

**BASE DOCUMENT - DB 195
VERSION 1**

MAY 25, 2007

DB Section 195 - Payment

DB195.00 Scope and Limit

(a) General - The Agency will pay only for Price Centers incorporated into the Project or performed in accordance with the terms of the Contract. Price Centers listed in the Schedule of Prices do not govern payment.

Payment constitutes full compensation to Design-Builder for furnishing all Materials, Equipment, tools, labor, and Incidentals necessary to complete the Work; and for risk, loss, damage, and expense arising from the nature or prosecution of the Work or from the action of the elements, subject to the provisions of **DB General Provisions**, Subsection 170.80. Design-Builder shall include the costs of bonds and insurance for the Project in the Unit Price for each Price Item of Work to be performed.

(b) Essential or Incidental Materials or Work - When the Contract Specifications state that the Price Center Value (PCV) is compensation for certain Materials or Work essential or Incidental to the Price Center, the same Materials or Work will not be measured or paid under any other Price Center.

DB195.10 Payment for Changes in Materials Costs - All asphalt cement incorporated into the Project will be subject to price escalation/de-escalation calculated as follows, and under the following circumstances during the term of the Contract:

(a) Monthly Asphalt Cement Material Price (MACMP) - The Monthly Asphalt Cement Material Price (MACMP) applicable to the Project is the price calculated and set by the Agency. The MACMP will be posted by the Agency each month on the Agency website at:

<http://www.oregon.gov/ODOT/HWY/ESTIMATING/asphalt-fuel.shtm>

If the Agency-selected index ceases to be available for any reason, the Agency in its sole discretion will select and begin using a substitute price source or index to establish the MACMP each month. The Agency does not guarantee that asphalt cement will be available for purchase at the MACMP.

(b) Asphalt Cement Material Base Price - The base price of asphalt cement for the Project is the MACMP published on the Agency website for the month immediately preceding the Proposal due date.

(c) Monthly Asphalt Cement Adjustment Factor - The monthly asphalt cement adjustment factor will be determined each month as follows:

- If the MACMP is within $\pm 5\%$ of the base, there will be no adjustment
- If the MACMP is more than 105% of the base price, then:
adjustment factor = (MACMP) - (1.05 x base price)

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- If the MACMP is less than 95% of the base price, then:
adjustment factor = (MACMP) - (0.95 x base price)

(d) Asphalt Cement Price Adjustment – An asphalt cement escalation/de-escalation clause will be in effect during the term of the Contract. A price adjustment will be made for the items containing asphalt cement listed below. The price adjustment, as calculated above, will use the MACMP for the month the asphalt is purchased for incorporation into the Project. The price adjustment will be calculated by multiplying the volume of asphalt incorporated into the Project during the month for which payment is to be made by the adjustment factor. The total amount of asphalt subject to this price adjustment is limited to the quantity estimates reported by Design-Builder pursuant to **DB General Provisions**, Subsection 155.18. The actual quantities of asphalt incorporated during each month shall be reported by Design-Builder as a separate line item in the Progress Estimate.

The Materials for which price adjustments may be applicable are:

- Asphalt in HMAC
- Emulsified Asphalt in Fog Coat
- Asphalt in Tack Coat
- Asphalt in Emulsified Asphalt Surface Treatment
- Asphalt in Multiple Application Emulsified Asphalt Surface Treatment
- Emulsified Asphalt in Mixture
- Recycling Agent

DB195.11 Fuel Cost Price Adjustment - Fuel cost adjustments may be available in the event of fluctuations in the cost of No 2 diesel fuel used in construction Equipment (excluding pickup trucks) during the term of the Contract.

