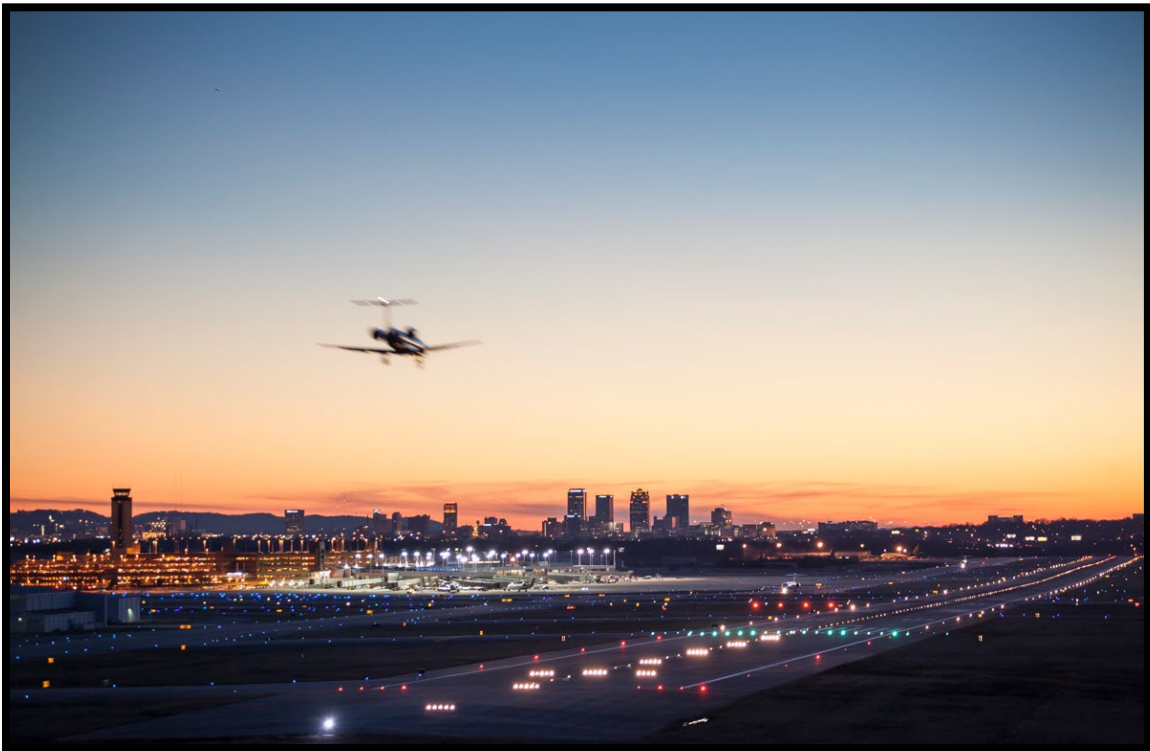


Request for Qualifications (RFQ)
Architectural and Construction Administration Services
Terminal Restroom Renovations



Birmingham Airport Authority
January 2026

I. Introduction

A. Project Description

The Birmingham Airport Authority (BAA) is soliciting Statements of Qualifications (SOQ) and Project Proposals from qualified architectural firms (firms) for the design, bidding, and construction administration services associated with the proposed renovation of 14 public restrooms (5 female, 5 male, and 4 family) within the terminal facility at BHM.

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, ADA design standards, state and local permitting requirements, as well as familiarization with other FAA Orders, Advisory Circulars (AC), and the National Environmental Policy Act (NEPA) process.

B. Project Background

Terminal Restroom Renovations

This project will provide design and construction administration services for the second round of the Terminal Restroom Renovations project within the terminal facility at BHM. Our aim is to renovate 14 restrooms (5 female, 5 male, and 4 family) in vital need of improvement by addressing aging infrastructure and optimizing the respective layouts for better circulation.

The goal of the project is to complete a full renovation including, but not limited to, new flooring, vents, fixtures, stalls, and lighting to each public restroom within the terminal facility. Each restroom will be stripped to the studs and reconstructed with enhanced fixtures and features that meet ADA design standards and provide for an enhanced passenger experience to the approximately 3 million passengers at BHM.

This effort will complete BAA's mission to fully modernize all public restrooms within the terminal, bringing them into conformity with current standards and enhancing the experience for the flying community and their families.

II. Scope of Services

A. Goals

- i. To enter into a contract with the most qualified architectural firm for professional services pertaining to the design and construction administration of the proposed renovations to 14 public restrooms within the terminal facility at BHM.
- ii. To provide professional services to design, bid, and construct the proposed project in FY 2026-2027.

- iii. To issue bid-ready plans in early September 2026.

B. Architectural Services

- i. Design Phase: Complete project design including preparation of architectural reports and recommendations, as well as, preparing detailed plans, specifications, cost estimates, and project schedules (design and construction)
- ii. Bidding and Negotiation Phase: Advertising and securing bids, administering, and attending pre-bid conferences, analyzing bid results, negotiation for services, furnishing recommendations for award, and preparation of contract documents
- iii. Construction Phase: Consultation and guidance during construction, as well as construction administration services
- iv. Project Closeout Phase: Services rendered after the completion of the project including final inspections and preventative maintenance

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 (5900 Messer Airport Highway, Birmingham AL 35212).

