

Bid Documents Potpourri

September 2012

Brought to you by the APWA-WA
Div. 1 and Contract Administration Subcommittees



The organization of choice in providing public works education, advocacy, expertise, and public awareness for its diverse community of members.

Tools, Rules, and Tips

New Tools

- Div. 1 committee website – non-GSP (General Special Provision) bid information/forms for download
www.apwa-wa.org/committee.aspx?id=5
- WSDOT new resources
www.wsdot.wa.gov/Business/Construction/SpecificationsAmendmentsGSPs.htm:
 - Combined amendments to date, in Word
 - Current Standard Specs w/amendments to date incorporated (tracked changes)
 - All WSDOT GSPs in one combined file for easy keyword searches

Bid Preference Law

RCW 39.04.380

- Not allowed w/federal funding
- AK, NV, NM, WY – 5% bid preference
- Cite in Bid Documents until common knowledge
- Proposal Signature Sheet – have Bidder list physical office in WA State.
- WA DES list of state reciprocity rules & specs:
<http://www.ga.wa.gov/pca/ recip.htm#> ;
<http://www.ga.wa.gov/EAS/EA-References/Instructions To Bidders-revised.pdf>

Bidding Preference. In accordance with RCW 39.04.380, effective March 30, 2012 the State of Washington is enforcing a reciprocal preference for Resident contractors. If a bid is received from a contractor who is:

- a. A Nonresident contractor (that is, at the time of bidding on a public works project, **does not have a physical office located in the State of Washington**); and
- b. From a state that provides a percentage bid preference to its resident Contractors bidding on public works contracts in that state, as shown here: <http://www.ga.wa.gov/pca/recip.htm#> ;

then a **comparable percentage disadvantage will be applied to the Total Bid** of that Nonresident contractor. The state of residence for a Nonresident contractor is the state in which the contractor is incorporated or, if not a corporation, the state where the contractor's business entity was formed. All Nonresident contractors will be evaluated for out of state bidder preference. If the state of the Nonresident contractor provides an in-state contractor preference, a comparable percentage disadvantage will be applied to their bid prior to determining the lowest responsive, responsible bidder .

If a Nonresident contractor is still the lowest responsive, responsible bidder after the Nonresident Disadvantage Total is applied, then they will be **awarded a contract in the amount of their original bid (not including the disadvantage percentage amount)**. See <http://www.ga.wa.gov/eas/PublicAgency.htm> for further explanation, if needed.

Off-site Prefab Reporting

RCW 39.04.370

- APWA GSP 1-07.9(5), based on DES guidelines
- Required for all contracts executed before Dec. 31, 2013
- Non-standard, project-specific orders made outside Washington
- “Local transportation projects” exempt
- Report on Affidavit of Wages Paid form addendum (L&I F700-164-000)

Goal:

Avoid Bid Protests, Rejected Bids

- Affect cost
- Affect schedule
- Respond to protest
- May need to re-bid
- Examples – presented throughout this workshop

General Reminders

- Always go back to original source for the latest – forms, GSPs, etc.
- Do not copy from previous projects
- Do not contradict State or Federal law
- Do not contradict Standard Specs unless you specifically delete and replace

General Reminders, cont.

- Say it once only, then just cite that location elsewhere as needed
- Cite laws & regulations rather than paraphrasing
- QC review by one person of all Bid Documents for Referential Integrity

Best Practices for Bid Forms

- Have Bidder fill in key numbers, to check compliance with mandatory criteria:
 - Contractor Registration #
 - UBI #
 - Industrial Insurance Account #
 - Employment Security Department #
 - State Excise Tax Registration #
 - DUNS #

Best Practices for Bid Forms, cont.

