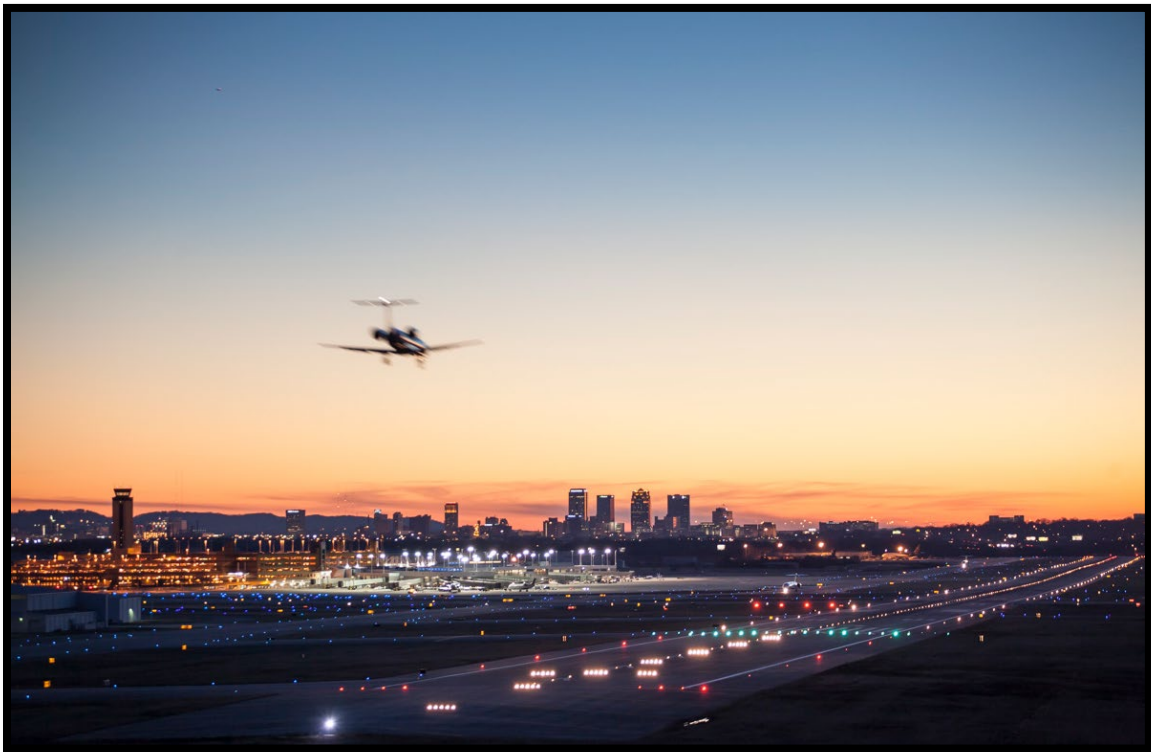


Request for Qualifications (RFQ)
Civil Engineering Services: Runway 24 Approach End Pavement
Strengthening Design



Birmingham Airport Authority
February 2025

I. Introduction

A. Project Description

The Birmingham Airport Authority (BAA) is soliciting Statements of Qualifications (SOQ) and Project Proposals from qualified engineering firms (firms) to perform civil engineering services for the preliminary investigation, design, and bidding phases for the following project at the Birmingham-Shuttlesworth International Airport (BHM):

- Runway 24 Approach End Pavement Strengthening

See Exhibit A for approximate project limits.

The selected firm shall be obligated to perform the necessary work through completion of construction and the closeout process for the project. This project is anticipated to receive an Airport Improvement Program (AIP) grant from the Federal Aviation Administration (FAA). The selected firm will need to be familiar with the process and required documentation associated with the AIP grant process. This includes, but is not limited to, FAA grant assurances, FAA airport design and construction standards, 14 Code of Federal Regulations (CFR) Part 77 airspace requirements, as well as familiarization with other FAA Orders, Advisory Circulars (AC), and the National Environmental Policy Act (NEPA) process.

B. Project Background

The Birmingham-Shuttlesworth International Airport (BHM) serves over 3 million passengers annually. With a 2023 operating revenue of approximately \$58 million, BHM is responsible for nearly 2,400 acres of airport property, which over 1,000 acres within the AOA fence line. The airport also currently maintains close to 90 pieces of maintenance equipment for the facilities, including one MB Multi-Tasking Snow Removal Vehicle with a 22-foot reversible plow and heavy-duty four-wheel drive Chassis.

BHM continues to experience operational growth and has recently welcomed Kuehne + Nagel International AG (K+N) as its third air cargo partner, following the commissioning of a second air cargo facility. K+N is currently operating one flight per week on a 747 freighter. BHM is also currently served by five major airlines.

BHM has two intersecting airline transport category runways: Runway 6/24 and Runway 18/36. Runway 6/24, constructed in the 1950's and extended most recently in 2007 to a total length of 12,007 feet, is the primary and critical runway. Runway 18/36 is the crosswind or secondary runway, with a total length of 7,100 feet.

Runway 24 Approach End Pavement Strengthening

Recent subsurface and geotechnical analysis noted that a portion (roughly 2,000 linear feet) of the Runway 24 approach end needs to be strengthened to extend its useful life. As part of this project, we anticipate a temporary threshold relocation, providing daytime construction flexibility that will allow continuous and timely work on the pavement, while maintaining airport operations. Once the work is complete, the runway threshold will be re-established, providing aircraft operators with the full 12,000 feet of runway offered at BHM.

Environmental: Per the JAN ADO, this project qualifies for a Simple Written Record Categorical Exclusion under FAA Order 1050.F sec5-6.4e.

The proposed project would include civil engineering services for the preliminary, design, and bidding phases to improve the strength of the approach end of Runway 24 at BHM.

The BAA's goal is to design bid ready construction plans in 2025 and construct in 2026.

II. Scope of Services

A. Goals

- i. To enter into a contract with the most qualified engineering firm for professional services to perform the scope of work.
- ii. To provide professional services to design the proposed project in FY 2025.

B. Anticipated Project Elements

The anticipated project element necessary phases to successfully execute the proposed project are listed below. These are subject to change based on actual project needs determination.

Preliminary Phase: This phase involves those activities required for defining the scope of a project and establishing preliminary requirements. Some examples of activities within this phase of a project include, but are not limited to:

- i. Coordinating with the sponsor on project scope requirements, finances, schedules, operational safety and phasing considerations, site access and other pertinent matters.
- ii. As applicable, coordinating project with local FAA personnel and other interested stakeholders to identify potential impacts to their operations.
- iii. Planning, procuring, and/or preparing necessary surveys, geotechnical, engineering investigations, field investigations, and architectural and engineering studies required for design considerations.
- iv. Developing design schematics, sketches, environmental and aesthetic considerations, project recommendations, and preliminary layouts and cost estimates.

Design Phase: This phase includes all activities required to undertake and accomplish a full and complete project design. Examples include, but are not limited to, those below:

- i. Conducting and attending meetings and design conferences to obtain information and to coordinate or resolve design matters.
- ii. Collecting engineering data and undertaking field investigations; performing geotechnical engineering studies; and performing architectural, engineering, and special environmental studies.
- iii. Preparing necessary engineering reports and recommendations.
- iv. Preparing detailed plans, specifications, cost estimates, and design/construction schedules.
- v. Preparing Construction Safety and Phasing Plan (CSPP).
- vi. Printing and providing necessary copies of engineering drawings and contract specifications.

Bidding and Negotiation Phase: These activities are sometimes considered part of the construction phase. They involve assisting the sponsor in advertising and securing bids, negotiating for services, analyzing bid results, furnishing recommendations on the award of contracts, and preparing contract documents.

III. Submittal Requirements

A. Selection Process

This qualification-based selection process shall be in accordance with FAA Advisory Circular 150/5100-14E, *Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects*.

Award of this project would not preclude the awarded firm from future planning, environmental, design and/or construction services award with BAA. This applies to both prime firms and subconsultants.

A Statement of Qualifications (SOQ) and Project Proposal will be solicited from all interested firms. The SOQ will allow the opportunity to provide data relating to the experience and qualifications of the interested firm as it relates to the proposed project. The Project Proposal will include information to illustrate the firm's category understanding, approach, and project management / communication plan.

Firms may be interviewed. However, BAA reserves the right to select the highest ranked consultant based solely upon submittals if sufficient information is included in the SOQ and project proposals.

B. Statement of Qualifications / Project Proposal

Please submit five (5) hard copies and one (1) electronic copy of your SOQ and Project Proposal submittal to the address below.

Contact: Ed Seoane, VP of Purchasing

E-mail: eseoane@flybhm.com

Address: Birmingham Airport Authority Receiving Warehouse
5500 Airline Drive
Birmingham, AL 35212

Hard copies may be shipped via U.S. Postal Service or any other reputable courier service (e.g., Federal Express, UPS, etc.). The electronic copy must be included with the hard copies via a USB flash drive. Deliveries can also be made in-person to the BAA Office located on the ground level of the Terminal Building (located at the above address).

All questions associated with this RFQ must be submitted in writing via e-mail to Ed Seoane at eseoane@flybhm.com by the deadline identified for questions/clarifications (see timeline). Questions related to the RFQ directed to any other BAA personnel may be grounds for disqualification.

C. Statement of Qualifications / Project Proposal Format

Respondent's SOQ and Project Proposal shall be submitted together as one submittal no longer than thirty (30) total pages of content (not including back / front cover, tabs / dividers, cover letter, or table of contents). Each page must not be larger than 8.5" x 11".

D. Statement of Qualifications Section Requirements

The SOQ portion of the submittal must include the following sections:

- i. **Firm Overview and Capability to Perform All Aspects of the Project:** Detail the overall structure of the firm and any unique operating characteristics that may

enhance the project's overall success. This should include but is not limited to: information such as relevant services provided by firm, office locations, and total number of employees providing relevant services.

