

**Airfield Safety
(Signage Replacement and MagVar Update)
Contract Number C01175C17
Section 00600
Addendum Number 1**

Prospective bidders are hereby notified that the bidding documents have been amended as hereinafter set forth:

Ref.	Section and Page or Drawing	Location and Description of Change
		VOLUME 1 OF 2 Bidding Requirements and Forms General Terms and Conditions Technical & FAA Specifications Contract Drawings
1.1	Cover page 1 of 1	COVER DELETE: "Contract Drawings" <i>Contract Drawings are provided in Volume 2.</i>
1.2	§00020 page 1 of 2	INVITATION TO BID DELETE: "DBE Goal: The County has determined that DBE goal will be established for this Contract. However, the County will require that the selected Contractor report any actual DBE participation on this Contract to enable the County to accurately monitor DBE program compliance. Please see §00120 for further information." REPLACE with: "DBE Goal: The County has determined that <u>a</u> DBE goal will <u>not</u> be established for this Contract. However, the County will require that the selected Contractor report any actual DBE participation on this Contract to enable the County to accurately monitor DBE program compliance. Please see §00120 for further information."
1.3	§01010 Page 1	CONTRACT TIME DELETE ¶1.4 in its entirety.
1.4	§01014 Page 1	COMPLETION TIMES ADD paragraph 1.2.C "C. The following runway designated work, at minimum, must be completed by 8/17/17: <ol style="list-style-type: none"> 1. Owner-supplied airfield guidance sign panels (reference Runway 13, 14, 31, or 32) must be installed on existing signs in Priority 1 Areas. 2. The surface painted thermoplastic hold position signs must be either removed or blacked out (painted over) in Priority 1 Areas. 3. The runway designation markings (sheet C-671) must be painted in Priority 1 Areas.

Ref.	Section and Page or Drawing	Location and Description of Change
		The Owner will self-perform any portion of this work that the Contractor will be unable to complete by 8/17/17. The County in its sole discretion will make a determination regarding the Contractor's progress and will provide the Contractor with adequate notice."
1.5	§01150 Page 1	<p>OPERATIONAL SAFETY ON AIRPORTS</p> <p>DELETE "¶1.2, D." and;</p> <p>REPLACE with:</p> <p>"D. Approved KCIA Escort: All equipment or personnel when within active taxiway or runway safety areas must be under escort. Escort will be Airport Operations personnel or designated Contractor personnel who have completed Airport-provided airfield driver training and possess a Movement Area (Red) badge."</p>
1.6	§01150 Page 5	<p>OPERATIONAL SAFETY ON AIRPORTS</p> <p>DELETE "¶1.7, A." and;</p> <p>REPLACE with:</p> <p>"A. Identification Badging: All Contractor personnel shall have and display KCIA identification/access badges. Contractor personnel who will act as escorts must attend Airport-provided driver training, which is offered at no cost. Training is held the first and third Wednesdays of each month. Contractor will be fined for each lost badge."</p>
1.7	§L-125 Page 6	<p>INSTALLATION OF AIRPORT LIGHTING SYSTEMS</p> <p>ADD paragraph 125-4.5:</p> <p>"125-4.5 REMOVE CABLE AND CONDUIT. The portion of cable and conduit removed shall be paid per linear foot, measured in a direct line from access point to access point as directed by the Engineer."</p>
1.8	§L-125 Page 6	<p>INSTALLATION OF AIRPORT LIGHTING SYSTEMS</p> <p>ADD paragraph 125-5.5:</p> <p>"125-5.5 REMOVE CABLE AND CONDUIT. Payment will be made at the contract unit price per linear foot, for removal of cable and conduit as directed by the Engineer. This price shall include all labor, tools, equipment, disposing of materials, restoration and any incidentals necessary to remove the portion of cable and conduit to the satisfaction of the Engineer."</p>
1.9	§CSPP Page 10	<p>CONSTRUCTION SAFETY AND PHASING PLAN (CSPP)</p> <p>DELETE subparagraph (vi), and;</p> <p>REPLACE with "(vi). Required Escorts. Personnel and vehicles operating within the airfield movement areas will require Airport Operations escort or Contractor escort (individual must possess a Movement Area badge)."</p>

Ref.	Section and Page or Drawing	Location and Description of Change
		CONTRACT DRAWINGS
1.10	G-080	CONSTRUCTION SAFETY AND PHASING PLAN OVERALL DELETE: Work Area Summary – Priority 1 Areas: “RUNWAY DESIGNATED WORK COMPLETED BEFORE 8/17/17” REPLACE with: “RUNWAY DESIGNATED WORK TO BE SCHEDULED FOR EARLIEST POSSIBLE COMPLETION IN CONTRACTOR'S SCHEDULE.”
		QUESTIONS AND RESPONSES Pursuant to 00100-1.02, King County provides the following questions and responses as clarifications of the referenced Contract provisions.
1.11	§00020 page 1 of 2 Federal Funds	Q. Has federal funding been secured for this project? R. The FAA AIP grant application has been submitted and is expected to be awarded before the bid due date (per the standard FAA grant funding process).

Attached To This Addendum:

- SECTION 00120, NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, USDOT SMALL BUSINESS ENTERPRISE PROGRAM REQUIREMENTS, AND APPRENTICESHIP REQUIREMENTS, Addendum No. 1

This Addendum shall be attached to and form a part of the Contract Documents. All bidders are reminded to acknowledge this Addendum on the Form of Bid.