Fuel cost adjustments will be determined in the following manner:

- A Monthly Fuel Price (MFP) will be established each month. The MFP for a given month will be the average weekly price obtained from the OPIS weekly listing dated the first Monday of that month for No. 2 diesel fuel for Portland, Oregon. Prices are based solely on rack and resellers' prices exclusive of freight, taxes, and special discounts.
- The base price of fuel for the Project is the MFP for the month immediately preceding the Proposal due date
- A monthly fuel adjustment factor will be determined each month as follows:
 - If the MFP is within $\pm 25\%$ of the base price, there will be no adjustment
 - If the MFP is more than 125% of the base price, then:
adjustment factor = (MFP) - (1.25 x base price)
 - If the MFP is less than 75% of the base price, then:
adjustment factor = (MFP) - (0.75 x base price)

An adjustment (\pm) to the monthly progress payment will be made in the amount of any applicable fuel cost adjustment if the MFP applicable to the pay period differs 25% or more from the base price. This adjustment will be calculated by multiplying the product of the adjustment factor by the amount of fuel used by Design-Builder in performance of the Work

during the pay period. The quantities of fuel used during each month shall be reported by Design-Builder as a separate line-item in the Progress Estimate, supported by the Agency-provided fuel usage worksheet. Design-Builder shall either request a copy of the Agency's worksheet from the Agency PM or refer to **DB Standard Special Provisions**, SP00195.11.

If the average weekly price is not posted by OPIS or is otherwise not available to the Agency for the first Monday of any month for any reason, the Agency may, in its sole discretion, use the average weekly price posted by OPIS immediately before or after the first Monday of that month. If the average weekly prices cease to be available from OPIS for any reason, the Agency in its sole discretion will select and begin using a substitute price source or index to establish the MFP each month. The method of calculating the adjustment factor will not change regardless of a change in the price source.

DB195.12 Steel Material Price Escalation/De-Escalation Clause - For purposes of this Subsection, "Steel Material" means structural and reinforcing steel, steel studs, sheet piling, guardrail, ductile iron pipe and other steel products used for the construction, reconstruction or major renovation of a road or Highway. The steel escalation/de-escalation program applies only to Steel Material incorporated into permanent structures of the Project. This exclusive Steel Material price escalation/de-escalation clause, and the steel escalation/de-escalation program described in this Subsection, are in effect for the duration of the Contract, regardless of the quantity of Steel Material incorporated into the Project, and whether or not Design-Builder elects to participate in the steel escalation/de-escalation program established herein by complying with its terms.

(a) Steel Material Price Escalation/De-Escalation Participation - Design-Builder may elect to participate in the steel escalation/de-escalation program for the Project by submitting to the Agency PM within 45 Calendar Days from NTP a completed Form TSE (Table of Steel Escalation) indicating each item of Steel Material for which Design-Builder elects to participate in the steel escalation/de-escalation program for the term of the Contract, and the estimated quantities of each selected item. Failure to submit Form TSE shall constitute an election by Design-Builder not to participate in the program. Failure to designate any particular item, or to provide a quantity estimate for any designated item, shall constitute Design-Builder's election not to participate in the program with regard to that item.

The Agency reserves all of its rights under the Contract, including but not limited to its right to suspend the Work under **DB General Provisions**, Subsection 180.70 and its right to terminate the Contract under **DB General Provisions**, Subsection 180.90, and this Steel Material price escalation/de-escalation provision will not limit those rights.

(b) Monthly Steel Materials Value (MV) and Base Steel Materials Value (BV) - The Monthly Steel Materials Value (MV) will be established by the Agency from the IDWPUSISTEEL1 Bureau of Labor Statistics (BLS), Producer Price Indexes (PPI), using non-seasonally-adjusted indexes only. Preliminary numbers may be referenced on the IDWPUSISTEEL1 BLS PPI for six (6) months or more before IDWPUSISTEEL1 BLS PPI determines they are final numbers.