- ii. **Recent Company Experience in Relevant Projects:** Discuss relevant services completed at other comparable airports within the past five (5) years. This should include, but is not limited to: project location, start and completion date, description, outcome, quality, and applicability to BAA's proposed project. Identify the firm's role as either a prime or subconsultant and specific contribution to the project. A point of contact for the project's sponsor must also be included. References may be contacted, as necessary.
- iii. **Personnel Qualifications:** Discuss the professional qualifications and relevant experience for key members of the project team (including sub consultants). Include how specific team members will contribute to the project's overall success. Provide organizational chart depicting project manager, deputy project manager, and other project team members in their respective roles. Workload of project manager must also be identified.
- iv. **Project Partners and DBE Goal Requirements:** Discuss any subconsultants intended to be included on the project team, if any. Detail their expected contribution to the project and, if applicable, number of projects the prime consultant and subconsultant have previously completed or are nearing completion. Provide a brief explanation of the project team's ability to meet DBE goal requirements. The form in Exhibit B must be filled out and included in the SOQ.

E. [Project Proposal Section Requirements](#)

The Project Proposal portion of the submittal must include the following sections:

- i. **Project Approach:** Discuss the Scope of Services and how the firm will provide the desired services. Identify any potential challenges the firm anticipates during the project. Identify and mitigate elements, if any, to minimize effects on airport users and operations for the duration of desired sustainability studies.
- ii. **Project Management / Communication Plan:** Discuss any relevant information which would detail how the firm would manage the project process including, but not limited to, scope of work development, budget, and methodology of baseline analysis. Prepare a proposed project schedule including major tasks and target completion dates. Additionally, identify the firm's plan for communication throughout the project to BAA.

F. [Statement of Qualifications / Project Proposal Evaluation Criteria](#)

SOQs and Project Proposals will be evaluated and scored on a scale of 0 (lowest) to 100 (highest). In the event SOQs and Project Proposals are not considered sufficient to determine the highest ranked firms for either project, interviews will be conducted with up to the three (3) highest ranked firms. Additional interview scoring criteria will be provided in advance of the interview date, if necessary. Each criterion and its portion of the maximum scoring value is listed below: Each criterion and its portion of the maximum scoring value is listed below:

1. Firm’s capability to perform all aspects of the project 20/100
2. Firm’s recent experience in relevant projects 15/100
3. Firm’s demonstration of personnel qualifications 10/100
4. Firm’s commitment to the DBE Goal 5/100
5. Firm’s proposed approach to the project 25/100
6. Firm’s proposed project management plan 15/100
7. Firm’s proposed communication plan 10/100

Note: Firms which meet or exceed the DBE goal will be awarded the five (5) point total. Firms below the DBE goal will be awarded zero (0) points. Firms not currently certified through the Alabama Unified Certification Program cannot count towards the DBE goal. Appendix B contains the required DBE participation certification which must be included in all SOQs.

G. **Tentative RFQ Timeline**

All deadlines are by 2:00 P.M. Central Time on each respective date. Any late submittals will not be accepted and immediately returned. There will be no deadline extensions in the event of inclement weather delays.

RFQ Posted	February 13, 2025
Pre-Submittal Meeting	February 20, 2025 (2:00 p.m. central)
Deadline for SOQ Questions/Clarifications	March 06, 2025
SOQ Deadline	March 13, 2025 (2:00 p.m. central)
Recommendation to Award	June-July 2025

H. **Pre-Submittal Meeting**

A **non-mandatory** pre-submittal meeting is scheduled for **Thursday, February 20, 2025, at 2:00 P.M.** (Central Time) via Zoom. This meeting is non-mandatory, but attendance is strongly encouraged. All attendees who plan to attend the meeting must RSVP to Ed Seone at eseoane@flybhm.com by 2:00 P.M. Central Time Tuesday, February 18th, 2025. Access to the Zoom meeting will be provided after the RSVP deadline.

No site visits will be permitted for this RFQ.

IV. **Disadvantage Business Enterprise (DBE) Assurances**

A. **Policy**

It is the policy of the BAA (Owner) that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole, in part, or without federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

B. DBE Obligation

The Owner's DBE participation goal for this project is **fourteen (14) percent**. In all cases, those who wish to do business with the Owner should demonstrate sensitivity to the plight of our certified DBEs and be willing to assist the DBEs to overcome barriers to competition. The Engineer agrees to ensure that DBEs and other small businesses, as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with or without federal funds. This includes the maximum opportunity to compete and perform under any contract associated with this Agreement. The Respondent/Engineer shall not discriminate based on race, color, national origin, or sex, in the award and performance of contracts, especially that DOT assisted. The Respondent/Engineer shall carry out applicable requirements or 49 CFR Part 26 and especially 49 CFR Part 26.13 (b), which is set forth in the following:

49 CFR PART 26 – SECTION 26.13 (b). Respondent/Engineer's Assurance

The Respondent/Engineer, sub recipient or sub-consultant, shall not discriminate based on race, color, national origin, or sex, in the performance of 49 CFR Part 26 in the award and administration of DOT – Assisted contracts.

Failure by the Respondent/Engineer to carry out these requirements is a material breach of this AGREEMENT entitling Owner to terminate this AGREEMENT or exercise any such other remedy, as the Owner deems appropriate.

V. Civil Rights Assurances

NONDISCRIMINATION REQUIREMENTS

Federal Aviation Administration Required Provisions

- A. **Civil Rights – General.** Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Contractor transfers its obligation to another, the transferee is obligated in the same manner as Contractor.

This provision obligates Contractor for the period during which the BAA remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. **Civil Rights – Title VI Assurances – Compliance with Nondiscrimination Requirements.**

1. **Compliance with Regulations:** Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Contractor for work to be

performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the BAA or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the BAA or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Contractor's noncompliance with the non-discrimination provisions of this contract, the BAA will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - (a) Withholding payments to Contractor under the Agreement until Contractor complies; and/or
 - (b) Cancelling, terminating or suspending the Agreement, in whole or in part.
6. **Incorporation of Provisions:** Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the BAA or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, BAA may request Contractor to enter into any litigation to protect the interests of the BAA. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.
7. **Civil Rights – Title VI Clauses for Use/Access to Real Property.** Contractor for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Airport, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Contractor will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Acts And Authorities in Paragraph C below.

In the event of breach of any of the above nondiscrimination covenants, the BAA will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.

- C. **Title VI List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
 1. **Title VI of the Civil Rights Act of 1964** (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

2. **49 CFR part 21** (Non-discrimination in Federally-assisted programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964);
 3. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970** (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 4. **Section 504 of the Rehabilitation Act of 1973** (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 5. **The Age Discrimination Act of 1975**, as amended (42 USC § 6101 *et seq.*), (prohibits discrimination on the basis of age);
 6. **Airport and Airway Improvement Act of 1982** (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
 7. **The Civil Rights Restoration Act of 1987** (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 8. **Titles II and III of the Americans with Disabilities Act of 1990**, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
 9. **The Federal Aviation Administration’s Nondiscrimination statute** (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 10. **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 11. **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency**, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 12. **Title IX of the Education Amendments of 1972**, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).
- D. **DBE.** Contractor acknowledges that the provisions of 49 CFR, Part 23, Disadvantaged Business Enterprises ("DBE"), as such regulations may be amended, and such other similar regulations as may be enacted, may be applicable to the activities of Contractor at the Airport, unless exempted by said regulations, and by choosing to operate at the Airport, Contractor shall be deemed to have agreed to comply with the regulatory agencies, in reference thereto. These requirements may include, but not be limited to, compliance with DBE participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if so directed, the contracting of specified percentages of goods and services

contracts to DBEs.

VI. Additional Information

The Birmingham Airport Authority reserves the right to accept or reject any or all proposals; or re-advertise for proposals for the benefit of the BAA. Any proposal that is submitted incomplete, obscure, or contains errors or discrepancies may be cause for rejection.

The SOQ / Project Proposal submittal shall not include any cost information, such as total cost, cost per hour, work hours, or other pricing data. Any cost information will result in the disqualification of the proposal. Fees will be negotiated with the highest ranked consultant following selection for the project.

BAA is not liable for any cost incurred by the consultant for the preparation of the SOQ / Project Proposal submittal, or, if deemed necessary, interview.

Additionally, the BAA reserves the right to pursue or not pursue the projects described in this RFQ at the discretion of the BAA. The project is subject to federal funding being available.

Federal provisions shall be required for this project. Please review all applicable federal provisions for professional services in Exhibit C. These provisions shall be included in the contract with the selected firm.

Exhibit A

Project Limits

Exhibit B

DBE Participation Certification

I. DBE Participation Certification

The following form is required to be completed and attached to the submittal. Failure to submit this form may be grounds for disqualification. Only firms certified as Disadvantaged Business Enterprises through the Alabama Unified Certification Program are eligible to be counted towards the DBE utilization for this Project. Inclusion of this form does not count towards the total page limit.

Proposed DBE Utilization		
Prime Firm:		
Project:		
DBE Firm Name	Role in Project	Percent of Project Team
		%
		%
		%
		%
		%
		%
		%
		%
		%
		%
Total DBE Utilization:		%



Bid Opportunity List

Please furnish the following subcontracting information for ALL bidders/quoters/proposers. This information must also be included in your bid or proposal package.

Prime Contractor/Consultant: _____

Bid/Proposal/Task Number: _____

Bid/Proposal/Task Name: _____

49 CFR Part 26.11 requires the Birmingham Airport Authority to develop and maintain a Bidders List/Participant List. This list is intended to be a listing of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and materials supplies on DOT- assisted projects, including DBEs and Non-DBEs. For consulting companies this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific DOT assisted project . Prime contractors and consultants must fill in the information below and should provide any additional information if needed .