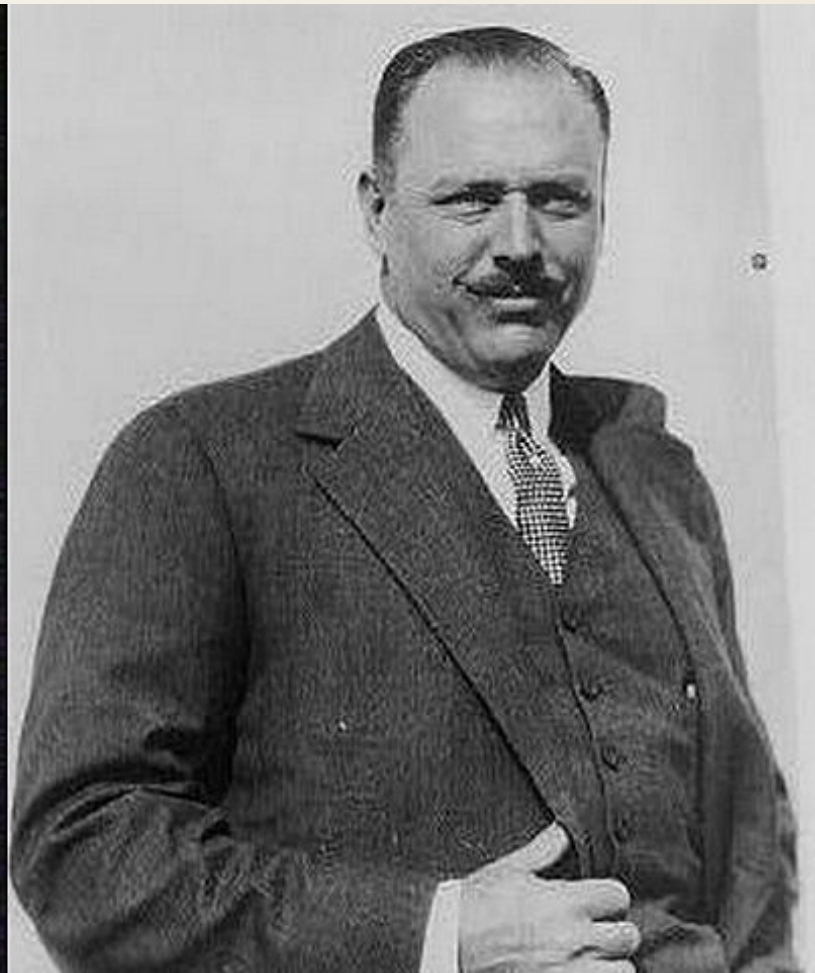
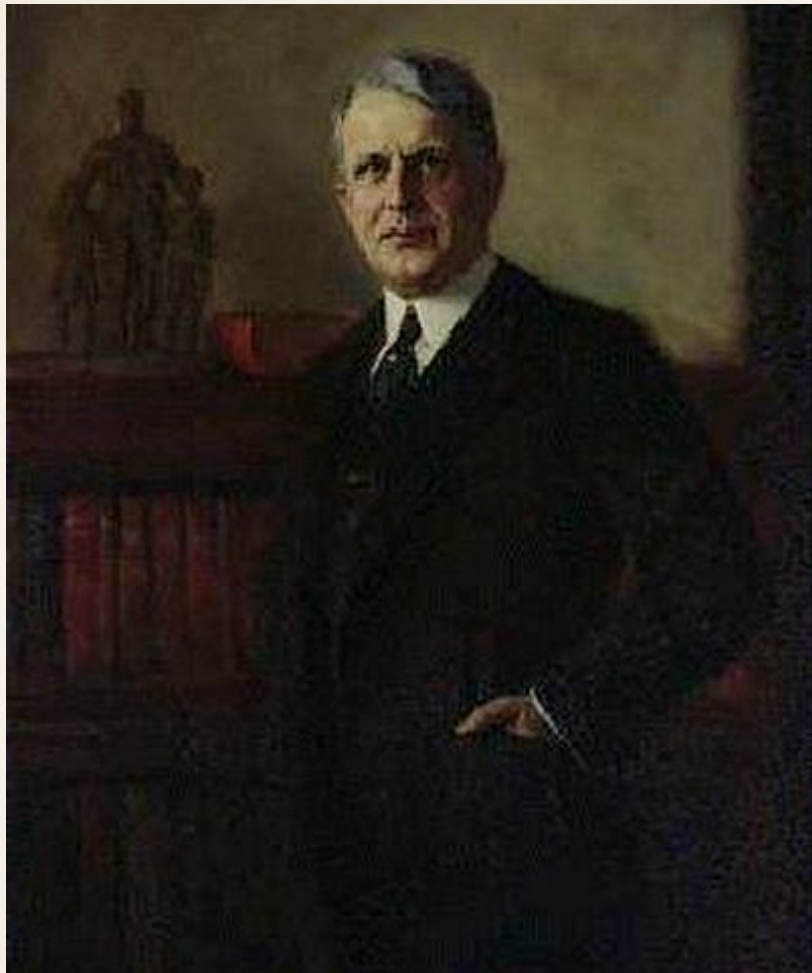
- Subcontractor's List
 - Advertisement for Bids must state if to be handed in w/bid, or up to 1 hour after opening (RCW 39.30.060)
 - Infrastructure jobs may also have electrical, plumbing, ventilation work
 - On form: Must be submitted with, and at the same time as, the Bid if HVAC, plumbing or electrical work is included in the Scope of Work.
 - Listing only subs required by law, or all subs?
- Owner-controlled Items
 - Minor Change bid item (Std Specs 1-04.4(1))
 - Force Account items