June 23, 2017



Trisha Roth
Contract Specialist

SECTION 00120
NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, USDOT SMALL
BUSINESS ENTERPRISE PROGRAM REQUIREMENTS, AND APPRENTICESHIP
REQUIREMENTS
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1.01 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY (EEO)

A. Nondiscrimination in Employment and Provision of Services. During performance of this Contract, the Contractor and all parties subcontracting under the authority of this Contract agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

B. Equal Employment Opportunity Efforts. The Contractor and all parties subcontracting under the authority of this Contract agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. The Contractor's equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with KCC 12.16.010.J, "equal employment opportunity efforts" shall mean active efforts to ensure equal opportunity in employment that is free from all forms of discrimination.

C. Labor Unions and Employment Referral Agencies Commitment. The Contractor shall take reasonable efforts to ensure that all labor unions or employment referral agencies furnishing workers under this Contract comply with King County Chapter 12.16. The Contractor shall notify the County promptly if a labor union or employment referral agency fails to comply with the nondiscrimination or equal employment opportunity efforts as defined by KCC 12.16. At the County's request, the Contractor shall provide documentation that evidences compliance with King County Chapter 12.16.

D. Nondiscrimination in Subcontracting Practices. During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

E. Compliance with Laws and Regulations. The Contractor and all parties subcontracting under the authority of this Contract shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. In addition, King County Code chapters 12.16, 12.17 and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this contract. The Contractor and its subcontractors shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

F. Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the American with Disabilities Act of 1990 as amended (ADA). Pursuant to Title II of the ADA, and Section 504, King County must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or

activities are carried out by contractors. The Contractor agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Contract in the same manner as King County is obligated to under Title II of the ADA, and Section 504 and shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability.

1. The Contractor agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract or agreement, as required by the disability access laws as defined by KCC 12.16; and
2. The Contractor shall not discriminate against persons with disabilities in providing the work under the Contract. In any subcontracts for the programs, activities and services under their Contract or agreement with the County, the Contractor shall include the requirement that the subcontractor provide to persons with disabilities access to programs, activities and services provided under the Contract or agreement, as required by the disability access laws as defined by KCC 12.16, that the subcontractor shall not discriminate against persons with disabilities in providing the work under the Contract and that the subcontractor shall provide that the County is a third party beneficiary to that required provision.

G. Sanctions for Violations. Any violation of the requirements of the provisions of this Section 00120 shall be a material breach of contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment, cancellation or suspension, in whole or in part, of the Contract by the County, or invoking the enforcement provisions of King County Code 12.16 that provide for penalties, liquidated damages or other remedies, and may result in ineligibility for County contracts.

H. Record-keeping Requirements and Site Visits. The County may visit, after reasonable notice, the Project Site, and Contractor and subcontractor offices to review records related to the solicitation, utilization, and payment to subcontractors and suppliers. This provision includes compliance with any other requirements of this Section. The Contractor shall provide all reasonable assistance requested by King County during such visits. The Contractor shall maintain, for at least 6 years after Final Acceptance of all work under this Contract, and permit access by the County to the following:

1. Records, including but not limited to written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payment to subcontractors and suppliers on this Contract, including but not limited to data and records related to the Contract for the purpose of monitoring, audit and investigation to determine compliance with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the Contract documents; and
2. The Contractor shall make the foregoing records available to King County for inspection and copying upon request. If this Contract involves federal funds, the Contractor shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Contract documents.

I. Assistance with the Requirements of this Section. Obtain copies of KCC 12.16, 12.17, 12.18 and 12.19 at the following link: http://www.kingcounty.gov/council/legislation/kc_code/15_Title_12.aspx. Address questions related to this Section 00120 by contacting King County Business Development and Contract

Compliance (BDCC) Section at the address below. Please include the contract number in all correspondence.

King County Department of Executive Services
 Finance and Business Operations Division
 Business Development and Contract Compliance Section
 Mail Stop: CNK-ES-0350
 401 Fifth Avenue
 Seattle, WA 98104

1.02 BIDDER'S LIST

A. In order to be responsive, Bidders must submit with their sealed bid the Bidders' List information on the form provided by the County in Section 00300. Bidders shall submit the name, address, DBE/Non-DBE status, annual gross receipts, and age of the firms bidding or quoting subcontracts on DOT-assisted projects. **Compliance with the requirement to provide the Bidders' list information is a matter of responsiveness.**

1.03 FEDERAL SMALL BUSINESS ENTERPRISE PROGRAM (JANUARY 1, 2014)

A. King County has received Federal financial assistance from the US Department of Transportation (USDOT), and as a condition of receiving this assistance, King County has established a Small Business Enterprise program to meet the maximum feasible portion of its Disadvantaged Business Enterprise (DBE) goal through race-neutral means in accordance with USDOT regulations.

B. Small Business Enterprise Program Requirements. The Small Business Enterprise (SBE) Program is an element of the USDOT DBE Program in accordance with the requirements of 49 CFR Part 26.39. As such, the requirements of this contract establish a specific percentage of participation by certified SBE firms. For this Contract the Bidder shall ensure that it subcontracts at least:

15 % of the Total Base Bid Price to Certified SBE Firms

C. SBE Participation as a Condition of Award. Certified SBE participation is a matter of bid responsiveness. Certified SBE participation shall be required as a Condition of Award and Bids will be considered non-responsive and rejected on that basis. Certified SBE participation can be counted as the prime contractor, subcontractor, manufacturer or supplier. Rules for evaluating participation and utilization of certified SBE Firms are defined in this section.