Base Steel Material Values (BVs) for the Project will be established for the month immediately preceding the Proposal due date. The Agency will only publish values on the ODOT website for use after the IDWPUSISTEEL1 BLS PPI establishes the numbers as

final numbers. The final values of MV and BV will be available at the following Agency website: <http://www.oregon.gov/ODOT/HWY/ESTIMATING/steel.shtml>

The Agency has no control over when the IDWPUSISTEEL1 BLS PPI establishes final values. The Steel Material price escalation/de-escalation adjustments may not be reflected on payments made to Design-Builder for up to two months after the applicable IDWPUSISTEEL1 BLS PPI values become final. The timing of Steel Material price escalation/de-escalation adjustments shall not constitute late payment under ORS 279C.570; nor shall the Agency be responsible for paying interest on any such Steel Material price adjustments.

If the Agency-selected index ceases to be available for any reason, the Agency in its discretion will select and begin using a substitute price source or index to establish the MV each month.

(c) Monthly Steel Materials Price Adjustment - The price adjustment calculated in accordance with this provision will use the MV for the month during which the Steel Material is incorporated into the Project, provided that the Work represented thereby has been included in the Progress Estimate. A price adjustment will only be made if the MV differs by more than 10% from the applicable BV.

Design-Builder and the Agency will agree on the total amount of Steel Materials incorporated into the Project each month. If agreement cannot be reached, the Agency will make the determination.

The Monthly Steel Materials Price Adjustment will be determined as follows:

- If the MV is within 10% ± of the BV, there will be no adjustment
- If the MV is more than 110% of the BV, then:
$$PA = (((MV-BV) \div BV) - 0.10) \times (CB \times PIP)$$
- If the MV is less than 90% of the BV, then:
$$PA = (((MV-BV) \div BV) + 0.10) \times (CB \times PIP)$$

Where:

- PA = Price Adjustment, dollars,
- MV = Monthly Steel Materials Value from the BLS PPI for the month determined above (after it becomes final),
- BV = Base Steel Materials Value from the month of the Proposal due date (after it becomes final),
- PIP = Amount paid for the item of Steel Material for the month for which the price adjustment is requested, and
- CB = Cost basis established in Form TSE for the applicable Steel Material.

(d) Payment of Price Adjustment

(1) The Agency will reimburse Design-Builder once every six (6) months upon receipt of proper documentation, as described below, a preliminary price adjustment for all Steel Materials incorporated into the permanent Structures of the Project during the six month period (“Adjustment Period”). The Agency will reconcile the price adjustment by the end

of the subsequent six-month period according to the final published IDWPUSISTEEL1 BLS PPI price data. In the event the reconciliation indicates that Design-Builder was overpaid, the Agency will deduct from the next payment due to Design-Builder the amount of the overpayment. In the event the reconciliation indicates Design-Builder was underpaid, the Agency will include in the next payment due to Design-Builder the amount remaining due.

(2) Design-Builder shall submit to the Agency PM every six (6) months during the term of the Contract Form TSEs for each month of the Adjustment Period. Each Form TSE submitted must include each type of Steel Material for which a price adjustment is sought, together with the quantity of each type of Steel Material incorporated into the permanent Structures of the Project during the month covered by the Form TSE, and the unit price paid. Each Form TSE shall be signed and certified as to accuracy by the Project Quality Manager.

DB195.20 Changes to Plans or Character of Work

(a) **Insignificant Changed Work** - If Agency-required changes in the Work do not significantly change the character or cost of the Work to be performed under the Contract, the Agency will pay for such Work at the Schedule of Prices price.

If the Work involved in the change is measured on a unit price basis and its character is not significantly changed, payment for the changed Work will be determined:

- As described in the applicable section of the **Agency-Supplied Specifications**
- If not described there, on a theoretical unit price determined by dividing Design-Builder's fixed-price for the affected Price Center by the estimated quantity of the item listed
- If neither of the above apply, the Agency will make an equitable adjustment

(b) **Significant Changed Work** - As used in this Subsection, the term "Significant Changed Work" shall apply only to that circumstance in which the character of the Work, as changed, differs materially in kind, nature, or cost from that involved or included in the original Scope of Work. If Agency-required changes in the Work significantly alter the character or fixed-price cost of the Work, the Agency will adjust the Contract Amount. The Parties shall agree upon the basis for payment and the amount of adjustment prior to Design-Builder commencing Significant Changed Work. If the basis and amount cannot be agreed upon, the Agency will make an equitable adjustment, which may increase or decrease the Contract Amount and/or Contract Time.