FHWA Funding Reminders

- Ad for Bids:
 - At least 3 week duration
 - Nondiscrimination paragraph – use as-is
 - State when DBE Confirmations due, when bids will be opened
- New FHWA 1273 form!
 - No WA amendment as of now
 - Informal synopsis of changes – see handout
- No retainage if you have “transportation funding”

FHWA Funding Reminders, cont.

- Additives:
 - Must use WSDPT GSP 1-02.6.OPT21.FR1 - preset order to accept additives until announced funds run out [labeled “alternate” by mistake]
 - Additives vs. Alternates
- DBE confirmation documents – Must use one of the 2 APWA GSPs:
 - Due w/bid [1-02.9 Option A]
 - Due 1, 2, or 3 hours after [1-02.9 Option B]
 - Cannot open bids until that deadline



Best Practices – Wage Rates

- State Prevailing
 - Reference? or include rates?
 - List everyone? or only applicable trades?
 - One Stop Shopping:
<http://www.wsdot.wa.gov/Design/ProjectDev/WageRates/default.htm> - scroll down, click on green 'buttons' to find wage rates, Benefit Code Key, and Supplemental rates (all 3 must go in your Bid Documents)
- Davis Bacon
 - Must include rates in Bid Documents
- Recommendation – always include actual rates in bid documents
 - No guesswork when rates change
 - All parties looking at exact same thing

APWA GSP Updates to Come

- Responsible Bidder, 1-02.14 – Options and revisions
- Insurance, 1-07.18
 - Revisiting / revising this fall / winter – If your Risk Manager wants changes considered, please send to Gretchen now
- Record Drawings – new GSP
- Surveying, 1-05.4 – revising GSP

Responsible Bidder Criteria

Responsibility vs. Responsiveness

- **Responsiveness** is determined from the contents of the bid at bid opening.
- **Bidder Responsibility** is determined after the bid opening and prior to award.