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:** 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.

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:

- Firm's capability to perform all aspects of the project 20/100
- Firm's recent experience in relevant projects 15/100
- Firm's demonstration of personnel qualifications 10/100
- Firm's proposed approach to the project 30/100
- Firm's proposed project management plan 15/100
- Firm's proposed communication plan 10/100

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	Thursday, January 22 nd , 2026
Pre-Submittal Meeting	Thursday, February 5 th , 2026, at 2pm Central
Deadline for SOQ Questions/Clarifications	Thursday, February 12 th , 2026, at 2pm Central
SOQ Deadline	Thursday, February 26 th , 2026, at 2pm Central
Potential Recommendation to Award	March – April 2026

H. Pre-Submittal Meeting

A **non-mandatory** pre-submittal meeting is scheduled for **Thursday, February 5th, 2026, 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 4:30 P.M. Central Time Thursday, January 29th, 2026. Access to the Zoom meeting will be provided after the RSVP deadline.

No site visits will be permitted for this RFQ.

IV. 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).

V. 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.

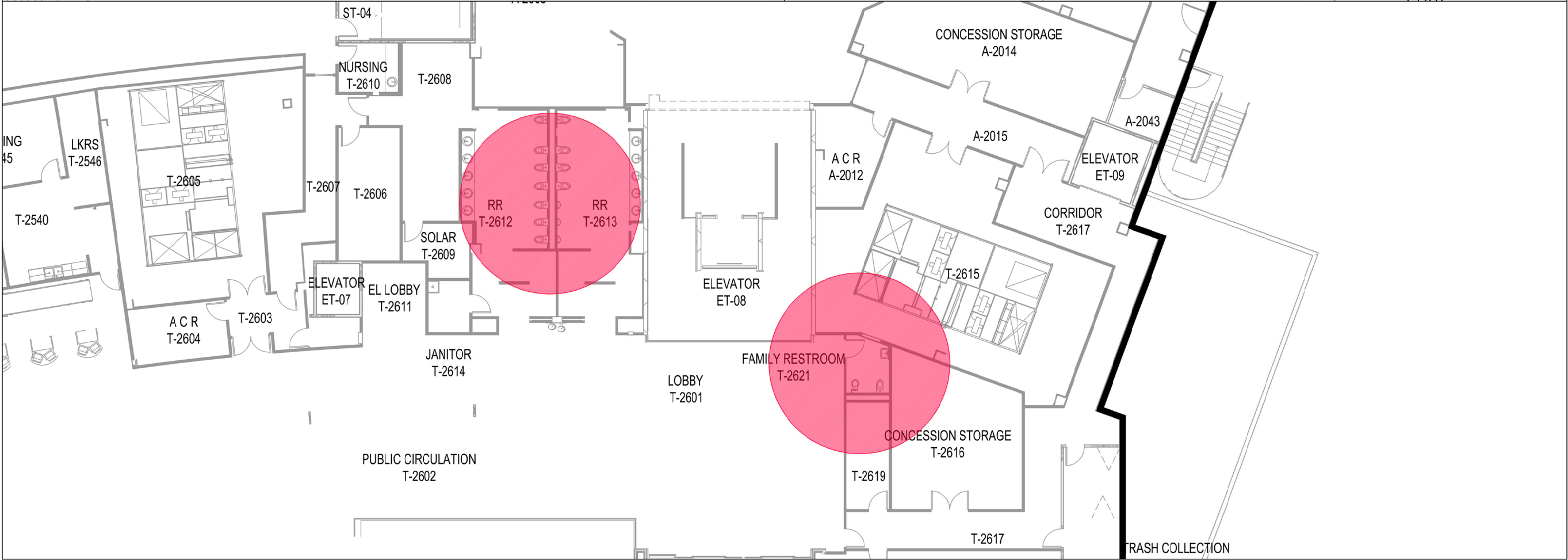
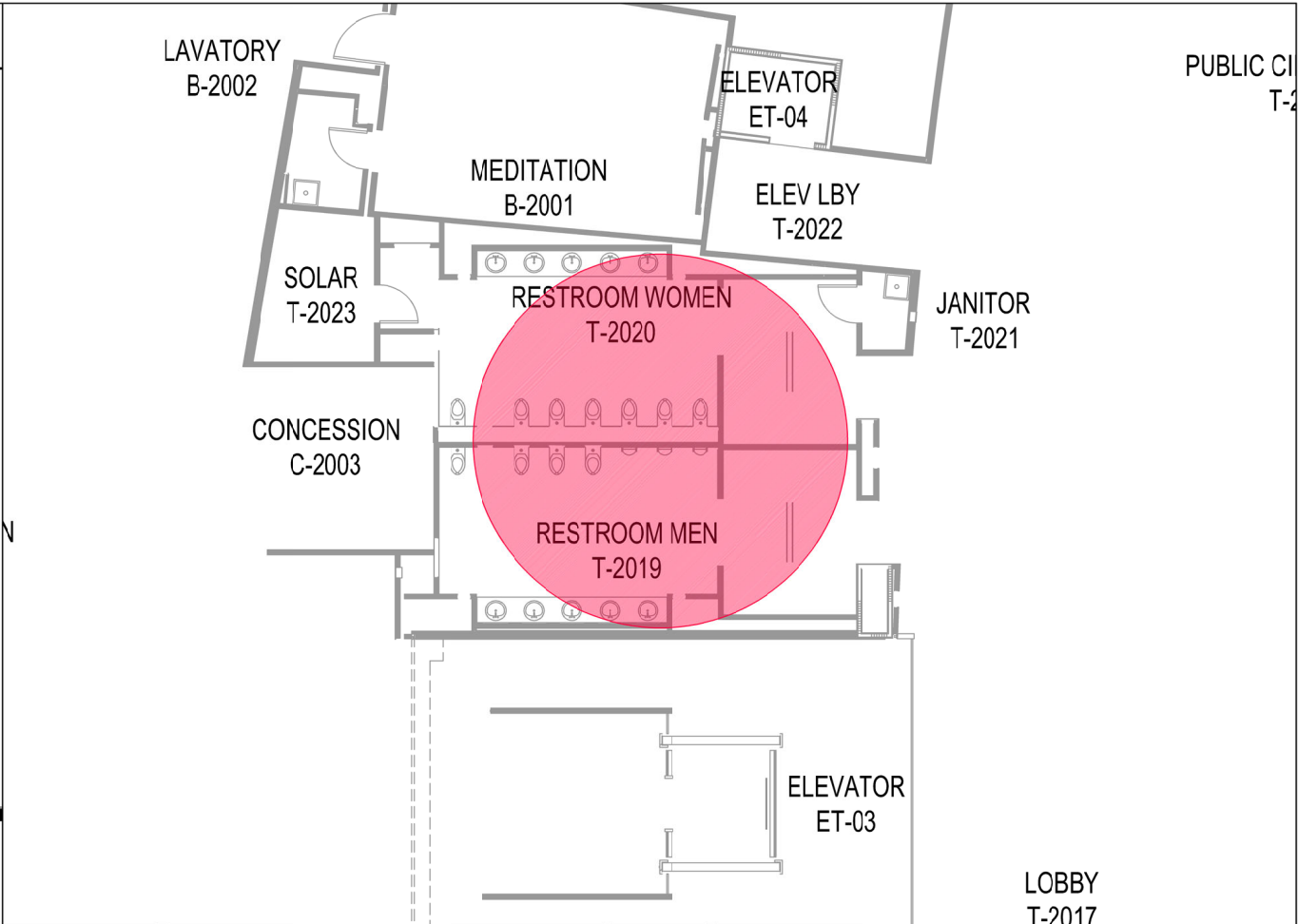
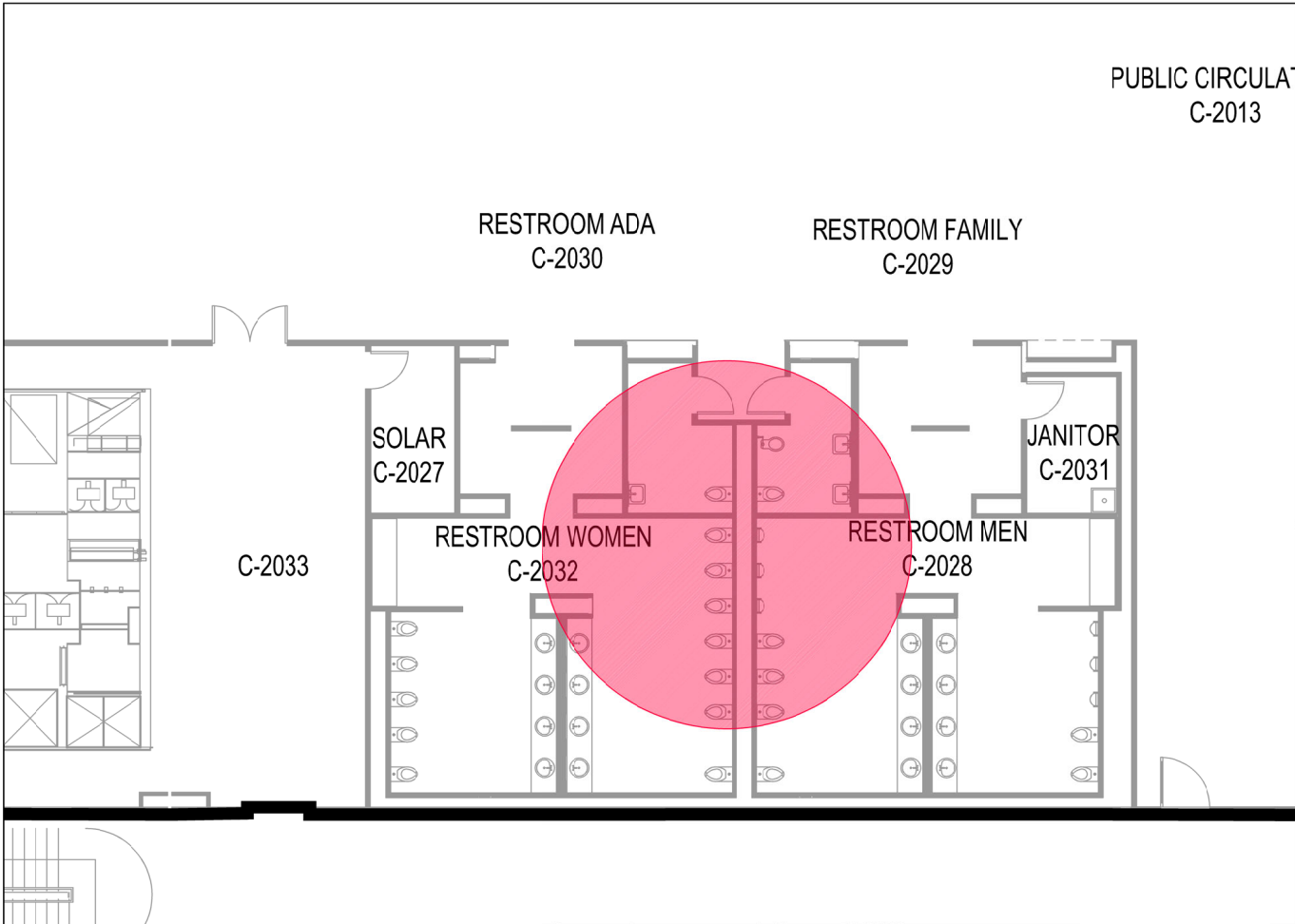
BAA is not liable for any cost incurred by the consultant for the preparation of the SOQ / Project Proposal submittal, or, if deemed necessary, interview.