1. **Responsiveness.** Failure to satisfy the SBE Utilization Requirement shall render a bid non-responsive and the bid will be rejected. A Bidder's demonstrated commitment to utilize Certified SBE Firms at or greater than the required percentage must be demonstrated at the time of bid opening on the SBE Utilization Certification Form and cannot be cured after that time and will result in bid rejection.
2. **Compliance with SBE Utilization Requirement.** To be eligible for award of the Contract, the Bidder shall complete and submit an SBE Utilization Certification Form with the Bidder's sealed Bid for each Certified SBE Firm the Bidder commits to utilize on this Contract, and for the Bidder, if Bidder is a Certified SBE Firm and intends to self-perform work. An SBE Utilization Certification Form is located in Section 00300. Additional Copies may be made as needed. The SBE Utilization Certification Form must include all the following information:
 - a. SBE Name and OMWBE certification number;

- b. Project Role to identify the SBE participation as the prime contractor, subcontractor, supplier or manufacturer;
 - c. Description of work and/or materials supplied by the Certified SBE Firm;
 - d. Dollar amount to be applied towards the SBE Utilization Requirement; and,
 - e. Signature of the Certified SBE Firm owner or an authorized representative of the Certified SBE Firm. An authorized representative means an officer or employee of the Certified SBE Firm, who has been authorized in writing and in advance of the Bid Submittal Due Date to execute an SBE Utilization Certification Form on behalf of the Certified SBE Firm.
3. A Bidder's failure to complete the SBE Utilization Certification Form to include all information listed above cannot be cured after bid opening and will result in a non-responsive bid.
4. **Certified SBE Eligibility/SBE Selection.** A Directory of Certified SBE firms is available at: www.omwbe.wa.gov. Bidders may contact the Washington State Office of Minority and Women's Business Enterprises (OMWBE) by telephone at 360-664-9750. Only firms certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) as a Small Business Enterprise for the USDOT Federal program shall be counted toward the SBE Utilization Requirement for this contract. Bidders shall use the Directory of Certified SBE Firms to confirm if an SBE is certified by the OMWBE and can be listed on the SBE Utilization Certification Form and therefore qualifies to be counted towards the SBE Utilization Requirement.

D. Definitions. The following definitions shall apply throughout this Section 00120.

- 1. "Administrator" means the Director of Finance and Business Operations Division.
- 2. **A "Certified SBE Firm" means a business that has been certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) as a Small Business Enterprise for the USDOT Federal program.** Information on the eligibility criteria for certification as an SBE in the Federal program is available at: www.omwbe.wa.gov
- 3. "Supplier" means a business that maintains a stock of material and or equipment for sale or lease to other business entities but does not (1) manufacture the material or equipment, or (2) install, maintain, or use the material and/or equipment at or for the project.
- 4. "Manufacturer." means a business that manufactures materials or equipment for sale or lease to other entities to install, maintain or use at or for the project.

E. Evaluating & Counting Certified SBE Firm Utilization.

- 1. **A Certified SBE Firm is the Prime Bidder.** For purposes of calculating compliance with the SBE Utilization Requirement, the County will count only the work performed by a Certified SBE Firm who is a Prime Bidder for the distinct, clearly defined work performed with its own forces.
- 2. **SBE Subcontractor or Manufacturer.** A Bidder will receive 100% credit towards the SBE Utilization Requirement for work performed by a Certified SBE Firm.

3. **SBE Supplier.** A Bidder will receive 60% credit towards the SBE Utilization Requirement for the purchase of materials or supplies from a Certified SBE Firm if the firm is a Supplier of materials or supplies only.

1.04 SUBSTITUTION OF CERTIFIED SBE FIRMS IN THE USDOT FEDERAL PROGRAM

A. King County requires that any Certified SBE Firm in the USDOT Federal program listed by a Bidder on its SBE Utilization Certification Form shall be used on the Contract.

B. The Bidder or selected Contractor shall not substitute a Certified SBE Firm without the County's prior written approval. If the Bidder or selected Contractor proposes, at any time after bid opening and before Contract Execution, or at any time after Contract Execution, to substitute a Certified SBE Firm, the Bidder or selected Contractor shall provide the County with five (5) business days' prior written notice and an explanation for the SBE substitution request. Substitution of an identified Certified SBE Firm may only be made by a Bidder or the selected Contractor for the following reasons:

1. Refusal of the listed Certified SBE Firm to sign a contract with the Contractor.
2. Bankruptcy or insolvency of the listed Certified SBE Firm.
3. Inability of the listed Certified SBE Firm to perform the requirements of the proposed Contract.
4. Inability of the Certified SBE Firm to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work detailed in the Contract.
5. The listed Certified SBE Firm is barred from participating in the Project as a result of a court order or summary judgment.
6. Other unforeseen circumstances as approved by King County.

C. The County will investigate the proposed substitution request and make a determination in writing to approve or disapprove the proposed substitution. Unless waived by the County in writing for good cause, substitution, if any, shall involve the replacement of a Certified SBE Firm with another Certified SBE Firm, and the Bidder or selected Contractor shall remain in compliance with the SBE Utilization Requirement.

1. For substitutions proposed after bid opening and before Contract execution, the Contract shall not be executed unless the County approves the Bidder's substitution request.
2. The failure of a Contractor to comply with the aforementioned conditions will be considered a material breach of the Contract and subject the Contractor to Liquidated Damages in accordance with 1.07G.
3. The County shall not be responsible or liable for any costs, delays, and/or damages resulting from the County denial.

1.05 NOT USED

1.06 REQUIREMENTS DURING CONTRACT PERFORMANCE

A. **Compliance.** Contractor's compliance with the SBE Utilization Requirements is an essential part of the Contract and a material condition and requirement of the Contract. King County requires that any Certified SBE Firm listed by a Bidder on its SBE Utilization Certification Form(s) shall be used on the Contract. The County will evaluate the Contractor's compliance with the SBE Utilization Requirement against the Contract Price after Substantial Completion of the Contract for compliance with the overall utilization of Certified SBE Firms on this Contract.