Goals for this Segment

- Enhance your understanding of RCW 39.04.010, 39.04.350, and 39.06.020 (the Bidder Responsibility statutes)
- Provide a foundation for effectively using Bidder Responsibility
- Understand changes required for bidding documents and contracts
- Avoid costly and time-consuming bid protests
- Ensure compliance with bidding laws

Supplemental Responsibility Criteria

- Criteria: May adopt relevant supplemental bidder responsibility criteria applicable to a particular project. RCW 39.04.350
- Bidding documents must include the following:
 - Supplemental criteria
 - Basis for evaluation
 - Deadline for bidder to submit additional information
 - Deadline/time limit for bidder to appeal a “not responsible” determination

Supplemental Criteria

Three 1-02.14 APWA GSPs

- Option A – Mandatory criteria only
- Option B – Std. Spec. 1-02.14, generally applicable supplemental criteria
- Option C – custom supplemental criteria
- Options B & C revised to remove confusion

APWA GSP 1-02.14

Option A, rev.

- Mandatory Criteria Only, RCW 39.04.350(1)
- Advantages:
 - Simple
 - Less chance of a protest
- Disadvantages:
 - Possible inexperienced and unqualified contractor
 - Minimal protection
 - May not be used on FHWA-funded projects

APWA GSP 1-02.14

Option B, rev.

- Generally Applicable Supplemental Criteria
- Advantages:
 - Retains some control over who may Bid
 - Follows currently accepted standards (CPARB)
www.ga.wa.gov/cparb/BidderResponsibilityGuidelines.doc
 - Measurable standards
- Disadvantages:
 - Not specific to project
 - Could be challenged in bid protest

APWA GSP 1-02.14

Option C, rev.

- Customized Supplemental Criteria
- Advantages:
 - Specific To Project. Example – Prove you have completed as Prime Contractor at least 2 projects over \$5 million, including water main at least 24-inch diam.
- Disadvantages:
 - Time consuming
 - Often more restrictive than needed
 - Limits bid pool
 - Must be approved in advance by WSDOT H&LP headquarters for FHWA-funded projects

Statement of Bidder Qualifications

- Typical Agency form used to gather additional information about the bidder
- Advantages
 - Gives general background information
 - Indicates someone is checking references
- Disadvantages
 - Does it tie into Supplemental Criteria?
 - Can't be used to disqualify bidder unless it does

Lunch



Bonds, Warranties, Guarantees

Contract Bonds

- Surety's promise to back up Contractor's promise
- Payment Bond – backs up promise to pay all workers, subcontractors, material suppliers, taxes, etc.
- Performance Bond – backs up promise to build the project in accordance with the Contract Documents

P & P Bonds

- New: Separate bonds, each for 100% of contract price – more protection, no additional cost
- Approved by:
 - APWA-WA Div. 1 committee
 - WA Cities Insurance Authority (WCIA)
 - WSDOT H&LP and FHWA
- Posted on:
 - WSDOT forms page, part of Local Agency Bid Packet
 - Word docs on Div. 1 Committee webpage

Problematic Bond Language

- Same old, same old
- Antiquated language (“bounden”)
- Limitations
 - Reduce to 25% at Final Acceptance
 - 1-year guarantee
 - Must inform or get consent of Surety for increase to contract price/change orders
- Attempting to turn Performance Bond into Maintenance Bond / Guarantee Bond

New Bonds - Provisions

- No 1-year guarantee period - limits coverage, not allowed w/Federal funding
- No requirement to inform Surety of increased contract totals (although a good idea if substantial)
- Covers new RCW 60.28 requirements w/fed funds (delete if retainage allowed)
- Show your attorney or risk manager for approval

Construction Warranties

- Three Basic Types:
 - Manufacturer's Warranties on items
 - Performance:
 - Example 1: "For a period of two years from substantial completion, Contractor will repair or replace all defects in workmanship or materials."
 - Example 2: "All landscaping plants are guaranteed to survive for a period of two years from substantial completion."
 - Installation: i.e. work conforms to contract docs, ie. "plans and specs"

Manufacturer's Warranties

- Covers purchased equipment, materials, or items
- Passed on from the Contractor to the Owner
- WSDOT Std. Spec. 1-05.10

1-05.10 Guarantees

The Contractor shall furnish to the Contracting Agency any guarantee or warranty furnished as a customary trade practice in connection with the purchase of any equipment, materials, or items incorporated into the project.

