In cases where sole discretion is specified the decision shall be
3 final, binding, and not subject to dispute resolution hereunder.

4 The oversight, spot checks, audits, reviews, tests, and inspections conducted by WSDOT
5 do not constitute approval nor acceptance of the materials or Work inspected or reviewed
6 or waiver of any Warranty or legal or equitable right with respect thereto. No acceptances
7 or approval by WSDOT shall constitute a waiver of any Warranty or legal or equitable
8 right under the Contract Documents, at law or in equity. WSDOT may require remedies
9 for Nonconforming Work, identify additional Work which must be done to bring the
10 Project into compliance with requirements of the Contract Documents, regardless of
11 whether previous oversight, spot checks, audits, reviews, tests, inspections, acceptances
12 or approvals were conducted by WSDOT. The Design-Builder agrees and acknowledges
13 that any such activity or failure to conduct any such activity by WSDOT is solely for the
14 benefit and protection of WSDOT, does not create or impose upon WSDOT any duty or
15 obligation toward the Design-Builder to cause it to fulfill the requirements of the
16 Contract Documents, may not be relied upon by the Design-Builder or used as evidence
17 in determining whether the Design-Builder has fulfilled the requirements of the Contract
18 Documents, and may not be asserted by the Design-Builder against WSDOT as a
19 defense, legal or equitable, to, or as relief from, the Design-Builder's obligation to fulfill
20 the requirements of the Contract Documents. Regardless of any such activity or failure to
21 conduct any such activity by WSDOT, the Design-Builder at all times shall have an
22 independent duty and obligation to fulfill the requirements of the Contract Documents.

23 WSDOT shall not be precluded by any measurement, estimate, or certificate made or
24 given by WSDOT under any provisions of the Contract, either before or after Final
25 Acceptance, or by making any payment, from showing that any such measurement,
26 estimate, or certificate is untrue, incorrect, or improper in any particular, or from showing
27 the true amount and character of the Work performed and materials furnished by the
28 Design-Builder, or from showing that the Work or materials do not conform in fact to the
29 requirements of the Contract Documents. WSDOT shall not be precluded,
30 notwithstanding any such measurement, estimate, or certificate, and payment in
31 accordance therewith, from recovering from the Design-Builder and the Sureties such
32 damages as it may sustain by reason of the Design-Builder's failure to comply with the
33 terms of the Contract. Neither the acceptance by the Secretary, nor any payment for the
34 whole or any part of the Work, nor any extension of time, nor any possession taken by
35 WSDOT shall operate as a waiver of any portion of the Contract or of any power herein
36 reserved or any right to damages herein provided, or bar recovery of any money
37 wrongfully or erroneously paid to the Design-Builder.

38 **1-03.8 Computation of Periods**

39 If the last date to perform any act or give any notice specified in the Contract Documents
40 (including the last date for performance or provision of notice "within" a specified time
41 period) falls on a non-business day (weekends, State, and Federal holidays), such act or
42 notice may be timely performed on the next succeeding day which is a business day.
43 Notwithstanding the foregoing, requirements contained in the Contract Documents
44 relating to actions to be taken in the event of an emergency and other requirements for

which it is clear that performance is intended to occur on a non-business day, shall be performed as specified, even though the date in question may fall on a non-business day.

1-03.9 *Waiver*

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision of the Contract Documents, notwithstanding any course of dealing or custom of the trade.

1-03.10 *Limitation on Third Party Beneficiaries*

Unless specifically noted otherwise in this Section, the parties to this Contract do not intend by any of the provisions of this Contract to cause the public or any member thereof or any other Person to be a third party beneficiary of the Contract Documents. Nothing in this Contract authorizes anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract. It is the further intent of WSDOT and the Design-Builder in executing the Contract Form that no individual, firm, corporation, or any combination thereof which supplies materials, labor, services, or equipment to the Design-Builder for the performance of the Work shall become thereby a third party beneficiary of this Contract. The Contract Documents shall not be construed to create a contractual relationship of any kind between WSDOT and a Subcontractor or any other Person except the Design-Builder.