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 B. These provisions shall be included in the contract with the selected firm.

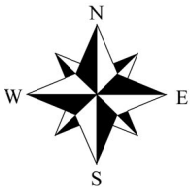
Exhibit A

Project Limits



5900 Airport Highway
Birmingham, AL 35212

BHM Upper Level Restroom Locations (Under Scope)



SCALE: NTS

DRAWN BY: OSB

DATE: 01/21/2026

BHM Terminal
Lower Level
Restroom Locations
(Under Scope)

SCALE: NTS

DRAWN BY: osh

DATE: 01/21/2025

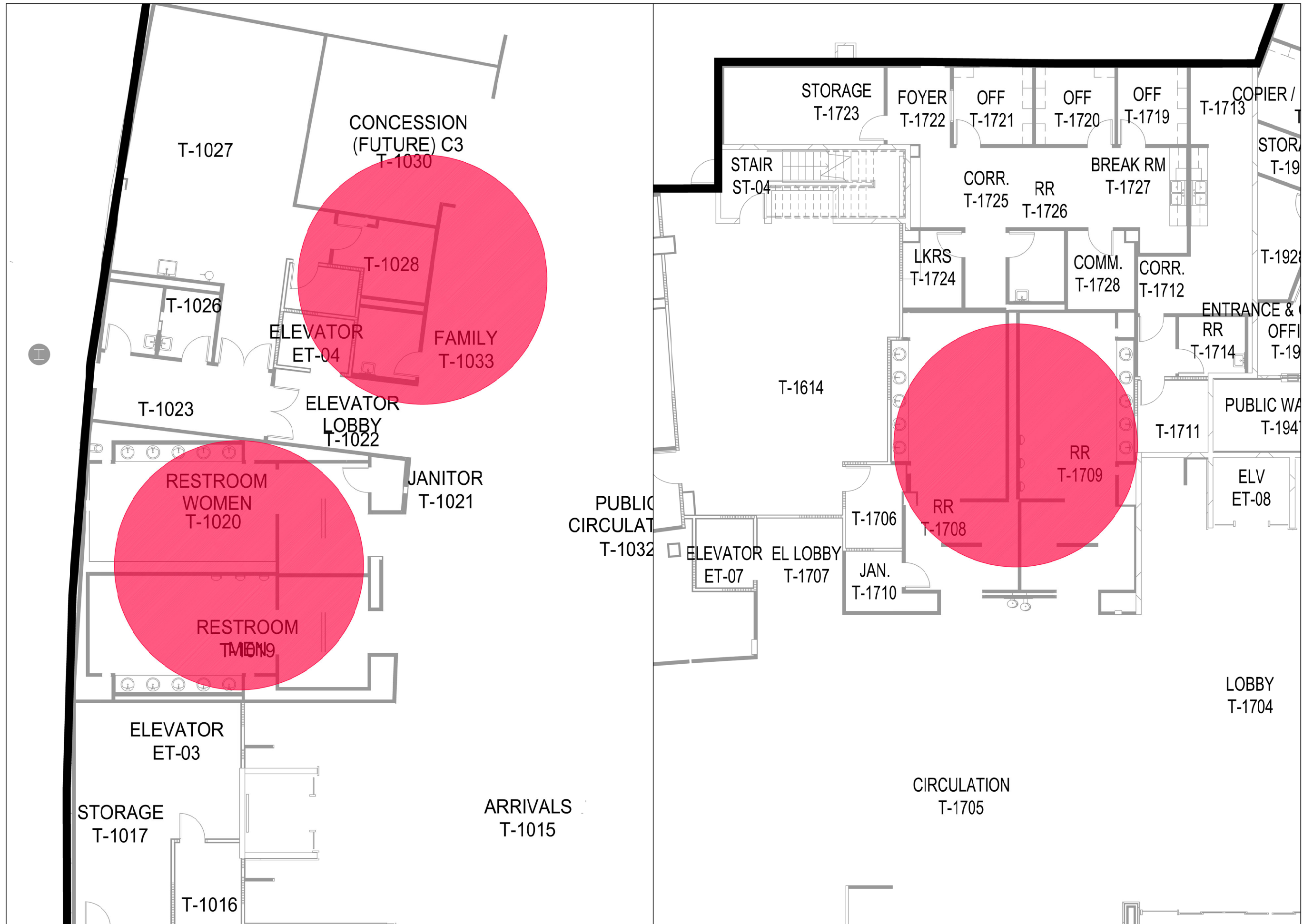


Exhibit B

Federal Provisions

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



FAA Airports

Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects (Issued on December 29, 2025)

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CURRENT CHANGES

Item	Changes
Editorial updates made to the May 24, 2023 version (effective December 29, 2025)	Updates were made mainly to address: -2024 FAA Reauthorization Act provisions -2 CFR Part 200 – <i>Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards</i> -Recently issued Executive Orders, some of which rescinded prior Executive Orders Provisions removed are: -A2: Affirmative Action Requirement -A16: Equal Employment Opportunity (EEO) -A19: Prohibition of Segregated Facilities Title VI section updated DBE section updated Buy American Preference section updated Provision added (A26): Prohibition of Covered Unmanned Aircraft Systems (UAS)
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

- a) 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) and Infrastructure Investment and Jobs Act (IIJA) grant programs. The source of requirements addressed within this document are identified within the section for each individual clause.
- b) **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.**
- c) 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.
- d) 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.
- e) Terminology:
 - i. 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.
 - ii. 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.
 - iii. For purposes of determining requirements for contract provisions, the term **“contract”** includes professional services, and subcontracts and supplier contracts such as purchase orders.
 - iv. 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).
 - v. The term **“bid”** is understood to mean a bid, an offer, or a proposal.
 - vi. The term **“applicant”** means a bidder, offeror, or proposer for a contract.

2. Sponsor Actions

In general, Sponsor’s actions consistent with obligations:

- a) Include in its procurements the provisions that are applicable to its project.
- b) 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.
- c) 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.
 - i. 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).
 - ii. 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.