Performance Warranty Provisions

- Possible Language (Basic):

For a period of two years after substantial completion, Contractor shall return to the project and repair or replace at Contractor's sole expense all defects in materials or workmanship. This obligation is in addition to all other warranties, requirements, and remedies under the Contract Documents.

- Recommended Language – see next slide

1-05.12(1) One-Year Guarantee Period

New Section

(proposed APWA GSP; not allowed with FHWA funding)

The Contractor shall return to the project and repair or replace all defects in workmanship and material discovered within one year after Final Acceptance of the Work. The Contractor shall start work to remedy any such defects within 7 calendar days of receiving the Contracting Agency's written notice of a defect and shall complete such work within the time stated in the Contracting Agency's notice. In case of an emergency, where damage may result from delay or where loss of services may result, such corrections may be made by Contracting Agency's own forces or another contractor, in which case the cost of corrections shall be paid by the Contractor. In the event the Contractor does not accomplish corrections within the time specified, the work will be otherwise accomplished and the cost of same shall be paid by the Contractor.

When corrections of defects are made, the Contractor shall then be responsible for correcting all defects in workmanship and materials in the corrected work for one year after acceptance of the corrections by the Contracting Agency.

This guarantee is supplemental to and does not limit or affect the requirements that the Contractor's work comply with the requirements of the contract or any other legal rights or remedies of the Contracting Agency.

Effect of Final Acceptance on Warranties and Contract Obligations

Final Acceptance Does Not Waive Owner's Warranty Rights:

“Final acceptance shall not constitute acceptance of any unauthorized or defective work or material. The Contracting Agency shall not be barred from requiring the Contractor to remove, replace, repair, or dispose of any unauthorized or defective work or material or from recovering damages for any such work or material.” *WSDOT Std. Spec. 1-05.12*

Effect of Maintenance Obligations

- Maintenance bond and performance warranty, etc.
- Do not limit the Contracting Agency's other contract rights.

Maintenance Bonds

- Do you need a separate maintenance bond?
-- Probably not
- Include maintenance obligations in Contract Documents, i.e. specifications
- Simply requiring a separate maintenance bond may not suffice – it creates ambiguity in contract obligations guaranteed by payment and performance bonds.

Enforcing Performance

- **Six Year Limitations Period For Written Contracts:**
 - RCW 4.16.040, requires an action based upon a written contract to be brought within 6 years of the **breach of contract.**
 - RCW 4.16.310 is a statute of repose that requires any claim for construction defects to “accrue” within 6 years of substantial completion or termination of services whichever is later.
 - RCW 4.16.326(1)(g) [2003] requires **any action for a construction defect to be filed within 6 years of substantial completion or termination of services whichever is later.**

