



Bishop International Airport • FNT

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REQUESTS FOR QUALIFICATIONS

FOR

**PROFESSIONAL ON-CALL AIRPORT
PLANNING AND ENVIRONMENTAL
SERVICES**

MARCH 15, 2023

Statement of Qualifications Due: May 12, 2023 at 10:00am

Bishop International Airport
3425 West Bristol Road
Flint, MI 48507

Point of Contact: Christopher Yeates, A.A.E. – Chief Operating Officer
Email: cyeates@bishopairport.org

Introduction

The Bishop International Airport Authority, “the Airport”, is soliciting Statements of Qualifications (SOQs) from interested and qualified Aviation Consultants for Professional Airport Planning and Environmental Consultant Services at Bishop International Airport for the next five (5) years. Professional, technical and advisory services are needed for projects identified in the Airport’s Capital Improvement Program (ACIP) and other projects as needed. The potential projects are likely to be subject to federal, state and local funding processes, and may require Authority Board approval prior to commencement.

The term of the agreement for these services is expected to run for five years from the date of execution, and selection will be conducted in accordance with Federal Aviation Administration (FAA) Advisory Circular (AC) 150/5100-14E. Work is expected to be accomplished during the course of several federal grant projects.

Airport Overview and Background

The Airport is located within Genesee County on the southwest side of the City of Flint. The Airport was opened in 1934 following the donation of 220 acres of farmland by Arthur Giles Bishop, President of Genesee County Savings Bank and General Motors Vice President, to the City of Flint. It originally consisted of one concrete and four turf runways. The first commercial air service flight took place on January 15, 1937, operated by Pennsylvania-Central Airlines.

Following continued growth, the citizens of Genesee County created an Airport Authority Board in 1987. The advisory board consists of nine board members, appointed by the Genesee County Board of Commissioners and City of Flint.

Construction on a new terminal building was completed in 1993 and then further expanded in 1999, 2004, 2006, and 2012. The terminal building now encompasses 242,000 square feet, including 9 passenger boarding bridges, space for airline operations, rental car operations, passenger processing and holding areas, concessionaire space, and the Airport Authority Offices. The Airport is currently serviced by three airlines: American Airlines, United Airlines, and Allegiant Airlines.

The Airport has two runways. Runway 9-27 is the primary precision approach runway, and Runway 18-36 is the crosswind runway with non-precision approaches. Some of the many airport tenants include the following services: cargo operations (FedEx), Fixed-Base Operator (Avflight), flight school (Crosswinds Aviation) aircraft maintenance (McClellan Aviation), commercial air service (United Airlines, American Airlines, Allegiant Air), aircraft maintenance base (Allegiant Air), and approximately 100 general aviation T-hangar tenants.

Scope of Services

The Airport plans to contract with one consulting firms, for a period of five (5) years, for planning and environmental services for various airport projects. Work will be authorized through Work Orders between the selected firm and the Airport. The selected firm may be required to coordinate efforts as necessary with the Airport’s other consultants.

As portions of the work conducted may be funded in whole or in part by the FAA, and accomplished during the course of multiple grants, the contract and all work orders will be subject to FAA Airport Improvement Program contract provisions as provided below.

Consultants shall be familiar with all relevant FAA and Michigan Department of Transportation (MDOT) regulations, funding programs, and requirements.

The following draft scope of services describes the types of work that may be covered under the agreement with the successful consultant. This draft is provided to help prospective proposers seeking to submit their qualifications. Proposers may rely on the following descriptions of the proposed scope of service only for the purpose of submitting their Statements of Qualifications. The ultimate scope of services will be developed between the Airport and the successful consultant.

The projects identified in the scope of services are subject to federal, state and local funding and may require environmental clearance and local approval prior to commencement. It shall be understood that some of the services related to the listed projects may not be completed and that the Airport reserves the right to initiate additional service not included in this procurement. The Airport reserves the right to conduct an additional Request for Qualifications at any time for services either listed or not listed in this scope of services.

