

# EXHIBIT A

**COLUMBIA RIVER CROSSING**  
**EXPENDITURES THROUGH DECEMBER 31, 2011**  
**SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

Row Labels	Sum of Expend Amount			
David Evans & Associates Inc	93,174,267.24			
DW Not Required	11,408,814.18	}	<i>"Journal Vouchers" - Expenditures occurring in other funds, transferred to the CRC fund.</i>	
(blank)	9,194,151.46			
Metro	1,698,458.28			
Ws Transportation, Dept Of	1,149,780.43			
Tri County Metropolitan	1,110,937.09	c		
Tri Met	1,010,737.82	c		0.70059427
Vancouvercenter	935,464.04	a		
City Of Vancouver	870,648.21		\$ 2,286,992.69	Sum (a) - Total Rent
American Construction Co Inc	828,508.26		\$ 1,189,458.28	Sum (b) - Total HDR Engineering
Vancouvercenter Development	803,036.16	a	\$ 2,121,674.91	Sum (c) - Tri-Met
Utility Mapping Services Inc	741,980.21			
C-Tran	675,771.84			
Hdr Engineering Inc	649,237.26	b		
Chase Manhattan Bank Db	630,403.92			
Shannon & Wilson Inc	603,656.44			
Crux Subsurface Inc	587,167.23			
H D R Engineering Inc	540,221.02	b		
Southwest Wa Reg Trans Council	491,941.36			
City Of Portland	484,403.22			
H N T B Corporation	477,867.54			
Boart Longyear Co	459,800.79			
Ws Doc Correctional Industries	344,938.32			
National Park Service Fort	333,323.46			
Vancouvercenter N Tower	297,477.36	a		
Claude T Sakr Consulting	290,514.03			
Vancouvercenter N Tower 6730	251,015.13	a		
Applied Archaeological	189,533.36			
Tom Warne & Associates Llc	184,745.20			
Public Knowledge Llc	140,766.40			
John Reilly Associates	111,484.21			
Nossaman Guthner Knox & Elliot	110,376.47			
Pegasus Global Holdings Inc	99,439.44			
Ch2m Hill Inc	98,154.57			
Right Systems Inc	86,758.82			
Brown, Rod	85,825.52			
Parsons Transportation Group	80,794.91			

**COLUMBIA RIVER CROSSING**  
**EXPENDITURES THROUGH DECEMBER 31, 2011**  
**SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

Row Labels	Sum of Expend Amount
E R F	79,711.36
Ws Dis Computer/Telcom Svcs	79,140.36
Jacobs Engineering	78,860.54
Ralls, Mary Lou	71,535.49
Telesmart Networks Inc	70,492.90
Aecom Technical Services Inc	68,547.57
Golder Associates Inc	62,000.04
T Y Lin International	58,367.04
Clark County Title Company	57,829.65
Wongdoody Inc	50,119.74
Global Geophysics	45,219.69
National Constructors Group	44,974.15
Northwest Netcom	42,457.04
Ficco, Douglas P	41,769.20
Matrix Communications Corp	41,714.30
Meridian Project Systems Inc	41,584.07
Ws Ga Real Estate Services	37,633.52
Chicago Title Insurance Co	34,326.45
Regents Of The Univ Of Ca	29,083.27
Ws Dot-Motor_Vehicle_Acc (108)	28,731.65
Xerox Corp	24,305.63
Confederated Tribes Of	23,318.36 c
Pci Group Llc	21,249.00
Xiotech	20,876.97
Cascade Title Company	20,081.92
Integra Telecom	19,955.59
Strickler, Kristopher W	19,189.93
Western Hydro Corp	18,283.73
Meyer, Michael D	16,983.50
Boyd, Nancy D	16,947.50
Ac Power Technology Inc	16,843.33
Electric Lightwave Inc	16,526.70
The Underhill Company Llc	16,484.63
Network Guys Inc	15,408.95
Verizon Wireless	14,299.51
Cort Furniture Rental	13,986.30
Dor Excise Tax	13,787.45
Ott, William P	13,350.65 c
Homewood Suites By Hilton	12,370.47

**COLUMBIA RIVER CROSSING**  
**EXPENDITURES THROUGH DECEMBER 31, 2011**  
**SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

Row Labels	Sum of Expend Amount
Confederated Tribes Of The	11,615.13
Xerox Corporation	11,078.05
Ws Revenue, Dept Of	10,628.59
N & N Drilling Supply	10,066.57
U S Postmaster	9,953.00
Southwest Regional	9,659.75
Cascade Computer Maintenance	9,282.12
Bentley Systems Inc	9,217.55
Palazzo, Michael A	8,982.64
Beeby, Megan	8,914.53
Printing Dept Of	8,572.54
Cambridge Systematics Inc	8,065.11
En Pointe	7,906.72
Meridian Systems	7,333.51
Meridain Project Systems Inc	7,333.50
Office Of Contract&Grant Admin	6,798.73
In-Situ Inc	6,310.58
Uw Grant & Contract Accounting	6,240.00
Wong, Rex	6,206.25
Ehl, Larry	6,087.65
Rust, Lynn K	5,795.81
Rainsberry, Sharon	5,787.20
C D W Government Inc	5,786.77
Trafficware Corp	5,362.15
Green, Franklin	5,028.47
Synnex Information Tech. Inc	4,681.27
Hilton Vancouver	4,435.45
Park N Go	4,392.00
J2 Blue Print Supply Co	4,344.20
Transoft Solutions Inc	4,323.00
Sunbelt Rentals	3,932.71
Liles, Casey	3,668.70
Oregonian Publishing Co Llc	3,657.22
Solutions At Work	3,450.00
Primavera Systems Inc	3,415.00
Dept Of Ecology	2,960.00
En Pointe Technologies Sales	2,948.27
Corporate Express	2,723.39
Echols, Amy	2,705.71

**COLUMBIA RIVER CROSSING**  
**EXPENDITURES THROUGH DECEMBER 31, 2011**  
**SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

Row Labels	Sum of Expend Amount
Graybar Electric Company Inc	2,698.97
City Of Seattle Public Util	2,667.00
Citrix Online Llc	2,590.26
Wagner, Donald R	2,566.28
Bnsf Railway Co	2,549.12
Environmental Systems Research	2,374.40
Coeur Products Ltd Inc	2,240.00
Lsi Marketing & Design	2,200.00
Dilley, Doyle G	2,193.06
National Park Srvc Mt Rainier	2,000.00
Cowlitz Indian Tribe	1,977.79
Grimm, Roxanne	1,961.02
Esri	1,954.80
Clark County Historical Museum	1,866.23
Clark Public Utilities	1,860.23
Ivy, Don	1,817.78
Robert Miner Dynamic Testing	1,800.00
Secure Computing Corp	1,685.18
Qwest Communications Inc	1,684.98
Beaver, Jesse L	1,670.94
Granite Northwest Inc	1,566.73
Cotton, Megan	1,529.36
Nez Perce Tribe	1,504.39
Avaya Inc	1,437.59
J-2 Blue Print Supply Co	1,328.25
Barker, Cecil	1,279.10
Mudrick Underground Inc	1,263.69
Nextel Sprint	1,255.85
Puget Sound Regional Council	1,253.94
North Central Texas Council	1,228.39
Pb Americas Inc	1,225.68
Ws Oah Office Of Admin Hearing	1,221.75
Ressa, Dianna G	1,215.66
Williams, Michael A	1,170.85
Qwest	1,133.93
Rider & Associates Inc	1,117.20
Purchase Power	1,113.00
Nichols, Michael R	1,098.97
Mead & Hunt Inc	1,038.47

**COLUMBIA RIVER CROSSING**  
**EXPENDITURES THROUGH DECEMBER 31, 2011**  
**SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

Row Labels	Sum of Expend Amount
Pitney Bowes	1,013.84
Seattle Daily Journal	1,010.07
Atlanta Regional Commission	1,007.74
Central Puget Sound	1,004.00
Gaston, Jeanette	977.50
Paradis, David Lee	974.72
California Transportation Foun	974.70
Northwest Helicopters Inc	972.80
Reserve Account	970.09
Teran, Daniel	960.26
Driver & Motor Vehicle Service	950.56
Landsberg, Karin J	937.02
Reck, Devin	923.09
Ecology Dept Of	920.00
Frafjord, Allen E	895.13
Cousin'S Country Inn Motel	839.30
Ws Ga Central Stores	833.09
Sacramento Areas	818.34
Pci Group Northwest Llc	800.00
Ws Transportation Dept Of	765.89
Peterson, Laura	709.40
Beimborn, Edward	686.96
Dell Marketing Lp	684.68
Burns, Carol	650.26
Long, Blane H	638.88
Cort Furniture Rental	636.42
Comcast Cable	621.44
Parametrix	595.00
Mclaughlin, Kay A	592.16
Central Puget Sound Regional	559.65
Perkins, Anthony Q	557.83
Halton Co The	548.84
Dunlap, Kelly	530.62
Clark County	514.60
Ws Licensing Dept Of	511.00
Commercial Card Solutions	506.80
Enterprise Rent A Car	487.82
U R S Electronics Inc	485.37
Francis, Carley	478.03

**COLUMBIA RIVER CROSSING**  
**EXPENDITURES THROUGH DECEMBER 31, 2011**  
**SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

Row Labels	Sum of Expend Amount
Muehleck, Ashlee E	475.26
L H Morris Electric Inc	432.63
Office Depot	428.43
Heathman Lodge The Llc	422.71
At & T Mobility	416.98
Ikon Office Solutions	396.07
Morris, John M	393.19
Conf Tribes Of Umatilla Res	368.52
Dot Fund 410 (Interfund)	353.87
Carl, Ashlee E	351.50
Wsp Highway Account (081)	340.07
Pioneer Printing & Stationery	337.21
Yakama Nation	325.84
American Concrete Pavement	325.00
Contractor'S Sign Supply	324.13
Moore, Timothy M	321.98
Holborn Safety	315.00
Capital Awards	313.01
Seattle Public Utilities	300.00
Kentta, Robert	297.71
Sexton, Timothy	295.40
Shilbayeh, Samih S	280.54
Ds Waters Of America	280.37
Daly, Keith	278.12
Gabel, Mark	274.00
Society For American	274.00
Sise, Fatou	263.42
Ramirez, Juanita	262.80
Builders Exchange Of Wa Inc	251.75
Abrahamson, Randy	250.66
Lakeside Industries	248.86
Stenstrom Group Inc	244.72
Mohamedali, Mustafa H	243.00
Ameritel Inn - Olympia	220.24
Writing Services	217.30
Teach Reporting Inc	215.55
Structured Solutions-Based	214.30
Harjo, David L	208.44
Comcast	204.95

**COLUMBIA RIVER CROSSING**  
**EXPENDITURES THROUGH DECEMBER 31, 2011**  
**SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

Row Labels	Sum of Expend Amount
Best Western Vancouver	204.03
The Reflector	201.60
Clark County Public Works	199.00
Holiday Inn Express & Suites	190.75
Wa St School For The Blind	189.08
Heep	185.00
Johnson, Rachel J	169.04
Brickey, Geraldene	168.87
Hilton, Ryan T	167.57
Johnson, Tony A	165.95
Bruchi'S	164.78
Ced	162.74
Doc Correctional Industries	160.65
Hotel Murano	158.88
Coast Wenatchee Center Hotel	158.80
Oxford Suites - Yakima	157.18
Quality Inn & Suites	135.98
Oregon Dot	131.31
Wts Portland Chapter	120.00
Fedex Corp	112.16
Ws Dop Training 415	110.00
Schwab, Leslie	110.00
Iyall, Mike	109.61
La Residence Suite Hotel	106.02
Shufelt, Sarah J	101.20
Edmo, Ed	100.00
Archuleta, Greg	100.00
Governor Hotel	98.35
Associated General Contractors	95.00
Washington State Patrol	85.06
Phillips Hagedorn, Melissa	81.00
Ws Printing, Dept Of	76.49
Cronin Co	73.04
Signs & More	70.76
Clark County Auditor	70.00
Arnold, Farrell L	70.00
Sledge, William	70.00
Wa Asphalt Pavement Assoc	65.00
Cardoni, Maria J	55.20



**COLUMBIA RIVER CROSSING**  
**EXPENDITURES THROUGH DECEMBER 31, 2011**  
**SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

Row Labels	Sum of Expend Amount
Industry Portals	49.95
Pitney Bowes Global Financial	38.60
Valdez, Claire A	38.57
Combs, Ernest Walter	36.57
Fouts, Mary A	29.33
Linco Micro-Image Systems Inc	26.06
Community Choices	25.00
Super 8 Motel - Long Beach	22.16
Pierce, Tim E	19.00
Wirtanen, Andrew J	17.00
Kinderman, Paul D	14.50
Hr Herndon Recognition	10.02
Degenhart, Mark A	9.74
Nelson, David A	8.93
Stricker, Michael W	8.00
Pitney Bowes Credit Corp	7.03
Williams, Scott	4.75
Holstine, Craig E	4.37
American Segmental Bridge Inst	-
Ws Ecology Dept Of	-
Ws Atg Legal Services (405)	(0.00)
Misc Vendors	(380.18)
<b>Grand Total</b>	<b>132,993,190.96</b>

# EXHIBIT B

**COLUMBIA RIVER CROSSING  
EXPENDITURES THROUGH SEPTEMBER 30, 2012  
SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

Sorted in Order of Payments (Highest to Lowest)

Payee Name	Total Expenditures	
David Evans & Associates Inc	104,252,227.92	A
(blank)	14,603,773.68	B
DW Not Required	9,239,811.93	B
Max J Kuney Co	3,993,483.89	
Tri Met	1,743,518.36	C
Metro	1,733,397.21	
Ws Transportation, Dept Of	1,297,134.64	
Utility Mapping Services Inc	1,172,817.28	
Tri County Metropolitan	1,110,937.09	C
Vancouvercenter	935,464.04	D
Vancouvercenter Development	911,015.16	D
City Of Vancouver	870,548.79	
American Construction Co Inc	828,508.26	
Hdr Engineering Inc	813,710.54	E
C-Tran	743,806.31	
Chase Manhattan Bank Db	630,403.92	
Shannon & Wilson Inc	603,656.44	
City Of Portland	592,643.67	
Crux Subsurface Inc	587,167.23	
H D R Engineering Inc	540,221.02	E
Southwest Wa Reg Trans Council	496,342.27	
H N T B Corporation	477,867.54	
Boart Longyear Co	459,800.79	
Ws Doc Correctional Industries	344,938.32	
National Park Service Fort	333,865.31	
Vancouvercenter N Tower	297,477.36	D
Claude T Sakr Consulting	290,514.03	
Vancouvercenter N Tower 6730	251,015.13	D
Vandevco	207,259.75	D
Applied Archaeological	200,647.29	
Tom Warne & Associates Llc	184,745.20	
Public Knowledge Llc	141,921.40	
National Constructors Group	112,129.02	
John Reilly Associates	111,484.21	
Nossaman Guthner Knox & Elliot	110,376.47	
Pegasus Global Holdings Inc	99,439.44	
Ch2m Hill Inc	98,154.57	
Jacobs Engineering	91,493.39	
Right Systems Inc	86,758.82	
Brown, Rod	85,825.52	
Applied Archaeological	82,167.82	
Clark Co Public Transportation	81,691.43	
Parsons Transportation Group	80,794.91	

*"Journal Vouchers" - Expenditures  
occurring in other funds, transferred  
to the CRC fund*