1-03.11 *Severability*

If any clause, provision, Section, or part of the Contract is ruled invalid by a court of competent jurisdiction, then the parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, Section, or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court which declared such invalidity for a judicial construction of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, Section, or part shall not affect the validity or enforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, Section, or part.

1-03.12 *Headings*

The headings of the Sections of this Contract are for convenience of reference only and shall not be deemed part of this Contract or considered in interpreting this Contract.

1-03.13 *Amendments*

The Contract Documents may be amended only by a Written instrument duly executed by the parties or their respective successors or assigns.

1-03.14 Governing Law

This Contract shall be construed under and shall be governed in accordance with the laws of the State.

1-03.15 Escrow Proposal Documents

1-03.15(1) Scope and Purpose

The purpose of this specification is to preserve the Design-Builder's Proposal documents for use by WSDOT in litigation between WSDOT and the Design-Builder arising out of this Contract.

The Design-Builder shall submit a legible electronic copy of all Escrow Proposal Documents (EPD) to a records management company designated by WSDOT. This documentation shall be placed in escrow with the records management company and preserved by that institution as specified in this specification.

1-03.15(2) Escrow Proposal Documents

The EPD as used in this specification means any writings, working papers, charts, and any other data compilations of any nature which contain or reflect all information, data, and calculations used by the Design-Builder to determine the Proposal for this Project. These items may be created originally in electronic format or converted to electronic format. The Design-Builder shall ensure paperless submittal by creating a PDF for each document. The EPD shall be submitted only electronically. The EPD shall include, but is not limited to equipment rates, overhead rates, labor rates, efficiency and productivity factors, and arithmetic extensions. The EPD shall also include detailed information from all Subcontractors identified in the Proposal and any other potential Subcontractors that provided data upon which the Proposal is based. The EPD shall include any manuals that are standard to the industry used by the Design-Builder in determining the Proposal for this Project. Such manuals may be included in the EPD by reference. The EPD shall not include documents provided by WSDOT for use by the Design-Builder in developing the Proposal.

1-03.15(3) Submittal of Escrow Proposal Documents

The EPD shall be submitted within 7 Calendar Days after the Contract has been fully executed in a password protected secure folder to the designated records management company. The secure folder shall be clearly marked "EPD" and shall also show the Design-Builder's name, the date of submittal, the Project title, and the Contract number. The Design-Builder shall provide the records management company with the password(s) to access the secure folder.

1-03.15(4) Affidavit

The secure folder shall contain, in addition to the Proposal documentation, an affidavit digitally signed by an individual authorized by the Design-Builder to execute Proposals. The affidavit shall list each EPD with sufficient specificity so a comparison can be made between the list and the EPD to ensure that all the EPD listed in the affidavit have been included in the secure folder. The affidavit shall show that the affiant has personally

1 examined the EPD and that the affidavit lists all of the documents used by the
2 Design-Builder to determine its Proposal for the Project and that all such documentation
3 has been enclosed in the secure folder.

4 **1-03.15(5) Verification**

5 The records management company upon receipt of the secure folder shall save the folder
6 in a virtual vault, or other secure place, and immediately notify WSDOT in writing that
7 the secure folder has been received. Upon receipt of such notice, WSDOT will promptly
8 notify the Design-Builder in writing that WSDOT will open the secure folder to verify
9 that the affidavit has been included and to compare the EPD listed in the affidavit with
10 the saved files stored in the secure folder to ensure that all of the EPD has been submitted
11 and are legible. The notification will advise the Design-Builder of the date and time the
12 secure folder will be opened and the name of the WSDOT employee who will verify the
13 contents of the secure folder. The WSDOT employee verifying the contents of the escrow
14 secure folder will not be involved or connected with the review, evaluation, or resolution
15 of any claim by the Design-Builder made to WSDOT in connection with the Contract for
16 which the verification was made. The Design-Builder may have representatives present at
17 the opening.