Prime Contractor/Consultant

Firm Name _____

Address _____

State & Zip Code _____

Firm Status Non-DBE Gender

DBE ACDBE Female

SBE MBE/WBE Male

Firm's Age _____

Annual Gross Receipts

- Less than \$1 million
- Between \$1 - \$3 million
- Between \$3 - \$6 million
- Between \$6 - \$10 million
- Greater than \$10 million

Ethnicity

- Asian Pacific American
- Black American
- Hispanic America
- Native America
- Subcontinental Asian America
- Other

Subcontracts/Consultant

Firm Name _____

Address _____

State & Zip Code _____

NACIS Code(s): _____

Work Performed on contract:

Firm's Age _____

Annual Gross Receipts

- Less than \$1 million
- Between \$1 - \$3 million
- Between \$3 - \$6 million
- Between \$6 - \$10 million
- Greater than \$10 million

Gender / Ethnicity

- Female
- Male
- Asian Pacific American
- Black American
- Hispanic America
- Native America
- Subcontinental Asian America
- Other

Firm Status Non-DBE

- DBE ACDBE
- SBE MBE/WBE

Subcontracts/Consultant

Firm Name _____

Address _____

State & Zip Code _____

NACIS Code(s): _____

Work Performed on contract:

Firm's Age _____

Annual Gross Receipts

- Less than \$1 million
- Between \$1 - \$3 million
- Between \$3 - \$6 million
- Between \$6 - \$10 million
- Greater than \$10 million

Gender / Ethnicity

- Female
- Male
- Asian Pacific American
- Black American
- Hispanic America
- Native America
- Subcontinental Asian America
- Other

Firm Status Non-DBE

- DBE ACDBE
- SBE MBE/WBE



Bid Opportunity List

Please furnish the following subcontracting information for ALL bidders/quoters/proposers. This information must also be included in your bid or proposal package.

Prime Contractor/Consultant: _____

Bid/Proposal/Task Number: _____

Bid/Proposal/Task Name: _____

Subcontracts/Consultant

Firm Name _____

Address _____

State & Zip Code _____

NACIS Code(s): _____

Work Performed on contract:

Firm's Age _____

Annual Gross Receipts

- Less than \$1 million
- Between \$1 - \$3 million
- Between \$3 - \$6 million
- Between \$6 - \$10 million
- Greater than \$10 million

Firm Status Non-DBE

DBE ACDBE

SBE MBE/WBE

Gender / Ethnicity

Female

Male

Asian Pacific American

Black American

Hispanic America

Native America

Subcontinental Asian America

Other

Subcontracts/Consultant

Firm Name _____

Address _____

State & Zip Code _____

NACIS Code(s): _____

Work Performed on contract:

Firm's Age _____

Annual Gross Receipts

- Less than \$1 million
- Between \$1 - \$3 million
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- Between \$6 - \$10 million
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Gender / Ethnicity

Female

Male

Asian Pacific American

Black American

Hispanic America

Native America

Subcontinental Asian America

Other

Subcontracts/Consultant

Firm Name _____

Address _____

State & Zip Code _____

NACIS Code(s): _____

Work Performed on contract:

Firm's Age _____

Annual Gross Receipts

- Less than \$1 million
- Between \$1 - \$3 million
- Between \$3 - \$6 million
- Between \$6 - \$10 million
- Greater than \$10 million

Firm Status Non-DBE

DBE ACDBE

SBE MBE/WBE

Gender / Ethnicity

Female

Male

Asian Pacific American

Black American

Hispanic America

Native America

Subcontinental Asian America

Other

Birmingham Airport Authority

**LETTER OF INTENT BETWEEN BIDDER/OFFEROR AND DISADVANTAGED BUSINESS ENTERPRISE (DBE) /
AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) SUBCONTRACTOR/SUPPLIER**

(Form to be completed and signed for each DBE/ACDBE firm)

Solicitation Number: _____	Project Title: _____
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Bidder/Offeror Name: _____

Address: _____ City: _____ State: ____ Zip: _____

Authorized Representative: _____ Phone: _____

DBE/ACDBE Subcontractor/Supplier Name: _____

Check one: Address: _____

DBE City: _____ State: ____ Zip: _____ Phone: _____

ACDBE Authorized Representative: _____

- A. This is a letter of intent between the bidder/offeror on this project and a DBE/ACDBE firm for the DBE/ACDBE to perform subcontracting work on this project, consistent with Title 49 CFR Parts 26 or 23 as applicable.
- B. By signing below, the bidder/offeror is committing to utilize the above-named DBE/ACDBE to perform the work described below.
- C. By signing below, the above-named DBE/ACDBE is committing to perform the work described below.
- D. By signing below, the bidder/offeror and DBE/ACDBE affirm that if the DBE/ACDBE subcontracts any of the work described below, it may only subcontract that work to another DBE/ACDBE if it wishes to receive DBE/ACDBE credit for said work.

Work to be performed by DBE/ACDBE Firm			
Description	NAICS*	DBE/ACDBE Contract Amount [†]	DBE/ACDBE Percentage of Total Project Value

AFFIRMATION: I hereby affirm that the information above is true and correct.

Bidder/Offeror Authorized Representative

_____ (Signature) (Title) (Date)

DBE/ACDBE Subcontractor/Supplier Authorized Representative

_____ (Signature) (Title) (Date)

* Visit <http://www.census.gov/eos/www/naics/> to search. Match type of work with NAICS code as closely as possible.

[†] To be provided only when the solicitation requires that bidder/offer include a dollar amount in its bid-offer.

In the event the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

**DBE Regular Dealer/Distributor
Affirmation Form**

Bidder Name:

U.S. Department of
Transportation

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? **YES** **NO**

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? **YES** **NO** (If "YES," Go to Question 2. If "NO" Continue.)
- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?
- YES** **NO*** (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

YES **NO¹**

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)?

YES² **NO³**

- a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased ? **YES²** **NO³**

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased **may** be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

DISADVANTAGED BUSINESS ENTERPRISE (DBE) OFFICE
Birmingham Airport Authority

DOCUMENTATION OF GOOD FAITH EFFORTS FORM
(To be completed and submitted with the Schedule of Contract Participation)

DBE Good Faith Effort Documentation

The intent of this form is to document the good faith effort attempts made by the apparent low bidder in soliciting DBE firms to meet the DBE project goal. Please note that the project goal will not be waived, and the contractor must make efforts to achieve the goal throughout the life of the contract.

Every work type where there is a certified DBE, the apparent low bidder must submit the form as follows:

The prime contractor understands that a determination of good faith effort to meet the contract goal is contingent on both the information provided by the prime contractor in the attachment forms to this application and the other factors listed in **Appendix A, of Title 49 CFR Part 26,** Consistent with the requirements of Title 49 CFR Part 26, Appendix A, the prime contractor hereby submits documentation (attached to this form) of good faith efforts made and requests to be evaluated under these requirements. The prime contractor acknowledges that the determination of good faith effort is made by the Birmingham Airport Authority and the Disadvantaged Business Enterprise Liaison Officer (DBELO), in keeping with federal requirements.

Date Submitted: _____
State Project Number: _____
Contractor Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Contact Person: _____ Telephone Number: _____
Email Address: _____

Bidder/offeror has met the DBE contract goal. The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.

Bidder/offeror has not met the DBE contract goal. The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

I certify that the information contained in this good faith effort documentation form is true and correct to the best of my knowledge. I further understand that any willful falsification, fraudulent statement or misrepresentation will result in appropriate sanctions which may involve debarment and/or prosecution under applicable State and Federal laws.

Bidder/Authorized Representative Signature: _____

Title: _____

Date: _____

Exhibit D

Insurance Requirements

BAA CONTRACTOR INSURANCE REQUIREMENTS
CONTRACTOR PROVIDED INSURANCE FOR AIR-SIDE PROJECT COVERAGE

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Worker's Compensation	Statutory for Coverage A
Employee's Liability	\$1,000,000 each Accident \$1,000,000 Disease – Policy Limit \$1,000,000 per Employee
	Requirements:
	<ol style="list-style-type: none"> 1. Voluntary Compensation Endorsement 2. Waiver of Subrogation
General Liability	\$1,000,000 each occurrence \$10,000,000 General Aggregate \$10,000,000 Completed Operations/Products Aggregate \$1,000,000 Personal Injury \$5,000 Medical Payments
	Requirements:
	<ol style="list-style-type: none"> 1. XCU Perils Coverage 2. Completed Operations Extended 3 Years 3. Broad Form Property Damage 4. Fellow Employee Coverage 5. Primary & Non-Contributory 6. Waiver of Subrogation 7. 30 Days Notice of Cancellation to Certificate Holder 8. CG2010 and CG2037 Endorsements 9. Contractual Liability applicable to Contractor's indemnification obligations
Business Automobile	\$2,000,000 per occurrence combined limit for bodily injury liability and property damage
	Requirements:
	<ol style="list-style-type: none"> 1. Covers owned, non-owned and hired autos 2. Primary & Non-Contributory 3. Waiver of Subrogation 4. 30 Days Notice of Cancellation to Certificate Holder

Umbrella \$10,000,000

Builder's Risk Policy Amount of Project

Requirement:

1. Contractor provide coverage for Contractor's equipment on the job site and all construction material and equipment which is schedule for the Work but has not been delivered to the Job Site
2. Coverage shall insure interest of Owner and Contractor
3. Provide Replacement Cost
4. Event of Loss, proceeds of any claim shall be paid to the Owner who shall apportion the proceeds between the Owner and the Contractor as their interest may appear
5. Coverage includes flood and earth movement
6. Per Project Aggregate

Pollution Policy \$5,000,000 *(Depending on project)*

Professional Liability \$1,000,000 *(Depending on project)*

Exhibit C

Federal Provisions

(All applicable federal provisions will be included in final agreement)



Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects

(Issued on **May 24, 2023**)

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CURRENT CHANGES

Item	Change
Editorial update made to the January 23, 2023 version (effective May 24, 2023)	The link on page 35 was updated to reflect changes to the Department of Labor website.
Editorial updates made to the November 17, 2022 version (effective January 23, 2023)	Pages 7, 16, 19, 20, 25, and 42 of Appendix A were edited to correct grammatical mistakes, update internal document links, and correct the name of the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