Payee	Ref	Total Paid	% of Total Expenditures
David Evans	A	104,252,227.92	67.77%
Unknown	B	23,843,585.61	15.50%
Tri-Met	C	2,854,455.45	1.86%
Rent (Vancouver Center)	D	2,602,231.44	1.69%
HDR Engineering Inc.	E	1,353,931.56	0.88%

**COLUMBIA RIVER CROSSING  
EXPENDITURES THROUGH SEPTEMBER 30, 2012  
SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

<b>Payee Name</b>	<b>Total Expenditures</b>
E R F	79,711.36
Ws Dis Computer/Telcom Svcs	79,140.36
Ralls, Mary Lou	71,535.49
Telesmart Networks Inc	70,492.90
Aecom Technical Services Inc	68,547.57
Golder Associates Inc	64,109.51
Clark County Title Company	59,614.95
Value Management Strategies	58,878.44
T Y Lin International	58,367.04
Wongdoody Inc	50,119.74
Matrix Communications Corp	49,724.51
Global Geophysics	47,272.50
Northwest Netcom	42,457.04
Ficco, Douglas P	41,769.20
Meridian Project Systems Inc	41,584.07
Ws Ga Real Estate Services	37,633.52
Chicago Title Insurance Co	36,053.55
Ott William P	32,576.49
Homewood Suites By Hilton	30,733.60
Regents Of The Univ Of Ca	29,083.27
Ws Dot-Motor_Vehicle_Acc (108)	28,731.65
Palazzo, Michael A	28,339.48
Xerox Corp	24,305.63
Confederated Tribes Of	23,318.36
Ac Power Technology Inc	22,537.63
Pci Group Llc	21,249.00
Boyd, Nancy D	21,105.69
Xiotech	20,876.97
Cascade Title Company	20,081.92
Integra Telecom	19,955.59
Bnsf Railway Co	19,629.96
Strickler, Kristopher W	19,189.93
Western Hydro Corp	18,984.34
Shea Carr & Jewell Inc	18,400.06
Meyer, Michael D	16,983.50
Electric Lightwave Inc	16,526.70
The Underhill Company Llc	16,484.63
Dor Excise Tax	16,171.95
Network Guys Inc	15,993.95
Verizon Wireless	14,299.51
Cort Furniture Rental	13,986.30
Ott, William P	13,350.65
Nossaman Llp	12,206.80
Confederated Tribes Of The	11,615.13

**COLUMBIA RIVER CROSSING  
EXPENDITURES THROUGH SEPTEMBER 30, 2012  
SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

<b>Payee Name</b>	<b>Total Expenditures</b>
Xerox Corporation	11,078.05
Ws Revenue, Dept Of	10,628.59
N & N Drilling Supply	10,066.57
U S Postmaster	9,953.00
Southwest Regional	9,659.75
Cascade Computer Maintenance	9,282.12
Bentley Systems Inc	9,217.55
Beeby, Megan	8,914.53
Printing Dept Of	8,572.54
Dilley, Doyle G	8,567.06
Blue Bird Transfer Inc	8,170.09
Cambridge Systematics Inc	8,065.11
En Pointe	7,906.72
Meridian Systems	7,333.51
Meridain Project Systems Inc	7,333.50
Office Of Contract&Grant Admin	6,798.73
In-Situ Inc	6,310.58
Uw Grant & Contract Accounting	6,240.00
Wong, Rex	6,206.25
Liles, Casey	6,102.41
Ehl, Larry	6,087.65
Mcp Inc	5,864.44
Rust, Lynn K	5,795.81
Rainsberry, Sharon	5,787.20
C D W Government Inc	5,786.77
Transoft Solutions Inc	5,463.00
K P F F Consulting Engineers	5,395.66
Trafficware Corp	5,362.15
Green, Franklin	5,028.47
Synnex Information Tech. Inc	4,681.27
Hilton Vancouver	4,435.45
Doc Correctional Industries	4,395.18
Park N Go	4,392.00
J2 Blue Print Supply Co	4,344.20
Social Solutions Com Inc	4,319.48
Des It & Brokering Leasing Svs	4,310.62
Sunbelt Rentals	3,932.71
Oregonian Publishing Co Llc	3,657.22
Citrix Online Llc	3,607.69
Grimm, Roxanne	3,497.77
Solutions At Work	3,450.00
Primavera Systems Inc	3,415.00
Cascade Title Company Of	3,137.80
Cowlitz Indian Tribe	3,116.62

**COLUMBIA RIVER CROSSING  
EXPENDITURES THROUGH SEPTEMBER 30, 2012  
SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

<b>Payee Name</b>	<b>Total Expenditures</b>
Dept Of Ecology	2,960.00
En Pointe Technologies Sales	2,948.27
Judd, Ron	2,880.03
Corporate Express	2,723.39
Echols, Amy	2,705.71
Graybar Electric Company Inc	2,698.97
City Of Seattle Public Util	2,667.00
Wagner, Donald R	2,566.28
Ressa, Dianna G	2,539.27
Environmental Systems Research	2,374.40
Coeur Products Ltd Inc	2,240.00
Lsi Marketing & Design	2,200.00
National Park Srvc Mt Rainier	2,000.00
Esri	1,954.80
Clark County Historical Museum	1,866.23
Clark Public Utilities	1,860.23
Nichols, Michael R	1,855.62
Ivy, Don	1,817.78
Robert Miner Dynamic Testing	1,800.00
Secure Computing Corp	1,685.18
Qwest Communications Inc	1,684.98
Beaver, Jesse L	1,670.94
Pitney Bowes	1,659.00
Granite Northwest Inc	1,566.73
Cotton, Megan	1,529.36
Nez Perce Tribe	1,504.39
Robert Miner Dynamic Testing I	1,500.00
Avaya Inc	1,437.59
Williams, Michael A	1,396.85
Seattle Daily Journal	1,370.07
J-2 Blue Print Supply Co	1,328.25
Ws Transportation Dept Of	1,316.20
Barker, Cecil	1,279.10
Mudrick Underground Inc	1,263.69
Nextel Sprint	1,255.85
Puget Sound Regional Council	1,253.94
Reck, Devin	1,242.97
North Central Texas Council	1,228.39
Pb Americas Inc	1,225.68
Ws Oah Office Of Admin Hearing	1,221.75
Qwest	1,133.93
Ecology Dept Of	1,120.00
Rider & Associates Inc	1,117.20
Purchase Power	1,113.00

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<b>Payee Name</b>	<b>Total Expenditures</b>
Paradis, David Lee	1,111.40
Gabel, Mark	1,061.77
Mead & Hunt Inc	1,038.47
Atlanta Regional Commission	1,007.74
Perkins, Anthony Q	1,006.63
Central Puget Sound	1,004.00
Environmental Systems Rsrch In	978.30
Gaston, Jeanette	977.50
California Transportation Foun	974.70
Northwest Helicopters Inc	972.80
Teran, Daniel	970.26
Reserve Account	970.09
Driver & Motor Vehicle Service	950.56
Landsberg, Karin J	937.02
Frafjord, Allen E	895.13
Francis, Carley	858.51
Cousin'S Country Inn Motel	839.30
Ws Ga Central Stores	833.09
Peterson, Laura	823.65
Sacramento Areas	818.34
Pci Group Northwest Llc	800.00
Beimborn, Edward	686.96
Dell Marketing Lp	684.68
Burns, Carol	650.26
Long, Blane H	638.88
Cort Furniture Rental	636.42
Clark County	622.80
Comcast Cable	621.44
Mclaughlin, Kay A	619.62
Parametrix	595.00
Central Puget Sound Regional	559.65
Halton Co The	548.84
Dunlap, Kelly	530.62
Ws Licensing Dept Of	511.00
Commercial Card Solutions	506.80
Enterprise Rent A Car	487.82
U R S Electronics Inc	485.37
Muehleck, Ashlee E	475.26
L H Morris Electric Inc	432.63
Office Depot	428.43
Heathman Lodge The Llc	422.71
Holborn Safety	420.00
At & T Mobility	416.98
Ikon Office Solutions	396.07

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**EXPENDITURES THROUGH SEPTEMBER 30, 2012**  
**SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

<b>Payee Name</b>	<b>Total Expenditures</b>
Morris, John M	393.19
Conf Tribes Of Umatilla Res	368.52
Dot Fund 410 (Interfund)	353.87
Carl, Ashlee E	351.50
Wsp Highway Account (081)	340.07
Pioneer Printing & Stationery	337.21
Yakama Nation	325.84
American Concrete Pavement	325.00
Contractor'S Sign Supply	324.13
Moore, Timothy M	321.98
Capital Awards	313.01
Ellison, Michael	303.64
Seattle Public Utilities	300.00
Kentta, Robert	297.71
Sexton, Timothy	295.40
Shilbayeh, Samih S	280.54
Ds Waters Of America	280.37
Wa State Ecy	280.00
Daly, Keith	278.12
Society For American	274.00
Builders Exchange Of Wa Inc	267.00
Sise, Fatou	263.42
Ramirez, Juanita	262.80
Abrahamson, Randy	250.66
Des Div Of Real Estate Service	250.00
Lakeside Industries	248.86
Stenstrom Group Inc	244.72
Mohamedali, Mustafa H	243.00
Degenhart, Mark A	242.63
Fleming, Michael S	224.75
Ameritel Inn - Olympia	220.24
Writing Services	217.30
Teach Reporting Inc	215.55
Structured Solutions-Based	214.30
Harjo, David L	208.44
Comcast	204.95
Best Western Vancouver	204.03
The Reflector	201.60
Clark County Public Works	199.00
Seattle Daily Jrnl Of Comm Inc	192.40
Holiday Inn Express & Suites	190.75
Wa St School For The Blind	189.08
Heep	185.00
Johnson, Rachel J	169.04



**COLUMBIA RIVER CROSSING  
EXPENDITURES THROUGH SEPTEMBER 30, 2012  
SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

<b>Payee Name</b>	<b>Total Expenditures</b>
Brickey, Geraldene	168.87
Hilton, Ryan T	167.57
Johnson, Tony A	165.95
Bruchi'S	164.78
Ced	162.74
Hotel Murano	158.88
Coast Wenatchee Center Hotel	158.80
Oxford Suites - Yakima	157.18
Quality Inn & Suites	135.98
Fedex Corp	135.32
Oregon Dot	131.31
Wts Portland Chapter	120.00
Cronk, Matthew A	112.00
Ws Dop Training 415	110.00
Schwab, Leslie	110.00
Iyall, Mike	109.61
La Residence Suite Hotel	106.02
Shufelt, Sarah J	101.20
Edmo, Ed	100.00
Archuleta, Greg	100.00
Governor Hotel	98.35
Associated General Contractors	95.00
Washington State Patrol	85.06
Phillips Hagedorn, Melissa	81.00
Ws Printing, Dept Of	76.49
Cronin Co	73.04
Merkens, Todd S	73.00
Signs & More	70.76
Arnold, Farrell L	70.00
Sledge, William	70.00
Clark County Auditor	70.00
Cardoni, Maria J	66.93
Wa Asphalt Pavement Assoc	65.00
Verizon Wireless Services Llc	58.60
Industry Portals	49.95
Pitney Bowes Global Financial	38.60
Valdez, Claire A	38.57
Combs, Ernest Walter	36.57
Fouts, Mary A	29.33
Linco Micro-Image Systems Inc	26.06
Community Choices	25.00
Super 8 Motel - Long Beach	22.16
Pierce, Tim E	19.00
Wirtanen, Andrew J	17.00

**COLUMBIA RIVER CROSSING  
EXPENDITURES THROUGH SEPTEMBER 30, 2012  
SOURCE: WSDOT ACCOUNTING SYSTEM DATA**

<b>Payee Name</b>	<b>Total Expenditures</b>
Kinderman, Paul D	14.50
Federal Express	11.22
Hr Herndon Recognition	10.02
Nelson, David A	8.93
Stricker, Michael W	8.00
Pitney Bowes Credit Corp	7.03
Williams, Scott	4.75
Holstine, Craig E	4.37
American Segmental Bridge Inst	-
	-
Ws Ecology Dept Of	-
Ws Atg Legal Services (405)	(0.00)
Misc Vendors	(1,220.18)
<b>Grand Total</b>	<b>153,835,863.09</b>

# EXHIBIT C

### **B.1 A&E Federal Regulations for Consultant Acquisition**

On November 30, 2005, the President signed into law the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, 119 Stat. 2396; Public Law 109-115, HR 3058 (“the FY 2006 Appropriations Act”).

- For federally funded projects, this bill removed any alternative procedures to what is commonly known as the Brooks Act for the procurement of architectural and engineering (A&E) consultant services.
- This bill also removed public agency caps on A&E firms’ overhead rates, codified the Brooks Act language, and placed a requirement on agencies to accept the audited overhead rate established by a firm’s cognizant agency.

The impacts to WSDOT regarding the acquisition of consultant services and the changes made necessary directly affected the WSDOT on-call A&E agreement process. To meet the requirements of the 2005 changes, WSDOT is adjusting the on-call process to fit the indefinite-delivery contract model described in the [Federal Acquisition Regulation \(FAR\)](#). However, clarification of the full intent of the Brooks Act needs to be made in order to develop applicable procedures and business rules.

The 2005 federal regulations eliminated alternative or “in-kind” procedures for A&E contracting. The legal modification specifically declared the Brooks Act, as codified in [40 USC 1101–1104](#), to be the legal basis for consultant selection for A&E contracts when federal funds participate. This law separates professional services of an architectural and engineering nature from all other forms of contracting for goods and services at all levels of government. Refer to [Appendix C](#) for the full text of the Brooks Act.

The four sections of the Brooks Act that together define the legal process of government contracting for A&E services are as follows:

1. **§ 1101** covers the government’s policy related to contracts for architectural and engineering professional services.
2. **§ 1102** provides definitions and specifically qualifies the broad spectrum of services that constitute A&E.
3. **§ 1103** describes the legal requirements for A&E selection.
4. **§ 1104** describes the process of negotiations and award of a contract.

However, there are other federal regulations in addition to the Brooks Act that apply to state departments of transportation and their subrecipients that receive federal-aid highway funds. These include [49 CFR 18](#) (Common Grant Rule) and [FAR Chapter 31](#). The regulations are as follows:

48 CFR 31, Cost factors for architecture-engineer services

49 CFR 18, Common Grant Rule

49 CFR 18.36, Issues regarding A&E consultant services.

23 USC 106, Project approval and oversight

23 USC 112, Letting of contracts

40 USC 1101–1104, Policy (Brooks Act)

23 CFR 172, Administration of engineering and design related service contracts

49 CFR 26, Participation by disadvantaged business enterprises in department of transportation financial assistance programs

### **B.1.1 Washington State Laws for A&E Consultant Acquisition**

[Chapter 39.80 RCW](#), *Contracts for architectural and engineering services*, quotes the Brooks Act language as the basis for A&E contracting in the state of Washington and goes on to provide the basis for department policy on A&E contracting. Therefore, whether federal funds are participating or not, the requirements of the Brooks Act are to be met. The only exceptions are when an emergency exists as covered in [Chapter 600](#) or there is justification for sole source as covered in [Chapter 430](#).

Washington State policy, declared by the Legislature in [RCW 39.80.010](#), reiterates the declaration of public policy made by the federal government and codified in [40 USC 1101–1104](#) (commonly known as the Brooks Act) for all federally funded A&E projects.

In accordance with state and federal law, there are four rules regarding A&E consultant solicitations that apply to the Washington State Department of Transportation:

1. The department shall publicly announce requirements for A&E services.
2. The department shall negotiate contracts for A&E services.
3. Selection shall be based on demonstrated competence and qualifications.
4. The department shall negotiate fair and reasonable pricing.