Planning and environmental services included in this scope of services may include, but are not limited to, the following:

1. Airport Planning

- a. Airport data collection and facility inventories
- b. Aeronautical activity forecasts and demand/capacity analyses
- c. Facility requirement determination
- d. Airport modeling for capacity and delay
- e. Airport layout and terminal area plan development
- f. Airport noise studies under 14 CFR Parts 150 and 161
- g. Compatible land-use planning in the vicinity of the airport
- h. Airport development schedules and cost estimates
- i. Airport financial planning and benefit cost analysis
- j. Participation in public information and community involvement programs related to airport development and planning projects
- k. Preparation of or updating of the Airport Layout Plan
- l. Airspace analysis
- m. GIS data collection, entry, and analysis and other electronic graphical/mapping efforts

2. Environmental Services

- a. Environmental Assessments (EA), Environmental Impact Statements (EIS), and other studies in accordance with FAA Orders 5050.4 and 1050.1.

3. Specialized Services

- a. Maintenance and planning of the Airport Capital Improvement Program
- b. Other specialized services as required.

Selection Process

All SOQs received will be evaluated by a selection committee comprised of three to five (3-5) members. The selection committee will evaluate each SOQ using the weighted criteria listed below. The Airport reserves the right to make additional investigations as it deems necessary and may require the submission of additional information.

Based on the information included in the submitted SOQ, the selection committee will identify a shortlist of best qualified consultants for further consideration.

The selection committee may conduct interviews with the short-listed proposers. If held, interviews would provide an opportunity for the Proposers to make a brief presentation about their proposal, and to clarify responses through exhibition and discussion.

SOQ Content

Proposers shall prepare a Statement of Qualifications as described below. Each Proposer shall provide detailed evidence of its competency, capability and expertise to complete the Scope of Services. The Airport desires succinct submittals that address the specific content requirements. To facilitate the review of all submittals, each SOQ shall be:

- Printed on 8-1/2" by 11" sheet size paper (folded 11" x 17" exhibits are acceptable);
- Typewritten no smaller than 10-point font size for the body of the proposal;
- 9-point font in graphics and captions is acceptable; and
- The entire Statement of Qualifications shall not exceed thirty (30) pages; excluding the front and back covers, dividers, and table of contents.

Each SOQ shall consist of the following elements in the prescribed order:

Cover Letter/General Firm Information

The Cover Letter shall not exceed 2 pages and shall include the following:

- Name and brief description of the firm;
- The name, work address, email address, and telephone number of the primary point of contact;
- Home office location and the location of other offices that will be performing the majority of the work;
- Number of relevant employees in the offices that will be performing the majority of the work;
- Legal organization of firm;
- Any litigation or arbitration action within the last three years. Briefly describe the circumstances and outcomes;

- Summary of major points contained in the SOQ; and
- An acknowledgement of receipt of amendments to the RFQ (if any).

The cover letter shall be signed by an officer or principal of the Proposers Firm.

Project Team

Proposers shall provide a written description of the proposed project team. The description shall include a profile of the team and a listing of the total number of personnel by discipline. Proposers may also include an organizational chart.

Each Proposer shall identify a Project Manager to serve as the primary point of contact for the Airport for the duration of this agreement. The Project Manager shall have recent, relevant experience. In addition, Proposers shall identify the individuals who would serve as the key team members of the Proposers organization, describe their experience and qualifications, and indicate their roles and responsibilities. It should be noted that it is the Airport's expectation that all key personnel listed as part of this requirement will actually be assigned to projects within the contract. For each key team member, include a resume detailing education, experience, work history, and appropriate background information as Attachment 1 of the Appendix.

List subcontractors that may be used during the duration of the agreement. Include Disadvantaged Business Enterprises (DBEs), certified within the State of Michigan, who will participate in the performance of the work. Include type of DBE, certifying agency, and elements of work to be performed.

Provide any other information that the Proposer deems relevant. In particular, describe any particular aspect of the organization which, by way of background, experience, unique qualifications, or other bases, sets its team apart from the competition.

Demonstrated Experience

Describe the experience, qualifications, and technical competence of the organization and they key team members in providing airport planning and environmental services within the last five (5) years.

Briefly describe at least three (3) other similar sized airports, with at least one commercial service airport, of similar scope and complexity where the firm or the key team members have provided similar services outlined in the scope of services for this RFQ. Reference the experiences of the firm in working with MDOT and FAA regulations and procedures.

