

## SECTION 00195 - PAYMENT

*(Follow all instructions. If there are no instructions above a subsection, paragraph, or sentence, then use the subsection, paragraph, or sentence on all projects. All other modifications to this Section will require Department of Justice approval. (See the Specification and Writing Style Manual, Chapter 3.) Remove all instructions before preparing the final document)*

Comply with Section 00195 of the Standard Specifications modified as follows:

*(Use the following subsection .10 on projects that have at least 150 tons of liquid asphalt.)*

*[ Begin subsection .10 ]*

**00195.10 Payment for Changes in Materials Costs** - Replace this subsection with the following subsection:

**00195.10 Asphalt Cement Material Price Escalation/De-escalation** - An asphalt cement escalation/de-escalation clause will be in effect during the life of the Contract.

The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision shall not limit those rights.

**(a) Monthly Asphalt Cement Material Price (MACMP)** - The Monthly Asphalt Cement Material Price (MACMP) will be established by the Agency each month and will be based on the published prices of PG 64 22 asphalt cement furnished by Poten & Partners, Inc. If no portion of the Project Site is within the boundaries of ODOT Maintenance Districts 13 or 14, the MACMP will be based on the average prices for the Pacific Northwest, Portland Oregon area. If any portion of the Project Site is located within the boundaries of ODOT Maintenance District 13 or 14, the MACMP will be based on the average prices for the Boise Idaho area. Each MACMP for a given month will be the average of the published prices for that MACMP for each Friday in that month.

For information regarding the calculation of the MACMP, and for the actual MACMP, go to the Agency website at:

[http://www.oregon.gov/ODOT/HWY/ESTIMATING/Pages/asphalt\\_fuel.aspx](http://www.oregon.gov/ODOT/HWY/ESTIMATING/Pages/asphalt_fuel.aspx)

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 MACMP each month. The MACMP will apply to all asphalt cement including but not limited to paving grade, polymer modified, and emulsified asphalts, and recycling agents. The Agency does not guarantee that asphalt cement will be available at the MACMP.

**(b) Base Asphalt Cement Material Price (Base)** - The Base asphalt cement material price for this Project is the MACMP published on the Agency website for the month immediately preceding the bid opening 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, then:

$$\text{Adjustment Factor} = (\text{MACMP}) - (1.05 \times \text{Base})$$

- If the MACMP is less than 95% of the Base, then:

$$\text{Adjustment Factor} = (\text{MACMP}) - (0.95 \times \text{Base})$$

**(d) Asphalt Cement Price Adjustment** - A price adjustment will be made for the items containing asphalt cement listed below. The price adjustment as calculated in (c) above will use the MACMP for the month the asphalt is incorporated into the Project. The price adjustment will be determined by multiplying the asphalt incorporated during the month for subject Pay Items by the Adjustment Factor.

The Pay Items for which price adjustments will be made are:

**Pay Item(s)**

*(List all pay items in which price adjustments apply. Add or delete pay items as appropriate.)*

- \_\_\_\_\_ Asphalt in \_\_\_\_\_ ACP
- Emulsified Asphalt in Fog Coat
- Emulsified Asphalt for Tack Coat
- Asphalt in Emulsified Asphalt Surface Treatment
- Asphalt in Multiple Application Emulsified Asphalt Surface Treatment
- Emulsified Asphalt in Mixture
- Recycling Agent

**[ End subsection .10 ]**

*(Use the following lead-in paragraph and subsection .11 on projects with estimated fuel usage in excess of 25,100 gallons. The estimated fuel usage is for the major items that are listed for coverage under this specification. The Fuel Escalation Worksheet is available at:*

*[http://www.oregon.gov/ODOT/HWY/ESTIMATING/Pages/manuals\\_forms\\_etc.aspx](http://www.oregon.gov/ODOT/HWY/ESTIMATING/Pages/manuals_forms_etc.aspx)*

Add the following subsection:

**[ Begin subsection .11 ]**

**00195.11 Fuel Cost Price Escalation/De-escalation** - A fuel escalation/de-escalation clause will be in effect during the life of the Contract.

The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision shall not limit those rights.

**(a) Monthly Fuel Price (MFP)** - A Monthly Fuel Price (MFP) will be established by the Agency each month. For the actual MFP, go to the Agency website at:

[http://www.oregon.gov/ODOT/HWY/ESTIMATING/Pages/asphalt\\_fuel.aspx](http://www.oregon.gov/ODOT/HWY/ESTIMATING/Pages/asphalt_fuel.aspx)

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. 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 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 discretion will select and begin using a substitute price source or index to establish the MFP each month. The Agency does not guarantee that fuel will be available at the MFP.

**(b) Base Fuel Price (Base)** - The Base fuel price for this Project is the MFP published on the Agency website for the month immediately preceding the bid opening date.

**(c) Monthly Fuel Adjustment Factor** - A Monthly Fuel Adjustment Factor will be determined each month as follows:

- If the MFP is within  $\pm 25\%$  of the Base, there will be no adjustment.
- If the MFP is more than 125% of the Base, then:

$$\text{Adjustment Factor} = (\text{MFP}) - (1.25 \times \text{Base})$$

- If the MFP is less than 75% of the Base, then:

$$\text{Adjustment Factor} = (\text{MFP}) - (0.75 \times \text{Base})$$

**(d) Fuel Price Adjustment** - A fuel price adjustment for fluctuations in the cost of fuel will apply only to the major fuel usage Pay Items shown in the following list and at the respective fuel factors listed:

*(Use the Fuel Escalation Worksheet to determine the types of work in which fuel factors apply. From the worksheet, determine all the appropriate pay items and, except for bridges and structures, list them by pay item under the "Item" column. All associated pay items for each bridge and each structure are included in individual "Bridge No." and/or "Structure No." line items. (Do not break out individual bridge or structure bid items.) List each bridge and structure*