- d) Require the contractor (including all subcontractors) to insert these contract provisions in each lower tier contract (e.g., subcontract or sub-agreement).
- e) 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.
- f) Require that the prime contractor be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor, or service provider.
- g) 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 step 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
Breach of Contract	\$350,000	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	\$0 ¹	REQD	REQD	REQD	REQD	REQD	n/a
Distracted Driving	\$15,000	NIS	REQD	REQD	REQD	REQD	n/a
Domestic Preferences for Procurements	\$0	NIS	REQD	REQD	REQD	REQD	Info
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 Covered Unmanned Aircraft Systems (UAS)	\$0	REQD	REQD	REQD	REQD	REQD	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 Notes:

¹ Under 49 CFR §§ 26.13(b) and 26.21, any sponsor with more than \$250,000 in total contracting opportunities in 1 year must incorporate required language in each contract, regardless of the particular contract's dollar value.

1. Language relative to solicitation for airport concessions does not need to be included in AIP funded solicitations, since in no case are concessions activities funded with federal funds.
2. Sponsors must include the appropriate Civil Rights – Title VI language in their solicitation notices when they seek proposals for concessions, and in the resulting contracts.
3. For concessions agreements, use the column for Non-AIP contracts. See 49 CFR Part 23 for definitions, requirements, and clauses related to concessions and the Airport Concessions Disadvantaged Business Enterprise (ACDBE) program.

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 applies 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 BREACH OF CONTRACT TERMS

A2.1 SOURCE

2 CFR Part 200, Appendix II(A)

A2.2 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 \$350,000.

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.

A2.3 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.

A3 BUY AMERICAN PREFERENCE

A3.1 SOURCE

Title 49 U.S.C. § 50101

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

Infrastructure Investment and Jobs Act (IIJA) (P.L. No. 117-58), Build America, Buy America (BABA)

A3.2 APPLICABILITY

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

Section 50101 of 49 U.S.C. 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 procured, 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 Infrastructure Investment and Jobs Act (IIJA), 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 Infrastructure Investment and Jobs Act (IIJA) (P. 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 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.