Project Understanding

Each Proposer shall briefly describe its understanding of the scope of services required for this contract. In particular, each response shall address the Proposer's understanding of the unique environment at the Airport, including local conditions and challenges, and the Proposer's understanding of and experience with applicable state and local codes and requirements that may pertain to work conducted under the scope of services.

References

Provide at least three (3) but no more than five (5) references for projects similar to those identified in the Scope of Services. Include the name of the client, full address, dates of service, contact name, title and contact telephone number for reference checks. Also provide a brief description of the work performed for each reference. For each reference, identify which of the key members identified above (to be assigned to this agreement) were involved and the extent of their involvement.

In addition to the references required above, the Proposer is advised that the Airport may request information from Proposer's clients and any other available sources while investigating Proposer's experience and qualifications. Submittal of an SOQ constitutes consent to such requests.

Appendix

- Attachment 1:* Attach detailed resumes for all key team members identified in the Project Team.
- Attachment 2:* Identify any exceptions to the draft Professional Services Agreement (Exhibit 1 of this RFQ).
- Attachment 3:* Identify any potential conflicts of interest with Genesee County, the Airport, or any other relevant parties.
- Attachment 4:* Identify any legal actions against the Proposer or any key team members that are pending or have been settle or finalized in the last two years.

SOQ Submission Instructions

Proposers must submit three (3) hard copies of the entire SOQ. All SOQs must be received by the Airport on May 12, 2023, no later than 10:00am.

SOQs not submitted in the manner described herein (including those sent solely by email or other electronic means) may be considered nonresponsive and subject to rejection. SOQs submitted after the specified due date and time in this RFQ will be rejected as late and will not be accepted. Proposers shall submit their SOQs to the following address:

Bishop International Airport Authority
ATTN: Christopher Yeates, A.A.E.
3425 West Bristol Road
Flint, MI 48507

SOQs must be enclosed in a sealed envelope, box or package, and clearly marked on the outside with the following: ***“Statement of Qualifications for Airport Planning and Environmental Services.”*** Include business name and address of responder on the outside of the qualifications package.

It is each Proposer's responsibility to ensure that its SOQ is received by the Airport prior to the deadline. This responsibility rests entirely with the Proposer, regardless of delays resulting from postal handling or for any other reasons. Responses will be accepted in person daily from 8:00am – 5:00pm local time, Monday through Friday, legal holidays excepted.

Proposers are advised they may be required to supply additional information upon request, or to make additional submissions under secondary selection criteria as indicated above under the Selection Process.

Inquiries

All questions regarding this RFQ shall be submitted in writing. All questions/correspondence shall be emailed to the Chief Operating Officer at cyeates@bishopairport.org. The deadline for filing questions is April 17, 2023 at 5:00pm. Answers will be provided via addendum on or before April 21, 2023. No questions will be accepted after the deadline.

SOQ Evaluation Criteria

The following criteria will be used by the selection committee in screening and ranking the SOQs:

Item	Criteria	Weighting Factor	Raw Score	Weighted Overall Score
1	Demonstrated Experience (Firm’s Project Experience, Qualifications, and Technical Expertise)	7	(1-5)	(Max 35)
2	Project Team (Project Manager and Key Team Members’ Qualifications and Experience)	5	(1-5)	(Max 25)
3	Familiarity with Local Environment	4	(1-5)	(Max 20)
4	DBE Utilization Strategy	2	(1-5)	(Max 10)
5	Understanding of RFQ Scope	2	(1-5)	(Max 10)
	Raw Scoring: 5 – Outstanding 4 – Very Good 3 – Satisfactory 2 – Barely Acceptable 1 – Inadequate 0 - Unacceptable	Score:	(Max 25)	(Max 100)

The selection committee will evaluate the written proposals based on the listed evaluation criteria and will create a shortlist of qualified Proposers based upon the SOQ responses. The selection committee may conduct interviews with the short-listed proposers. If held, interviews would provide an opportunity for the Proposers to make a brief presentation about their proposal, and to clarify responses through exhibition and discussion.