Limitation Periods May Not Apply to Public Owners In Some Cases

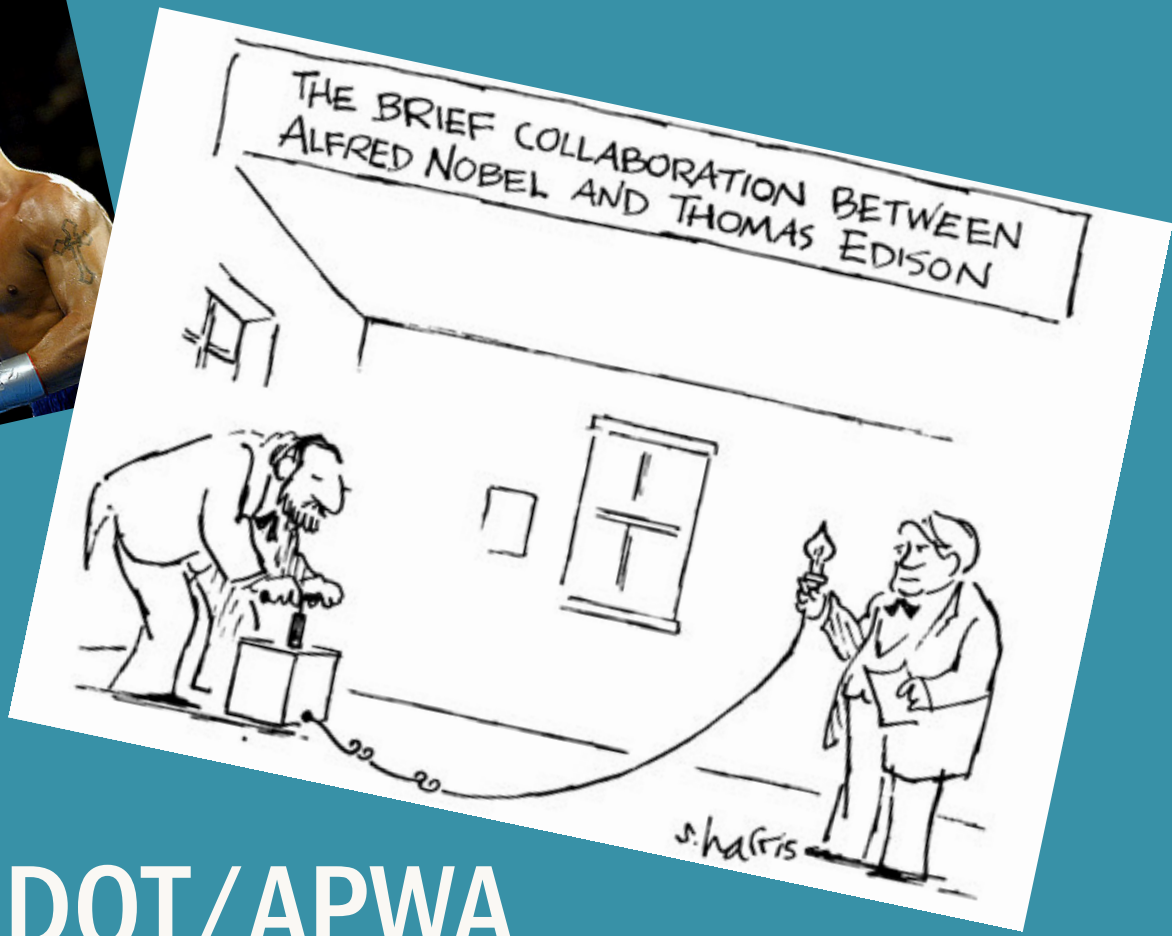
- ***Seattle Baseball v. Kiewit***, no limitations period against a public owner if the project involves a “sovereign duty.”
- Involved sovereign duty delegated by State – i.e. recreation.

Plant Establishment / Maintenance Choices

1. PSIFE – leave contract open, per Standard Specifications – 1 year, 2nd & 3rd years
2. Use the Performance Bond – “he said, she said”
3. Stop at Physical Completion (not Final Acceptance), use Agency forces to nurture and maintain (no “IFE”)
4. Separate maintenance contract with landscape-type firm – needs separate bonding

Questions for Steve Palmer, Bond Broker?





CSI vs. WSDOT/APWA

Quick Primer - General Differences

CSI	WSDOT / APWA
Geared toward Private Owner	Geared toward Public Owner
Vertical construction, w/ some site work	Infrastructure
Lump Sum bids / contracts	Unit Price bids / contracts
Div. 0-49 – set format, no content <ul style="list-style-type: none">• Boilerplate content for sale - \$\$\$\$• Boilerplate written by large agencies	Div. 0 – format by convention; content by individual agency, funding agency.
All inclusive except for AIA “General Conditions of the Construction Contract”	Div. 1-9 – format and content by WSDOT, GSPs by APWA
Writing style - Outline format	Writing style - Narrative format
Nomenclature different	

Why One Way Instead of the Other?