B. Change Orders. If the Contract Price is increased as a result of adding additional work, the Contractor shall take all reasonable measures to ensure that Certified SBE Firms were provided an opportunity to compete and participate in the new work.

C. Evaluating Commercially Useful Function and Counting a Contractor's SBE Utilization.

1. Only Certified SBE Firms performing a commercially useful function according to custom and practice in the industry shall be counted.
 - (a) No credit will accrue for a Certified SBE Firm acting merely as a passive conduit of funds to a Non-Certified SBE Firm.
 - (b) A Certified SBE Firm may subcontract a portion of the work provided that the Certified SBE Firm having the contract is actually performing the majority of work (at least 51% of the subcontract amount).
 - a. If a Certified SBE Firm is performing at least 51% of the subcontract amount, 100% of the subcontract amount will be counted.
 - b. No credit shall accrue to a Certified SBE Firm that subcontracts more than 49% of its work.
 - (c) A Certified SBE Firm that acts as a broker in a transaction shall not count towards the Contractor's SBE Utilization Requirement.
 - a. A broker is a firm that does not, itself, perform, manage, or supervise the work of its contract or subcontract in a manner consistent with the standard and customary business practices for contractors or subcontractors in its line of business.
 - b. A Certified SBE Firm will be considered a broker if it subcontracts more than 49% of its work.
2. **Certified SBE Subcontractor or Manufacturer.** The County will count 100% of the subcontract amount for a Certified SBE Subcontractor or Manufacturer provided the Certified SBE Firm is performing a Commercially Useful Function.
3. **SBE Supplier.** The County will count 60% of the total bid dollar amount for materials supplied from a Certified SBE Firm.

D. Required Submittals During Work. The Contractor shall collect, submit and update the submittals listed below for itself, all Subcontractors and Suppliers by the 10th of each month for previous month. Such subcontractor information shall be submitted prior to the county processing and paying any progress payment that includes such subcontractor work. The BDCC Reporting Website is located at <http://www.kingcounty.gov/bdcc>. Telephone 206-263-9745 if you require assistance. Report forms are available on the Website.

1. Updated Subcontractors and Suppliers List. The Contractor shall update its Subcontractor and Supplier Lists with any changes on the Contract electronically using the BDCC Reporting Website.
2. Monthly Utilization Reports. Labor hours (EEO Monthly Reports) shall be completed each month by the Contractor for themselves and each subcontractor for the month electronically using the BDCC Reporting Website.
3. Apprenticeship Utilization Reports. When applicable, the Contractor shall submit all apprenticeship reports electronically using the BDCC Reporting Website.

4. Affidavits of Amounts Paid. The Contractor shall submit with each progress payment request, an affidavit identifying amounts earned to all firms who performed work during the period for which payment is requested.
5. Final Affidavits of Amounts Paid. Upon completion of all work and as a condition precedent to final payment, the Contractor shall upload a final Affidavit of Amounts Paid electronically using the BDCC Reporting Website. Identify amounts actually paid, and any amounts earned, to each subcontractor firm and/or supplier for work performed on this Contract. Failure to submit such affidavits may result in withholding of payments or the final payment. King County will provide affidavit forms.

E. Failure to Comply with the Federal USDOT SBE Utilization Requirements.

1. The Contractor's unexcused failure to comply with the applicable requirements of USDOT Regulations 49 CFR Part 26, and the requirements of this contract, for a specific percentage of participation by certified SBE firms in the Federal USDOT program, shall be deemed a breach of Contract. King County may impose liquidated damages, withhold progress payments, and seek any other remedy allowed by law.
2. Before imposing any liquidated damages or withholding payment, the Administrator shall first provide written notice of a potential violation to the Contractor. The Contractor shall have an opportunity to submit a written reply within fifteen (15) days from the date the Administrator's notice of a potential breach is mailed to the Contractor. The Administrator shall notify the Contractor in writing of his or her final determination.

F. Liquidated Damages.

1. The County is damaged when a contract or portion of a contract is not actually performed by a certified SBE firm in the Federal program in compliance with the requirements set forth in USDOT 49 CFR Part 26. Because the actual monetary amount of such damage is not reasonably calculable, liquidated damages equal to the dollar value of the participation by Certified SBE firms in the Federal program lost to the County due to the violation, may be imposed as provided in the Contract using the methodology set forth in 2. Below.
2. The following example is for informational purposes only:

Total contract price is \$100,000

Percentage of total contract price subject to the SBE requirement: 10%

Dollar amount of total contract price to SBE firms to meet the SBE requirement: \$10,000 ($\$100,000 \times 10\% = \$10,000$)

Actual SBE dollar amount reported: \$5,000.

Shortfall in SBE Requirement: 5%

Liquidated damages: \$100,000.00 ($\$100,000 \times 5\% = \$5,000$)

1.07 APPRENTICESHIP PROGRAM REQUIREMENTS

A. Definitions

“Administrator” means the Director of King County Office of Business Relations and Economic Development.

“Apprentice” means a person who has signed a written Apprenticeship Agreement with and enrolled in a training program approved by the Washington State Apprenticeship and Training Council, hereinafter referred to as SAC, to learn a skilled craft or trade as an Apprentice.

“Apprentice Hiring Goal(s)” means the specific goals established by the County for qualified disabled persons, economically disadvantaged youth, minorities, and women to participate as Apprentices on County public work contracts. These goals shall be expressed as an overall annual goal for all projects subject to the apprenticeship requirements.

“Apprenticeship Program” means the County’s plan for administering King County Code 12.16.150-180 and setting forth compliance requirements for apprentice utilization on selected County public work contracts.