CONTRACT GUIDANCE

1. Purpose of this Document

- 1) The purpose of this document is to establish a convenient resource for Sponsors that consolidates federal contract provisions and clauses into one document that includes an applicability matrix. This document itself does not create, revise or delete requirements for participation in the Airport Improvement Program (AIP). The source of requirements addressed within this document are identified within the section for each individual clause.
- 2) **While this document is intended to assist Sponsors with their compliance efforts, it does not alter or modify the terms of any applicable statute or regulation, is not a substitute for reading the regulation and the applicability matrix, and each corresponding document section, nor does it constitute legal advice.**
- 3) Federal laws and regulations require that a Sponsor (a recipient of federal assistance) include specific clauses in certain contracts, solicitations, or specifications regardless of whether or not the project is federally funded.
- 4) For purposes of remaining compliant with its obligations, a Sponsor must incorporate applicable contract provisions in all its procurements and contract documents. Unless otherwise stated, these provisions flow down to subcontracts and sub-tier agreements.
- 5) Terminology:
 - a. The term **“Sponsor”** is used in this document to mean either an obligated Sponsor on a project that is not federally funded, or a Sponsor on an AIP funded project. A Sponsor is a “recipient” of federal assistance when receiving AIP or other FAA grant funds.
 - b. The term **“Owner”** of a public use airport is generally used in the solicitation or contract clauses because of its common use in public contracts. An Owner becomes an obligated Sponsor upon acceptance of the AIP grant assurances associated with current or prior AIP grant funded projects.
 - c. For purposes of determining requirements for contract provisions, the term **“contract”** includes professional services, and subcontracts and supplier contracts such as purchase orders.
 - d. The term **“contractor”** is understood to mean a contractor, subcontractor, or consultant; and means one who participates, through a contract or subcontract (at any tier).
 - e. The term **“bid”** is understood to mean a bid, an offer, or a proposal.
 - f. The term **“applicant”** is understood to mean the following in different contexts:
 - i. For the Equal Employment Opportunity (EEO) clause, the term **“applicant”** means an applicant for employment (whether or not the phrase, *for employment*, follows the word applicant or applicants).

- ii. For all other clauses, the term “**applicant**” means a bidder, offeror, or proposer for a contract.

2. Sponsor Actions

In general, Sponsor’s actions consistent with obligations:

- 1) Include in its procurements the provisions that are applicable to its project.
- 2) Not incorporate the entire contract provisions guidelines in its solicitation or contract documents, whether by reference or by inclusion in whole. Incorporation of this entire guidance document creates potential for ambiguous interpretation and may lead to improper application that unnecessarily increases price. A Sponsor that fails to properly incorporate applicable contract clauses may place themselves at risk for audit findings or denial of Federal funding.
- 3) Incorporate applicable contract provisions using mandatory language as required. The subheading entitled *Applicability* advises whether a particular clause or provision has mandatory language that a Sponsor must use.
 - (a) Mandatory Language – Whenever a clause or provision has mandatory text, the Sponsor must incorporate the text of the provision without change, except where specific adaptive input is necessary (e.g., such as the Sponsor’s name).
 - (b) No Mandatory Language – For provisions without mandatory language, this guidance provides model language acceptable to the FAA. Some Sponsors may have standard procurement language that is equivalent to those federal provisions. In these cases, Sponsors may use their existing standard procurement provision language provided the text meets the intent and purpose of the Federal law or regulation.
- 4) Require the contractor (including all subcontractors) to insert these contract provisions in each lower tier contract (e.g., subcontract or sub-agreement).
- 5) Require the contractor (including all subcontractors) to incorporate the requirements of these contract provisions by reference for work done under any purchase orders, rental agreements, and other agreements for supplies or services.
- 6) Require that the prime contractor be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor, or service provider.
- 7) Verify that any required local or State provision does not conflict with or alter a Federal law or regulation.

3. Typical Procurement Steps

The typical procurement steps in a project are:

- 1) Solicitation, Request for Bids, or Request for Proposals – This is also called the Advertisement or Notice to Bidders.
- 2) Bidding or Accepting Proposals – In this stage, the bidders receive a complete set of the procurement documents, also known as the project manual. The project manual will typically

include a copy of the solicitation, instructions-to-bidders, bid forms, certifications and representations, general provisions, contract conditions, copy of contract, project drawings, technical specifications, and related project documents.

- 3) Bid/Proposal Evaluation – Period when Sponsor tabulates, reviews, and evaluates all proposals for bid responsiveness and bidder responsibility.
- 4) Award – Point when the Sponsor formally awards the contract to the successful bidder.
- 5) Execution of Contract – Point at which the Sponsor formally enters into a legally binding agreement with bidder to perform services or provide goods.

4. Applicability Matrix for Contract Provisions

[Table 1](#) Matrix summarizes the applicability of contract provisions based upon the type of contract or agreement. The dollar threshold represents the value at which, when equal to or exceeded, the Sponsor must incorporate the provision in the contract or agreement.

Supplemental information addressing applicability and use for each provision is located in Appendix A. Appendix A and the Matrix include notes indicating when the Sponsor may incorporate references in the solicitation in lieu of including the entire text.

Sponsors are responsible for reviewing both the Matrix and each corresponding section to determine applicability of specific contract provisions.

Meaning of cell values in table below:

- Info – Sponsor has discretion on whether to include clause in its contracts.
- Limited – Provision with limited applicability depending on circumstances of the procurement.
- n/a – Provision that is not applicable for that procurement type.
- NIS – Provision that does not need to be included or referenced in the solicitation document
- REF – Provision to be incorporated into the solicitation by reference.
- REQD – Provision the Sponsor must incorporate into procurement documents.

Table 1 – Applicability of Provisions

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
Access to Records and Reports	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Affirmative Action Requirement	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
Breach of Contract	\$250,000	NIS	REQD	REQD	REQD	REQD	n/a
Buy American Preferences	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) Buy American Statement	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) Construction	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) Equipment/Building Projects	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
Civil Rights – General	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
Civil Rights - Title VI Assurances	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) Notice - Solicitation	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) Clause - Contracts	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) Clause – Transfer of U.S. Property	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) Clause – Transfer of Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) Clause - Construct/Use/Access to Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) List – Pertinent Authorities	\$0	NIS	REQD	REQD	REQD	REQD	REQD
Clean Air/Water Pollution Control	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
Contract Work Hours and Safety Standards	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
Copeland Anti-Kickback	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
Davis Bacon Requirements	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a
Debarment and Suspension	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
Disadvantaged Business Enterprise	\$ 250,000	REQD	REQD	REQD	REQD	REQD	n/a
Distracted Driving	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
Domestic Preferences for Procurements	\$0	NIS	REQD	REQD	REQD	REQD	Info
Equal Employment Opportunity	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(1) EEO Contract Clause	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(2) EEO Specification	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
Federal Fair Labor Standards Act	\$ 0	REQD	REQD	REQD	REQD	REQD	Info
Foreign Trade Restriction	\$ 0	REQD	REQD	REQD	REQD	REQD	n/a
Lobbying Federal Employees	\$ 100,000	REF	REQD	REQD	REQD	REQD	n/a
Occupational Safety and Health Act	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment	\$0	NIS	REQD	REQD	REQD	REQD	Info
Prohibition of Segregated Facilities	\$0	NIS	Limited	REQD	Limited	Limited	n/a
Recovered Materials	\$10,000	REF	Limited	REQD	REQD	Limited	n/a
Right to Inventions	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
Seismic Safety	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
Tax Delinquency and Felony Conviction	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Termination of Contract	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
Veteran’s Preference	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a

Airport Concessions Disadvantage Business Enterprise (ACDBE) Notes:

1. Language relative to solicitation for ACDBEs does not need to be included in AIP funded solicitations, since in no case are concessions activities funded with federal funds.
2. Airport Sponsors must include the appropriate Civil Rights – Title VI language in their solicitation notices when they seek proposals for concessions.
3. For ACDBE agreements, use the column for *Non-AIP Contracts*.

APPENDIX A – CONTRACT PROVISIONS

A1 ACCESS TO RECORDS AND REPORTS

A1.1 SOURCE

2 CFR § 200.334

2 CFR § 200.337

FAA Order 5100.38

A1.2 APPLICABILITY

2 CFR § 200.334 requires a Sponsor to retain records pertinent to a Federal award for a period of three years from submission of final closure documents. 2 CFR § 200.337 establishes that Sponsors must provide Federal entities the right to access records pertinent to the Federal award. FAA policy extends these requirements to the Sponsor's contracts and subcontracts of AIP funded projects.

Contract Types – The Sponsor must include this provision in all contracts and subcontracts of AIP funded projects.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA with meeting the intent of this requirement. If the Sponsor prefers to use different language, the Sponsor's language must fully satisfy the requirements of 2 CFR §§ 200.334 and 200.337.

A1.3 MODEL CONTRACT CLAUSE

ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

A2 AFFIRMATIVE ACTION REQUIREMENT

A2.1 SOURCE

41 CFR Part 60-4

Executive Order 11246

A2.2 APPLICABILITY

Minority Participation. Sponsors are required to set goals for minority participation in AIP funded projects exceeding \$10,000. The goals for minority participation derive from Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA) as established in Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table of all EAs and SMSAs and the associated minority participation goals.

To find the goals for minority participation, a Sponsor must either refer to the Federal Register Notice or to the Department of Labor online document, "[Participation Goals for Minorities and Females](#)". EAs and SMSAs span state boundaries. A Sponsor may have to refer to entries for adjacent states in order to locate the goal for the project location.

Female Participation. Executive Order 11246 has set a goal of 6.9% nationally for female participation for all construction projects. This value remains constant for all counties and states.

Contract Types –

Construction – The Sponsor must incorporate this notice in all solicitations for bids or requests for proposals for AIP funded construction work contracts and subcontracts that exceed \$10,000. Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

Equipment – The Sponsor must incorporate this notice in any equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at a manufacturer's plant (e.g., firefighting and snow removal vehicles).

Professional Services – The Sponsor must incorporate this notice in any professional service agreement if the professional services agreement includes tasks that meet the definition of construction work [as defined by the U.S. Department of Labor (DOL)] and exceeds \$10,000. Examples include installation of monitoring systems (e.g., noise, environmental, etc.).

Property/Land – The Sponsor must incorporate this notice in any agreement associated with land acquisition if the agreement includes construction work (defined above) that exceeds \$10,000. Examples include demolition of structures or installation of boundary fencing.

Use of Provision – MANDATORY TEXT. The Sponsor must:

- (a) Incorporate the text of this provision in its solicitations without modification.
- (b) Incorporate the applicable minority participation goal and the covered area by geographic name.
- (c) Not simply insert a reference to the 1980 Federal Register Notice.