As with the federal regulations related to A&E services, state law distinguishes architectural and engineering services from all other professional services contracting for separate treatment by its own RCW. This separate treatment is not only addressed as separate from personal professional services, but is also clearly separated from laws related to public works. For the full text of [Chapter 39.80 RCW](#), see [Appendix D](#).

*State Administrative and Accounting Manual (SAAM)*

 [www.ofm.wa.gov/policy/default.asp](http://www.ofm.wa.gov/policy/default.asp)

WSDOT Travel Directive

 [www.wsdot.wa.gov/business/consulting](http://www.wsdot.wa.gov/business/consulting)

## B.2 A&E Legal Requirements

This section provides further information regarding the state and federal requirements specific to A&E contracting and describes the basis for the A&E processes.

Without going into a broad discussion of processes, which are covered in separate chapters, this section covers:

- The legal basis for the majority of A&E contracting and the legal reasons why the CSO maintains a database of consultant information (see [Chapter 400](#)).
- The legal options for how the CSO institutes selection boards and the selection process through to contract award (see [Chapter 410](#)).
- The reason for the types of contracts that may be used (see [Appendix I](#), Contract Types).

Following are the regulations that apply to A&E contracting:

[RCW 39.80.030](#) pertains to an agency's requirement for professional services and advance publication. It states that each agency shall publish in advance that agency's requirement for professional services. It goes on to say that the announcement shall state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details.

An agency may comply with this section by (1) publishing an announcement on each occasion when professional services provided by a consultant are required by the agency, or by (2) announcing generally to the public its projected requirements for any category or type of professional services.

[RCW 39.80.040](#) covers the procurement of architectural and engineering services, submission of statements of qualifications and performance data, and the state's requirements for participation by minority and women-owned firms. This RCW states that in the procurement of architectural and engineering services, an agency is to encourage firms to submit statements of qualifications in their areas of expertise, together with past performance data each year. This information, kept on file over several years by the CSO, coupled with any additional information firms might submit in response to solicitations for specific projects, should be the basis for determining whether a firm gets an interview. The guidelines and procedures of the agency are to include a plan that ensures minority and women-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The RCW also states that the level of participation by minority and women-owned firms should be consistent with their general availability within the professional communities involved.

[40 USC 1101](#) (the Brooks Act) states that the policy of the federal government is to publicly announce all requirements for architectural and engineering services.

Whenever federal funds are used for A&E services, the state is required to publicly announce its requirements for consultant services. State law also requires a public announcement of an agency's consultant requirements. WSDOT will publicly announce its needs for consultant services whether federal funds are participating or not.

The appropriate state law in this case is [RCW 39.80.030](#), which says that “*Each agency shall publish in advance that agency’s requirement for professional services.*” It should be noted that the wording of this RCW is specific and deliberate; the term “requirement” is singular, not plural. The emphasis is on the agency publishing its requirement for professional services **each time** it has a requirement for professional services.

[RCW 39.80.030](#) goes on to further emphasize this published announcement for each requirement “in advance (of the need)” by stating: “*The announcement shall state concisely the general scope and nature of the project or work for which the services are required...*” Here, there is a distinction between services being referred to as a *project*, which generally involves multiple A&E disciplines, and services referred to as *work*, which is generally a single category or discipline. The reason this is important is that for projects with multiple disciplines, potential proposals would most likely have teams, with several subconsultants being proposed. For defined work, the usual expectation is a single category with a single firm specializing in that discipline submitting a proposal.

Lawmakers were very specific regarding how an agency is to comply with [RCW 39.80.030](#). Historically, lawmakers have left the compliance details to the Washington Administrative Code (WAC) or agency policy development and rule making. But in this case, they were very specific.

An agency may comply with [RCW 39.80.030](#) by:

1. “...an announcement on each occasion when professional services provided by a consultant are required...” Here, there is no distinction between project services, which are usually multidisciplined, or category-specific type work, which is usually of a single discipline. It is an announcement on each occasion, regardless of whether it is a multidisciplined project or a specific category or type of work; or
2. “...announcing generally to the public its projected requirements for any category or type of professional services.” In this second part, the reference to project (multidisciplined) is specifically omitted while reference to category or type of work (single discipline) is specifically called out. Also of note is the use of the plural term “requirements.” Here, there is anticipation that there may be several tasks within that category or type of work where the professional services of consultants are required.

Therefore, there are two potential ways to comply with [RCW 39.80.030](#):

- Either the agency can announce each instance where the professional services of a consultant are necessary, in advance, and go through the full Brooks Act requirements of selection; or
- The agency can determine, in advance, the projected requirements for the various types or categories of services that will be needed and announce those requirements by category and go through the requirements of the Brooks Act for selection.

Nothing precludes the agency from complying with both.

[23 CFR 172](#) requires that whatever procedures a state (or any of its subdivisions) uses to meet the requirements of the Brooks Act when acquiring consultant services must be in writing and approved by the appropriate federal agency: in this case, FHWA.<sup>1</sup>

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<sup>1</sup> In certain circumstances, WSDOT may be receiving funds from other federal agencies, such as the Federal Aviation Administration or the Federal Transit Administration, and should be aware of the rules under which the state may be obligated to operate.

### **B.2.1 Competitive Selection Based on Specific Work**

In accordance with [RCW 39.80.040](#), it is the intent of the state that all selections for professional A&E services be based on qualifications and past performance, to the highest degree possible. Both state law ([RCW 39.80.040](#)) and federal law ([40 USC 1103\(b\)](#)) provide that firms' qualifications be gathered, maintained on file, and updated annually.

It might appear that WSDOT would be justified in writing noncommittal on-call agreements for category-specific requirements, with the anticipation that the state would provide a second tier of competition between those firms awarded contracts when needs arise. However, neither state law nor federal law provides any basis for the award of contracts without at least a minimum anticipation of work to be done under that contract.

In other words, there is no legal basis to support a process of awarding multiple, purely noncommittal agreements for a multitude of categories, let alone for potentially full projects, where large numbers of agreements are awarded without any guarantee of work to the top qualifying firm(s). There is no way to determine the best qualified firm from a group of potential prospects without evaluation of their past performances and current qualifications against the work for which services are required.

If unanticipated work should arise where the timing is too short for a normal selection process to occur, then the need falls under the definition of "emergency," which is covered in [Chapter 600](#). Under those circumstances, the requirements are for the state to make the selection as competitive as possible within the time constraints.

In following both state and federal regulations, the steps that take place in the selection process do not allow for a selection to be made and negotiations for cost to occur until after the best qualified firms have been able to enter into discussions with the selection board regarding the anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. How these regulations apply to the "on-call" portion of indefinite-delivery contracts (IDCs) is shown in [Appendix I](#), Contract Types.

[RCW 39.80.040](#) relates all work, for the purposes of selection, to projects. In context, the definition of A&E states that one of the criteria for determining whether the work is A&E is whether the work is "related" to a project that leads to alteration of physical property.

Therefore, category-specific contracts need to be accomplished in relation to the projected or anticipated needs for category-specific services as "publicly announced" prior to the start of work.

A second part of this discussion covers the qualifications of subconsultants and the work proposed to be assigned through subcontracts. When selections, at any point in the selection process, are based in part on the qualifications of potential subconsultants proposed by the consultant, those subconsultants should be fixed in the award and negotiations.

There is no way to make a determination of the best-qualified team to do the work, whether a full project or category-specific, without first taking into consideration those firms that have been proposed as subconsultants. Negotiations with the most qualified firms should occur prior to the award of a contract. Negotiating substitutions of proposed subconsultants after an award is made



negates the qualifications-based selection process. Also detrimental to the process would be the substitution or addition of a noncompeting sub after the award of a contract, unless significant impacts or changes necessitate a change in team structure.

The substitution, removal, or addition of one or more subconsultants, or changes in the work assigned to subconsultants on a contract, requires a contract supplement and the approval of the WSDOT Chief Engineer.

### **B.2.2 Contract Clauses**

Federal regulations require that certain clauses be included in contracts where federal funds participate. These clauses largely specify certain protections for public funds.

The required clauses and the instances for their inclusion are cited in [49 CFR 18.36\(i\)](#).

### **B.2.3 Disadvantaged, Minority, & Women's Business Enterprise (DMWBE) Participation**

The issue of DMWBE participation through goal setting will need to be addressed for federally funded projects. This cannot be accomplished if agreements are entered into prior to knowing what work is being contracted for. WSDOT's Office of Equal Opportunity (OEO) and the Federal Highway Administration (FHWA) have historically taken issue with the process of awarding agreements for work "as yet undefined."

In accordance with [RCW 39.80.040](#), the state has legal requirements regarding participation by minority-owned, women-owned, and veteran-owned businesses in A&E consultant contracts. Agency procedures and guidelines are to include a plan to ensure minority-owned, women-owned, and veteran-owned businesses are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The level of participation by minority-owned, women-owned, and veteran-owned businesses shall be consistent with their general availability within the professional communities involved.

In 1998, the people of the State of Washington passed Initiative 200 (I 200), which says that the state "*shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.*"

The initiative was very specific in its use of the term "quotas," which the initiative eliminated as the basis for balancing participation by disadvantaged, minority, and women's businesses. The federal regulation regarding public contracting specifically forbids the use of quotas in balancing discrimination and specifies the use of goals instead.

Since the passage of I-200, there have been claims that the use of goals creates preferential treatment and establishes reverse discrimination. Yet the term "goals" is never used in I-200, only quotas. It should be noted that the term "preferential treatment" was not defined in I-200.

According to the language, the state **shall not discriminate** against any individual or group. However, that is what is occurring when specific groups are not included on contracts in proportion to the number of qualified firms available in the community where the work is occurring."

RCW 39.80.040 describes the selection criteria established by the agency as being synonymous with the agency's policies and procedures related to the selection process.

Here, the criteria are not just the score sheets or qualifications data. Rather, the criteria are the full "procedures and guidelines" established for the selection process. Those procedures and guidelines are to include a plan that ensures minority- and women-owned businesses are afforded the maximum practicable opportunity to compete for and obtain public contracts for services.

Under RCW 39.80.040, a state plan should address methods where all firms have the opportunity to compete for and be awarded contracts as primes. To accomplish this, the plan needs to address different economic levels and capacities. If the only contracts offered are of a dollar size outside the reach of smaller firms, regardless of their ownership, the state has not truly addressed the intent of the RCW.

### **B.2.4 Contract Estimates**

Federal regulations, in addressing the issue of government estimates for A&E contracts, specify that the contracting officer perform a detailed cost analysis in connection with each procurement action, including contract modifications. As a starting point, the contract officer should have an independent estimate made for the services required prior to receiving proposals, in accordance with 49 CFR 18.36(f)(1&2).

48 CFR 31.205-6(b)(2) specifies the appropriate process and method for performing a qualified cost analysis based on the cost proposal of the firm with which negotiations are held.

**Note:** Contract officers and/or lead negotiators are encouraged to become familiar with the specifications in the above citations, as they address what determines "fair and reasonable pricing" to the government.

## **B.3 A&E Contract Administration**

Following are the federal and state laws and regulations on which A&E contract administration is based.

### **B.3.1 Federal Regulations**

For federally funded projects, the Common Grant Rule, 49 CFR 18, governs the administration of federal participatory funds. However, there are slight differences<sup>2</sup> among federal agencies regarding how those regulations are applied.

In addition to the Federal Highway Administration (FHWA), other potential federal agencies that might be involved include the Federal Transit Authority, Federal Aviation Administration, United States Army Corp of Engineers, United States Department of the Interior or Bureau of Land Management, and the United States Department of Agriculture (usually the Forest Service).

Applicable federal regulations have been cited previously. The area consultant liaison and the WSDOT project team need to be aware of the clauses required by 49 CFR 18.36(i) and included in the contract to understand the potential impacts to the project.

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<sup>2</sup> Generally, the federal agency with the largest percentage of participation takes the lead regarding applicable regulations that will apply to WSDOT. The ACL and the WSDOT project managers should meet with the appropriate federal field personnel to discuss what regulations may apply for the specific project involved.

### **B.3.2 Washington State Laws**

The basis for A&E contract administration at WSDOT starts with the Office of Financial Management's (OFM's) *State Administrative and Accounting Manual* (SAAM). WSDOT's *Purchasing Manual* is based in part on the SAAM. The *Purchasing Manual* covers the processes involved in verifying invoices for payments, signatures and authorizations for payments, and other administrative issues.

Chapter 10 of the WSDOT *Purchasing Manual* covers travel for companies with offices located inside the state of Washington. For interstate travel expenses related to consultants whose corporate or primary place of business is outside the state of Washington, FAR 31 governs cost reimbursement, provided those expenses have been included in the negotiations and approved in the contract in detail.

## **B.4 Consultant Evaluations**

Following are the federal and state laws and regulations upon which consultant evaluations are based.

### **B.4.1 Federal Regulations**

40 USC 11, 1101–1104, Selection criteria

49 CFR 18.36(t), Collecting data on and appraising firms' qualifications

49 CFR 18.36(b)(8), Past performance evaluation

### **B.4.2 Washington State Law**

RCW 39.80.040 states that, in the procurement of architectural and engineering services, the agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency in the process of selecting the most qualified firms for award of contracts.

## **B.5 Legal References for Emergency Contracts**

Following are the federal and state laws and regulations upon which legal references for emergency contracts are based.

### **B.5.1 Federal Regulations**

23 CFR 172.5(3) states that noncompetitive negotiation may be used to procure engineering and design-related services on federal-aid participating contracts when it is not feasible to award the contract using competitive negotiation, equivalent state qualifications-based procedures, or small purchase procedures. Contracting agencies shall submit justification and receive approval from the FHWA before using this form of contracting.

Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- The service is available from only a single source;
- There is an emergency that will not permit the time necessary to conduct competitive negotiations; or
- After solicitation of a number of sources, competition is determined to be inadequate.

### **B.5.2 Washington State Law**

[RCW 39.29.006\(6\)](#) defines “emergency” as a set of unforeseen circumstances beyond the control of the agency that either:

- Present a real, immediate threat to the proper performance of essential functions; or
- May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

[RCW 39.29.016](#) states that emergency contracts [for personal services] shall be filed with OFM and made available for public inspection within three working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to OFM when the contract is filed.

[RCW 39.80.060](#) pertains to procurement of architectural and engineering services, with an exception for emergency work. It states that:

- This RCW need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.
- Nothing in this chapter shall relieve the contracting authority from complying with applicable law limiting emergency expenditures.

[49 CFR 18.36\(d\)\(4\)](#) pertains to situations where:

- An unusual and compelling urgency precludes full and open competition, and
- Delay in award of a contract would result in serious injury, financial or other, to the government.

Contracts awarded using this authority shall be supported by written justifications and approvals, and this statutory authority requires that agencies request offers from as many potential sources as is practicable under the circumstances.

## **B.6 Legal References for Disadvantaged Business Enterprise**

Following are the federal and state laws and regulations upon which legal references for Disadvantaged Business Enterprise (DBE) are based. In addition, FHWA’s website ([www.fhwa.dot.gov/HEP/49cfr26.htm](http://www.fhwa.dot.gov/HEP/49cfr26.htm)) contains an extensive question and answer overview of the federal requirements under the federal regulation. It also has detailed explanations of “good faith effort,” what constitutes social and economic disadvantage, and what forms are necessary for federal reporting.