Notwithstanding the foregoing, any such adjustments shall not be more than the amount justified by the Agency on the basis of rates for Force Account Work, and shall exclude any loss of anticipated profits.

DB195.30 Differing Site Conditions - Upon written notification, the Agency will investigate the identified conditions. If the Agency determines that the conditions materially differ and cause an increase or decrease in the cost or justify an adjustment to Contract Time, an adjustment in Contract Amount or Contract Time, excluding loss of anticipated profits, will be made, and the Contract modified accordingly. The Agency PM will notify Design-Builder as to whether or not an adjustment of the Contract is warranted.

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No Contract adjustment which benefits Design-Builder will be allowed unless Design-Builder has provided the required written notice.

DB195.40 Unreasonable Delay by the Agency - If Design-Builder believes that performance of all or any portion of the Work is being suspended, delayed, or interrupted for an unreasonable period of time in excess of that customary in the construction industry, due to acts or omissions of the Agency or persons acting for the Agency, and that additional compensation, Contract Time, or both, are due Design-Builder because of the suspension, delay or interruption, Design-Builder shall immediately file a written notice of delay in accordance with **DB General Provisions**, Subsection 180.60. Design-Builder shall then promptly submit a properly-supported request for additional compensation, Contract Time, or both, in accordance with the applicable provisions in **DB General Provisions**, Subsections 180.60 through 180.80.

The Agency will promptly evaluate a properly-submitted request for additional compensation. If the Agency determines that the delay was unreasonable, and that the cost required for Design-Builder to perform the Contract has increased as a result of the unreasonable suspension, delay or interruption, the Agency will make an equitable adjustment, excluding profit, and modify the Contract in writing accordingly. The Agency PM will notify Design-Builder of the determination and whether an adjustment to the Contract Amount is warranted.

Under this provision, no Contract adjustment will be allowed:

- Unless Design-Builder has provided the written notice required by **DB General Provisions**, Subsection 180.60
- For costs incurred more than 10 Calendar Days before the Agency PM receives Design-Builder's properly-submitted written request
- For any portion of a delay that the Agency deems to be a reasonable delay, or for which an adjustment is provided for or excluded under other terms of the Contract
- To the extent that performance would nevertheless have been suspended, delayed or interrupted by causes other than those described in this Subsection

DB195.50 Progress Payments and Retained Amounts

(a) Required Submittals - The Agency will make progress payments only in accordance with the provisions of this Subsection and only if the following have occurred:

(1) A Progress Estimate conforming to Contract requirements has been submitted to the Agency PM and approved by the Agency.

(2) A Pay Request conforming to Contract requirements, and all required accompanying submittals, prepared in accordance with Contract requirements, have been submitted to the Agency PM.

(b) Payment Does not Constitute Acceptance - The Agency's payment of progress payments shall not be construed as Acceptance or approval of any part of the Work, and shall not relieve Design-Builder of responsibility for defective Materials or workmanship.

(c) Progress Estimates - The estimates upon which progress payments are based are not represented to be precise, and all estimated quantities are subject to correction in the final payment. If Design-Builder uses these estimates as a basis for making payments to Subcontractors, Design-Builder assumes all risk and bears any losses that result.

If the estimated amount due Design-Builder for any given month is less than \$1,000, the Agency will make no payment for that month unless requested by Design-Builder. If Work is not performed per Contract requirements, Design-Builder will not be considered to have progressed the Work beyond the previous month's level until Work is brought into compliance.