A2.3 MANDATORY SOLICITATION CLAUSE

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

- | | |
|--|--|
| Goals for minority participation for each trade: | <i>[Sponsor must insert established goal]</i> |
| Goals for female participation in each trade: | 6.9% |

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

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, 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 goals 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.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 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 subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the “covered area” is **[Sponsor must insert state, county, and city]**.

A3 BREACH OF CONTRACT TERMS

A3.1 SOURCE

2 CFR Part 200, Appendix II(A)

A3.2 APPLICABILITY

This provision requires Sponsors to incorporate administrative, contractual or legal remedies in the event that a contractor violates or breaches contract terms. The Sponsor must also include appropriate sanctions and penalties.

Contract Types – This provision is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II (A). This threshold is occasionally adjusted for inflation and is \$250,000.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA as meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR Part 200. Select either “contractor” or “consultant” as applicable.

A3.3 MODEL CONTRACT CLAUSE

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the **[Contractor | Consultant]** or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide **[Contractor | Consultant]** written notice that describes the nature of the breach and corrective actions the **[Contractor | Consultant]** must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner’s notice will identify a specific date by which the **[Contractor | Consultant]** must correct the breach. Owner may proceed with termination of the contract if the **[Contractor | Consultant]** fails to correct the breach by the deadline indicated in the Owner’s notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

A4 BUY AMERICAN PREFERENCE

A4.1 SOURCE

Title 49 USC § 50101

Executive Order 14005, *Ensuring the Future is Made in All of America by All of America's Workers*

Bipartisan Infrastructure Law (Pub. L. No. 117-58), Build America, Buy America (BABA)

A4.2 APPLICABILITY

The Buy American Preference incorporates statutory requirements and policies outlined in the in 49 USC § 50101, Executive Order 14005, and BABA.

Section 50101 of 49 USC requires that all steel and manufactured goods used on AIP projects be produced in the United States. This section also gives the FAA the ability to issue a waiver to a Sponsor to use non-domestic material on an AIP funded project subject to meeting certain conditions. A Sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

- 1) Applying the provision is not in the public interest.
- 2) The steel or manufactured goods are not available in sufficient quantity or quality in the United States.
- 3) The cost of components and subcomponents produced in the United States is more than 60 percent of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number (such as specific airport lighting equipment) are considered the equipment.
- 4) Applying this provision would increase the cost of the overall project by more than 25 percent.

Executive Order 14005 advances the Administration's priority to use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The Order directs, to the extent appropriate and consistent with applicable law, agencies shall partner with the Hollings Manufacturing Extension Partnership (MEP) to conduct supplier scouting in order to identify American companies that are able to produce goods, products, and materials in the United States that meet Federal procurement needs, prior to consideration of using non-domestic products.

The Bipartisan Infrastructure Law, Build America, Buy America (BABA) Act strengthens Made in America Laws and bolsters America's industrial base, protects national security, and supports high-paying jobs. Under BABA, iron, steel and certain construction materials are required to be 100% produced in the United States.

Under the Bipartisan Infrastructure Law (Pub. L. No. 117-58) BABA three waivers are available for iron and steel, manufactured products, and construction materials when a Federal agency finds that –

- 1) Applying the domestic content procurement preference would be inconsistent with the public interest (a "public interest waiver");

- 2) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- 3) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).

BABA defines construction materials, items that are or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber or drywall.

Items that consist of two or more of the aforementioned materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

The Buy America Preference requirements flow down from the Sponsor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

Note: The Buy American Preference does not apply to temporary equipment a contractor uses as a tool of its trade and which does not remain as part of the project.

Required Documentation

The FAA Buy American Requests. All applications (requests) for an FAA Buy American Preference Waiver includes, at minimum, a completed Content Percentage Worksheet and Final Assembly Questionnaire. Additional information may be requested from the applicant by the FAA. Airport Sponsors, consultants, construction contractors, or equipment manufacturers are responsible for completing and submitting waiver applications. The FAA is unable to make a determination on waiver requests with incomplete information. Sponsors must confirm with the bidder or offeror to assess the adequacy of the waiver request and associated information prior to forwarding a waiver request to the FAA for action. All FAA waivers forms are available from the FAA Buy American Requirements webpage.

Proprietary Confidentiality. Exemption 4 of the Freedom of Information Act protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential. Proprietary manufacturing and design information submitted to the Federal Aviation Administration for the purposes of receiving a Buy American Waiver shall not be disclosed outside the FAA. The FAA will provide a written notification to the Airport Sponsor, manufacturer(s), contractor(s) or supplier(s) when a waiver determination is complete.

Timing of Waiver Requests. Sponsors desiring a Type 2 waiver should submit their waiver request, with justification, *before* issuing a solicitation for bids or a request for proposal for a project.

The Sponsor must submit a Type 2, Type 3, or Type 4 waiver request *prior* to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary and extenuating circumstances exist.

The Buy American Notice of Determination (NOD) Process. The FAA Reauthorization Act of 2018 requires that all approved waivers must be posted to the FAA’s website and remain posted for public comment for 10 days, before becoming effective. All FAA waivers must complete the NOD process. Sponsors are encouraged to wait until approved waivers become effective before executing AIP projects.

Buy American Conformance Lists. The FAA Office of Airports maintains listings of projects and products that have received a waiver from the Buy American Preference requirements for project specific and nationwide use. Each of these conformance lists is available online at www.faa.gov/airports/aip/buy_american/. Products listed on the FAA Nationwide Buy American Conformance list do not require additional submittal of domestic content information. Nationwide waivers expire five years from the date issued, unless revoked earlier by the FAA.

Facility Waiver Requests. For construction of a facility, the Sponsor may submit the waiver request after bid opening, but prior to contract execution. Examples of facility construction include terminal buildings, terminal renovation, and snow removal equipment buildings.

Contract Types –

Construction and Equipment – The Sponsor must meet the Buy American Preference requirements of 49 USC § 50101 and BABA for all AIP funded projects that require materials that are or consists primarily of iron, steel or manufactured goods and construction materials.

Professional Services – Professional service agreements (PSAs) do not normally result in a deliverable that meets the definition of a manufactured product. However, the emergence of various project delivery methods has created situations where task deliverables under a PSA may include a manufactured product. If a PSA includes providing a manufactured good as a deliverable under the contract, the Sponsor must include the Buy American Preference provision in the agreement.

Property – Most land transactions do not involve acquiring a manufactured product. However, under certain circumstances, a property acquisition project could result in the installation of a manufactured product. For example, the installation of property fencing, gates, doors and locks, etc. represent manufactured products acquired under an AIP funded land project that must comply with Buy American Preferences.

Use of Provisions – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully comply with 49 USC § 50101 and BABA.

There are two types of FAA Buy American certifications. The Sponsor must incorporate the appropriate certifications of compliance with FAA Buy American Preference in the solicitation:

- **Construction Projects** involving the replacement, rehabilitation, reconstruction of airfield surfaces such as on runways, taxiways, taxilanes, aprons, roadways, parking lots, etc. – Insert the Certificate of compliance to FAA Buy American Preference based on Construction Projects.

- **Equipment and Buildings Projects** involving and including the acquisition of equipment such as snow removal equipment, navigational aids, wind cones, and the construction of buildings such as hangars, terminal development, lighting vaults, aircraft rescue & firefighting buildings, etc. - Insert the Certificate of Compliance with FAA Buy American Preference Based on Equipment/Building Projects.

A4.3 MODEL SOLICITATION CLAUSES

A4.3.1 Certification of Compliance with FAA Buy American Preference Statement

FAA BUY AMERICAN PREFERENCE

The Contractor certifies that its bid/offer is in compliance with 49 USC § 50101, BABA and other related Made in America Laws,¹ U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

The bidder or offeror must complete and submit the certification of compliance with FAA’s Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA’s Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

¹ Per Executive Order 14005 “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to “Buy America” or “Buy American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

A4.3.2 Certification of Compliance with FAA Buy American Preference – Construction Projects

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e., not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing iron, steel and manufactured products produced in the United States;
 - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
 - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- a) To provide to the Airport Sponsor or the FAA evidence that documents the source and origin of the iron, steel, and/or manufactured product.
 - b) To faithfully comply with providing U.S. domestic products.
 - c) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
 - d) Certify that all construction materials used in the project are manufactured in the U.S.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
 - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
 - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.

- d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
- e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 2 Waiver (Nonavailability) - The iron, steel, manufactured goods or construction materials or manufactured goods are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

Type 3 Waiver – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “facility/project.” The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- d) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

Type 4 Waiver (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) A completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bids and/or offers;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

A4.3.3 Certification of Compliance with FAA Buy American Preference – Equipment/Building Projects

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101, and other Made in America Laws, U.S. statutes, guidance, and FAA policies by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing steel and manufactured products produced in the United States;
 - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
 - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.
 - b) To faithfully comply with providing U.S. domestic product.
 - c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
 - d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
 - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
 - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.

- d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 2 Waiver (Nonavailability) - The iron, steel, manufactured goods or construction materials are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

Type 3 Waiver – The cost of the item components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “item”. The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108 (products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- d) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials, would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bidders and/or offerors;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

A5 CIVIL RIGHTS - GENERAL

A5.1 SOURCE

49 USC § 47123

A5.2 APPLICABILITY

There are two separate civil rights provisions that apply to projects:

1. FAA General Civil Rights Provision and,
2. Title VI provisions, which are addressed in Appendix A6.

Contract Types – The General Civil Rights Provisions found in 49 USC § 47123, derived from the Airport and Airway Improvement Act of 1982, Section 520, apply to all Sponsor contracts *regardless* of funding source.

Use of Provision – MANDATORY TEXT. Each contract must include two civil rights provisions. The first general clause must be included in all contracts, lease agreements, or transfer agreements. An additional specific provision must be included; the applicable text is based on whether the contract is a general contract or whether the contract is a lease or transfer agreement. The Sponsor must incorporate the text of the appropriate general clause and specific clause without modification into the contract, lease, or transfer agreement.