### **B.6.1 Federal Regulations**

#### **23 CFR – Highways**

Subchapter B – Payment Procedures

Part 172 – Administration of engineering and design related service contracts

Subchapter C – Civil Rights

Part 200 – Title VI program and related statutes – Implementation and review procedures

#### **45 CFR – Public Welfare**

Part 90 – Nondiscrimination on the basis of age in programs or activities receiving federal financial assistance

#### **49 CFR – Transportation**

Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964

Part 26 – Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs

Part 27 – Nondiscrimination on the basis of disability in programs or activities receiving [or benefiting from] federal financial assistance

### **B.6.2 Washington State Law**

#### **Chapter 18 RCW, Businesses and professions**

18.08 Architects

18.43 Engineers and land surveyors

18.96 Landscape architects

#### **Chapter 39 RCW, Public contracts and indebtedness**

39.29 Personal service contracts

39.80 Contracts for architectural and engineering services

#### **Chapter 49 RCW, Labor regulations**

49.60 Discrimination – Human rights commission

49.60.180 Unfair practices of employers

## B.7 Legal References for Ethics and Organizational Conflict of Interest (OCOI)

It is expected that all parties in a contracting situation will follow the basic principles of ethical behavior. These include, but are not limited to:

- Maintaining the highest professional standard of job performance and exercising due diligence in carrying out professional duties.
- Maintaining trust and confidence in the integrity of the contracting process.
- Avoiding involvement in any transaction that might conflict or appear to conflict with the proper discharge of one's professional duties.
- Maintaining knowledge of and complying with all relevant laws and regulations governing the contracting process.
- Not intentionally influencing others to commit any act that would constitute an ethical violation.

Following are the federal regulations and state laws and policies upon which the legal references for ethics and OCOI are based.

### B.7.1 Federal Regulations

[49 CFR 18.36\(b\)\(3\)](#): These sections cover individual and organizational conflict of interest requirements, including ethical behavior (see [Appendix M](#)) on the part of state employees and their contractors. They also include specific guidelines for grantee state employees, their immediate families, partners, or associates, and the relationships they might have with any contractor or potential contractor. This section requires rules and procedures for identifying, evaluating, and resolving organizational conflicts of interest in contract acquisitions.

[49 CFR 18.36\(c\)\(1\)\(v.\)](#), Organizational conflicts of interest

### B.7.2 Washington State Laws

[Chapter 42.52 RCW](#); [WAC 292](#): This statute and its related administrative rules establish a framework for ethics in public service that provides specific guidelines and prohibitions related to activities that may be incompatible with the public duties of state employees.

[Chapter 18.43 RCW](#); [RCW 18.235.140](#); [WAC 196-27A](#): These statutes and rules provide guidelines for the professional conduct of engineers and land surveyors.

### B.7.3 WSDOT Policy

WSDOT management adheres to the provisions of [Chapter 42.52 RCW](#), *Ethics in Public Service*, and has published supporting policy statements in a variety of areas, including guidelines on the use of state resources.

In addition, [Secretary's Executive Order E 1059](#), *Organizational Conflicts of Interest*, and the *Organizational Conflicts of Interest Manual*, provides guidance relating specifically to design-build and design-bid-build construction projects. For further details, see [Appendix P](#), OCOI.



# EXHIBIT D



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Title 49: Transportation

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### PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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AUTHORITY: 49 U.S.C. 322(a).

SOURCE: 53 FR 8086, 8087, Mar. 11, 1988, unless otherwise noted.

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**Subpart A—General**

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### § 18.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

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### § 18.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

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### § 18.3 Definitions.

As used in this part:

*Accrued expenditures* mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

*Accrued income* means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

*Acquisition cost* of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

*Administrative requirements* mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

*Awarding agency* means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

*Cash contributions* means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

*Contract* means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

*Cost sharing or matching* means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

*Cost-type contract* means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

*Equipment* means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

*Expenditure report* means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

*Federally recognized Indian tribal government* means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

*Government* means a State or local government or a federally recognized Indian tribal government.

*Grant* means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

*Grantee* means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

*Local government* means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

*Obligations* means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

*OMB* means the United States Office of Management and Budget.

*Outlays* (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind

contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

*Percentage of completion method* refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

*Prior approval* means documentation evidencing consent prior to incurring specific cost.

*Real property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

*Share*, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

*State* means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

*Subgrant* means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

*Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

*Supplies* means all tangible personal property other than "equipment" as defined in this part.

*Suspension* means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

*Termination* means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

*Terms of a grant or subgrant* mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

*Third party in-kind contributions* mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

*Unliquidated obligations* for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

*Unobligated balance* means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

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#### **§ 18.4 Applicability.**

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 18.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, chapter 2, Section 583—the Secretary's discretionary grant program) and titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and part C of title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)(19)(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

- (iii) Special Meal Assistance (section 11 of the Act),
- (iv) Summer Food Service for Children (section 13 of the Act), and
- (v) Child Care Food Program (section 17 of the Act).
- (5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:
  - (i) Special Milk (section 3 of the Act), and
  - (ii) School Breakfast (section 4 of the Act).
- (6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).
- (7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a) (3) of this section;
- (8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;
- (9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and
- (10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).
- (b) *Entitlement programs.* Entitlement programs enumerated above in § 18.4(a) (3) through (8) are subject to subpart E.

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#### § 18.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 18.6.

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#### § 18.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(1) All Departmental requests for exceptions shall be processed through the Assistant Secretary of Administration.

(2) [Reserved]

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

(1) All case-by-case exceptions may be authorized by the affected operating administrations or departmental offices, with the concurrence of the Assistant Secretary for Administration.

(2) [Reserved]

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 60 FR 19646, Apr. 19, 1995]

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### Subpart B—Pre-Award Requirements

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#### § 18.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(3) Forms and procedures for Federal Highway Administration (FHWA) projects are contained in 23 CFR part 630, subpart B, 23 CFR part 420, subpart A, and 49 CFR part 450.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988]

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#### **§ 18.11 State plans.**

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

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#### **§ 18.12 Special grant or subgrant conditions for "high-risk" grantees.**

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

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### **Subpart C—Post-Award Requirements**

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#### **Financial Administration**

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#### **§ 18.20 Standards for financial management systems.**

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

(d) Certain Urban Mass Transportation Administration (UMTA) grantees shall comply with the requirements of section 15 of the Urban Mass Transportation (UMT) Act of 1964, as amended, as implemented by 49 CFR part 630, regarding a uniform system of accounts and records and a uniform reporting system for certain grantees.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988]

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#### § 18.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 18.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency



when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

(j) 23 U.S.C. 121 limits payments to States for highway construction projects to the Federal share of the costs of construction incurred to date, plus the Federal share of the value of stockpiled materials.

(k) Section 404 of the Surface Transportation Assistance Act of 1982 directs the Secretary to reimburse States for the Federal share of costs incurred.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988]

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## § 18.22 Allowable costs.

[Link to an amendment published at 76 FR 61598, October 5, 2011.](#)

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a	Use the principles in—
State, local or federal-recognized Indian tribal government	2 CFR part 225.
Private nonprofit organization other than an (1) Institution of higher education, (2) hospital, or (3) organization named in 2 CFR part 230, Appendix C, as not subject to that part	2 CFR part 230.
Institutions of Higher Education	2 CFR part 220.
For-profit organizations other than a hospital, commercial organization or a non-profit organization listed in 2 CFR part 230, Appendix C, as not subject to that part	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

(c) The overhead cost principles of OMB Circular A-87 shall not apply to State highway agencies for FHWA funded grants.

(d) Sections 3(1) and 9(p) of the UMT Act of 1964, as amended, authorize the Secretary to include in the net project cost eligible for Federal assistance, the amount of interest earned and payable on bonds issued by the State or local public body to the extent that the proceeds of such bonds have actually been expended in carrying out such project or portion thereof. Limitations are established in sections 3 and 9 of the UMT Act of 1964, as amended.

(e) Section 9 of the UMT Act of 1964, as amended, authorizes grants to finance the leasing of facilities and equipment for use in mass transportation services provided leasing is more cost effective than acquisition or construction.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988, 76 FR 61598, Oct. 5, 2011]

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## § 18.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

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## § 18.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 18.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 18.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(8) 23 U.S.C. 121(a) permits reimbursement for actual construction cost incurred by States for highway construction projects. Except for private donations of right-of-way, contributions and donations shall not be considered State costs, and shall not be allowable for matching purposes for highway construction contracts. 23 U.S.C. 323 permits private donations of right-of-way to be used for a State's matching share, and establishes procedures for determining the fair market value of such donated right-of-way.

(9) Section 4(a) of the UMT Act of 1964, as amended, provides that the Federal grant for any project to be assisted under section 3 of the UMT Act of 1964, as amended, shall be in an amount equal to 75 percent of the net project costs. Net project cost is defined as that portion of the cost of the project which cannot be reasonably financed from revenues.

(10) Section 18(e) of the UMT Act of 1964, as amended, limits the Federal share to 80 percent of the net cost of construction, as determined by the Secretary of Transportation. The Federal share for the payment of subsidies for operating expenses, as defined by the Secretary, shall not exceed 50 percent of the net cost of such operating expense projects.

(c) *Valuation of donated services* —(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(3) Section 5(g) of the Department of Transportation Act (49 U.S.C. 1654(g)) limits in-kind service contributions under the local Rail Service Assistance Program to "the cash equivalent of State salaries for State public employees working in the State rail assistance program, but not including overhead and general administrative costs."

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e) (2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land



would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 18.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988]

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#### **§ 18.25 Program income.**

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 18.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 18.31 and 18.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(4) Section 3(a)(1)(D) of the UMT Act of 1964, as amended, provides that the Secretary shall establish requirements for the use of income derived from appreciated land values for certain UMTA grants. Specific requirements shall be contained in grant agreements.

(5) UMTA grantees may retain program income for allowable capital or operating expenses.

(6) For grants awarded under section 9 of the UMT Act of 1964, as amended, any revenues received from the sale of advertising and concessions in excess of fiscal year 1985 levels shall be excluded from program income.

(7) 23 U.S.C. 156 requires that States shall charge fair market value for the sale, lease, or use of right-of-way airspace for non-transportation purposes and that such income shall be used for projects eligible under 23 U.S.C.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988]

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#### **§ 18.26 Non-Federal audits.**

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and

Non-Profit Organizations.” The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends \$300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee’s own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 18.36 shall be followed.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 61 FR 21387, May 10, 1996; 62 FR 45939, 45947, Aug. 29, 1997]

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## Changes, Property, and Subawards

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### § 18.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 18.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes —(1) Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency’s share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 18.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget form the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 18.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the

revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

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#### § 18.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

(d) If the conditions in 23 U.S.C. 103(e) (5), (6), or (7), as appropriate, are met and approval is given by the Secretary, States shall not be required to repay the Highway Trust Fund for the cost of right-of-way and other items when certain segments of the Interstate System are withdrawn.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988]

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#### § 18.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 18.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 18.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

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#### § 18.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

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#### § 18.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

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#### § 18.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

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#### § 18.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's

officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 18.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed* —(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Procurement by sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 18.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) *Procurement by competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) *Procurement by noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 18.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets the standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)



(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

(j) 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR part 635, subpart A.

(k) Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant or loan funds to support procurements utilizing exclusionary or discriminatory specifications.

(l) 46 U.S.C. 1241(b)(1) and 46 CFR part 381 impose cargo preference requirements on the shipment of foreign made goods.

(m) Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

(n) Section 105(f) of the Surface Transportation Assistance Act of 1982, section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR part 23 impose requirements for the participation of disadvantaged business enterprises.

(o) Section 308 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1068(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.

(p) 23 U.S.C. 112(b) provides for an exemption to competitive bidding requirements for highway construction contracts in emergency situations.

(q) 23 U.S.C. 112 requires concurrence by the Secretary before highway construction contracts can be awarded, except for projects authorized under the provisions of 23 U.S.C. 171.

(r) 23 U.S.C. 112(e) requires standardized contract clauses concerning site conditions, suspension or work, and material changes in the scope of the work for highway construction contracts.

(s) 23 U.S.C. 140(b) authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.

(t) FHWA, UMTA, and Federal Aviation Administration (FAA) grantees and subgrantees shall extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to certain other related areas and shall award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, or equivalent State (or airport sponsor for FAA) qualifications-based requirements. For FHWA and UMTA programs, this provision applies except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988; 60 FR 19639, 19647, Apr. 19, 1995]

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#### § 18.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 18.42 is placed in every cost reimbursement subgrant; and



(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

- (1) Ensure that every subgrant includes a provision for compliance with this part;
  - (2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and
  - (3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.
- (c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:
- (1) Section 18.10;
  - (2) Section 18.11;
  - (3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 18.21; and
  - (4) Section 18.50.

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## Reports, Records, Retention, and Enforcement

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### § 18.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(1) Section 12(h) of the UMT Act of 1964, as amended, requires pre-award testing of new buses models.

(2) [Reserved]

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988]

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#### § 18.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

- (i) Submitting financial reports to Federal agencies, or
- (ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report* —(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 18.41(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report* —(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement* —(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 18.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs* —(1) *Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 18.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 18.41(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 18.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 18.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 18.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 18.41(b)(2).

(f) Notwithstanding the provisions of paragraphs (a)(1) of this section, recipients of FHWA and National Highway Traffic Safety Administration (NHTSA) grants shall use FHWA, NHTSA or State financial reports.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988]

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#### § 18.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

- (i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or
- (ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 18.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The right of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

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#### § 18.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 18.35).

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#### § 18.44 Termination for convenience.

Except as provided in § 18.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 18.43 or paragraph (a) of this section.

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### Subpart D—After-The-Grant Requirements

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#### § 18.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF -271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:*

In accordance with § 18.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

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#### § 18.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 18.42;

(d) Property management requirements in §§ 18.31 and 18.32; and

(e) Audit requirements in § 18.26.

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#### **§ 18.52 Collection of amounts due.**

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

- (1) Making an administrative offset against other requests for reimbursements,
- (2) Withholding advance payments otherwise due to the grantee, or
- (3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

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### **Subpart E—Entitlements [Reserved]**

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For questions concerning e-CFR programming and delivery issues, email [webteam@gpo.gov](mailto:webteam@gpo.gov).

# EXHIBIT E

**2004**  
**Professional Services Consultant Agreement**  
**Task Order Negotiated Hourly Rate**  
**Agreement Number Y 9245**

Firm Name and Address:  DAVID EVANS and ASSOCIATES Inc. 2100 SW River Parkway Portland, OR 97201							
Federal Employer Identification Number: 93 0661195	Unified Business Identifier (UBI) Number: 600 227 608						
Completion Date: June 30, 2010	Execution Date:						
Federal Aid Number: DEMO-0051(260)	1099 Form Required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No						
Project title and description of work:  Columbia River Crossing Project (CRCP)							
D/M/WBE Goals will <b>not</b> be set on Task Order (On-Call) Agreements.	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Total Amount Authorized</td> <td style="text-align: right;">\$50,000,000.00</td> </tr> <tr> <td>Management Reserve Fund</td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td>Maximum Amount Payable</td> <td style="text-align: right;">\$50,000,000.00</td> </tr> </table>	Total Amount Authorized	\$50,000,000.00	Management Reserve Fund	\$0.00	Maximum Amount Payable	\$50,000,000.00
Total Amount Authorized	\$50,000,000.00						
Management Reserve Fund	\$0.00						
Maximum Amount Payable	\$50,000,000.00						

**Index of Exhibits**

- Exhibit "A" - Scope of Work
- Exhibit "B" - D/M/WBE Participation
- Exhibit "C" - Electronic Exchange of Engineering and Other Data
- Exhibit "D" - Prime Consultant Cost Computations
- Exhibit "E" - Sub-consultant Cost Computations
- Exhibit "F" - Title VI Assurances
- Exhibit "G" - Certification Documents

**RECEIVED**

JUL 25 2005

Columbia River Crossing

THIS AGREEMENT, made and entered into as shown in the "Execution Date" box on page one (1) of this AGREEMENT, between the State of Washington, acting through the Washington State Department of Transportation and the Secretary of Transportation, hereinafter called the



"STATE," and the organization/firm referenced on page one (1) of this AGREEMENT, hereinafter called the "CONSULTANT."