Total scores will be determined by combining the initial scores of the SOQs (based on the evaluation criteria identified above) with the scores from the interviews. The Proposer(s) with the highest total score will be deemed the “best qualified” and will be recommended for contract award. Upon approval by the Airport Authority Board, agreement negotiations with the “best qualified” team will commence.

Selection of the successful Proposer will be qualification based. At no time should overhead rate, fees, or any cost information be identified as part of this submission process.

RFQ Schedule

The schedule for this RFQ process is identified below.

RFQ Issued	March 15, 2023	
RFQ Question Deadline	April 17, 2023	5:00pm
Airport Response to Questions	April 21, 2023	5:00pm
RFQ Response (SOQ) Due Date Shortlist	May 12, 2023	10:00am
Proposers Notified	May 22, 2023	
Proposal Interviews (if applicable)	June 5-9, 2023	
Notice of Selection	June 12, 2023	
Airport Authority Board Approval	June 27, 2023	11:30am

General Information/Contract Provisions

Airport Reservation of Rights

The Airport reserves the right to: reject any and all submissions to this RFQ; extend the date for submittal of responses; request additional information and data from any or all Proposers; supplement, amend, or otherwise modify the RFQ through addenda issued; cancel this RFQ with or without substitution of another RFQ; to reissue this RFQ; make reviews and investigations as it considers necessary and appropriate for evaluation; to not select any Proposer; initiate additional procurement action for any services included in this initial procurement; and to deem a Proposal as non-responsive if the Airport obtains information from any reference check that reveals concerns about the Proposer's past performance or their ability to successfully perform.

The Airport assumes no responsibility for costs incurred in responding to this RFQ or any part of this selection process. Any materials submitted through this selection process shall become the property of the Airport upon receipt. The Airport shall have the right to copy, reproduce, or otherwise dispose of such documents in any way that the Airport selects. The airport shall be free to use as its own, without payment or any kind of liability, any idea, scheme, concept, technique, suggestion, layout, or plan received in response to this RFQ including any future RFP process, if conducted.

Contact with Airport Employees

All firms interested in this project (including the firm's employees, representatives, agents, lobbyists, attorneys, and subcontractors) shall refrain from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, Authority Board, and Airport staff. This is intended to create a level playing field for all potential firms and protect the integrity of the selection process. All contact on this selection process should be addressed to the Chief Operating Officer as identified in Inquires above.

Freedom of Information Act

The Airport is subject to the Freedom of Information Act, 5 U.S.C. § 552. Accordingly, notwithstanding any claim of confidentiality or that any or all of the Proposer's submittal contains propriety information, the

Proposer understands by its submission that information may be disclosed pursuant to a public records request.

Protest Appeal Procedure

In accordance with the Authority's Purchasing Policy, a Protester may file with the Authority's Chief Executive Officer a protest about any or all of the following:

1. Alleged defects in a Competitive Solicitation process;
2. A contract award recommendation reached through a Competitive Solicitation process; or
3. Award of a contract.

In order for a protest to be valid, the Protestor shall file the protest prior to award of the contract to which it relates, unless the Protester did not know and could not have known of the facts giving rise to such protest prior to the contract award. In such cases, the protest must be filed within 3 business days after the award of the contract to which the protest pertains. A Protester shall be deemed to have known of the facts giving rise to its protest prior to the contract award if the Authority sent notice of the contract award recommendation to the Protestor at least 5 business days prior to the award of the contract.

In order for a protest to be valid, it shall be filed in writing and include the following information:

- A. Name, address, telephone number, and email of the Protester.
- B. Description of the Competitive Solicitation to which the protest relates.
- C. A detailed statement of the legal or factual grounds, or both, for the protest. The protest shall include copies or specific reference to all documents, statutes or other materials the Protester wants the Authority to consider, and the Authority may, but need not, consider any data or material not included with or made specific reference to in the protest.
- D. A statement of the relief requested by the Protester.

The contract award process shall not proceed further until the Authority makes a written determination about the merits of the protest, unless the Authority, in consultation with the General Counsel, determines in writing that:

- a) The protest does not provide sufficient information to make a determination on its merits;
- or
- b) Award of the contract without delay is necessary to protect the Authority's best interests.