The required clauses for each type of contact are summarized in the table below:

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Clause that is used for all contracts, lease agreements and transfer agreements	Every contract or agreement regardless of funding source.	A5.3.1
Clause that is used for general contract agreements	This applies to all contracts that do not involve property agreements. It applies to all contracts not covered by A5.3.3 regardless of funding source.	A5.3.2
Clause that is used for lease agreements and transfer agreements	This applies to all property agreements such leases of concession space in a terminal and leases where a physical portion of the airport is transferred for use. It applies to all contracts not covered by A5.3.2 regardless of funding source.	A5.3.3

A5.3 MANDATORY CONTRACT CLAUSES

A5.3.1 General Clause that is used for Contracts, Lease Agreements, and Transfer Agreements

GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

A5.3.2 Specific Clause that is used for General Contract Agreements

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

A5.3.3 Specific Clause that is used for Lease Agreements or Transfer Agreements

If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor.

The above provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration.

A6 CIVIL RIGHTS – TITLE VI ASSURANCE

A6.1 SOURCE

49 USC § 47123

FAA Order 1400.11

A6.2 APPLICABILITY

Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance. Sponsors must include appropriate clauses from the Standard DOT Title VI Assurances in all contracts and solicitations.

The text of each individual clause comes from the U.S. Department of Transportation [Order DOT 1050.2](#), Standard Title VI Assurances and Nondiscrimination Provisions, effective April 24, 2013. These assurances require that the Recipient (the Sponsor) insert the appropriate clauses in the form provided by the DOT. Where the clause refers to the applicable activity, project, or program, it means the AIP project.

The clauses are as follows:

A6.2.1 Applicability of Title VI Solicitation Notice

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Title VI Solicitation Notice – <ul style="list-style-type: none">Assurance 2 of the DOT Standard Title VI Assurances and Nondiscrimination ClausesAssurance 30(d) of the Airport Sponsors Assurances	<ol style="list-style-type: none">All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; andAll Sponsor proposals for negotiated agreements regardless of funding source.	A6.3.1

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<p>Title VI Clauses for Compliance with Nondiscrimination Requirements</p> <ul style="list-style-type: none"> Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(1) of the Airport Sponsor Assurances 	<p>Every contract or agreement (unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities, which is a rare occurrence).</p> <p>It has been determined that service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements must include this clause.</p>	<p>A6.4.2</p>
<p>Title VI Required Clause for Property Interests Transferred from the United States</p> <ul style="list-style-type: none"> Assurance 4 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30e.3 of the Airport Sponsor Assurances 	<p>As a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Sponsor.</p> <p>This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract.</p>	<p>A6.4.3</p>
<p>Title VI Required Clause for Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program –</p> <ul style="list-style-type: none"> Assurance 5 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(4)(a) of the Airport Sponsor Assurances 	<p>As a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for all transfers of real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases where a physical portion of the airport is transferred for use, for example a fuel farm, apron space, or a parking facility. It applies to agreements not covered by A6.4.4.</p>	<p>A6.4.4</p>

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<p>Clause for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program</p> <ul style="list-style-type: none"> Assurance 6 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(4)(b) of the Airport Sponsor Assurances 	<p>In any future (deeds, leases, licenses, permits, or similar instruments) entered into by the Sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases of concession space in a terminal not covered by A6.4.3.</p>	<p>A6.4.5</p>
<p>Title VI List of Pertinent Nondiscrimination Acts and Authorities</p> <ul style="list-style-type: none"> Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(2) of the Airport Sponsor Assurances 	<p>Insert this list in every contract or agreement, unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities, which is a rare occurrence.</p> <p>This list can only be omitted if the FAA has determined that the contractor or company is already subject to substantively identical nondiscrimination requirements.</p>	<p>A6.4.1</p> <p>List must be included in all applicable contracts.</p>

A6.3 MANDATORY SOLICITATION CLAUSE

The Sponsor must include this clause in:

- 1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and
- 2) All Sponsor proposals for negotiated agreements **regardless of funding source.**

A6.3.1 Title VI Solicitation Notice

Title VI Solicitation Notice:

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

A6.4 MANDATORY CONTRACT CLAUSES

A6.4.1 Title VI List of Pertinent Nondiscrimination Acts and Authorities

Insert this list in every contract or agreement, unless the Sponsor has determined and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities. This list can be omitted if the FAA has determined that the contractor or company is already subject to nondiscrimination requirements, which is a rare occurrence.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must

take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

A6.4.2 Nondiscrimination Requirements/Title VI Clauses for Compliance

The Sponsor must include this contract clause in:

- 1) Every contract or agreement (unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities); and
- 2) Service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements.
- 3) Other types of contracts with utility companies involving property covered by A6.4.2, A6.4.3, or A6.4.4.

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
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 will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or

refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

A6.4.3 Title VI Clauses for Deeds Transferring United States Property

This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract. It will be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Sponsor.

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances:

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Sponsor*) will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC §§ 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (*Title of Sponsor*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Sponsor*), its successors and assigns.

The (*Title of Sponsor*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the (*Title of Sponsor*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

**A6.4.4 Title VI Clauses for Transfer of Real Property
Acquired or Improved Under the Activity, Facility,
or Program**

This applies to agreements such as leases where a physical portion of the airport is transferred for use—for example a fuel farm, apron space, or a parking facility—and will be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for all transfers of real property acquired or improved under the Airport Improvement Program.

**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE
AIRPORT IMPROVEMENT PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances:

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee,

licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (*Title of Sponsor*) will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the (*Title of Sponsor*) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A6.4.5 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

This applies to agreements such as leases of concession space in a terminal and any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under the Airport Improvement Program.

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, (*Title of Sponsor*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities

thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, (*Title of Sponsor*) will there upon revert to and vest in and become the absolute property of (*Title of Sponsor*) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A7 CLEAN AIR AND WATER POLLUTION CONTROL

A7.1 SOURCE

2 CFR Part 200, Appendix II(G)

42 USC § 7401, et seq

33 USC § 1251, et seq

A7.2 APPLICABILITY

Contract Types – This provision is required for all contracts and lower tier contracts that exceed \$150,000.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR § 200.

A7.3 MODEL CONTRACT CLAUSE

CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceed \$150,000.

A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

A8.1 SOURCE

2 CFR Part 200, Appendix II(E)

2 CFR § 5.5(b)

40 USC § 3702

40 USC § 3704

A8.2 APPLICABILITY

Contract Work Hours and Safety Standards Act Requirements (CWHSSA) (40 USC §§ 3702 & 3704) requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts not less than one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. CWHSSA prohibits unsanitary, hazardous, or dangerous working conditions on federally-assisted projects. The Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this Act, while DOL's Occupational Safety and Health Administration (OSHA) enforces the safety and health requirements.

Contract Types –

Construction – This provision applies to all contracts and lower tier contracts that exceed \$100,000, and employ laborers, mechanics, watchmen, and guards.

Equipment – This provision applies to any equipment project exceeding \$100,000 that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g., ARFF and SRE vehicles).

Professional Services – This provision applies to professional service agreements that exceed \$100,000 and employs laborers, mechanics, watchmen, and guards. This includes members of survey crews and exploratory drilling operations.

Property – While most land transactions do not involve employment of laborers, mechanics, watchmen, and guards, under certain circumstances, a property acquisition project could require such employment. Examples include the installation of property fencing or testing for environmental contamination

Use of Provision – MANDATORY TEXT. Sponsors must incorporate this text without modification.

A8.3 MANDATORY CONTRACT CLAUSE

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

A9 COPELAND “ANTI-KICKBACK” ACT

A9.1 SOURCE

2 CFR Part 200, Appendix II(D)

29 CFR Parts 3 and 5

A9.2 APPLICABILITY and PURPOSE

The Copeland (Anti-Kickback) Act (18 USC § 874 and 40 USC § 3145) makes it unlawful to induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

Contract Types –

Construction – This provision applies to all construction contracts and subcontracts financed under the AIP that exceed \$2,000.

Equipment – This provision applies to all equipment installation projects (e.g., electrical vault improvements) financed under the AIP that exceed \$2,000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g., SRE and ARFF vehicles).

Professional Services –The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) include tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate the Copeland Anti-kickback provision.

Property –Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the Copeland Anti-Kickback provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The Sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 29 CFR Part 5.

A9.3 MODEL CONTRACT CLAUSE

COPELAND “ANTI-KICKBACK” ACT

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

A10 DAVIS-BACON REQUIREMENTS

A10.1 SOURCE

2 CFR Part 200, Appendix II(D)

29 CFR Part 5

49 USC § 47112(b)

40 USC §§ 3141-3144, 3146, and 3147

A10.2 APPLICABILITY

The Davis-Bacon Act (40 USC §§ 3141-3144, 3146, and 3147) ensures that laborers and mechanics employed under the contract receive pay no less than the locally prevailing wages and fringe benefits as determined by the Department of Labor.

Contract Types –

Construction – Incorporate into all construction contracts and subcontracts that exceed \$2,000 and include funding from the AIP.

Equipment – This provision applies to all equipment installation projects (e.g., electrical vault improvements) financed under the AIP that exceed \$ 2,000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g., SRE and ARFF vehicles)

Professional Services – The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) includes tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate this clause.

Property – Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The Sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

Fencing Projects – Fencing projects that exceed \$2,000 must include this provision.

Use of Provision – MANDATORY TEXT. 29 CFR part 5 establishes specific language a Sponsor must use. The Sponsor may not make any modification to the standard language. A/E firms that employ laborers and mechanics on a task that meets the definition of construction, alteration, or repair are acting as a contractor. The Sponsor may not substitute the term “Contractor” for “Consultant” in such instances.

A10.3 MANDATORY CONTRACT CLAUSE

DAVIS-BACON REQUIREMENTS

1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor,

Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding. The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types

described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) That each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the Contractor’s or subcontractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits,

apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR §§ 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR § 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

A11 DEBARMENT AND SUSPENSION

A11.1 SOURCE

2 CFR Part 180 (Subpart B)

2 CFR Part 200, Appendix II(H)

2 CFR Part 1200

DOT Order 4200.5

Executive Orders 12549 and 12689

A11.2 APPLICABILITY

The Sponsor must verify that the firm or individual that it is entering into a contract with is not presently suspended, excluded, or debarred by any Federal department or agency from participating in federally-assisted projects. The Sponsor accomplishes this by:

- 1) Checking the System for Award Management (SAM.gov) to verify that the firm or individual is not listed in SAM.gov as being suspended, debarred, or excluded;
- 2) Collecting a certification from the firm or individual that it is not suspended, debarred, or excluded; and
- 3) Incorporating a clause in the contract that requires lower tier contracts to verify that no suspended, debarred, or excluded firm or individual is included in the project.