WITNESSETH THAT:

WHEREAS, the STATE desires to accomplish the above referenced PROJECT; and

WHEREAS, the STATE does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting Services to the STATE.

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

## **I General Description of Work**

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor, and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

## **II Scope of Work**

The Scope of Work for this PROJECT is detailed in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT.

Each item of work under this AGREEMENT will be provided by Task Order. Each Task Order will be individually negotiated with the CONSULTANT. Each Task Order will be considered a separate contract, identifying the maximum amount authorized, start date and end date, and scope of work specific to the task. The terms of the Task Order cannot be modified without written approval from the STATE and CONSULTANT. Any work performed outside of the terms and conditions of the Task Order will not be considered for reimbursement.

## **III General Requirements**

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the STATE. Necessary contacts and meetings



with agencies, groups, and/or individuals shall be coordinated through the STATE. The CONSULTANT shall attend coordination, progress and presentation meetings with the STATE and/or such Federal, Community, City or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days notice shall be agreed to between the STATE and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, which will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

Participation for Disadvantaged Business Enterprises (DBE), if required, per 49 CFR Part 26, or participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is a DBE firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the STATE'S "DBE Program Participation Plan" and perform a minimum of 30% of the total amount of the AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of the AGREEMENT.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the STATE shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are the property of the STATE. Reuse by the STATE or by others, acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

#### **IV**

### **Time for Beginning and Completion**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

## V Payment Provisions

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

1. **Hourly Rates:** The CONSULTANT shall be paid by the STATE for work done, based upon the negotiated hourly rates shown in Exhibit "D" attached hereto and by this reference made part of this AGREEMENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the STATE shall be utilized. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

In the event re-negotiation of the hourly rates is conducted, the STATE reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the re-negotiation accordingly. Any changes in the CONSULTANT'S fixed hourly rates may include salary or overhead adjustments.

2. **Direct Non-Salary Costs:** Direct Non-Salary Costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the STATE. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the STATE, Department of Transportation's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, revisions thereto. However, Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
3. **Management Reserve Fund:** The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs

in excess of the Management Reserve Fund shall be made in accordance with Section XIV, "Extra Work."

4. **Maximum Total Amount Payable:** The Maximum Total Amount Payable by the STATE to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
5. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly billings shall be supported by detailed statements for hours expended at the rates established in Exhibit "D", including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT'S employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the PROJECT at the time of the interview.
6. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

7. **Inspection of Cost Records:** The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.



A post audit may be performed on this AGREEMENT. The need for a post audit will be determined by the STATE External Audit Office and/or at the request of the STATE'S PROJECT Manager.

In addition to submitting an invoice for reimbursement to WSDOT for services, all CONSULTANTS are required to manually input invoice data for the Prime CONSULTANT and all sub-consultants on a monthly basis into WSDOT's web based invoice-tracking system. A link to this system can be found at WSDOT's Consultant Services web site: <http://www.wsdot.wa.gov/consulting>.

## **VI Sub-Contracting**

The STATE permits sub-contracts for those items of work as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

Compensation for this sub-consultant work shall be based on the cost factors shown on Exhibit "E."

The work of the sub-consultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the sub-consultant shall be substantiated in the same manner as outlined in Section V. All sub-contracts shall contain all applicable provisions of this Agreement.

With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE'S Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for sub-contracting shall create, between the STATE and sub-contractor, any contract or any other relationship. A DBE certified sub-consultant is required to perform a minimum of 70% of the total amount of their sub-contracted agreement.

## **VII Employment**

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the

AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT'S employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

## **VIII Nondiscrimination**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964  
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973  
(23 USC Chapter 3 Section 324)
- Rehabilitation Act of 1973  
(29 USC Chapter 16 Subchapter V Section 794)
- Age Discrimination Act of 1975  
(42 USC Chapter 76 Section 6101 et seq.)
- Civil Rights Restoration Act of 1987  
(Public Law 100-259)
- American with Disabilities Act of 1990  
(42 USC Chapter 126 Section 12101 et. seq.)
- 49 CFR Part 21
- 23 CFR Part 200
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

## IX Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination, the cost to the STATE of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT'S failure to perform is without the CONSULTANT'S or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the PROJECT, or dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. This subsection shall not be a bar to renegotiating of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE'S concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## X Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

## XI Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided, however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to *de novo judicial review*. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation "Consultant Service's Procedures Manual" M27-50 and revisions thereto.

## XII Venue, Applicable Law, and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.



### **XIII Legal Relations**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT'S negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT'S agents or employees, and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT'S negligence or the negligence of the CONSULTANT'S agents or employees.

The CONSULTANT'S relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the State Ethics law, RCW 42.52, which regulates gifts to STATE officers and employees. Under that statute, any STATE officer or employee who has or will participate with the CONSULTANT regarding any aspect of this PROJECT is prohibited from seeking or accepting any gift, gratuity, favor, or anything of economic value from the CONSULTANT. Accordingly, neither the CONSULTANT nor any agent or representative shall offer anything of economic value as a gift, gratuity, or favor directly or indirectly to any such officer or employee.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT'S own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the PROJECT. Subject to the processing of a new sole source, or an acceptable supplemental agreement, the CONSULTANT shall provide On-Call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

#### **Insurance Coverage**



- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREEMENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Washington State Department of Transportation  
Consultant Service's Office  
PO Box 47323  
Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT'S professional liability to the STATE shall be limited to the accumulative amount of the authorized task order(s) or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT'S professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

#### **XIV Extra Work**

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.

- C. The CONSULTANT must submit any "request for equitable adjustment", hereafter referred to as "CLAIM", under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a CLAIM submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

## **XV Endorsement of Plans**

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

## **XVI Federal Review**

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

## **XVII Certification of the Consultant and the State**

Attached hereto as Exhibit "G-1(a and b)" are the Certifications of the CONSULTANT and the STATE, Exhibit "G-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "G-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "G-4" Certificate of Current Cost or Pricing Data. Exhibit "G-3" is required only in AGREEMENTS over \$100,000 and Exhibit "G-4" is required only in AGREEMENTS over \$500,000.

## **XVIII Complete Agreement**

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof

shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

## **XIX Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

DAVID EVANS and ASSOCIATES Inc.

  Sr. Vice President May 16, 2005  
Signature SRVP & CFO Date

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

 May 16, 2005  
Signature Date

*Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.*

# EXHIBIT F

# COLUMBIA RIVER CROSSING

## TYPICAL PATTERNS OF PUBLIC SECTOR AND CONTRACT RELATED IRREGULARITIES

Red Flags of Public Sector Irregularities <sup>1</sup>		CRC?	Comments
1	Failure to Produce documents in a timely manner	Yes	All Public Records requests have been delayed. It took over 6 months to receive contracts and Task Orders and Amendments.
2	Failure to Respond to inquiries in a timely manner	Yes	Many Public Records requests were ignored, not responded to as required by state statutes, etc.
3	Inadequacies in reporting requirements (e.g. untimely reports, incomplete reports, and others)	Yes	CRC project does not have a consolidated method for paying expenditures. Project reporting either does not exist, or does not reconcile to actual documents or source data.
4	Failure to have an adequate information gathering and retrieval system	Yes	See Comments Above
5	Altered or missing documents	Indeterminable	Incomplete data does not allow for determination
6	Photocopied or duplicate documents	Indeterminable	We are provided with photocopies - do not know if originals are present at CRC office
7	Failure to have adequate supporting documentation for reports and summary data	Indeterminable	Incomplete data does not allow for determination

Red Flags of Contract Irregularities <sup>1</sup>		CRC?	Notes
<b>Contract Specification Phase</b>			
1	Providing contractor with information or advice on a preferential basis	Potential	David Evans conducted and/or managed a significant portion of pre-CRC studies (1999-2005)
2	Using statements of work, specification, or sole source justifications developed by, or in consultation with the contractor permitted to bid	Yes	David Evans scoped the project
3	Permitting consultants who assisted in preparing statements of work, specification, or design to perform on the contracts as subcontractors or consultants	Yes	David Evans scoped the project
4	Splitting costs into separate categories to avoid review	Unknown	
5	Poorly written or vague specifications/statements of work	Yes	For example, "Jump start CRC work" (this Task Order was budgeted at \$100,000 but ended up costing \$3.5M)
6	Writing specifications not consistent with past similar procurement	Unknown	

<sup>1</sup> Source: 2011 Fraud Examiners Manual

# COLUMBIA RIVER CROSSING

## TYPICAL PATTERNS OF PUBLIC SECTOR AND CONTRACT RELATED IRREGULARITIES

Red Flags of Contract Irregularities <sup>1</sup>		CRC?	Notes
<b>Bid Submission Phase</b>			
7	Acceptance of late bid	No	The Engineering Bid process is based on "Statements of Qualifications" - according to the CRC, only one team of qualified experts submitted bids.
8	Falsifications of documents or receipts to get a late bid accepted	No	
9	Change in bid after other bidders prices are known	No	
10	Change in bid dates	No	
11	Receipt of late bids	No	
12	Last bid usually receives the bid	No	
<b>Bid-Rigging Schemes</b>			
13	Qualified bidders who later become subcontractors	Yes	HDR and Parson Brinckerhoff appear to be firms who could be primary bidders on the CRC project.
14	Wide disparity in bid prices	No	N/A - Only one bidder
15	Same contractors who bid on all projects with rotating low bidders	Potential	Common to see HDR, Parsons Brinckerhoff, and DEA sharing pieces of WSDOT and ODOT projects
16	Qualified bidders who fail to submit bids	Yes	It is unknown why apparent qualified firms did not submit Statements of Qualifications.
17	Bid protests from losing, qualified bidders	Unknown	
18	Splitting up requirements so contractors can each get a "fair share" and can rotate bids	See note	Common to see HDR, Parsons Brinckerhoff, and DEA sharing pieces of WSDOT and ODOT projects
19	Rotational pattern to winning bidders	Unknown	
20	Geographical pattern to winning bidders	Unknown	
21	Joint venture bids by firms who could have bid individually	Yes	HDR and Parson Brinckerhoff were part of the "David Evans Team"

Other Red Flags		CRC?	Notes
1	Government employee becoming employees of prime contractor	Yes	Numerous WSDOT employees have become employees of prime contractors
2	Charging unallowable costs to buyer	Yes	4% Markup paid to David Evans & Associates
3	Reclassification of employees from indirect to direct charges	Yes	Potential administrative employees charged directly to job
4	Material change orders	Yes	\$50 Million DEA contract alone has been increased by more than 160% (or \$81.5 Million)
5	Vendor listed more than once, with different vendor numbers	Yes	Several contractors are listed with different spellings, etc. - lack of audit trail

<sup>1</sup> Source: 2011 Fraud Examiners Manual

# EXHIBIT G



Washington State  
Department of Transportation[News](#)[Search](#)[Contact WSDOT](#)[WSDOT Home](#)[TRAFFIC & ROADS](#)[PROJECTS](#)[BUSINESS](#)[ENVIRONMENTAL](#)[MAPS & DATA](#)**CONSULTANT SERVICES****MOST REQUESTED**

- » [Request for Qualifications](#)
- » [Criteria Definitions](#)
- » [Submittals Received](#)
- » [Interview Date](#)
- » [Interview Shortlist](#)
- » [Selection](#)
- » [Submittal Information Form - Prime](#)
- » [Submittal Information Form - Sub](#)
- » [Performance Evaluation Completed by a Reference Form](#)

*States of Oregon and Washington  
Departments of Transportation  
Notice to Consultants*

***Columbia River Crossing Project - Environmental Impact  
Statement***

The Washington State Department of Transportation (WSDOT) solicits interest from consulting firms who would like to be evaluated for providing environmental and design services to work collaboratively with the WSDOT and Oregon Department of Transportation (ODOT) Project Team to deliver the environmental phase of the Columbia River Crossing Project. This project is expected to enter the EIS phase (or other required environmental documentation, if an EIS is not required) by Spring/Summer 2005. One (1) agreement will be awarded. The WSDOT/ODOT Project Team anticipates the total cost of the environmental phase to be in excess of \$20 million, with an initial agreement to be in excess of \$6 million, but the total dollar figure will vary upon project requirements and funding. The agreement will be for the duration of the I-5 Columbia River Crossing Project. An effective WSDOT/ODOT and consultant project team will be crucial to successful, on-time, and on-budget project delivery.

To access the RFQ/RFP and information on the Project Description; Submittal Information, Evaluation Criteria; etc., please look to your left under the "Most Requested" column. Click on RFQ/RFP to open the Request for Qualifications / Request for Proposal. Also, in the "Most Requested" column are the links to all of the required forms, etc. in pdf format. If you are unable to open a pdf document, please make sure that you are utilizing the most current version of Adobe Acrobat Reader. If you continue to have problems, please call (360) 705-7104 and provide the following information: Your Name, Firm Name, Phone Number, Fax Number, E-mail address, and title of the RFP/RFQ you are interested in. We will send you a hard copy by either fax or e-mail.

Dates of publication in the Seattle Daily Journal of Commerce: Wednesday, February 16, 2005, and Wednesday, February 23, 2005.

Submittal Due Date: Wednesday, March 23, 2005.

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# EXHIBIT H

### **United States Code (U.S.C.) Title 40 – Public Buildings, Property and Works**

Chapter 11, Section 1101 – 1104: Selection of Architects and Engineers

Commonly referred to as the Brooks Act

#### **§ 1101. Policy (Formerly 40 U.S.C. § 541)**

The policy of the Federal Government is to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

#### **§ 1102. Definitions (Formerly 40 U.S.C. § 542)**

In this chapter, the following definitions apply:

- (1) **Agency head.** – The term “agency head” means the head of a department, agency, or bureau [of the Federal Government].
- (2) **Architectural and engineering services.** – The term “architectural and engineering services” means—
  - (A) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;
  - (B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
  - (C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.
- (3) **Firm.** – The term “firm” means an individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture or engineering.

### § 1103. Selection procedure (Formerly 40 U.S.C. § 543)

- (a) **In general.** – These procedures apply to the procurement of architectural and engineering services by an agency head.
- (b) **Annual statements.** – The agency head shall encourage firms to submit annually a statement of qualifications and performance data.
- (c) **Evaluation.** – For each proposed project, the agency head shall evaluate current statements of qualifications and performance data on file with the agency, together with statements submitted by other firms regarding the proposed project. The agency head shall conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services.
- (d) **Selection.** – From the firms with which discussions have been conducted, the agency head shall select, in order of preference, at least 3 firms that the agency head considers most highly qualified to provide the services required. Selection shall be based on criteria established and published by the agency head.

### § 1104. Negotiation of contract (Formerly 40 U.S.C. § 544)

- (a) **In general.** – The agency head shall negotiate a contract for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Federal Government. In determining fair and reasonable compensation, the agency head shall consider the scope, complexity, professional nature, and estimated value of the services to be rendered.
- (b) **Order of negotiation.** – The agency head shall attempt to negotiate a contract, as provided in subsection (a), with the most highly qualified firm selected under section 1103 of this title. If the agency head is unable to negotiate a satisfactory contract with the firm, the agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the agency head is unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

# EXHIBIT I

### O.1 Legal References

Following are the federal and state laws and regulations upon which [Chapter 430](#) and this appendix are based. The portions of the federal and state laws that specify emergency conditions are covered separately in [Chapter 600](#).