(1) Submittal of Progress Estimates – At the same time each month, the Project Quality Manager shall submit to the Agency PM for review an estimate of the amount and value of Work completed through the previous month, calculated based on the Baseline Progress Schedule and the Schedule of Prices price allocation for each activity. Sufficiently-detailed information shall be provided to support partial payment of fixed-price Price Centers. The Project Quality Manager shall verify and certify satisfactory completion of all Work being submitted for payment and that the Work complies with all quality requirements of the Contract.

Notwithstanding the foregoing, the amount of each progress payment will not exceed the reasonable value of the Work performed, as determined by the Agency. If Work is not performed per Contract requirements, payment will be suspended at the previous month's level until Work is brought into compliance.

(2) Value of Materials on Hand – Subject to the provisions of Subsection 195.60, the Agency will also make an estimate of the amount and value of acceptable Materials on hand (i.e., already delivered and stored in accordance with the requirements of this Subsection to be incorporated into the Project.

(3) Value of Work Accomplished – The sum of the values in (1) and (2) above will be collectively referred to in this Subsection as the “value of Work accomplished,” subject to (4) below.

(4) Limitations on Value of Work Accomplished – In determining the value of Work accomplished, the Agency's estimate will be based on the Schedule of Prices provided and the Work completed.

(5) Reductions to Progress Payments - With each progress payment, Design-Builder will receive a Contract payment voucher and summary setting forth the value of Work accomplished, reduced by the following:

- Amounts previously paid
- Amounts deductible or owed to the Agency for any cause specified in the Contract
- Additional amounts retained to protect the Agency's interests

(d) Retainage – The amount to be retained from progress payments shall be 2.5% of the value of Work accomplished, and shall be retained in one of the forms specified herein. If the Agency determines that satisfactory progress is not being made on the Work, the

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Agency may withhold up to 5% of the value of Work accomplished from subsequent progress payments. No retainage will be withheld from Work performed as Force Account Work.

(e) Forms of Retainage - Forms of acceptable retainage are set forth below. "Cash, Alternate A" is the Agency-preferred form of retainage. If the Agency incurs additional costs as a result of Design-Builder's election to use a form of retainage other than Cash, Alternate A, the Agency may recover such costs from Design-Builder by a reduction of the final payment.

(1) Cash, Alternate A - Retainage will be deducted from progress payments and held by the Agency until final payment is made, unless otherwise specified in the Contract.

(2) Cash, Alternate B (Interest Earned) - Upon Design-Builder's written request, the Agency will deposit the cash retainage withheld in an interest-bearing account in a bank, savings bank, trust company, or savings association for the benefit of the Agency, as provided by ORS 279C.560(4). Interest earned on the account shall accrue to Design-Builder only when Design-Builder has requested the deposit. Amounts retained and interest earned will be included in the final payment.

Any retainage withheld on Work performed by a Subcontractor shall be released to Design-Builder as provided in this Subsection.

(3) Cash, Alternate C (Retainage Surety Bond) - Upon receipt of an approved retainage Surety bond, the Agency will limit the amount of cash retainage withheld to \$10,000. The Surety bond must be in the bond form provided by the Agency. The bond must be provided by the same Surety that provides the Performance and Payment Bonds.

If Design-Builder elects this form of retainage, the Agency will withhold from progress payments up to 5% of the value of Work accomplished as cash retainage until the retained amount equals \$10,000. After that amount is retained, no further cash retainage will be withheld until the additional retainage required exceeds the face amount of the retainage Surety bond provided. Thereafter, retainage will be withheld from progress payments as provided in this Subsection.

If an acceptable retainage Surety bond is provided, Design-Builder shall notify all Subcontractors of the existence of the retainage Surety bond and shall advise them of their rights under ORS 279C.560(6).

Retainage withheld pursuant to this Subsection will be included in the final payment.

Any retainage withheld on Work performed by a Subcontractor will be released to Design-Builder as provided in this Subsection.

(4) Bonds and Securities - Design-Builder may deposit bonds or securities with the Agency or with any bank or trust company, to be held instead of cash retainage for the benefit of the Agency. In such event, the Agency will reduce the cash retainage by an amount equal to the value of the bonds and securities. Interest on the bonds and securities shall accrue to Design-Builder.