Note: Section 768 of the FAA Reauthorization Act of 2024 (Public Law 118-63), which became effective on May 16, 2024, establishes specific requirements for the procurement of certain rolling stock using FAA grant funds. The provision prohibits airports from using Federal financial assistance to procure buses or rail car vehicles rolling stock from covered entities.

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 2024 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 U.S.C. § 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.

A3.3 MODEL SOLICITATION CLAUSES

A3.3.1 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 U.S.C. § 50101, BABA and other related Made in America Laws,² 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.

² 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.

The bidder or offeror certifies procurement of certain rolling stock using FAA grant funds will prohibit airports from using Federal financial assistance to procure buses or rail car vehicle rolling stock from covered entities.

A3.3.2 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 U.S.C. § 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 (ü) or the letter “X”.

- ☐ Bidder or offeror hereby certifies that it will comply with 49 U.S.C. § 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 U.S.C. § 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 the 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

A3.3.3 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 U.S.C. § 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 (ü) or the letter “X”.

- ☐ Bidder or offeror hereby certifies that it will comply with 49 U.S.C. § 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 U.S.C. § 50101(a) but may qualify for a Type 3 waiver under 49 U.S.C. § 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 U.S.C. § 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 CIVIL RIGHTS - GENERAL

A4.1 SOURCE

49 U.S.C. § 47123

A4.2 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 U.S.C. § 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 General Clause and the appropriate Specific Clause without modification into the contract, lease, or transfer agreement.

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

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
General Clause that is used for all contracts, lease agreements and transfer agreements	Every contract or agreement regardless of funding source.	A4.3.1
Specific 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.	A4.3.2
Specific 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.	A4.3.3

A4.3 MANDATORY CONTRACT CLAUSES

A4.3.1 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, creed, sex, 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.

A4.3.2 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.

A4.3.3 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.

A5 CIVIL RIGHTS – TITLE VI ASSURANCE

A5.1 SOURCE

49 U.S.C. § 47123

FAA Order 1400.11

A5.2 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:

A5.2.1 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 – - Assurance 2 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses - Assurance 30(d) of the Airport Sponsors Assurances	1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations regardless of funding source ; and 2) All Sponsor proposals for negotiated agreements regardless of funding source .	A5.3.1

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Title VI List of Pertinent Nondiscrimination Acts and Authorities - Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses - Assurance 30(e)(2) of the Airport Sponsor Assurances	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. This list can only be omitted if the FAA has determined that the contractor or company is already subject to substantively identical nondiscrimination requirements.	A5.4.1 List must be included in all applicable contracts.
Title VI Clauses for Compliance with Nondiscrimination Requirements Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(1) of the Airport Sponsor Assurances	Insert this clause 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. It has been determined that service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements must include this clause.	A5.4.2 Clause must be included in all applicable contracts.
Title VI Required Clause for Property Interests Transferred from the United States - Assurance 4 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses - Assurance 30e.3 of the Airport Sponsor Assurances	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. This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract.	A5.4.3

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Title VI Required Clause for Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program – - Assurance 5 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses - Assurance 30(e)(4)(a) of the Airport Sponsor Assurances	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 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.	A5.4.4
Clause for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program - Assurance 6 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses - Assurance 30(e)(4)(b) of the Airport Sponsor Assurances	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 This applies to agreements such as leases of concession space in a terminal not covered by A6.4.3.	A5.4.5

A5.3 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 **regardless of funding source**; and
- 2) All Sponsor proposals for negotiated agreements **regardless of funding source**.

A5.3.1 Title VI Solicitation Notice

Title VI Solicitation Notice:

As a condition of a grant award, the Sponsor shall demonstrate that it complies with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq) and implementing regulations (49 CFR part 21) including amendments thereto, the Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), U.S. Department of Transportation and Federal Aviation Administration (FAA) Assurances, and other relevant civil rights statutes, regulations, or authorities, including any amendments or updates thereto.

This may include, as applicable, providing a current Title VI Program Plan to the FAA for approval, in the format and according to the timeline required by the FAA, and other information about the communities that will be benefited and impacted by the project. A completed FAA Title VI Pre-Grant Award Checklist is required for every grant application, unless excused by the FAA. The Sponsor shall affirmatively ensure that when carrying out any project supported by this grant that it complies with all federal nondiscrimination and civil rights laws based on race, color, national origin, sex, creed, age, disability, genetic information, in consideration for federal financial assistance. The Department's and FAA's Office of Civil Rights may provide resources and technical assistance to recipients to ensure full and sustainable compliance with Federal civil rights requirements. Failure to comply with civil rights requirements will be considered a violation of the agreement or contract and be subject to any enforcement action as authorized by law.

A5.4 MANDATORY CONTRACT CLAUSES

A5.4.1 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 U.S.C. § 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) including amendments thereto;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 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 U.S.C. § 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 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (P.L. 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 U.S.C. § 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;
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681, et seq).

A5.4.2 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), creed, sex, 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 including amendments thereto.
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.

A5.4.3 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.)

A5.4.4 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.)

A5.4.5 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.)