Contract Types – This requirement applies to *covered transactions*, which are defined in 2 CFR part 180 (Subpart B). AIP funded contracts are non-procurement transactions, as defined by 2 CFR § 180.970. Covered transactions include any AIP-funded contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000. This includes contracts associated with land acquisition projects.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR part 180. For professional service agreements, Sponsor may substitute “bidder/offeror” with “consultant.”

A11.3 MODEL BID/PROPOSAL CERTIFICATION CLAUSES

A11.3.1 Bidder or Offeror Certification

CERTIFICATION OF OFFEROR/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

A11.3.2 Lower Tier Contract Certification

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must confirm each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally-assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offeror /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

A12 DISADVANTAGED BUSINESS ENTERPRISE

A12.1 SOURCE

49 CFR Part 26

A12.2 APPLICABILITY

A Sponsor that anticipates awarding \$250,000 or more in AIP funded prime contracts in a federal fiscal year must have an approved Disadvantaged Business Enterprise (DBE) program on file with the FAA Office of Civil Rights (49 CFR § 26.21). The approved DBE program will identify a 3-year overall program goal that the Sponsor bases on the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on the project (49 CFR § 26.45).

Contract Types – Sponsors with a DBE program on file with the FAA must include the following provisions, if applicable:

- 1) Clause in all solicitations for proposals for which a contract goal has been established,
- 2) Clause in each prime contract, and
- 3) Clause in solicitations that are obtaining DBE participation through race/gender neutral means.

Use of Provision –

1. *Solicitations with a DBE Contract Goal* – No mandatory language provided. 49 CFR §26.53 requires a Sponsor’s solicitation to address what a contractor must submit on proposed DBE participation. The language of A12.3.1 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy these requirements. The Sponsor may require the contractor’s submittal on proposed DBE participation either at bid opening as a matter of responsiveness or within five days of bid opening as a matter of responsibility.
2. *Solicitations Relying on Race/Gender Neutral Means* – No mandatory language provided. The language of A12.3.2 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy requirements for a Sponsor that is not applying a project specific contract goal but is covered by a DBE program on file with the FAA.
3. *Assurance for Contracts Covered by DBE Program* – **MANDATORY TEXT PROVIDED.** Sponsors must incorporate this language if they have a DBE program on file with the FAA. This includes projects where DBE participation is obtained through race/gender neutral means (i.e., no DBE contract goal). Section 26.13 of 49 CFR establishes mandatory language for contractor assurance. The Sponsor must not modify the language. Part 26 of 49 CFR requires Sponsors ensure this clause also flows down into subcontracts (i.e., must be included verbatim in subcontracts).

4. *Prompt Payment for Contracts Covered by DBE Program* – No mandatory language provided. Section 26.29 of 49 CFR requires Sponsors to include a contract clause requiring prompt payment to subcontractors no later than thirty (30) days after the prime contractor receives payment from the Sponsor. The requirement applies to all subcontractors, not just DBEs. The prompt payment language of A12.3.3 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, such as a specific clause identified in the Sponsor’s approved DBE program plan, the Sponsor’s revised language must fully satisfy these requirements.
5. *Termination of DBE Subcontractors on Contracts with a DBE Contract Goal* - No mandatory language provided. Section 26.53 of 49 CFR prohibits unauthorized removal or replacement of DBE firms listed in response to a solicitation that had a DBE contract goal and sets forth the specific enforcement mechanism recipients must include in prime contracts. The language of A12.3.3 is acceptable to the FAA in meeting the intent of this requirement.
6. Sponsors that are not required to have a DBE program on file with the FAA are not required to include DBE provisions and clauses.

A12.3 REQUIRED PROVISIONS

A12.3.1 Solicitation Language (Solicitations that include a Contract Goal)

Bid Information Submitted as a matter of responsiveness:

The Owner’s award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR § 26.53.

As a condition of responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner’s project goal
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

Bid Information submitted as a matter of responsibility:

The Owner’s award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR § 26.53.

As a condition of responsibility, every Bidder or Offeror must submit the following information on the forms provided herein within five days after bid opening.

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner’s project goal;
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

A12.3.2 Solicitation Language (Race/Gender Neutral Means)

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the [Insert Name of Owner] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

A12.3.3 Prime Contracts (Contracts Covered by a DBE Program)

Contract Assurance (49 CFR § 26.13; mandatory text provided) –

The Contractor, subrecipient 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 recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

Prompt Payment (49 CFR § 26.29; acceptable/sample text provided) –

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number of days, not to exceed 30] days from the receipt of each payment the prime contractor receives from [Name of recipient]. The prime contractor agrees further to return retainage payments to each subcontractor within [specify number of days, not to exceed 30] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the [Name of Recipient]. This clause applies to both DBE and non-DBE subcontractors.

Termination of DBE Subcontracts (49 CFR § 26.53(f); acceptable/sample text provided) –

The prime contractor must not terminate a DBE subcontractor listed in response to [include Solicitation paragraph number where paragraph 12.3.1, Solicitation Language appears] (or an approved substitute DBE firm) without prior written consent of [Name of Recipient]. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent [Name of Recipient]. Unless [Name of Recipient] consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

[Name of Recipient] may provide such written consent only if [Name of Recipient] agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to [Name of Recipient] its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to [Name of Recipient], of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise [Name of Recipient] and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why [Name of Recipient] should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), [Name of Recipient] may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

A13 DISTRACTED DRIVING

A13.1 SOURCE

Executive Order 13513

DOT Order 3902.10

A13.2 APPLICABILITY

The FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

Contract Types – Sponsors must insert this provision in all AIP funded contracts that exceed the micro-purchase threshold of 2 CFR § 200.320 (currently set at \$10,000).

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy these requirements.

A13.3 MODEL CONTRACT CLAUSE

TEXTING WHEN DRIVING

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

A14 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

A14.1 SOURCE

2 CFR § 200, Appendix II(K)

2 CFR § 200.216

A14.2 APPLICABILITY

Sponsors and subgrant recipients are prohibited from using AIP grant funds to:

- a) Procure or obtain,
- b) Extend or renew a contract to procure or obtain, or
- c) Enter into a contract to procure or obtain certain covered telecommunications equipment.

These restrictions apply to telecommunication equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system. Covered telecommunications equipment is equipment produced or provided by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of either).

Contract Types – The Sponsor must include this provision in all AIP funded contracts and lower-tier contracts.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy these requirements. Sponsor may substitute “Contractor and subcontractor” with “Consultant and sub-consultant” for professional service agreements.

A14.3 MODEL CERTIFICATION CLAUSE

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

A15 DRUG FREE WORKPLACE REQUIREMENTS

A15.1 SOURCE

49 CFR Part 32

Drug-Free Workplace Act of 1988 (41 USC § 8101-8106, as amended)

A15.2 APPLICABILITY

The Drug-Free Workplace Act of 1988 requires some Federal contractors and *all* Federal grantees to agree that they will provide drug-free workplaces as a condition of receiving a contract or grant from a Federal agency. The Act does **not** apply to contractors, subcontractors, or subgrantees, although the Federal grantees workplace may be where the contractors, subcontractors, or subgrantees are working.

Contract Types – This provision applies to all AIP funded projects, but not to the contracts between the grantee (the Sponsor) and a contractor, subcontractors, suppliers, or subgrantees.

Use of Provision – No mandatory or recommended text provided because the requirements do not extend beyond the Sponsor level.

A15.3 CONTRACT CLAUSE

None.

A16 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

A16.1 SOURCE

2 CFR Part 200, Appendix II(C)

41 CFR § 60-1.4

41 CFR § 60-4.3

Executive Order 11246

A16.2 APPLICABILITY

The purpose of this provision is to provide equal opportunity for all persons, without regard to race, color, religion, sex, or national origin who are employed or seeking employment with contractors performing under a federally-assisted construction contract. There are two provisions — a construction clause and a specification clause.

The equal opportunity contract clause must be included in any contract or subcontract when the amount exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract or subcontract must include the clause for the remainder of the year, regardless of the amount or the contract.

Contract Types –

Construction – The Sponsor must incorporate contract and specification language in all construction contracts and subcontracts as required above.

Equipment – The Sponsor must incorporate contract and specification language into all equipment contracts as required above that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g., ARFF and SRE vehicles).

Professional Services – The Sponsor must include contract and specification language into all professional service agreements as required above.

Property – The Sponsor must include contract and specification language into all land acquisition projects that include work that qualifies as construction work as defined by 41 CFR part 60 as required above. An example is installation of boundary fencing.

Use of Provision – MANDATORY TEXT. 41 CFR § 60-1.4 provides the mandatory ***contract*** language. 41 CFR § 60-4.3 provides the mandatory ***specification*** language. The Sponsor must incorporate these clauses without modification.

A16.3 MANDATORY CONTRACT CLAUSE

A16.3.1 EEO Contract Clause

EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in

whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

A16.3.2 EEO Specification

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. 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 (OFCCP), U.S. 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 (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. 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.

3. If the Contractor is participating (pursuant to 41 CFR part 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 efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. 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 a 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. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. 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.

6. 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.

7. 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 actions. 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 onsite 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 therefor, 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 opportunities 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 Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b 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 onsite 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 at least 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 supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). 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 its obligations under 7a through 7p of these specifications 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, ensures 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 demonstrates 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.

9. 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 a 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).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation 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.

13. 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 7 of these specifications, 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 part 60-4.8.

14. 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, the 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, contractors shall not be required to maintain separate records.

15. 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).