Bonds and securities deposited instead of cash retainage shall be assigned or made payable to the Agency and shall be of a kind approved by the Director of the Oregon Department of Administrative Services. Examples of approved bonds and securities acceptable in lieu of cash retainage include, but are not limited to:

- Bills, certificates, notes or bonds of the United States
- Other obligations of the United States or its agencies
- Obligations of any corporation wholly owned by the federal government
- Indebtedness of the Federal National Mortgage Association
- General obligation bonds of the State of Oregon or any political subdivision thereof
- Time certificates of deposit or savings account passbooks issued by a commercial bank, savings and loan association, or mutual savings bank, duly authorized to do business in the State
- Corporate bonds rated "A" or better by a recognized rating service
- Irrevocable letters of credit from a bank doing banking business in the State

When the Agency determines that requirements for the protection of the Agency's interest have been fulfilled, but no later than at the time final payment is made, amounts retained will be released to Design-Builder.

(f) Reduction of Retainage – As the Work progresses, the amounts to be retained are subject to reduction in the Agency's sole discretion. Retainage reductions will be considered only as follows:

When the Work is 97.5% or more completed, the Agency may, without application by Design-Builder, reduce the retained amount to 100% of the value of the Work remaining.

When a Subcontractor has satisfactorily completed all of its work, it may request release of retainage for that work from Design-Builder. Design-Builder shall request reduction of retainage in the amount withheld for the Subcontractor's work after certifying to the Agency that the Subcontractor's work is complete, and that all contractual requirements pertaining to the Subcontractor's work have been satisfied. Within 60 Calendar Days of the end of the month in which the Agency receives Design-Builder's certification regarding the Subcontractor's work, the Agency will either notify Design-Builder of any deficiencies which require completion before release of retainage, or verify that the Subcontractor's work complies with the Contract and release all retainage for that work with the next scheduled progress payment. Within 10 Calendar Days of receipt of retainage, Design-Builder shall pay to the Subcontractor all such retainage released.

The Agency will only release retainage for satisfactorily-completed portions of the Work represented by Price Centers in the Schedule of Prices, or Price Centers or unit-priced Work added by Change Order. Work not represented by a Price Center, but which constitutes part of an uncompleted Price Center, will not be regarded as satisfactorily completed Work for the purposes of this Section.

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If retainage has been reduced or eliminated, the Agency reserves the right to protect its interests by retaining amounts from further progress payments at the rates provided in this Subsection.

(g) Withholding Payments – In addition to retainage, the Agency may withhold such additional amounts from progress payments as may reasonably protect the Agency's interests until Design-Builder has:

- Complied with all orders issued by the Agency PM
- Satisfied all legal actions filed against the Agency, the Agency's governing body and its members, and Agency employees that Design-Builder is obliged to defend

Further, notwithstanding ORS 279C.555 or 279C.570, if Design-Builder is required to file certified statements confirming payment of prevailing rates of wage but fails to do so, the Agency will withhold 25% of any amount earned in accordance with the provisions of ORS 279C.800 through 870.

DB195.55 Unit Price Work - Design-Builder shall submit a summary table of quantities with each Progress Estimate indicating Work Location; item number; and description, quantity, Unit Price, and total amount due for the period covered by the Progress Estimate. Design-Builder shall attach copies of quantity measurement notes or field book entries stamped and signed by an Oregon-licensed professional engineer or surveyor assigned to Design-Builder's construction Quality Management organization. Design-Builder's Project Manager and the Project Quality Manager must sign and date the summary table.

DB195.60 Advance Allowance for Materials on Hand

(a) Conditions - If the total value of Materials on hand is at least \$1,000 or the total value of a single class of Materials on hand is at least \$500, the Agency may authorize an advance allowance for the Materials in the progress payments. The Agency will not make advance allowances on the Materials unless all of the following conditions have been satisfied:

(1) Price Center Milestone - The Materials on hand were included as a Milestone in the appropriate Price Center.