A6 CLEAN AIR AND WATER POLLUTION CONTROL

A6.1 SOURCE

2 CFR Part 200, Appendix II(G)

42 U.S.C. § 7401, et seq

33 U.S.C. § 1251, et seq

A6.2 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 Part 200.

A6.3 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 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 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.

A7 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

A7.1 SOURCE

2 CFR Part 200, Appendix II(E)

29 CFR § 5.5(b)

40 U.S.C. § 3702

40 U.S.C. § 3704

A7.2 APPLICABILITY

Contract Work Hours and Safety Standards Act Requirements (CWHSSA) (40 U.S.C. §§ 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.

A7.3 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.

A8 COPELAND “ANTI-KICKBACK” ACT

A8.1 SOURCE

2 CFR Part 200, Appendix II(D)

29 CFR Parts 3 and 5

A8.2 APPLICABILITY and PURPOSE

The Copeland (Anti-Kickback) Act (18 U.S.C. § 874 and 40 U.S.C. § 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.

A8.3 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.

A9 DAVIS-BACON REQUIREMENTS

A9.1 SOURCE

2 CFR Part 200, Appendix II(D)

29 CFR Part 5

49 USC § 47112(b)

40 USC §§ 3141-3144, 3146, and 3147

A9.2 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.

A9.3 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 regulations implementing 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 no 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.

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 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.

A10 DEBARMENT AND SUSPENSION

A10.1 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

A10.2 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.”

A10.3 MODEL BID/PROPOSAL CERTIFICATION CLAUSES

A10.3.1 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.

A10.3.2 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.

A11 DISADVANTAGED BUSINESS ENTERPRISE

A11.1 SOURCE

49 CFR Part 26

49 U.S.C. § 47113

A11.2 APPLICABILITY

A Sponsor that anticipates awarding prime contracts totaling \$250,000 or more in Federal financial assistance 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 Sponsor will also 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 seek to obtain DBE participation.

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 A11.3.1 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. The Sponsor's election regarding responsiveness vs. responsibility is recorded in its approved DBE program. Special consideration and procedures apply to negotiated procurements and to projects solicited using the Design-Build approach.
2. *Solicitations without a DBE Contract Goal* – No mandatory language provided. The language of A11.3.2 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 language must be included regardless of whether there is a DBE contract goal for the project. 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. 49 CFR § 26.29 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. 49 CFR § 26.53 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.

A11.3 REQUIRED PROVISIONS

A11.3.1 Solicitation Language (Solicitations with a DBE Contract Goal)

For traditional design-bid-build projects, the decision on whether DBE information is a matter of responsiveness or responsibility is laid out in the Sponsor's approved DBE program and the Sponsor should incorporate the applicable solicitation language accordingly. Special procedures apply in the case of negotiated procurements and for projects that follow the Design-Build method of procurement. In all cases, Sponsors should include only the applicable solicitation language from the examples below.

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 including any amendments thereto. 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 including any amendments thereto. 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 requirements for **negotiated procurements**:

In a negotiated procurement, such as a procurement for professional services, the Sponsor may allow the bidder/offeror to make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required under the above *responsiveness* or *responsibility* procedures before the final selection for the contract is made by the recipient.

Bid Information submitted for **Design-Build projects**:

In a design-build contracting situation, in which the Sponsor solicits proposals to design and build a project with minimal-project details at time of letting, the Sponsor may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of 49 CFR § 26.53 that

applies to design-bid-build contracts. To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, the recipient must provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. The recipient and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, *e.g.*, replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

A11.3.2 Solicitation Language (Solicitations with No DBE Contract Goal)

The requirements of 49 CFR Part 26 including any amendments thereto 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.

A11.3.3 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, including any amendments thereto, 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 pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

A12 DISTRACTED DRIVING

A12.1 SOURCE

Executive Order 13513

DOT Order 3902.10

A12.2 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 \$15,000).

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.

A12.3 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 \$15,000 that involve driving a motor vehicle in performance of work activities associated with the project.

A13 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

A13.1 SOURCE

2 CFR § 200, Appendix II(K)

2 CFR § 200.216

A13.2 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.

A13.3 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 P.L. 115-232, § 889(f)(1)).

A14 DRUG FREE WORKPLACE REQUIREMENTS

A14.1 SOURCE

49 CFR Part 32

Drug-Free Workplace Act of 1988 (41 U.S.C. § 8101-8106, as amended)

A14.2 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.

A14.3 CONTRACT CLAUSE

None.

A15 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

A15.1 SOURCE

29 USC § 201, et seq

2 CFR § 200.430

A15.2 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.

A15.3 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.

A16 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

A16.1 SOURCE

31 USC § 1352 – Byrd Anti-Lobbying Amendment

2 CFR Part 200, Appendix II(I)

49 CFR Part 20, Appendix A

A16.2 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.

A16.3 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 31 U.S.C. § 1352. 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.

A17 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

A17.1 SOURCE

29 CFR Part 1910

A17.2 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.

A17.3 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.