“Apprentice Utilization Requirement” means the overall percentage of Labor Hours established for the Contract to be worked by Apprentices. This requirement is expressed as a percentage of the total Labor Hours for the Contract.

“Apprenticeship Utilization Plan” means a plan submitted to the County by the contractor that outlines how the Apprentice Utilization Requirement will be met.

“Best Efforts” means the strongest possible efforts that Contractors can reasonably make to meet the Apprentice Utilization Requirement established for each public work contract selected for participation in the Apprenticeship Program.

“Disability” means any physical or mental impairment that substantially limits one or more major life activities.

“Economically Disadvantaged Youth” means a person 18-24 years old whose annual family income is at or below the income guidelines for Federal Free or Reduced Lunch Programs, and who have significant barriers to employment, as defined by the Federal Workforce Investment Act.

“Labor Hours” means the total number of projected hours or actual hours to be worked or that have been worked by workers receiving an hourly wage who are directly employed on the site of the public works project. Labor Hours shall also include hours worked by workers employed by subcontractors on the project. Labor Hours shall not include hours worked by supervisors, professionals, or clerical workers.

“Minority or Minorities” means a person who is a citizen of the United States and who is a member of one or more of the following historically disadvantaged racial groups:

1. Black or African American: Having origins in any of the Black racial groups of Africa;
2. Hispanic: Of Mexican, Puerto Rican, Cuban, or Central or South American culture or origin;
3. Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or
4. American Indian or Alaskan Native: Having origins in any of the original peoples of North America.

“Qualified Disabled Person” means a person with a disability that, with reasonable accommodation, can perform the essential functions of the job in question.

B. Policy and General Requirements. In accordance with King County Code 12.16.150-180, which is incorporated herein by this reference, King County has established certain Apprentice Utilization Requirements for this Contract.

1. Specifically, the Contractor shall:
 - a. Utilize apprenticeship training programs registered with the Washington State Apprenticeship Training Council ("SAC").
 - b. Meet the overall Apprentice Utilization Requirement established for this Contract unless reduced pursuant to King County Code 12.16.160.
 - c. Encourage participation by all subcontractors working on the project, with distribution across trade/craft where feasible, and where approved by the County.
 - d. Ensure that Best Efforts are made to meet the specific Apprentice Utilization Requirement.
2. If the Contractor is failing to meet the Apprentice Utilization Requirement during the term of the Contract, the Contractor shall work with resource-based organizations such as the Seattle/King County Building and Construction Trades Council to identify additional sources of Apprentices.
3. Questions concerning compliance with these requirements, including utilization goals, bidding and submittal requirements, shall be directed in writing to PCSS at 401 Fifth Avenue, Third Floor, M/S CNK-ES-0340 , Seattle, Washington 98104. If appropriate, such questions may be treated as requests for interpretation and answered by addenda to the Solicitation Document.

C. Apprentice Utilization Requirement.

1. Pursuant to King County Code 12.16. 150-180, King County has established a minimum Apprentice Utilization Requirement of 15% for this Contract. (Apprentices shall work 15% of the Labor Hours for this Project). The Contractor and Subcontractors shall use Apprentices at every opportunity.
2. The Contractor shall require each of its subcontractors to comply with the requirements of the Apprenticeship Program. Each Bidder shall notify each proposed subcontractor of the Apprentice Utilization Requirement for this project. At the Bid Evaluation Conference, or upon request, the Bidder shall submit written verification from each of its proposed subcontractors that the proposed subcontractor has been notified of the Apprenticeship Program requirements. The proposed subcontractors shall also submit written statements to the Bidder that indicate whether they will use Apprentices on the project.
3. The Contractor shall ensure compliance with the apprenticeship training standards for each trade or craft that is utilized, as set forth by the Washington State Apprenticeship and Training Council (SAC).

D. Apprentice Hiring Goals.

1. Based on the degree of evidenced underrepresentation within the trades, and in accordance with the standards set forth in King County Code Section 12.16.160 (C) the County has established the following overall annual individual Apprentice Hiring Goals for qualified disabled persons, economically disadvantaged youth, minorities and women:
 - a. Qualified Disabled Persons 2% of the Apprentice Utilization Goal
 - b. Economically Disadvantaged Youth 7% of the Apprentice Utilization Goal

- c. Minorities 20% of the Apprentice Utilization Goal
- d. Women 18% of the Apprentice Utilization Goal

E. Reporting Requirements.

1. Apprenticeship Utilization Plan.

- a. The Contractor shall submit an Apprenticeship Utilization Plan to the County for approval, upon request, but no later than ten (10) days following Notice of Selection. The Apprenticeship Utilization Plan submitted by the Contractor shall demonstrate the distribution of Apprentices across the trades and crafts wherever feasible. King County may withhold progress payment from the Contractor if the plan is not approved. The Plan shall include the following elements:
 - (1) An estimate of the total contract Labor Hours by trade and craft to be worked by the Contractor and all subcontractors.
 - (2) An estimate of the total Labor Hours in each trade or craft to be worked by Apprentices and journey workers, and the anticipated dates when the work will start.
 - (3) A list that contains the names of all proposed subcontractors who will perform work on this Contract.
 - (4) Specific efforts proposed by the Contractor and all subcontractors to achieve the Apprentice Utilization Requirement.
 - (5) A rate of participation in each trade and/or craft, and an overall rate of participation that is not less than the Apprentice Utilization Requirement.
 - (6) King County encourages the Contractor to include in the Apprenticeship Utilization Plan an estimate of the projected labor hours that will be performed by qualified disabled persons, economically disadvantaged youth, minorities, and women as Apprentices.
- b. King County reserves the right to request revisions to the Contractor's Apprenticeship Utilization Plan and to withhold final approval of the plan until such time as the information contained in the plan meets the requirements of this section.