#### O.1.1 Federal Regulations

[23 USC 112](#), Letting of contracts

[23 USC 106](#), Project approval and oversight

[49 CFR 18.36](#), Common grant rule for states

[23 CFR 172.5\(3\)](#), Methods of procurement. The regulation states that noncompetitive negotiation may be used to procure engineering and design-related services on federal-aid participating contracts when it is not feasible to award the contract using competitive negotiation, equivalent state qualifications-based procedures, or small purchase procedures. Contracting agencies shall submit justification and receive approval from the Federal Highway Administration (FHWA) before using this form of contracting. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- The service is available from only a single source.
- There is an emergency that will not permit the time necessary to conduct competitive negotiations.
- After solicitation of a number of sources, competition is determined to be inadequate.

#### O.1.2 Washington State Laws

[Chapter 39.80 RCW](#), Contracts for architect and engineering services

[RCW 39.80.010](#), Legislative declaration

“The legislature hereby establishes a state policy, to the extent provided in this chapter, that governmental agencies publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.”

[RCW 39.80.060](#), Procurement of architectural and engineering services – Exception for emergency work (see [Appendix D](#) for full text)

## O.2 A&E Sole Source Justification and Procedures

WSDOT attempts to be in compliance with federal regulations, whether specific projects have federal funding or not. Under certain circumstances, when consultant services are acquired for architectural and engineering (A&E) work on or related to a specific project, the state has to be in compliance whether federal funds are involved or not.

[23 CFR 172](#) identifies four “alternative” methods for obtaining the services of consultants for A&E work. Three of the four are competitive negotiation, small purchases (falling under the definition of the simplified acquisition threshold), and noncompetitive negotiation. The fourth relates to a state having laws “on the books prior to June of 1998” that define a method as an alternative to the Brooks Act. If a state does not have a legislated “alternative” method on the books prior to 1998, they are to be in compliance with the Brooks Act, [40 USC 1101–1104](#). This means that any of the other three methods chosen by the state must also meet the requirements of the Brooks Act.

WSDOT currently uses two methods for consultant acquisition for A&E work as specifically covered under state law in [Chapter 39.80 RCW](#): competitive negotiations and noncompetitive negotiations. The state did not have a law providing for an alternative method of acquisition prior to June of 1998; state law supported the language and intent of the federal regulations ultimately codified in [40 USC 1101–1104](#).

The method(s) chosen must be clearly identified with specific written processes covering the items in [23 CFR 172.9](#) and must be submitted to the FHWA for approval prior to entering into contracts for A&E services on federally funded projects. The *Consultant Services Manual* covers those written procedures. FHWA approval of this manual satisfies the requirements of [23 CFR 172.9](#) and, in part, meets the provisions for approval of the state’s Stewardship Agreement.

**Note:** The second method, small purchases (or simplified acquisition), is covered in [400.01](#) and subsequent subsections of [Chapter 410](#).

This appendix covers the third method, noncompetitive selection, which includes emergency A&E contracts under the federal regulations. The intent of the emergency contracts chapter (see [Chapter 600](#)) is to cover both A&E and personal services contracts that must be instituted immediately to protect public safety and/or public property. For further information regarding other state regulations pertaining to non-A&E emergency contracting, see [Chapter 600](#).

### O.2.1 Emergency Situations

Emergency situations are briefly covered here because an emergency is one of the three federal provisions allowing for noncompetitive acquisition of A&E contracts. However, the processes for emergency contracts are covered in [Chapter 600](#).

It is fairly simple to determine which situations pose an immediate threat of loss of life, bodily injury, or loss or damage to physical property. Accidents, earthquakes, severe weather events, and other natural disasters can all pose an immediate threat to the public or to publicly owned property. However, there are circumstances when an emergency exists, but is not so readily apparent. That is why the WSDOT policy statement regarding acquisition through noncompetitive negotiation requires executive-level determination as to whether or not a circumstance constitutes an emergency.



## **O.2.2 Noncompetitive Acquisition Considerations**

Short of an immediate emergency (as defined above), based on federal and state regulations, one of the three following situations will exist to justify a noncompetitive acquisition. In [410.02](#), the requirements for a request memo are covered. The request memo needs to address the existence of one of these three circumstances and provide documentation supporting the assertion.

### **1. The service is available from only a single source.**

For the majority of WSDOT A&E work, there are a number of legitimate firms capable and willing to do whatever work the department needs. Usually, the issue is finding the most qualified firm at a fair and reasonable cost. WSDOT has a legally prescribed process for making that determination through open competition. The federal laws and state laws referenced above are clear regarding this issue.

Legislators, engineers, and the public understand that well-publicized, open competition for consultant services provides lower costs, innovation, and better quality in design and construction.

Failure to plan far enough ahead to meet the requirements of the law, or continuing to use the same firms over and over stifles competition, discourages participation, and leads to problems and higher costs in the design effort and in construction. Ultimately, the quality of the finished product is compromised and the public suffers.

However, there are occasions when there is only one firm capable of providing a very specialized service, or only one firm available to provide a necessary service.

For the **service to be available from only a single source** requires that a firm be the only one that can provide the services. For this condition to exist, the work process would typically be very specialized and highly technical. When time allows, the only way to ensure there is no other firm with the same or similar capabilities is to solicit submittals and allow firms to present their approaches to the work. If there is only one that has the qualifications, then this would fall under circumstance 3 below.

When there is no time to provide for a full solicitation, or there is a firm that holds a patent or a trademark, or has developed a specialized process, then the sole source determination may be documented and justified.

### **2. There is an emergency that will not permit the time necessary to conduct competitive negotiations.**

The reference to an “emergency” is meant to be specific to actual emergencies as covered by [Chapter 600](#), Emergency Consultant Contracts.

When not providing for full and open competition, the contracting officer will solicit offers from as many potential sources as is practicable under the circumstances. Adequate documentation and justification will be provided to the HQ Consultant Services Office (CSO) for any solicitation or selection where less than full and open competition was used.

The project management involved and the area consultant liaison (ACL) should follow the provisions in [Chapter 600](#) and provide the appropriate documentation to the CSO as soon as reasonably possible.

### 3. After solicitation of a number of sources, competition is determined to be inadequate.

For certain types of work and at certain times within economic cycles, there may be only one or two firms that respond to solicitations. Under these situations, this item becomes self-explanatory. If a Request for Qualifications (RFQ) has been appropriately advertized, and attempts have been made to find sufficient competition without success, the CSO manager may determine and make a public announcement that inadequate competition exists.

An emergency is then presumed to exist, and a firm that the contracting authority determines sufficiently meets WSDOT's requirements and has sufficient qualifications to do the work may be sourced without further solicitations.

Provided the work has been sufficiently advertised to meet the usual expectations, the attempt to solicit interest from a wide area of availability constitutes open competition, or at least satisfies the requirements of publicly providing the opportunity.

## O.3 Sole Source Contracts for Phased Work Assignments

There are circumstances when it makes sense to end a contract at the finish of one phase of work, or in the middle of a project, and keep the firm available for the next phase of the work. Under certain conditions, a "sole source" contract can be executed, provided precautions are observed. This means using more than one contract for the life of the same project.

Following are the circumstances where a sole source contract is allowable without a determination of an emergency requirement:

1. One phase of work ends and another begins with the same consultant.
2. Overlapping phases require a new contract to start before work ends on the last phase.
3. Design support is needed during construction.
4. The contract payment type changes during the course of the work.
5. An expert witness is needed
6. There is a legislative exemption for expert or review panels (A&E).

In each of the first three cases above, the issue of potentially awarding the next phase of work to the consultant who has been authorized to do the first and possibly successive phases must be addressed in the announcement soliciting for the original work.

A statement similar to the following must be prominently displayed within the Request for Qualifications (RFQ) or Request for Proposal (RFP), and subsequently contained in any contract entered into where this option may be exercised:

*The state reserves the right to authorize subsequent phases of work to the consultant within the scope of this project as described herein. Should the state exercise this right, the state may choose to supplement the existing contract or the state may choose to close the existing contract and negotiate a new contract, at its option.*

**Note:** Notification before entering into a separate contract for phased work is mandatory. It must be addressed in the solicitation for Statements of Qualifications (SOQs), not after the project gets through one phase and is ready to start the next. Otherwise, the next phase would have to be advertised soliciting new SOQs. It should be further noted that this applies to A&E project-specific contracts. Indefinite-delivery contracts (IDC) cannot be “sole sourced.”

Should a firm produce a significant portion of work for a project under a task order document (TOD) authorized from an on-call contract under an emergency determination, and the contracting authority determines that it is appropriate to have that consultant “on-call” during construction, a “sole source on-call during construction contract” should be negotiated for that firm. Otherwise, no “sole sourcing” should be done from work started, or performed under an on-call contract task order. For more information on IDCs, see [Appendix I](#), Contract Types.

### ***O.3.1 Changing the Contract Type or Payment Method During the Course of the Work***

Changing contracts during the course of the work most often happens when a transition is made from design work (PS&E) to a design support during construction contract. Usually, a cost-plus-fixed-fee (CPFF) contract is used for design work. However, a CPFF contract is difficult to work with during construction.

A separate contract needs to be executed based on negotiated hourly rates. Quite often during a construction contract, work is assigned by letter because any other method could cause delay to the contract, adding possible increased costs. Design support during construction contracts is covered in [Appendix I](#), Contract Types.

Occasionally, the wrong type of contract may be used for a project or work and it becomes necessary to change the contract type during the course of the work. This cannot be done by supplementing the existing contract. The HQ Accounting and Financial Services Office will not allow it. When executing the replacement contract, care must be taken not to change or modify the limits or general scope of the original solicitation.

**Note:** There is a distinction between task assignment contracts (TACs) and on-call task order contracts (TODs), both of which are currently in use. Under the TAC, the master contract is funded to the maximum covered by the contract or subsequent supplements. Under the on-call contract, no funding is committed until the individual task order documents are executed and work orders are set up for each particular TOD. Request memos need to be written and approved for these instances.

For those circumstances where prior approval of the consultant services includes an option to the state to add additional phases of work within the boundaries of the project, the responsible ACL should check with the CSO manager to verify the existence of the option for the particular phase in question and discuss the potential contract type, possibility of supplementing the existing contract, and other parameters related to the progress of the project. This would be similar to the presolicitation meeting covered in [410.03](#).

## O.4 Request Memo

For any contract to be entered into under this appendix, a request memo must be prepared and submitted to the CSO. Justification must be provided, along with all other pertinent project data. The request memo for consultant use is available from the CSO's intranet website ([www.wsdot.wa.gov/consulting](http://www.wsdot.wa.gov/consulting)). If not available, the CSO can be contacted for a current request memo form. All request memos should be assembled by the appropriate ACL, or at least discussed with the ACL prior to completion and submittal.

For some requests, the information will be simple, such as the on-call during construction-type contracts. Reference should be made to prior approvals, such as a prior request memo for the original consultant solicitation and contract and the solicitation where the option to have the consultant provide such services was covered.

For obvious immediate emergency requests, see [Chapter 600](#), Emergency Consultant Contracts. Where the emergency is less obvious, full justification and documentation should be covered in the request memo and attached thereto. When this occurs, the appropriate executive-level authority should be the name in the "from" block, and that person must initial the request. An appropriate executive-level authority would be the Regional Administrator or a similar position within Headquarters.

To the degree appropriate, the instructions set forth in [410.02](#) regarding the request memo instructions for A&E project-specific selection are to be followed.

Once the request memo is received by the CSO, it will move to the CSO manager for review and recommendation for approval. If the memo is properly documented, the manager will meet with the contracting authority to obtain approval. With approval of the request, the contract process can begin. The proposed consultant should be notified and an RFP prepared and sent to the consultant.

## O.5 Notification and Request for Proposal

The instructions in this section assume that the services being requested do not fall under [Chapter 600](#), Emergency Consultant Contracts, but do fall under the noncompetitive negotiations process.

Once appropriate approvals have been received, the CSO manager should notify the intended firm of its selection and the state's intent to enter into a negotiated contract. Notification by phone and follow-up letter should be made to the firm, including an explanation of the process to be used for negotiations and contract award. In addition, the project manager and lead negotiator (contract officer) should be notified of the selection and provided with the necessary data and information for the scoping and/or negotiations process.

WSDOT uses two methods for establishing the detailed scope. In the first, WSDOT writes the statement of work (SOW) from internal scoping sessions. The second, the Managing Project Delivery (MPD) process, involves project personnel, support personnel, and the consultant firm meeting for SOW developmental sessions as described in [Appendix N](#), Negotiations, Statements of Work, and Managing Project Delivery. The method used and the approach to negotiations will be determined by the nature of the work required.

If the state has a detailed SOW, it should be submitted to the firm with a request that the firm prepare and submit its proposal. As appropriate, the importance of the time element should be discussed along with a time frame for submission of the firm's response to the RFP.

If the state intends to use the MPD method, the notification should address the process and establish a time and location for the initial meeting. Any further data the state needs from the firm should be requested at this time. In either case, a general outline and synopsis of the services needed should be included with the RFP and notification.

**Note:** The only time a consultant is compensated for SOW development is through the MPD process where the CSO is directly involved in the process.

## O.6 Negotiations and Notice to Proceed

It is important to establish how the state ensures "fair and reasonable cost" when there is no second or third firm waiting to be hired, should the "sole source" firm and the state not reach agreement on cost for the work.

Generally, most firms that the state seeks to acquire services from have audited overhead rates and established labor rates within their organizations. The profit portion of an all-inclusive billing rate is subject to negotiations based on the factors covered within the WSDOT [Audit Guide for Consultants](#). The negotiations will mainly be centered on the number of hours required for the work.

Occasionally, there may be a need to acquire the services from a highly specialized firm that has typically provided services at market rates. It will be up to the chief negotiator to determine "fair and reasonable" for the state. Discussions with project management prior to the actual negotiations need to occur. The negotiator needs to become familiar with the budget and target pricing before starting the actual negotiations.

For details on negotiations and the MPD process for SOW development, including the MPD flow chart and narrative, see [Appendix N](#), Negotiations, Statements of Work, and Managing Project Delivery.

Once negotiations have concluded and the state and the consultant have reached agreement on all issues, the contract will be assembled and circulated for approvals and execution. As appropriate to the work, a notice to proceed (NTP) will be issued to the consultant with details regarding the project manager, where the invoices are to be sent, when the first meeting with project management is scheduled, and any other details the consultant may need regarding the contract.

In cases where there is a time constraint, a limited notice to proceed (LNTP) may be issued once the negotiations have concluded. The notice will cover what work the consultant may start based on the negotiations. The notice will also cover all limiting factors and state when full NTP can be expected.

If the time factor is such that the work must start before negotiations can occur, an emergency will be declared by the contracting authority and an LNTP will be issued. The LNTP will cover any limiting factors, clearly state that the work is subject to final negotiations, and provide for specific rates and terms limited to the time frame up to conclusion of negotiations.

Under most circumstances, the administration of the contract will follow the provisions of [Chapter 500](#), Administration of Contracts.



# EXHIBIT J



**P.1 Organizational Conflict of Interest (OCOI)**

An organizational conflict of interest may occur when an individual or firm:

- Is unable to render impartial assistance or advice.
- Is unable to be objective in the performance of the contract work.
- Has an unfair competitive advantage.
- Displays the appearance of or potential for any of the above conditions.