18 **1-03.15(6) Supplementation**

19 EPD listed in the affidavit but not saved in the secure folder through error or oversight
20 shall be submitted in a secure folder within 5 Calendar Days after the opening of the
21 original secure folder. Any EPD that are illegible shall be replaced with legible versions
22 and furnished within 5 Calendar Days after the opening of the original secure folder. The
23 secure folder shall be marked "Supplemental EPD". The same procedure used in
24 verifying the contents of the original secure folder shall be used in verifying the contents
25 of the supplemental submittal.

26 **1-03.15(7) Duration and Use**

27 The EPD and affidavit shall remain in escrow during the life of the Contract and will be
28 returned to the Design-Builder by the records management company, provided that the
29 Design-Builder has signed the Final Contract Voucher Certification and has not reserved
30 any claims on the Final Contract Voucher Certification against WSDOT arising out of the
31 Contract. In the event that claims against WSDOT are reserved on the Final Contract
32 Voucher Certification, the EPD and affidavit shall remain in escrow. If the claims are not
33 resolved and litigation ensues, WSDOT may serve a request upon the Design-Builder to
34 authorize the records management company, in writing, to release the EPD and affidavit
35 in escrow to WSDOT. The Design-Builder shall respond to the request within 20
36 Calendar Days after service of the request. If the Design-Builder objects or does not
37 respond to the request within 20 Calendar Days after service of the request, WSDOT may
38 file a motion under the Civil Rules requesting the court to enter an order directing the
39 records management company to deliver the EPD and affidavit in escrow to WSDOT.
40 The records management company shall release the EPD and affidavit as follows:

- 41 1. To WSDOT upon receipt of an email from the Design-Builder authorizing the
42 release

2. To WSDOT upon receipt of a certified copy of a court order directing the release of the documents
3. To the court for an in-camera examination pursuant to a certified copy of a court order
4. The EPD and affidavit shall be returned to the Design-Builder if litigation is not commenced within the time period prescribed by law

The Design-Builder agrees that the secure folder saved in escrow and any supplemental secure folder saved in escrow contain all of the Proposal documentation used to determine the Proposal and that no other Proposal documentation shall be utilized by the Design-Builder in litigation over claims brought by the Design-Builder arising out of this Contract unless otherwise ordered by the court.

1-03.15(8) Remedies for Refusal or Failure to Provide Bid Proposal Documentation

Failure or refusal to provide EPD shall be deemed a material breach of this Contract. WSDOT may at its option refuse to make payment for progress estimates under Section 1-09.9 until the Design-Builder has submitted the EPD required by the Contract. WSDOT may at its option terminate the Contract for default under Section 1-08.10. These remedies are not exclusive and WSDOT may take such other action as is available to it under the law.

1-03.15(9) Confidentiality of Proposal Documentation

The EPD and affidavit held in escrow are and will remain the property of the Design-Builder. WSDOT has no interest in or right to the EPD and affidavit other than to verify the contents and legibility of the EPD unless litigation ensues between WSDOT and Design-Builder over claims brought by the Design-Builder arising out of this Contract. In the event of such litigation, the EPD and affidavit may become the property of WSDOT for use in the litigation as may be appropriate subject to the provisions of any court order limiting or restricting the use or dissemination of the EPD and affidavit as provided in Section 1-03.15(7).

Apart from content and legibility verification and litigation, the EPD shall not be accessed by either WSDOT or the Design-Builder at any time without the party desiring access to the documents providing Written notification to, and receiving concurrence from, the other party. Both WSDOT and the Design-Builder shall be present whenever the EPD is accessed.

1-03.15(10) Cost and Escrow Instructions

The cost of the escrow will be borne by WSDOT. WSDOT will provide escrow instructions to the records management company consistent with this specification.