(2) Request for Advance Allowance - Design Builder submitted to the Agency PM at least five (5) Calendar Days before the pay period cutoff date a written request for advance allowance for Materials on hand, accompanied by written consent of Design-Builder's Surety.

(3) Materials Conformance Documentation - Design-Builder has the required Materials conformance and quality compliance documents on file.

(4) Condition of Storage/Stockpiling - The Materials have been delivered and/or acceptably stored or stockpiled in one of the following locations in accordance with the Agency's instructions:

- At the Project Site
- On Agency-owned property

- On property in the State of Oregon on which the property owner has authorized storage in writing (The written authorization must allow the Agency to enter upon the property and remove Materials for at least six (6) months after completion of the Project. Design-Builder has furnished a copy of the written permission to the Agency.)
- On property outside the State of Oregon on which the property owner has authorized storage in writing, provided that such storage location is authorized in writing by the Agency PM (The permit must allow the Agency to enter upon the property and remove Materials for at least six (6) months after completion of the Project. Design-Builder has furnished a copy of the written permission to the Agency.)

(5) Condition of Materials - The Materials meet all of the following conditions:

- Conform to Contract Specifications
- Are in a form ready for incorporation into the Project
- Are clearly marked and identified as being specifically fabricated, or produced, and reserved for use on the Project

(b) Responsibility for Protection – Design-Builder has full control and responsibility for the protection of Materials on hand from the elements and against damage, loss, theft, or other impairment until the entire Project has been completed and accepted by the Agency.

If Materials are damaged, lost, stolen, or otherwise impaired while stored, the monetary value advanced for them, if any, will be deducted from the next progress payment.

(c) Amount of Advance Allowance - If all conditions have been satisfied, the amount of advance allowance, less retainage, will be determined by one of the following methods at the Agency's election:

- Net cost to Design-Builder of the Materials, f.o.b. the Project Site or other approved site
- Price (or portion of it attributable to the Materials), less the cost of incorporating the Materials into the Project, as estimated by the Agency

(d) Proof of Payment - Design-Builder shall provide the Agency PM with proof of payment to the Materials suppliers for purchased Materials within 30 Calendar Days of the date of the progress payment that includes the advance allowance.

If proof of payment is not provided, sums advanced will be deducted from future progress payments, and the Agency will not approve further prepayment advance allowance requests.

(e) Terminated Contract - If the Contract is terminated, Design-Builder shall provide the Agency immediate possession of all Materials for which advance allowances have been received. If, for any reason, immediate possession of the Materials cannot be provided, or if the Agency determines that the Materials are not in satisfactory condition, Design-Builder shall immediately refund to the Agency the total amount advanced for the Materials. The Agency may deduct any amount not refunded from final payment. Design-Builder shall

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immediately remove from Agency-controlled property all such Materials upon reimbursement to Agency of amounts owed pursuant to this Subsection.

DB195.70 Payment under Terminated Contract - Payment for Work performed under a Contract that is terminated will be determined under (a) or (b) of this Subsection.

(a) Termination for Default - Upon termination of the Contract for Design-Builder's default, the Agency will make no further payment to Design-Builder. The Agency will make progress payments to the Entity to whom the Contract is assigned, but may withhold an amount sufficient to cover anticipated Agency costs, as determined by the Agency, to complete the Project.

Upon completion of the Project, the Agency will determine the total amount that the defaulting Design-Builder would have been entitled to receive under the terms of the Contract for the Work actually completed by Design-Builder, had Design-Builder completed the Work (the "Cost of the Work").

If the Cost of the Work completed by Design-Builder, less the sum of all amounts previously paid to Design-Builder, exceeds the expense incurred by the Agency in completing the Work, including without limitation expenses for additional managerial and administrative services, the Agency will pay the excess to Design-Builder, subject to the consent of Design-Builder's Surety.