- Use format/content the contractor / subcontractor is most familiar with
- Match project conditions
 - Public vs. Private
 - Vertical vs. Infrastructure
 - Lump sum vs. Unit Price Bid
- Owner's mandate?
- Designers, agency departments passions (waterline example)
- Cost to convert formats, tweak content

If you Combine or Transcribe

- Format
 - Need CSI Master Format, Section Format, Page Format
- Content Issues
 - Responsibilities – Owner, Architect, Engineer, Construction Manager, Contractor
 - Measurement & Payment
 - Cross referencing
 - Other sections
 - Other published documents (WSDOT/APWA Std Specs, AIA GCs)
 - Standards (IBC, AASHTO, etc.)
 - Each setup designed to be used as a whole, so challenges if you “pick & choose”

Div. 0 – Bid & Contract Forms

- Format
 - If Local Agency , then in Information to Bidders – explain how Project Manual organized
 - If CSI format – there are pre-set sections that will work (next slide)
- Content
 - Suggest using Agency content
 - CSI content – Div. 0 also contains Div. 1 topics, so confusion

Div. 0 Sections

WSDOT / APWA	CSI
Call for Bids	00 11 13
Information and Checklist for Bidders	00 21 13
Bid Proposal	00 41 43
Bid Security	00 43 13
Non-Collusion Affidavit	00 45 19
Subcontractor List	00 43 36
Statement of Bidder's Qualifications	00 45 13
Agreement	00 52 00
Public Works Payment Bond	00 61 13.16
Performance Bond	00 61 13.13
Prevailing Wage Rates	00 43 43

Div. 1 – General Conditions

- Format
 - Best to match format of your base spec
 - Both CSI & WSDOT/APWA Standard Specifications have similar headings (see next slide)
- Content
 - Decide on base spec, & either reference or include it –
 - WSDOT/APWA Std Specs
 - AIA General Conditions of the Contract?
 - Agency specific, stand-alone (Sound Transit, etc.)
 - CSI content – Div. 0 also contains Div. 1 topics – if you did not use CSI Div. 0, pull from there as needed for Div. 1.

Div. 1 - General Conditions

CSI	WSDOT / APWA
Summary of Work	Definitions & Terms
Work Restrictions, Utilities	Bid Procedures & Conditions
Price & Payment Procedures	Award & Execution of Contract
Administrative Requirements (Submittals, Schedules)	Scope of the Work
Quality Requirements	Control of the Work
Temporary Facilities & Controls	Control of Material
Product Requirements	Legal Relations & Responsibility to the Public
Execution & Closeout Reqmts	Prosecution & Progress
Performance Requirements	Measurement & Payment
Life Cycle Activities	Temporary Traffic Control

General Conditions Compared

AIA Gen. Conditions (A201)	WSDOT/APWA Div. 1	
1. General Provisions	1-01	Definitions and Terms
2. Owner		
3. Contractor	1-02	Bid Procedures and Conditions
4. Administration of the Contract		
5. Subcontractors	1-03	Award and Execution of Contract
6. Construction by Owner or by Other Contractors	1-04	Scope of the Work
7. Changes in the Work	1-05	Control of Work
8. Time	1-06	Control of Material
9. Payments and Completion	1-07	Legal Relations and Responsibilities to the Public
10. Protection of Persons and Property	1-08	Prosecution and Progress
11. Insurance and Bonds	1-09	Measurement and Payment
12. Uncovering and Correction of Work	1-10	Temporary Traffic Control
13. Miscellaneous Provisions		
14. Termination or Suspension of the Contract		

Div. 2-x – Technical Specifications

- Format
 - Best to match format of your base spec
 - CSI & WSDOT/APWA quite different
 - If using CSI for infrastructure, don't just lump whole spec under "PART 1, General"
- Content
 - Decide on base spec, & either reference or include it
 - WSDOT/APWA Std Specs
 - CSI-based proprietary boilerplate, included in Project Manual
 - Agency specific, stand-alone (Sound Transit, etc.)
- Split format/content – may be best if separate (sub) contractors performing each portion
 - Approach roadway in WSDOT/APWA format/content
 - Building in CSI
 - Best way to not confuse cross-references and standards?