If the Authority determines that the protest is without merit, the solicitation or contract award process may continue.

If the Authority determines that the protest is with merit, then the Authority shall recommend relief to address the protest to the Chief Executive Officer, and the Authority shall provide any relief approved by the Chief Executive Officer. No matter the outcome, the Authority shall provide the Protester with the outcome of the protest along with a description of how the Authority reached such outcome.

Failure to meet any applicable deadline for a protest shall constitute a waiver of any and all rights to protest.

Sample Agreement

An example of the Airport's standard-form Professional Service Agreement and provisions is attached as

Exhibit 1. Upon award, negotiations of agreement will be initiated with the successful proposer.

Affirmative Action Requirement

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

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

Timetables

Goals for minority participation for each trade:	12.6%
Goals for female participation in each trade:	6.9%

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

The Contractor’s compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor’s goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the “covered area” is Michigan, Genesee County, Flint.

FAA Buy American Preferences

Professional Service Agreements do not normally result in a deliverable that meets the definition of a manufactured product. However, the emergence of various project delivery methos has created situations

where tasks deliverables under a Professional Service Agreement may include a manufactured product. If a Professional Service Agreement includes providing a manufactured good as a deliverable under the contract, the language included in 49 USC § 50101 will apply.

Title VI Solicitation Notice

The Bishop International Airport Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC § § 2000d to 200d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantage business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for this award.

Davis Bacon Requirements

The emergence of different project delivery methods has created situations where Professional Service Agreements include tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If there are such tasks included as part of this agreement and work qualifies as construction, alteration, or repair and it exceeds \$2,000, the language included in 29 CFR Part 5.5 will apply.

Debarment and Suspension

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.

Disadvantage Business Enterprise (DBE)

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the Bishop International Airport Authority 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. The successful Proposer(s) will be required to make good faith efforts to work with the Airport to fulfill the commitment to these business enterprises.

Federal Fair Labor Standards Act

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

Foreign Trade Restriction

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 with 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 the 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 the 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.

Lobbying and Influencing Federal Employees

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

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

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/coprehensive-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.

Federal Contract Provisions

Selected consultant shall comply with all Required Federal Contract Provisions included in the sample agreement as Exhibit B.

Exhibit 1

PROFESSIONAL SERVICES AGREEMENT On-Call Airport Planning and Environmental Consulting Services

This Agreement, made and entered into this _____ day of _____ 20____ by and between _____ (hereinafter referred to as "Consultant") with offices located in _____ and Bishop International Airport Authority, (hereinafter, "Authority") whose address is 3425 W. Bristol Road, Flint, Michigan 48502.

WHEREAS, the Authority requires the services of an airport planning and environmental consultant; and

WHEREAS, the Authority has advertised for and received written statement of qualifications for airport planning and environmental consulting services; and

WHEREAS, the Consultant is willing to perform such services in the manner, and pursuant to the terms and conditions, hereinafter set forth.

NOW THEREFORE, in consideration and the mutual covenants and agreements hereinafter set forth and in subsequently issued Work Orders, the parties hereto agree as follows:

ARTICLE 1 - SCOPE OF WORK

1.1 Services. The Authority has engaged the Consultant to provide airport planning and environmental services for airport planning and environmental projects as described in Federal Aviation Advisory Circular 150/5100-14E. Mutually-agreed upon project specific Work Orders shall be supplied and executed by both parties. Each such Work Order shall contain a Project Description, detailed Scope of Services, Project Schedule, Deliverables, Compensation Terms and other provisions or conditions specific to the Services or project being authorized. Any Work Order, when signed by both parties, shall be incorporated into and form a part of this Agreement. In the event of a conflict between this Agreement and any Work Order issued hereunder, the terms of the Work Order shall govern the provision of the particular Service or Project involved with the exception of federally required clauses located within Exhibit B.

1.2 Time and Availability. The Consultant estimates it will perform the consulting services for the Authority in the stated time frame agreed upon with each Work Order. The Consultant shall have discretion in selecting the dates and times it performs such consulting services throughout the term giving due regard to the needs of the Authority's business activities.