[49 CFR 18.36\(b\)\(3\)](#) addresses organizational conflicts of interest where a contractor's performance of a contract gives the contractor access to information that is not readily available to the public and that may give the contractor a competitive advantage. Access to proprietary information could occur when the contractor: is providing systems engineering and technical direction; is preparing specifications or work statements; is participating in development and design work; and/or gains access to the information of other companies in performing advisory and assistance services for the government.

The potential for an organizational conflict of interest to occur and the process for identifying and mitigating OCOIs apply to all agreements for professional services related to WSDOT projects. While the applicability is not limited to any particular type of acquisition, OCOIs are more likely to occur in agreements involving management support services; consultant or other professional services; contractor involvement in technical evaluations; and design, systems engineering, and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.

**P.1.1 Roles and Responsibilities Related to OCOI**

The ultimate responsibility for avoiding, managing, neutralizing, or mitigating organizational conflicts of interest rests with the individual consultant or consulting firm that is potentially conflicted. An OCOI may occur in any number of different circumstances. All consultants proposing or bidding on solicitations for agreements may be impacted, including those applying as a design-build team, whether submitted on a Request for Statement of Qualifications or a Request for Proposal.

This section applies to all business configurations, including a joint venture and the individual entities that make up a joint venture; parent and subsidiaries comprising one entity; entities resulting from acquisitions and mergers; and employees of consultants who move from one firm to another. Actual or potential conflicts of interest are carried from one firm to another in the course of completing a business transaction.

WSDOT employees have the responsibility to identify and manage potential, actual, or perceived OCOIs as the employees become aware of them. The goals in managing potential conflicts of interest are to prevent the existence of conflicting roles that might bias a contractor's judgment and to prevent unfair competitive advantage. Therefore, it is preferable that potential conflicts be identified as early as possible in the acquisition process. The federal regulations require that each individual contracting situation be examined on the basis of its particular facts and the nature of the proposed agreement. Employees engaged in the contracting process must exercise common sense, good judgment, and sound discretion in determining whether a potential conflict of interest exists, and, if so, the appropriate means of resolving it.

WSDOT retains the sole discretion to determine, on a case-by-case basis, whether an OCOI exists and whether actions may be appropriate to avoid, neutralize, or mitigate any actual or potential conflict or the appearance of any such conflict. Any determination by WSDOT regarding the existence of an actual or potential OCOI or whether the OCOI may be avoided, neutralized, or mitigated is based solely on the facts made available at the time the determination is made. Unknown facts or a change in the facts over time can necessitate a reevaluation of the original conclusion. Risks associated with a successful legal challenge to an OCOI are the sole responsibility of the person or firm potentially conflicted.

**Note:** WSDOT reserves the right to reassess and revise any determination made regarding an OCOI at any time. WSDOT also recognizes that its concern with an OCOI must be balanced against the need to promote competition in the procurement process and not to unnecessarily restrict the pool of potential consultants or constructors available to perform needed work.

### ***P.1.2 Evaluating OCOIs and Determining a Course of Action***

The HQ Consultant Services Office's (CSO's) evaluation process parallels the one prescribed in the 2009 *Organizational Conflicts of Interest Manual* relating to construction contracts. The CSO has adopted these procedures for use on all agreements administered by the CSO, whether or not they are federally funded. Because it is possible that the same individuals and/or consulting firms will seek to be involved in one or more phases of a project (predesign, design, and construction), it is important that the department implements a coordinated approach to evaluating and addressing OCOIs. This is particularly relevant to the CSO's solicitations, because potential proposers of early predesign and design phases of a project must be made aware of the potential OCOIs that can arise as later phases go out to proposal or bid. As an initial step in identifying OCOIs, the Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan (see [Exhibit P-1](#)) and the Organizational Conflict of Interest Certification (see [Exhibit P-3](#)) will be included in all relevant CSO solicitation documents, along with instructions for their use.

The following guidelines are intended to enhance pertinent federal and state statutes regarding ethics and OCOIs, as referenced and discussed earlier in this section. In general, the CSO will evaluate the following on a case-by-case basis:

- Whether or not an OCOI exists.
- Whether or not the OCOI can be avoided, neutralized, or mitigated.
- The appropriate steps to be taken to avoid, neutralize, or mitigate the OCOI.

### **P.1.3 Making the Determination**

The CSO uses the following legal framework as the basis for making such determinations:

[Chapter 42.52 RCW](#), Ethics in Public Service, applies to all state officers and employees, as well as former officers and employees who may become private consultants. For the purposes of OCOIs, these statutory provisions will be construed to apply to all employees of consultants and/or subconsultants who perform work on WSDOT projects.

[Chapter 18.43 RCW](#) includes prohibitions on conduct related to the practice of engineering. Conflicts of interest are referenced in [RCW 18.43.105\(6\)](#). Similarly, the Board of Registration, tasked with the oversight of engineers and land surveyors in accordance with [Chapter 18.43 RCW](#), has promulgated a set of rules of professional conduct and practice that addresses conflicts of interest ([WAC 196-27A-020-2\(i\)](#)).

Federal rules in which the Federal Highway Administration addresses OCOIs in relation to federally funded highway projects include:

- [49 CFR 18.36](#)
- [23 CFR 636.109\(b\) 6 & 7](#) for the NEPA process as it relates to design-build
- [23 CFR 636.116 & 117](#) for design-build projects

WSDOT adopts these rules for use on all WSDOT design-build contracts, whether federally funded or not.

Initial considerations in the determination of a mitigation strategy would likely include a review of potential bidders/proposers who have requested the solicitation and a review of their teaming partners, including design professionals who may be more likely to have an OCOI. For those identified, a key factor would be previous work done by the individual or firm on the project or in the planning phases of the solicitation.

Mitigation plans may include contract clauses prohibiting some subsequent or related work by the contractor; restrictions on the specific work the contractor or subcontractor will be allowed to perform; nondisclosure and confidentiality agreements; and exclusion of specific individuals or business units from participation in the project.

### **P.1.4 OCOI Situations That Cannot Be Avoided, Neutralized, or Mitigated**

The following situations are considered to result in a conflict of interest that cannot be avoided, neutralized, or mitigated due to the level of involvement in the project and the access to special knowledge and proprietary information.

**Note:** These restrictions apply only to the circumstances described.

1. For design-build projects, firms that act as the General Engineering Consultant (GEC) or Major Consultant, or key staff employed by the GEC or Major Consultant, will not be allowed to join a design-build team that submits a bid or proposal for a contract that is part of the project for which the individual or firm acted in the capacity of a GEC or Major Consultant, or key staff employed by the GEC or Major Consultant.

2. For design-build projects, a consultant (individual or firm) and/or subconsultant (individual or firm) that assists WSDOT in preparing a Request for Qualifications or other solicitation document, or assists in establishing selection criteria, will not participate in any capacity on a design-build team related to the same contract.
3. For design-build projects, individual consultants or subconsultants will not be allowed to do the actual scoring of a Statement of Qualifications (SOQ) or a proposal. Consultants or subconsultants may be allowed to act as discipline-specific advisory experts to identify the strengths and weaknesses of an SOQ or a proposal.
4. For design-build projects, if the National Environmental Policy Act (NEPA) process has not been completed prior to issuing the Request for Proposal (RFP), a consultant and/or subconsultant that has responsibility to prepare the NEPA document will not participate in any capacity on a design-build team for the same project. A subconsultant to the preparer of a NEPA document<sup>1</sup> may be allowed to participate on a design-build team provided that:
  - a. WSDOT releases the subconsultant from further responsibility on the NEPA document no later than the issuance of the RFP, and
  - b. There is no other basis for an OCOI with said subconsultant.
5. For design-bid-build projects, firms that act as WSDOT's GEC or Major Consultant will not participate as a constructor nor as a consultant or subconsultant on a constructor's team on a construction contract developed under its supervision.

### ***P.1.5 Procedures for Addressing OCOIs***

Because the CSO contracts process most often precedes the design-build or construction phase of a project, it is the initial point at which a consultant is encouraged to consider any potential OCOI. In addition, consultants becoming subconsultants should consider whether being a subconsultant could preclude their working on contracts related to their prime's work product due to the potential appearance of an OCOI. Consultants and subconsultants should investigate and manage potential OCOIs well in advance of forming teams or considering proposals/submissions in a solicitation. A firm or individual considering whether to enter into an agreement as a consultant or subconsultant on a WSDOT project should consider contacting the CSO regarding whether its proposed scope of work may create an OCOI if in the future the firm or individual chooses to participate with a proposer on a contract related to the firm's or individual's work product.

The CSO will include a provision in the solicitation document regarding any OCOI that could potentially occur in the solicitation, along with the method for the consultant to respond to the potential OCOI, and a process for imposing a restraint on eligibility for future contracting activities, as appropriate. The provision will also state whether or not the terms of the agreement and the application of the provision to the agreement are subject to negotiation. This process will most often be relevant to architectural and engineering (A&E) solicitations for predesign and design services related to a project that is eventually going to design-build or construction.

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<sup>1</sup> NEPA documents include the Environmental Assessment, Environmental Impact Statement, Finding of No Significant Impact, Record of Decision, and Categorical Exclusion.

1. Prior to submitting an SOQ or a proposal on a CSO solicitation, each submitter/proposer will conduct an internal review of its current affiliations and will require its team members to identify potential, real, or perceived OCOIs relative to the anticipated procurement. Potential submitters/proposers will be notified that existing and/or future contractual obligations relative to the proposed procurement may present an OCOI and these may require avoidance, neutralization, or mitigation.
2. If a potential, real, or perceived OCOI is identified or if there is any question regarding an OCOI, the potential submitter/proposer will submit an Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan (see [Exhibit P-1](#)), along with other pertinent information, to the project manager and the area consultant liaison (ACL) or CSO staff. The project manager and the ACL/CSO will evaluate the plan following the provisions in [P.1.2](#), propose changes to the plan as appropriate, and forward their recommendations regarding the plan to the CSO manager for review.
3. The CSO manager, in consultation with the State Construction Engineer, when relevant, will review the recommendations and issue a final written response to the consultant.
  - a. WSDOT, at its sole discretion, will make a determination regarding any potential OCOI and the entity's ability to avoid, neutralize, or mitigate such a conflict.
  - b. If the CSO manager determines that an actual or potential OCOI exists and cannot be avoided, neutralized, or mitigated, a written response will be issued indicating that the individual or firm that has been determined to have an OCOI will not be allowed to participate as a team member or as a contractor for that particular agreement. Failure to abide by WSDOT's determination in this matter may result in an SOQ or a proposal being declared nonresponsive.
  - c. If the CSO manager determines that the actual or potential OCOI can be avoided, neutralized, or mitigated, a written response will be issued indicating concurrence or stating that corrections and resubmittal of the plan are required.

### **P.1.6 Appeal Procedures**

The consultant will have the right to appeal a finding of an actual or potential OCOI. The CSO manager's determination, reflected in the response to the plan, may be appealed to the WSDOT Assistant Secretary for Engineering and Regional Operations, whose decision will be final, subject to further review only as provided for by state law.

### **P.1.7 Certification**

For submittals or proposals in response to an A&E solicitation where there is potential for an OCOI to exist, an Organizational Conflict of Interest Certification (see [Exhibit P-3](#)) will be required to be included with the SOQ or proposal.

It is expected that most, if not all, potential or real OCOIs will have been identified and reviewed by the department prior to the submission of the SOQ or proposal. However, if a potential, real, or perceived OCOI is identified or if there is any question regarding an OCOI, the submitter/proposer will submit an Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan (see [Exhibit P-1](#)), along with other pertinent information, as

attachments to the OCOI Certification. If a previously submitted and approved plan is still applicable, it should be included with the CSO manager's response as an attachment to the OCOI Certification. The submissions and responses will be evaluated in accordance with the criteria described in [P.1.2](#) to [P.1.4](#).

### **P.1.8 Contract Provisions**

All relevant consultant services contracts are to include a reference to and require compliance with the provisions in this chapter related to OCOI and with the Secretary's Executive Order [E 1059](#). In addition, the OCOI Acknowledgement for Consultant Contracts (see [Exhibit P-2](#)) is to be included in all relevant CSO contracts.



### Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan

This disclosure statement and plan outlines potential organizational conflicts of interest, either real or perceived, that result in the following:

- Cause the individual consultant or firm to be potentially unable to render impartial assistance or advice to WSDOT; and/or
- Cause the individual consultant or firm to otherwise be impaired in its objectivity in performing the work; and/or
- Cause the individual consultant or firm to have an unfair competitive advantage.

**Section I:** Describe the potential organizational conflict of interest, as defined in federal and state law, in the WSDOT Secretary's Executive Order E-1059.00, and in Chapters 900 and 920 of the *Consultant Services Manual*.

- a. Name of person or firm potentially conflicted.
- b. Name of project solicitation relevant to this submittal.
- c. Description of potential conflict of interest (include role in current and future projects and scopes of work as appropriate).

**Section II:** Describe the proposed management plan for avoiding, neutralizing, or mitigating the potential organizational conflict of interest as described in Section I.

**Acknowledgement:**

I acknowledge that the Washington State Department of Transportation (WSDOT) may require revisions to the management plan described in Section II of this disclosure statement prior to approving it, and that WSDOT has the right, at its sole discretion, to limit or prohibit my involvement in the project as a result of the potential conflict(s) of interest described in Section I of this disclosure statement and plan.

Signed \_\_\_\_\_ Date \_\_\_\_\_

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

### Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan *Exhibit P-1*



**Organizational Conflict of Interest Acknowledgement  
for Consultant Contracts**

By my signature below, I acknowledge that the Washington State Department of Transportation (WSDOT) has a policy on organizational conflicts of interest that is implemented in accordance with the Secretary's Executive Order [E 1059](#) and the *Consultant Services Manual*. As the consultant and the authorized signatory, I agree to abide by WSDOT's policies as described therein for this contract and for any project or agreement related to this contract. I acknowledge that this provision on organizational conflicts of interest is required to be implemented in all subconsultant contracts, at all tiers.

Signed \_\_\_\_\_ Date \_\_\_\_\_

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

**Organizational Conflict of Interest  
Acknowledgment for Consultant Contracts**  
*Exhibit P-2*

**Organizational Conflict of Interest Certification**

Name of Submitter: \_\_\_\_\_

My signature below certifies that, prior to submitting this (SOQ) (Proposal), I have conducted an internal review of (Submitter's) (Proposer's) current affiliations and have required (Submitter's) (Proposer's) team members to identify potential, real, or perceived organizational conflicts of interest relative to the anticipated procurement, in accordance with the Secretary's Executive Order [E 1059](#) and the WSDOT *Consultant Services Manual*, Chapter 920.

I further certify that the "Organizational Conflict of Interest Disclosure and Avoidance/ Neutralization/ Mitigation Plan" forms are attached, as listed below, for all real or potential organizational conflicts of interest as defined in the *Consultant Services Manual* for all (Submitter) (Proposer) team members.

(To be signed by authorized signatory of (Submitter) (Proposer)):

Signed \_\_\_\_\_ Date \_\_\_\_\_

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

List of attachments by name of person or firm potentially conflicted:

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**Organizational Conflict of Interest Certification**  
***Exhibit P-3***



# EXHIBIT K

## **V.1 Introduction and Narrative**

Even though a significant amount of time and effort is spent on defining such things as the statements of work (SOWs), project schedules, delivery efforts, and project controls, there will be times when unavoidable changes will occur. It is the responsibility of both the management team and the administrative team to have a unified change management plan in place that defines the processes involved. The plan must include the involvement of the designated area consultant liaison and, where necessary, the WSDOT HQ Consultant Services Office (CSO).