2. Apprentice Utilization Report (AUR).

- a. The Contractor shall submit to the County an AUR on a monthly basis. The Contractor shall submit the AUR by the 10th of each month to report Apprentice utilization for the previous month. The Contractor shall also submit AURs for all its sub-contractors by the 10th of the month. The County may withhold progress payments to the Contractor for failure to provide AURs as specified in this section. The Contractor shall submit all AURs electronically using King County Business Development and Contract Compliance Reporting Website. Contact the Business Development and Contract Compliance Section at 206-263-9734 for assistance with the reporting website.
- b. King County may visit at any time the work site(s) to determine the actual employment levels of Apprentices. The Contractor and the subcontractors shall provide every assistance requested by King County during such visits.

3. **Changes in the apprenticeship utilization plan or apprentice utilization requirement.** If, during the term of the Contract, the Contractor determines that it will be unable to comply with the Apprenticeship Utilization Plan or the Apprentice Utilization Requirement, the Contractor shall make a written request for a reduction or modification of the Requirement to the County consistent with King County Code Section 12.16.160(B). To the extent that the request is based upon King County Code Section 12.16.160(B) (1), the request shall include written documentation of the Contractor's Best Efforts and inability to utilize Apprentices registered with SAC. Documentation provided by the Contractor must clearly demonstrate that the requested numbers of Apprentices or candidates for apprenticeship are not available to meet the Apprentice utilization percentages.
4. **Best efforts.**
 - a. The Contractor shall ensure that Best Efforts are made to meet the Apprentice Utilization Requirement. In fulfilling the Best Efforts requirement, the Contractor shall, at a minimum, take (or, where appropriate, require its subcontractors to take) the following steps:
 - (1) Contact SAC approved program sponsors to request Apprentices and notify the sponsor that this effort is in regard to the County's Apprenticeship Program.
 - (2) If Apprentices are available, proceed with the hiring process.
 - (3) If Apprentices are not available through SAC approved program sponsors, contact other recruitment/referral agencies, including, but not limited to the Apprenticeship Opportunities Project and Seattle Vocational Institute and request such candidates for the SAC apprenticeship program. If Apprentice candidates are available through these agencies, request direct entry into the SAC approved apprentice program and, proceed with the hiring process, and provide appropriate documentation to King County.
 - (4) If direct entry of the candidate(s) into the SAC approved apprentice program is denied, request documentation of the denial from the SAC approved program. Forward this documentation to King County.
 - (5) If Apprentice candidates are not available through recruitment/referral agencies, including, but not limited to the Apprenticeship Opportunities Project and Seattle Vocational Institute, request documentation of the unavailability from the recruitment/referral agencies and pursue any other reasonable recruitment methods including, but not limited to advertising in appropriate news media. Forward documentation of contacts with recruitment/referral agencies and other efforts to recruit targeted Apprentices to King County.
 - (6) If Apprentices are not available, document the request and obtain documentation from the SAC approved program sponsor of the fact that such persons are unavailable. Forward this documentation to King County with the next monthly AUR submittal, due by the 10th of each month.
 - b. The Administrator will evaluate the request for a reduction or modification in accordance with the provisions of King County Code Section 12.16.160(B). If appropriate, the administrator shall direct that a change order be prepared by

the County reducing the Apprentice Utilization Requirement. If the Administrator determines that a reduction in the Apprentice Utilization Requirement is not justified, the Administrator shall provide a written response of its denial to the Contractor within ten (10) working days from the date of receipt of the Contractor's written request.

F. Failure to Comply with the Apprenticeship Requirements.

1. Unless otherwise determined by the Administrator, in accordance with the standards established in King County Code 12.16.150-180, failure by a Contractor to comply with the Apprenticeship Program requirements shall be deemed a breach of Contract for which the County shall be entitled to all remedies allowed by law and under this contract. In the event the Contractor and/or its subcontractors fail to comply with the Apprenticeship Program requirements, King County may withhold progress payments, assess liquidated damages, and seek any other remedy allowed by law. Failure to comply with the apprenticeship utilization requirements may be considered evidence bearing on a contractor's qualification for award of future Contracts. The Contractor may be debarred from being awarded King County contracts for a period not to exceed two years from the date of the Notice of Completion and Final Acceptance of this contract. The debarment procedures shall ensue as specified in King County Code 12.16.115. The following shall be considered in any debarment proceedings:
 - a. The Contractor's degree of compliance with the apprenticeship requirements of current and previous King County contracts.
 - b. The Contractor's Best Efforts to meet the apprenticeship requirement.
 - c. The Contractor's contacts with approved apprenticeship training programs, such as ANEW, Apprenticeship Opportunities Project, the Seattle Vocational Institute, and the Washington State Apprenticeship and Training Council.
 - d. Neither the provisions of any collective bargaining agreement, nor the failure by a labor union or referral agency with whom the contractor or subcontractor have a collective bargaining agreement, to refer workers shall excuse the contractor's obligation to comply with the Apprentice requirements established for this contract in accordance with King County Code 12.16.150-180.