Technical Specifications (Div. 2-x)

CSI	WSDOT / APWA
Technical Specifications	Special Provisions
Stand alone, except for References	Supplementing Standard Specifications
48 Divisions	8 Divisions
More infrastructure choices than previous 16 divisions	Infrastructure only, no provision for building construction
References IBC, etc.	References AASHTO, WSDOT, etc.
Part 1 – General Part 2 – Products Part 3 - Execution (No Measurement, Payment sections)	x.1 – Description x.2 – Materials x.3 – Construction Requirements x.4 – Measurement x.5 – Payment
Can add Part 4, Measurement & Payment	Can make new sections under Div. 8, Miscellaneous

Checking and Re-checking

- Check every single cross-reference –
 - Did you use the section referenced?
 - Resolve any contradictions
- Check base or reference specs against your Special / Technical Provisions
- Check all standards referenced
 - Resolve any contradictions
- Check measurement / payment provisions



You *can* make it work

Questions?



Thank you for coming !!

Call or email us . . .

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Kibble & Prentice
A USI COMPANY

Div. 1 committee: <http://www.apwa-wa.org/committee.aspx?id=5>

APWA GSPs: <http://www.wsdot.wa.gov/partners/apwa/>

Informal Synopsis of key changes to FHWA 1273 form, from 1994 to 2012 version:

1. No more WA amendments, at least as of now – everything in the amendments now covered in new version or n/a (ARRA \$, retainage release)
2. Format/organization/nomenclature
 - a. Moved sections around within the document – so not new, but might seem new.
 - b. Under each major section, 1st ¶ states what jobs that section applies to: All, or all >\$2,000, or all > \$100k, Design-Build contracts or not, etc.
 - c. Changed “State Highway Agency” to “Contracting Agency” throughout.
3. Clearer delineation of different requirements between construction contracts vs material suppliers vs. professional service contracts (not as many requirements for them)
4. Applies to Design-Build contracts also.
5. Makes more distinctions between projects on the NHS, and other local roads where there are not as many rules/reporting/restrictions, even w/fed. funds. e.g.: may use convict labor on local roads / collectors. :)
6. Nondiscrimination, helping hand -
 - a. Women added to the nondiscrimination & recruitment rules, etc. (not just minorities)
 - b. “Good faith” efforts (a defined term), instead of “best” efforts
 - c. Increased minority/women record-keeping/reporting requirements for contractor.
 - d. Trainees – no longer requires 25% of apprentices/trainees to be in 1st year of their program. Took out a bunch of references to “helpers”, instead put them with the classifications you’ll have to ask for wage determination on a project-basis.
 - e. Added ADA requirements – contractor must provide reasonable accommodation for disabled workers unless would cause undue hardship.
7. Wages
 - a. Has always said Davis Bacon wages must be paid except on local road/rural minor collector projects. Now adds that Contracting Agencies may elect to apply Davis-Bacon to other projects.
 - b. Some of the wage rules – OT, violations penalties, withholding – now tied only to contracts > \$100k.
 - c. Contractors/subs must not include full addresses & SSNs on certified payrolls, but must keep that info. just in case. [this was in the WA amendment to FHWA 1273, so not new]
 - d. By entering into this contract, contractor certifies they are not ineligible for govt contracts under Davis Bacon Act or 29CFR.
8. Contractor must self-perform 30% of work –
 - a. can be done by employees and by leased workers (like from an employment agency), and they added rules under which this counts in the 30%.
 - b. 30% rule not required for Design-Build, although agency can impose this if they want.
9. Section VI, **RECORD OF MATERIALS, SUPPLIES, AND LABOR** -- requiring Contractor & State to maintain records on materials and supplies costs, and report using FHWA-47 -- was removed in its entirety [this was in the WA amendment to FHWA 1273, so not new – see attached FHWA memo that explains the change].