Many audit findings involve needed changes to the work effort described in the SOW. Most often those changes are not documented, are handled improperly, or are done without following the administrative procedures until well after the change has occurred. It is very problematic when a consultant is inappropriately given verbal authorizations. Supplements to the contract must be written for all changes that materially affect the contract, whether or not there is a change in the dollar amounts or in the time frame of the contract.

There are also times when supplements to the contract are planned. This often occurs on longer-term contracts where funding occurs on a biennial basis or becomes available in “pieces.”

Supplements can be written and changes can be made only to the work within the scope of the original project as publicly described. Work outside the parameters of the advertised project or synopsis descriptions cannot be added to the contract. For project-specific contracts, this means the project limits, both physically and categorically.

Federal regulations do not allow firms that do the studies to subsequently do the design. Firms that do the design cannot participate in the construction effort, nor can they provide construction oversight on their own design.

Where phased work is allowed, a supplement cannot be written to add subsequent phases of work to the contract unless that has been covered in the original solicitation and subsequently included in the contract.

## **V.2 Contract Supplement Process**

Contract supplements require approval from the CSO prior to starting negotiations. The process starts with a “request to supplement” provided on the proper request memo. The request memo form includes questions, because the CSO is responsible for reporting architectural and engineering activity on a quarterly basis, and the questions asked by the Office of Financial Management (OFM) regarding the need to supplement the contract have to be answered by the CSO.

The request memos include the following information in accordance with the requirements of OFM.

**V.2.1 Documentation Needed for a “Supplement for Time Extension Only”**

1. Provide the project manager’s name, phone number, and org code.
2. Identify and fully describe why the additional time is needed. Include any explanations regarding delays that may have been caused by the department or those completely out of the consultant’s control.
3. Explain why the time was not included in the terms of the original contract.
4. Explain what conditions have changed since the award and provide other applicable information that clearly justifies the decision to supplement the contract.
5. Are rates the same as those negotiated under the original contract? If no, explain.
6. Identify the start date of the proposed supplement and duration of the supplemental work.
7. List the area consultant liaison’s name and phone number.

**V.2.2 Documentation Needed for a “Supplement for Changed Conditions”**

1. Provide the project manager’s name, phone number, and org code.
2. Identify and describe the problem, requirement, or need that the supplement is intended to address and that makes the supplement necessary. Explain how WSDOT determined that the services under the proposed supplement are critical or essential to agency responsibilities or operations and/or whether the services are mandated or authorized by the Legislature. Also, identify and explain in detail why this supplement is of an emergent nature if it falls under the Governor’s order dated August 4, 2008 (if applicable). Emergent supplements include:
  - Those related to public safety and those that would prevent material loss of or damage to property, bodily injury, or loss of life if action is not taken.
  - Contracts that stem from court orders or are required under the law.
  - Contracts that secure the receipt of federal or other funds or that may be an integral part of a revenue-generating enterprise.
  - Contract supplements that reduce contract dollars and/or zero cost supplements that extend a contract end date. Supplements to finalize projects close to completion will be considered on a case-by-case basis. All other supplements should be carefully evaluated as to whether it is in the best interest of the state to move forward.
  - Mission-critical information technology contracts without which a system can fail, a project will encounter costly delays, or key deadlines will be missed and penalties will be incurred.
3. Explain how the agency concluded that sufficient staffing or expertise is not available within the agency (not just within the agency division) to perform the services.
4. Explain what effort has been taken to conclude that other public resources are not available to perform the services more efficiently or more cost-effectively.

5. State whether the original contract was competitively procured or awarded as a sole source, and explain when the contract was awarded, the cumulative dollar amount of the original contract, and any subsequent supplements prior to this supplement.
6. Explain why the services under the proposed supplement were not included in the terms of the original contract or in the solicitation document. Include any conditions that have changed since contract award and other information that supports the decision to supplement the contract.
7. State the rationale for executing a supplement to the existing contract rather than competitively procuring the services and awarding a new contract. Include whether the new services are within the scope of the original contract or solicitation document and how the supplement can most effectively achieve the department's purpose.
8. Provide an explanation of the consultant's qualifications, abilities, or expertise to meet the agency's specific needs for the services under the supplement.
9. Provide a written state estimate of the cost of additional work, including direct labor rates, overhead, profit, subconsultant costs, and reimbursables.
10. Provide the funding source for the project. Include the program identification number (PIN), work order number, and the organization code for the work order. Also, include the federal-aid number and participation percentage on federally funded projects. Provide assurance that the appropriate program management office has reviewed and approved the funding.
11. List the area consultant liaison's name and phone number.





# EXHIBIT L

**Agreement Number Y 9245****Supplement Number 2**

This SUPPLEMENTAL AGREEMENT, is made and entered into on this

16<sup>th</sup> day of June, 2008, between the State of Washington, acting through the Washington State Department of Transportation and the Secretary of Transportation, hereinafter called the "STATE," and David Evans & Associates Inc., hereinafter called the "CONSULTANT."

WHEREAS, the parties hereto have previously entered into an agreement for services, said agreement being Agreement Number Y 9245 dated May 16, 2005; and

WHEREAS, the STATE desires to have the CONSULTANT assist the STATE by providing additional services; and

WHEREAS, Section XIV, EXTRA WORK of the AGREEMENT provides for payment by supplemental agreement for additional work; and

WHEREAS, both parties desire to supplement said AGREEMENT by increasing the maximum amount payable to cover the cost for additional services.

NOW, THEREFORE, in consideration of the promises, covenants, terms, conditions, and performance contained herein, or attached and incorporated and made a part hereof, the parties mutually agree as follows:

Each and every provision of the original AGREEMENT as supplemented shall remain in full force and effect, except as expressly modified in the following sections:

**IV****Time for Beginning and Completion**

Section IV, "Time for Beginning and Completion," shall be supplemented to extend the completion date from May 30, 2008, to June 30, 2010.

**V**

**Payment**

Section V, "Payment," shall be supplemented to compensate the CONSULTANT for the additional engineering services necessary to complete the project as follows:

**C. Maximum Total Amount Payable**

The maximum total amount authorized for this SUPPLEMENTAL AGREEMENT is increased by \$45,000,000.00 from \$50,000,000.00 to \$95,000,000.00. The maximum total amount payable for this AGREEMENT is \$95,000,000.00, including the MRF of \$0.00.

1 IN WITNESS WHEREOF, the parties hereto have executed this SUPPLEMENTAL  
2 AGREEMENT as the day and year first above written.

3 DAVID EVANS & ASSOCIATES INC.

WASHINGTON STATE DEPARTMENT  
OF TRANSPORTATION

4 *David Evans, Sr. V.P.*

5 *Arnold R. Anderson, Sr. VP.*

*David Dickey*

6 Approved as to form on this 6<sup>th</sup> day of June, 2008.

7 By:

8 *J. N. Attridge*  
Assistant Attorney General

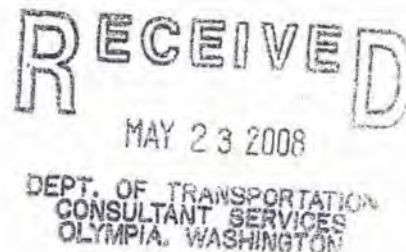




DATE: 5/16/2008

TO: Director, Consultant Services  
MS-47323  
Ph- (360) 705-7103

FROM: Douglas P Ficco *DF*  
MS-S 15  
Ph-360-737-2726



SUBJECT: Request for Consultant Services- Supplement Original Agreement  
Agreement Number: Y 9245, Supplement Number: 2  
Project Title: Columbia River Crossing Project  
Prime Consultants Name: David Evans & Associates, Inc.

1. *Project Manager Name, Phone Number, and Org Code.*

Name: Douglas P. Ficco Phone: 360-737-2726 Org Code: 441101

2. *Identify and fully describe the specific problem, requirement or need which the amendment is intended to address and which makes the services necessary.*

3. In February of 2005 the WSDOT advertised for this project. David Evans and Associates, Inc. was awarded a contract for the project. We are now ready to move to the next phase of work for the project.

The Columbia River Crossing Project is one of a finite list of projects recognized by the Oregon and Washington Departments of Transportation through the I-5 Partnership Strategic Plan as being a solution to improving the existing I-5 Columbia River crossing and significant to the future of the Pacific Northwest. This PROJECT encompasses a five-mile capacity improvement along Interstate 5 from the SR 500 interchange in Clark County to the Columbia Boulevard interchange in Portland. It includes possible improvements to 7 interchanges (4 in Washington and 3 in Oregon); and replacement of or the addition of a supplemental structure to the existing bridge over the Columbia River.

*Describe how WSDOT determined that the services are critical or essential to the agency responsibilities or operations and/or whether the services are mandated or authorized by the legislature*

The I-5 Corridor is a critical link in the Washington/Oregon transportation system, that is congested many hours of the day resulting in associated economic impacts. It serves as a vital regional travel corridor within the Portland/Vancouver region. As a major route for employees, freight, and goods for many large and small businesses, its importance extends beyond our borders, both nationally and internationally.

The project is a joint effort between the WSDOT, ODOT, Federal Highway Administration, Federal Transit Administration, Metro, Southwest Washington Regional

Transportation Council, C-Tran, TriMet, City of Vancouver, City of Portland, and the communities in the I-5 corridor.

4. *Explain what effort has been taken to conclude that sufficient staffing or expertise is not available within the agency, (not just within the agency division), to perform the service.*

WSDOT does not have sufficient staff or expertise to perform the work on this project.

*Explain what effort has been taken to conclude that OTHER GOVERNMENTAL RESOURCES (LOCAL, STATE OR FEDERAL AGENCIES) OUTSIDE OF WSDOT are not available to perform the services more efficiently or more cost effectively.*

N/A

5. *Provide an explanation of the consultant's qualifications, abilities, or expertise to meet the agency's specific needs for the services under the amendment.*

6. 2. In February of 2005 the WSDOT advertised for this project. That advertisement included the following.

7. 10. The WSDOT/ODOT project team desires to retain an experienced consultant team to gain the benefit of experience and expertise in major project management as well as to augment WSDOT/ODOT workforce to deliver this project. The consultant will come into this project at a very early preliminary stage to formulate strategies collaboratively with the WSDOT/ODOT project team on how to deliver this massive, challenging project, and then to implement the delivery strategies. The first stage of the agreement is to perform preliminary design and NEPA environmental documentation. At the option of the WSDOT/ODOT project team, additional design work, and one PS&E as well as On-Call services through completion of construction may be added, if necessary.

David Evans and Associates, Inc. was selected for the project.

8. *State the rationale for executing an amendment to an existing contract rather than competitively procuring the services and awarding a new contract. Include how executing the amendment can most effectively achieve the agency's purpose.*

See above.

9. *Are the proposed services within the scope of the original contract? If no, explain:*

Yes.

10. *Explain why the services were not included in the terms of the original contract?*

The services were included. The funding wasn't.



- 11. Explain what conditions have changed since the award and other applicable information that clearly justifies the decision to amend the contract.*

We need the additional dollar amount to continue working on the project.

- 12. Are the rates the same as that negotiated under the original contract?*

The rates are the same as the existing amended rates.

- 13. Provide the funding source of the project, include the Program Identification Number (PIN) and Work Order Number. Also, include the organization code for the work order. Include Federal Aid Number and participation percentage on federally funded projects. Provide assurance that the appropriate Program Management office has reviewed and approved funding.*

PIN Number 400506A

Work Order Number XL 2268

Org Code 441101

The funding source will vary during the duration of the project.

- 14. Provide a written State estimate for the costs of the services that will be performed by the consultant on the proposed project. The estimate should include the following:*

- *Direct Salary Costs*  
*Include number of hours and salary rates for each proposed classification.*
- *Overhead Costs*  
*Based upon a percentage of direct salary costs (normally the range is between 120-200% of direct salary costs).*
- *Fixed Fee Costs*  
*Based upon a percentage of direct salary costs. The fixed fee percentage will normally range from 17-35% of direct salary costs.*
- *Reimbursable Expenses*  
*Usually 5-10% of total costs of the agreement. These costs may include mileage, travel, computer, copies, etc.*
- *Sub-consultant Expenses*  
*Include estimated costs for sub-consultants, this will be an accumulative amount that will include direct salary costs, overhead costs, fixed fee costs and reimbursable expenses.*

\$45,000,000.00

15. Identify the start date of the proposed supplement and duration of the supplemental work.

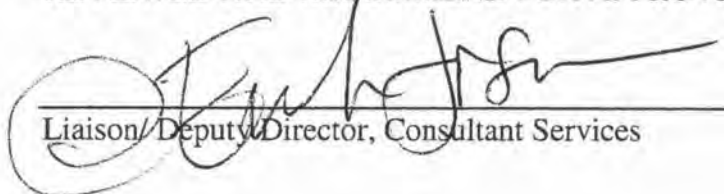
Start June 1, 2008, End date June 30 2010.

16. Area Consultant Liaison Name and Phone Number.

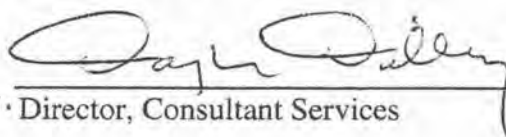
Name: George Humphrey

Phone: 360-816-8864

REVIEWED AND RECOMMEND FOR APPROVAL:

 5/20/08  
Liaison/Deputy Director, Consultant Services Date

APPROVED:

 6/02/08  
Asst. Director, Consultant Services Date

FOR INTERNAL USE ONLY

Agreement Type: ☐ CPFF ☒ TONHR ☐ TONPR ☐ HR ☐ LS

Attachments

cc:

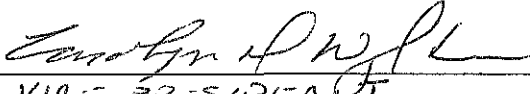
# EXHIBIT M

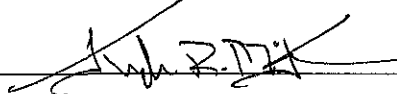


1 IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day  
2 and year first above written.

3 DAVID EVANS & ASSOCIATES, INC.

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION

5   
VICE PRESIDENT



6 This Document for Time Extension has been approved as to form by the Office of the  
7 Attorney General. Any further modification, change, or reformation of this AGREEMENT  
8 shall require approval as to form by the Office of the Attorney General.

**PSC / A & E**  
**AGREEMENT REVIEW TRANSMITTAL**

Date: April 26, 2010  
To: Accounting / MS-47420  
From: Consultant Services / MS-47323

Agreement Number	Supplement Number	Region / Division	Work Order
Y-9245	03	SWR	
Firm Name			
David Evans and Associates, Inc.			
Agreement Title			
I-5, Columbia River Crossing Project			

**Agreement Type:**

- ☐ Personal Service Contract  
☒ A & E

We have completed our review of the above referenced agreement in accordance with departmental Directive D 13-70 (SC) and:

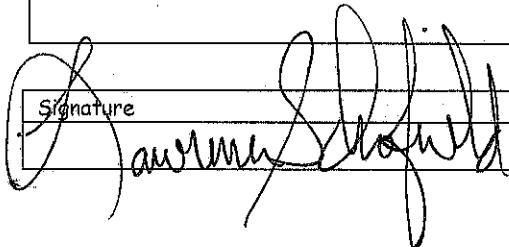
- ☒ We have no comments or recommendations for revision to the agreement. No reply required.  
☐ We request that you consider the following comments and recommendations and return the original of this form with your approval or comments.

**Initial Comments:**

**Response to Reply:**

**Reply:**

- ☐ Revisions made. (See attached.)  
☐ Comments or recommendations not incorporated because:

Signature 	Date April 26, 2010
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