G. Liquidated Damages. This Contract hereby incorporates by reference King County Code 12.16 150-180 (King County Apprenticeship Program). The unexcused failure of the Contractor or any subcontractor to comply with any of the requirements of K.C.C. 12.16 150-180 shall be a breach of contract. The purpose of King County's Apprenticeship Program is to provide the region with a well-trained work force. King County in general, and its Apprenticeship Program in particular, are damaged when Apprentice participation and training does not occur at the required levels. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages equal to the prevailing wage rate, including benefits, for 1st year general laborer Apprentice at the time of contract execution shall exist, for every short fall hour of Apprentice participation, as provided in Section 00700. This will fairly compensate King County for resulting delays in carrying out the purpose of the Apprenticeship Program, the costs of meeting utilization Requirements through additional contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation. The following example is for informational purposes only:

For this example assume the labor rate is \$20.98

Total labor hours subject the apprenticeship requirement 10,000

Total labor hours to meet the apprenticeship requirement 1,500 (10,000 X 15% = 1,500)

Actual Apprentice hours reported: 1,000.

Shortfall in Apprentice hours: 500

Liquidated damages: \$10,490.00 (500 hours X \$20.98 = \$10,490.00)

1.08 USDOT CIVIL RIGHTS REQUIREMENTS

A. This paragraph sets forth USDOT Civil Rights provisions applicable to this Contract. If any of the provisions below conflict with other provisions found herein, the provisions set forth in this paragraph control and supersede all other provisions.

B. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements USDOT may issue.

C. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying contract:

1. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor ("U.S. DOL") regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Part 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements USDOT may issue.
2. **Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)**
 - a. The Contractor's attention is called to the Equal Opportunity Clause and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth herein.
 - b. The goals and timetables for minority and female participation set by the Office of Federal Contract Compliance Programs, expressed in percentage

terms for the Contractor's aggregate work force in each construction craft and in each trade on all construction work in the covered area, are as follows:

<u>Timetable</u>	<u>Goal</u>
<u>Women - Statewide</u>	
Until further notice.....	6.9%
<u>Minorities - by Standard Metropolitan Statistical Area (SMSA)</u>	
Spokane, WA:	
SMSA Counties:	
Spokane, WA	2.8%
WA Spokane.	
Non-SMSA Counties:	
3.0%	
WA Adams; WA Asotin; WA Columbia; WA Ferry; WA Garfield; WA Lincoln, WA Pend Oreille; WA Stevens; WA Whitman.	
Richland, WA	
SMSA Counties:	
Richland Kennewick, WA	5.4%
WA Benton; WA Franklin.	
Non-SMSA Counties:	
3.6%	
WA Walla Walla.	
Yakima, WA:	
SMSA Counties:	
Yakima, WA.....	9.7%
WA Yakima.	
Non-SMSA Counties:	
7.2%	
WA Chelan; WA Douglas; WA Grant; WA Kittitas; WA Okanogan.	
Seattle, WA:	
SMSA Counties:	
Seattle Everett, WA.....	7.2%
WA King; WA Snohomish.	
Tacoma, WA.....	6.2%
WA Pierce.	
Non-SMSA Counties:	
6.1%	
WA Clallam; WA Grays Harbor; WA Island; WA Jefferson; WA Kitsap;	

WA Lewis; WA Mason; WA Pacific;
WA San Juan; WA Skagit; WA
Thurston; WA Whatcom.

Portland, OR:

SMSA Counties:

Portland, OR-WA 4.5%
WA Clark.

Non-SMSA Counties: 3.8%

WA Cowlitz; WA Klickitat; WA
Skamania; WA Wahkiakum.

- c. These goals are applicable to each nonexempt Contractor's total on-site construction workforce, regardless of whether or not part of that workforce is performing work on a Federal, or federally assisted project, contract, or subcontract until further notice. Compliance with these goals and timetables is enforced by the Office of Federal Contract Compliance Programs.
 - d. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, in each construction craft and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goal shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
 - e. The Contractor shall provide written notification to the Engineer within 10 working days of award of any construction subcontract in excess of \$10,000 or more that are Federally funded, at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
 - f. As used in this Notice, and in the contract resulting from this solicitation, the Covered Area is as designated herein.
3. **Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) - As used in these specifications:**
- a. Covered Area means the geographical area described in the solicitation from which this contract resulted;
 - b. Director means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

- c. Employer Identification Number means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
- d. Minority includes:
 - (1) Black, a person having origins in any of the Black Racial Groups of Africa.
 - (2) Hispanic, a fluent Spanish speaking, Spanish surnamed person of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish origin.
 - (3) Asian or Pacific Islander, a person having origins in any of the original peoples of the Pacific rim or the Pacific Islands, the Hawaiian Islands and Samoa.
 - (4) American Indian or Alaskan Native, a person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
- 4. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- 5. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith effort to achieve the Plan goals and timetables.
- 6. The Contractor shall implement the specific affirmative action standards provided herein. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- 7. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these

specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

8. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
9. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its action. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunity and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 9b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy

manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including

- circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
10. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of the obligations under 9a through 9p of this Paragraph 1.04B provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensure that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrate the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
11. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
12. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
13. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
14. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspensions, terminations and cancellations of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
15. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 9 of this Paragraph 1.04B, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

16. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include, for each employee, their name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, the Contractors will not be required to maintain separate records.
17. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

D. Nonsegregated Facilities. Applicable to all construction contracts and all related subcontracts of \$10,000 or more.

1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the Bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

E. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties. The apparent low Bidder, the firm designated as the second low Bidder and other firms if requested shall complete the following forms as provided by the County and submit these forms within two (2) calendar days after bid opening. The forms are located in Section 00410. The information included in these forms shall be used to determine a Bidder's

responsibility. Failure to submit the completed forms will result in a determination by the County that the Bidder is not responsible and the Contract will not be awarded to that Bidder:

1. Contractor's Compliance Statement (Executive Order No. 11246); and
2. Certification of Nonsegregated Facilities.

F. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal transit law at 49 U.S.C. 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements USDOT may issue.

G. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements USDOT may issue.

1.09 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

A. It is the policy of the DOT that the following requirements of 49 CFR Part 26 apply to this Contract.

1. **Nondiscrimination—49 CFR Part 26.** The Contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this contract or such other remedy as the King County deems appropriate.
2. **Prompt Payment.** See Section 00800.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
4. **Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, King County shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. Cancellation, termination, or suspension of the Contract, in whole or in part.
5. **Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Sponsor or the USDOT to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another

who fails or refuses to furnish this information, the Contractor shall so certify to King County or the FTA, as appropriate, and shall set forth what efforts it has made to obtain this information

6. Nondiscrimination-49 CFR Part 21. The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the contract covers a program set forth in Appendix B of the 49 CFR Part 21.

B. Incorporation of Provisions. The Contractor shall include the provisions of items 1 through 4 of Paragraph 1.10 A above in every contract including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as King County or the DOT or the USDOT may direct as a means of enforcing such provisions including sanctions for noncompliance.

1.10 DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

A. DBE Participation. King County has not established a DBE goal for this Contract. However, the County encourages the Contractor to take every effort to attain DBE participation.

B. Reporting Requirement. King County requires that the Contractor report any actual DBE participation on this Contract to enable the County to monitor DBE participation accurately and for reporting purposes.. The Contractor shall collect and submit its DBE participation data electronically using the BDCC Reporting Website. **Such information shall be submitted prior to the County processing and paying any progress payment that includes such subcontractor work. The BDCC Reporting Website is located at <http://www.kingcounty.gov/bdcc>. Telephone 206-263-9745 if you require assistance.**

C. DBE Eligibility. A DBE means a business certified as a DBE by the Washington State Office of Minority and Women's Business Enterprise ("OMWBE"). To be counted all DBE firms must be certified by OMWBE.

D. DBE Listing. A Directory of DBE firms certified OMWBE is available online at the following website address: <http://omwbe.wa.gov/directory-of-certified-firms/> or the OMWBE can be reached at 360-664-9750.

E. Counting DBE Participation. King County will count DBE participation toward its annual overall DBE goal as provided for in 49 CFR 26.55.

1. **DBE Contractor.** King County will only count the work a DBE contractor performs with its own forces as well as the work performed by DBE subcontractors, with their own work forces.
2. **Joint Venture.** When a DBE performs as a participant in a joint venture, King County will only count that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces.
3. **Commercially Useful Function.** King County will count expenditures to a DBE contractor only for DBEs who perform a commercially useful function on that contract.
 - a. DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by

actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (if applicable) and paying for the material itself.

- b. DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds is passed in order to obtain the appearance of DBE participation.
 - (1) A DBE does not perform a commercially useful function if it fails to exercise responsibility with its own work force for at least 30 percent of the total cost of its contract, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.
4. **Trucking.** Use the following factors in determining whether DBE trucking company is performing a commercially useful function:
- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for meeting the DBE goals.
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck that is used on the contract.
 - c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e. The DBE may also lease trucks from a non-DBE firm and may enter an agreement with an owner-operator who is a non-DBE. The DBE who leases trucks from a non-DBE or employs a non-DBE owner-operator is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE
 - f. In any lease or owner-operator situation, as described in subparagraphs d and e above, the following rules shall apply:
 - (1) A written lease/rental agreement on all trucks leased or rented, showing the true ownership and the terms of the rental must be submitted and approved by the Contracting Agency prior to the beginning of the work. The agreement must show the lessor's name, trucks to be leased, and the agreed upon method of payment (hour, ton, or per load). All lease agreements shall be for a long-term relationship, rather than for the individual project. Does not apply to owner-operator arrangements
 - (2) Only the vehicle (not the operator) is leased or rented. Does not apply to owner-operator arrangements.

- g. In order for DBE project goals to be credited, DBE trucking firms must be covered by a subcontract or a written agreement approved by the county prior to performing their portion of the work.
 - h. For purposes of this subparagraph 4, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
5. **Expenditures with DBEs.** Expenditures with DBEs for materials or supplies shall be counted as provided in the following:
- a. **Manufacturer.** If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - b. **Regular Dealer.** If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - (1) To be a regular dealer a firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - (2) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, as provided in this Section (5)(b), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or of the cost of the materials and supplies themselves shall be counted on a contract by contract basis.
 - (3) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
 - c. **Purchases from a DBE.** With respect to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and typical for the services rendered. No part of the cost of the materials and supplies themselves shall be counted.

1.11 DISADVANTAGED BUSINESS ENTERPRISE AND OTHER SMALL CONTRACTORS AND SUPPLIERS PARTICIPATION.

A. King County encourages Bidders to carry out the following steps to facilitate DBE and other small contractors and suppliers participation, which may be either on a direct basis in response to this solicitation or as a subcontractor to a Bidder.

1. Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) DBE and other small contractors and suppliers that have the capability to perform the work of the contract.
2. Select portions of the work to be performed by subcontractors to increase the likelihood that DBE and other small contractors and suppliers' goals will be achieved.
3. Provide interested subcontractors with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. Negotiate in good faith with interested DBEs and other small contractors and suppliers.
5. Avoid rejecting DBEs and other small contractors and suppliers as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to obtain DBE and other small business participation.
6. Make efforts to assist interested DBEs and other small contractors and suppliers in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
7. Make efforts to assist interested DBEs and other small contractors and suppliers in obtaining necessary equipment, supplies, materials, or related assistance or services.

B. Effectively use the services of available minority/women community organizations, contractors' groups, local, state, and Federal minority/women business assistance offices; Disadvantaged Business Enterprise and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs and other small contractors and suppliers.

END OF SECTION