If the expense incurred by the Agency in completing the Work exceeds the Contract Amount, Design-Builder or Design-Builder's Surety shall pay to the Agency the amount of the excess expense.

The Agency's determination of the expense incurred by the Agency and the total amount of Agency damage resulting from Design-Builder's default shall be final.

If a termination for default is determined by a court of competent jurisdiction to be unjustified, it shall be deemed a termination for public convenience, and payment to Design-Builder will be made as provided below.

(b) Termination for Public Convenience

(1) General - Full or partial termination of the Contract shall not relieve Design-Builder of responsibility for completed portions of the Work, or relieve Design-Builder's Surety of the obligation for any just claims arising from the completed Work.

(2) Mobilization - If mobilization is not included as an activity within a separate Price Center, but payment is otherwise allowable as a reimbursable item under the Contract, the Agency may pay Design-Builder for mobilization expenses, including moving Equipment to and from the Project Site. If allowed, payment of mobilization expenses will be based on cost documentation submitted by Design-Builder to the Agency PM.

(3) All Other Work - The Agency will pay Design-Builder at the price stipulated in the Contract for the number of Price Centers of completed, accepted Work. For Price Centers partially completed, payment will be as mutually agreed, or, if not agreed, as

the Agency determines to be fair and equitable. No claim for loss of anticipated profits will be allowed.

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(a) Final Estimate - As soon as practicable after Final Inspection, the Agency PM will prepare a final estimate of the Price Centers performed. With this estimate as a base, the total amount due Design-Builder will be determined according to the terms of the Contract, including without limitation any amounts due for Extra Work performed.

(b) Final Payment - The amount of final payment will be the difference between the total amount due Design-Builder and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

After computation of the final amount due, final payment will be mailed to Design-Builder's last known address, as shown in the records of the Agency.

Beginning 30 Calendar Days after the date of Third Notification, interest will begin to accrue at the statutory rate on any money due and payable to Design-Builder as final payment, determined as described above. No interest will be paid on money withheld due to outstanding amounts owed by Design-Builder under the provisions of **DB General Provisions**, Subsection 170.10.

(c) No Waiver of Right to Make Adjustment - The fact that the Agency has made any measurement, estimate, or certification either before or after completion of the Project, issued Final Acceptance, assumed possession of the Project Site, or paid for any part of the Work, shall not prevent either Party from any of the following:

- Showing the true amount and character of the Work
- Showing that any measurement, estimate or certification is incorrect
- Recovering from the other Party damages that may have been suffered because the other Party failed to comply with the Contract

DB195.95 Error in Final Quantities and Amounts

(a) Request for Correction of Compensation – If Design-Builder believes the amounts detailed in the final Contract payment voucher prepared by the Agency to be incorrect, Design-Builder shall submit an itemized statement to the Agency PM detailing all proposed corrections.

This statement must be submitted to the Agency PM within 90 Calendar Days from the date the voucher was mailed to Design-Builder or Design-Builder waives all rights to a claim based on errors in quantities and amounts.

(b) Acceptance or Rejection of Request

(1) Consideration of Request – The Agency will consider and investigate a properly-submitted corrected statement of compensation, and will promptly advise Design-Builder of acceptance or rejection of the request in full or in part.

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(2) Acceptance of Request - If the Agency accepts Design-Builder's request in full or in part, the Agency will prepare a post-Contract payment voucher including all accepted corrections, and will forward it to Design-Builder.

(3) Rejection of Request - If the Agency rejects the request in full, the Agency will issue a written notice of rejection and mail it to Design-Builder.

(4) Design-Builder Objection to Revised Voucher or Notice of Rejection - If Design-Builder disagrees with the revised voucher or notice of rejection of a timely-filed request, Design-Builder may request review pursuant to the procedure set forth in **DB General Provisions**, Subsection 199.40. If Design-Builder fails to submit a request for review within 30 Calendar Days after the Agency mails a post-Contract payment voucher or notice of rejection, Design-Builder waives all rights to a claim based on errors in quantities and amounts.