*separately. Also include units for the fuel factor value such as xx gallons/ton, xx gallons/sq. ft) and xx gallons/cu. ft., where xx is the fuel factor.)*

| Item | Fuel Factor     |
|------|-----------------|
|      | _____ Gal/_____ |
|      | _____ Gal/_____ |

*(Use the following paragraph and list for bridges and structures. Copy and paste the list as necessary. Delete what does not apply.)*

All pay items associated with the following bridges and structures:

|                     |                   |
|---------------------|-------------------|
| Bridge No. _____    | _____ Gal/\$_____ |
| Bridge No. _____    | _____ Gal/\$_____ |
| Structure No. _____ | _____ Gal/\$_____ |
| Structure No. _____ | _____ Gal/\$_____ |

The Contractor is cautioned to consider that its operations may require more or less fuel.

A price adjustment ( $\pm$ ) to the Contractor for fuel cost changes will be made monthly if the Monthly Fuel Price differs 25% or more from the Base Fuel Price. This adjustment will be the product of the Monthly Fuel Adjustment Factor and the estimated Monthly Fuel Used. The Monthly Fuel Used will be determined by multiplying the quantities of Work accomplished during the month for subject Pay Items, by the appropriate Fuel Factors.

*(Use the Fuel Escalation Worksheet to determine fuel requirements.)*

Fuel requirements for constructing the Project have been estimated at \_\_\_\_\_ gallons, based on fuel factors shown.

If the Contractor elects to use an alternate fuel (natural gas, wood pellets, propane, or other), the estimated fuel requirements will not be revised. Fuel cost adjustments will continue to be made as specified and will not be revised.

*[ End subsection .11 ]*

*(Use the following subsections .12(a) and .12(d) when there are qualifying Pay Items to list under this subsection. The Cost Estimator/Designer will determine which items are eligible from the Steel Escalation/De-Escalation Worksheet. The worksheet is available at:*

*[http://www.oregon.gov/ODOT/HWY/ESTIMATING/Pages/manuals\\_forms\\_etc.aspx](http://www.oregon.gov/ODOT/HWY/ESTIMATING/Pages/manuals_forms_etc.aspx)*

*Fill in the table, in .12(d), with only those Pay Items which the Cost Estimator/Designer has determined are eligible from the Steel Escalation/De-Escalation Worksheet.)*

**00195.12(a) Steel Material Price Escalation/De-Escalation Participation** - Replace the paragraph that begins "The Contractor may select..." with the following paragraph:

The Contractor may select individual Pay Items to include in the steel escalation/de-escalation program from those Pay Items listed for this Project under 00195.12(d) by following the directions provided in 00195.12(d). The Contractor is not obligated to select any Pay Items. Before or within seven Calendar Days after the date of the preconstruction conference, the Contractor shall submit in writing to the Project Manager the Pay Items selected by the Contractor to be included in the steel escalation/de-escalation program, in the manner required under 00195.12(d). If the Contractor elects to not participate in the steel escalation/de-escalation program for the Project, no response from the Contractor is required. If the Contractor fails to inform the Project Manager of Pay Items to include in the steel escalation/de-escalation program in the manner and within the time limits stated in 00195.12(d) (or the Contractor otherwise elects not to participate in the program), the Contractor thereby elects not to participate in the program and forfeits all present and future rights to participate in the program for this Project.

**00195.12(d) Steel Materials Pay Item Selection** - Add the following to the end of this subsection:

If the Contractor elects not to participate in the steel escalation/de-escalation program for this Project, no response from the Contractor is required.

The Contractor may elect to participate in the steel escalation/de-escalation program for this Project under 00195.12 through 00195.12(d) by marking each check box for each Pay Item in the list below the Contractor is selecting for participation in the program. The completed list must be submitted in writing, signed and dated by the Contractor, to the Project Manager before or within seven Calendar Days after the date of the preconstruction conference.

| <b>PARTICIPATE</b>       | <b>PAY ITEM DESCRIPTION</b>        | <b>COST BASIS (CB)</b>  |
|--------------------------|------------------------------------|-------------------------|
| <input type="checkbox"/> | Pay Item Name (from the Worksheet) | CB (from the Worksheet) |
| <input type="checkbox"/> | Pay Item Name (from the Worksheet) | CB (from the Worksheet) |
| <input type="checkbox"/> | Pay Item Name (from the Worksheet) | CB (from the Worksheet) |
| <input type="checkbox"/> | Pay Item Name (from the Worksheet) | CB (from the Worksheet) |

*(Copy and paste the above list to add additional items.)*

Regardless of the number of Pay Items listed by the Agency or selected by the Contractor, or if no Pay Items qualify for the steel escalation/de-escalation program for this Project or the Contractor elects not to participate in the steel escalation/de-escalation program for this Project, the steel price escalation/de-escalation clause (and program) contained in 00195.12 through 00195.12(d) are included in this Contract and are the only steel price escalation/de-escalation clause (and program) that apply to this Contract.

\_\_\_\_\_  
Contractor's Signature

\_\_\_\_\_  
Date

*(Use the following subsection .12(d) on projects which do not have any qualifying Pay Items. Do not use this subsection when using the subsection 00195.12(d) above.)*

**00195.12(d) Steel Materials Pay Item Selection** - Add the following paragraph to the end of this subsection:

No Pay Items under this Contract qualify for the steel escalation/de-escalation program for this Project.

**00195.60(a-2) Stored or Stockpiled Conditions** - In the paragraph that begins "To be eligible...", replace the bullet that begins "Be in a form ready..." with the following bullet:

- Be in a form ready for incorporation into the permanent Work; and