A18 PROCUREMENT OF RECOVERED MATERIALS

A18.1 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))

A18.2 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.

A18.3 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.

A19 RIGHT TO INVENTIONS

A19.1 SOURCE

2 CFR Part 200, Appendix II(F)

37 CFR Part 401

A19.2 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.

A19.3 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.

A20 SEISMIC SAFETY

A20.1 SOURCE

49 CFR Part 41

A20.2 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.

A20.3 MODEL CONTRACT CLAUSE

A20.3.1 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.

A20.3.2 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.

A21 TAX DELINQUENCY AND FELONY CONVICTIONS

A21.1 SOURCE

Section 8113 of the Consolidated Appropriations Act, 2022 (P.L. 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

A21.2 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.

A21.3 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 (ü) 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.

A22 TERMINATION OF CONTRACT

A22.1 SOURCE

2 CFR Part 200, Appendix II(B)

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

A22.2 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.

A22.3 MODEL CONTRACT CLAUSES

A22.3.1 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.

A22.3.2 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.

A23 TRADE RESTRICTION CERTIFICATION

A23.1 SOURCE

49 USC § 50104

49 CFR Part 30

A23.2 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.

A23.3 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.

A24 VETERAN'S PREFERENCE

A24.1 SOURCE

49 USC § 47112(c)

A24.2 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.

A24.3 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 49 U.S.C. § 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. § 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.

A25 DOMESTIC PREFERENCES FOR PROCUREMENTS

A25.1 SOURCE

2 CFR § 200.322

2 CFR Part 200, Appendix II(L)

A25.2 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.

A25.3 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.

A26 PROHIBITION OF COVERED UNMANNED AIRCRAFT SYSTEMS (UAS)

A26.1 SOURCE

FAA Reauthorization Act of 2024 (Public Law 118-63), Section 936

49 U.S.C. § 44801 note

Sponsors and subgrant recipients are prohibited from using AIP grant funds to enter into, extend, or renew a contract for:

- 1) The operation, procurement, or contracting action with respect to a covered unmanned aircraft system (UAS); or
- 2) To any entity that operates a covered unmanned aircraft system (UAS) in the performance of such contract.

The term “Covered UAS” means a small unmanned aircraft, an unmanned aircraft, and unmanned aircraft system, or the associated elements of such aircraft and aircraft systems related to the collection and transmission of sensitive information (consisting of communication links and the components that control the unmanned aircraft) that enable the operator to operate the aircraft in the National Airspace System which is manufactured or assembled by a covered foreign entity; and an unmanned aircraft detection system or counter- UAS system that is manufactured or assembled by a covered foreign entity. These covered foreign entities include:

- (a) The People’s Republic of China.
- (b) The Russian Federation.
- (c) The Islamic Republic of Iran.
- (d) The Democratic People’s Republic of Korea.
- (e) The Bolivarian Republic of Venezuela.
- (f) The Republic of Cuba.
- (g) Any other country the Secretary determines necessary.

A26.2 APPLICABILITY

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 Sponsor's language must fully satisfy these requirements. Sponsor may substitute "Contractor and subcontractor" with "Consultant and sub-consultant" for professional service agreements as appropriate.

A26.3 MODEL CONTRACT CLAUSE

The Bidder or Offeror certifies that they are aware of and comply with relevant Federal statutes and regulations, including those from the Federal Aviation Administration (FAA), for operating unmanned aircraft systems (UAS) in accordance, and in compliance with all related requirements in the FAA Reauthorization Act of 2024 (Public Law 118-63), section 936 (49 U.S.C. § 44801 note).

Contractor warrants that all UAS operations will be conducted in full compliance with all applicable Federal Aviation Administration (FAA) regulations, including but not limited to 14 CFR Part 107, and any other applicable local, state, or Federal laws and regulations.

Sponsors and subgrant recipients cannot use AIP grant funds to enter into, extend, or renew a contract related to covered unmanned aircraft systems (UAS). This includes both procurement and operational contracts, as well as contracts with entities that operate such systems.

Exhibit C

Insurance Requirements

**EXHIBIT C: BAA CONTRACTOR INSURANCE REQUIREMENTS
CONTRACTOR PROVIDED INSURANCE FOR NON-AIRSIDE PROJECT**

<u>Type of Coverage</u>	<u>Minimum Limits</u>	<u>COVERAGE</u>
Worker's Compensation	Statutory	
Employee's Liability	\$1,000,000	Each Accident
	\$1,000,000	Disease – Policy Limit
	\$1,000,000	per Employee
Requirements:		1. Voluntary Compensation Endorsement 2. Waiver of Subrogation
General Liability	\$1,000,000	each occurrence
	\$2,000,000	General Aggregate
	\$2,000,000	Completed Operations/Products Aggregate
	\$2,000,000	Personal Injury
	\$5,000	Medical Payments
Requirements:		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:		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	\$5,000,000	
Builder's Risk Policy	Amount of Project	1. Requirement: 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	\$1,000,000	<i>(Depending on project)</i>
Professional Liability	\$1,000,000	<i>(Depending on project)</i>