A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

A17.1 SOURCE

29 USC § 201, et seq

2 CFR § 200.430

A17.2 APPLICABILITY

The U.S. Department of Labor (DOL) Wage and Hour Division administers the Fair Labor Standards Act (FLSA). This act prescribes federal standards for basic minimum wage, overtime pay, record keeping, and child labor standards.

Contract Types – Per the Department of Labor, all employees of certain enterprises having workers engaged in interstate commerce; producing goods for interstate commerce; or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the FLSA.

All consultants, sub-consultants, contractors, and subcontractors employed under this federally assisted project must comply with the FLSA.

Professional Services – 29 CFR § 213 exempts employees in a bona fide executive, administrative or professional capacity. Because professional firms employ individuals that are not covered by this exemption, the Sponsor’s agreement with a professional services firm must include the FLSA provision.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 29 USC § 201, et seq. The Sponsor must select *contractor* or *consultant*, as appropriate for the contract.

A17.3 MODEL SOLICITATION CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The [*Contractor* | *Consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*Contractor* | *Consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

A18.1 SOURCE

31 USC § 1352 – Byrd Anti-Lobbying Amendment

2 CFR Part 200, Appendix II(I)

49 CFR Part 20, Appendix A

A18.2 APPLICABILITY

Consultants and contractors that apply or bid for an award of \$100,000 or more must certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or another award covered by 31 USC § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

Contract Types – The Sponsor must incorporate this provision into all contracts exceeding \$100,000.

Use of Provision – MANDATORY TEXT. Appendix A to 49 CFR Part 20 prescribes language the Sponsor must use. The Sponsor must incorporate this provision without modification.

A18.3 MANDATORY CERTIFICATION CLAUSE

CERTIFICATION REGARDING LOBBYING

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under

grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A19 PROHIBITION OF SEGREGATED FACILITIES

A19.1 SOURCE

2 CFR Part 200, Appendix II(C)

41 CFR Part 60-1

A19.2 APPLICABILITY

The contractor must comply with the requirements of the EEO clause by ensuring that facilities they provide for employees are free of segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. This clause must be included in all contracts that include the equal opportunity clause, regardless of the amount of the contract.

Contract Types – AIP Sponsors must incorporate the Prohibition of Segregated Facilities clause (41 CFR § 60-1.8) in any contract containing the Equal Employment Opportunity clause of 41 CFR § 60-1.4. This obligation flows down to subcontract and sub-tier purchase orders containing the Equal Employment Opportunity clause.

Construction – Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Equipment – On site installation of equipment such as airfield lighting control equipment meets the definition of construction and thus this provision would apply. This provision does not apply to equipment projects involving manufacture of the item at a vendor’s manufacturing plant. An example would be the manufacture of a SRE or ARFF vehicle.

Professional Services – Professional services that include tasks that qualify as construction work as defined by 41 CFR part 60-1. Examples include the installation of noise monitoring equipment.

Property/Land – Land acquisition contracts that include tasks that qualify as construction work as defined by 41 CFR part 60-1. Examples include demolition of structures or installation of boundary fencing.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 41 CFR Part 60-1.

A19.3 MODEL CONTRACT CLAUSE

PROHIBITION OF SEGREGATED FACILITIES

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The

Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, 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 that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

A20.1 SOURCE

29 CFR Part 1910

A20.2 APPLICABILITY

Contract Types – All contracts and subcontracts must comply with the Occupational Safety and Health Act of 1970 (OSH). The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) oversees the workplace health and safety standards wage provisions from OSH.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 29 CFR Part 1910.

A20.3 MODEL CONTRACT CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

A21 PROCUREMENT OF RECOVERED MATERIALS

A21.1 SOURCE

2 CFR § 200.323

2 CFR Part 200, Appendix II(J)

40 CFR Part 247

42 USC § 6901, et seq (Resource Conservation and Recovery Act (RCRA))

A21.2 APPLICABILITY

Sponsors of AIP funded development and equipment projects must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 emphasizes maximizing energy and resource recovery through use of affirmative procurement actions for recovered materials identified in the Environmental Protection Agency (EPA) guidelines codified at 40 CFR part 247. When acquiring items designated in the guidelines, the Sponsor must procure items that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Contract Types – This provision applies to any contracts that include procurement of products designated in subpart B of 40 CFR part 247 where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.

Construction and Equipment – Include this provision in all construction and equipment projects.

Professional Services and Property – Include this provision if the agreement includes procurement of a product that exceeds \$10,000.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 2 CFR Part 200.

A21.3 MODEL CONTRACT CLAUSE

PROCUREMENT OF RECOVERED MATERIALS

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year;
or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

A22 RIGHT TO INVENTIONS

A22.1 SOURCE

2 CFR Part 200, Appendix II(F)

37 CFR Part 401

A22.2 APPLICABILITY

Contract Types – This provision applies to all contracts and subcontracts with small business firms or nonprofit organizations that include performance of *experimental, developmental, or research work*. This clause is not applicable to construction, equipment, or professional service contracts unless the contract includes *experimental, developmental, or research work*.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR Part 200, Appendix II.

A22.3 MODEL CONTRACT CLAUSE

RIGHTS TO INVENTIONS

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR § 401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

A23 SEISMIC SAFETY

A23.1 SOURCE

49 CFR Part 41

A23.2 APPLICABILITY

Contract Types – This provision applies to construction of new buildings and additions to existing buildings financed in whole or in part through the Airport Improvement Program.

Professional Services– Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

Construction – Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

Equipment – Sponsor must include the construction provision if the project involves construction or structural addition to a building such as an electrical vault project to accommodate or install equipment.

Land – This provision will not typically apply to a property/land project.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 49 CFR part 41.

A23.3 MODEL CONTRACT CLAUSE

A23.3.1 Professional Service Agreements for Design

SEISMIC SAFETY

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

A23.3.2 Construction Contracts

SEISMIC SAFETY

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction

Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

A24 TAX DELINQUENCY AND FELONY CONVICTIONS

A24.1 SOURCE

Section 8113 of the Consolidated Appropriations Act, 2022 (Public Law 117-103) and similar provisions in subsequent appropriations acts.

DOT Order 4200.6 – Appropriations Act Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

A24.2 APPLICABILITY

The Sponsor must ensure that no funding goes to any contractor who:

- Has been convicted of a Federal felony within the last 24 months; or
- Has any outstanding tax liability for which all judicial and administrative remedies have lapsed or been exhausted.

Contract Types – This provision applies to all contracts funded in whole or part with AIP.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of DOT Order 4200.6.

A24.3 MODEL CERTIFICATION CLAUSE

CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- 1) The applicant represents that it is () is not () a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is () is not () a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the Sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government’s interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify

the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 USC § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

A25 TERMINATION OF CONTRACT

A25.1 SOURCE

2 CFR Part 200, Appendix II(B)

FAA Advisory Circular 150/5370-10, Section 80-09

A25.2 APPLICABILITY

Contract Types – All contracts and subcontracts in excess of \$10,000 must address *termination for cause* and *termination for convenience* by the Sponsor. The provision must address the manner (i.e., notice, opportunity to cure, and effective date) by which the Sponsor’s contract will be affected and the basis for settlement (e.g., incurred expenses, completed work, profit, etc.).

Use of Provision –

Termination for Convenience – No mandatory text provided. The Sponsor must include a clause for termination for convenience. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR § 200.

Termination for Cause – No mandatory text provided. The Sponsor must include a clause for termination for cause (includes default). The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR Part 200, Appendix II.

Equipment, Professional Services, and Property – No mandatory text provided. The Sponsor may use their established clause language provided that it adequately addresses the intent of 2 CFR Part 200 Appendix II(B), which addresses termination for cause and for convenience.

A25.3 MODEL CONTRACT CLAUSES

A25.3.1 Termination for Convenience

TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.

4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

1. Completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
2. Documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
3. Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4. Reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

A25.3.2 Termination for Default

TERMINATION FOR CAUSE (CONSTRUCTION)

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes standard language for conditions, rights, and remedies associated with Owner termination of this contract for cause due to default of the Contractor.

TERMINATION FOR CAUSE (EQUIPMENT)

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract for cause if the Contractor:

1. Fails to begin the Work under the Contract within the time specified in the Notice- to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

TERMINATION FOR CAUSE (PROFESSIONAL SERVICES)

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) **Termination by Owner:** The Owner may terminate this Agreement for cause in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
 2. Make adequate progress so as to endanger satisfactory performance of the Project; or
 3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

- b) **Termination by Consultant:** The Consultant may terminate this Agreement for cause in whole or in part, if the Owner:
1. Defaults on its obligations under this Agreement;
 2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
 3. Suspends the project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Consultant is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

A26 TRADE RESTRICTION CERTIFICATION

A26.1 SOURCE

49 USC § 50104

49 CFR Part 30

A26.2 APPLICABILITY

Unless waived by the Secretary of Transportation, Sponsors may not use AIP funds on a product or service from a foreign country included in the current list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR).

Contract Types – The trade restriction certification and clause apply to all AIP funded projects.

Use of Provision – MANDATORY TEXT. 49 CFR Part 30 prescribes the language for this model clause. The Sponsor must include this certification language in all contracts and subcontracts without modification.

A26.3 MANDATORY SOLICITATION CLAUSE

TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC § 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

A27 VETERAN'S PREFERENCE

A27.1 SOURCE

49 USC § 47112(c)

A27.2 APPLICABILITY

Contract Types – This provision applies to all AIP funded projects that involve labor to carry out the project. This preference, which excludes executive, administrative, and supervisory positions, applies to covered veterans [as defined under § 47112(c)] only when they are readily available and qualified to accomplish the work required by the project.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 49 USC § 47112.

A27.3 MODEL CONTRACT CLAUSE

VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

A28 DOMESTIC PREFERENCES FOR PROCUREMENTS

A28.1 SOURCE

2 CFR § 200.322

2 CFR Part 200, Appendix II(L)

A28.2 APPLICABILITY

To the greatest extent “practicable,” Sponsors must provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the U.S., including, but not limited to iron, aluminum, steel, cement, or other manufactured products.

Contract Types – Must be included in all subawards, including all contracts and purchase orders for work or products under the grant.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR § 200.322.

A28.3 MODEL CERTIFICATION CLAUSE

CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.