1.3 Standard of Conduct. In rendering consulting services under this Agreement, the services shall be performed by the Consultant with reasonable care, skill, and diligence in accordance with generally accepted professional practice and shall be held to a professional standard of care.

ARTICLE 2 - INDEPENDENT CONTRACTOR

2.1. Independent Contractor. The Consultant is an independent contractor and is not an employee of, or in any other service relationship with Bishop International Airport Authority. The manner in which the Consultant's services are rendered shall be within the Consultant's sole control and discretion. The Consultant is not authorized to speak for, represent, or obligate the Authority in any manner without the prior express written authorization from the Authority Chief Executive Officer or his designee.

2.2. Taxes. The Consultant shall be responsible for all taxes arising from compensation and other amounts paid under this Agreement, and shall be responsible for all payroll taxes and fringe benefits of the Consultant's employees or other Consultant representatives. Neither federal, nor state, nor local income tax, nor payroll tax of any kind, shall be withheld or paid by the Authority on behalf of the Consultant, its employees or other Consultant representatives.

2.3. Benefits. The Consultant, Consultant employees or other Consultant representatives will not be eligible for, and shall not participate in, any employee pension, health, welfare, or other fringe benefit plan, of the Authority. No workers' compensation insurance shall be obtained by the Authority covering the Consultant, Consultant's employees or other Consultant representatives.

2.4 Nonexclusive. The Consultant is not required to offer his services exclusively to the Authority under this contract. The Consultant may choose to work for other individuals or entities during the term of this contract, provided that the services and deliverable products required under this contract are submitted in the manner and on the schedule defined under this contract.

ARTICLE 3 - COMPENSATION FOR CONSULTING SERVICES

3.1. Compensation. The Authority shall compensate the Consultant for the services and expenses on the basis set forth in the applicable Work Order. In the event the Consultant incurs time and expenses in excess of the total compensation provided for in an authorized Work Order, no compensation for said additional time and expenses shall be required to be paid by the Authority without written amendment to the Work Order executed by the Authority.

3.2 Invoicing and Payment. The Consultant may invoice the Authority once monthly for services performed and expenses incurred during the previous month pursuant to authorized Work Orders. The Authority will pay the Consultant within 30 days of receipt of the invoice. The invoice should include documentation showing the number and classification of employees, the hours worked for each, and the services provided and copies of supporting documentation for any project related expenses. The Authority shall notify the Consultant in writing of any disputed amount contained on an invoice within fifteen (15) calendar days from the date of invoice.

ARTICLE 4 - TERM AND TERMINATION

4.1. Term. The term of this Agreement shall be from the Effective Date through _____, 20__, unless sooner terminated as provided herein. This agreement shall continue through the completion of any amendments or Work Orders that may be executed under this agreement.

4.2. Termination. The Authority has the right to terminate this Agreement, in whole or in part, at any time, with or without cause, by giving written notice to the Consultant of such termination and specifying the effective date thereof. Such notice shall be given at least ten (10) days before the effective date of such termination. The Consultant has right to terminate this Agreement for reasons including but not limited to nonpayment of fees, breach of any material condition in relation to this master contract and Work Orders, and inability to reach agreement on services, changes in parties, or other substantially changed conditions by giving written notice to the Authority of such termination and specifying the effective date thereof. Such notice shall be given at least thirty (3) days before the effective date of such

termination. The Consultant shall be entitled to receive compensation in accordance with the contract for any satisfactory work completed pursuant to the terms of this agreement prior to the date of termination.

ARTICLE 5 – INSURANCE AND INDEMNIFICATION

5.1 Insurance. The Consultant, and any subcontractors, shall maintain, to the extent reasonably available, the insurance coverage according to the schedule in Exhibit A during the performance of its Services under this Agreement from vendor(s) licensed to do business in the State of Michigan. The Consultant will provide evidence of insurance to the Authority upon contract execution.

5.2 Indemnification. The Consultant shall defend, pay on behalf of, indemnify and hold harmless Bishop International Airport Authority (including Genesee County, the City of Flint, their directors, officers, agents, elected officials and employees) from any and all liabilities, costs or damages (including reasonable attorneys' fees) that may arise from any action or inaction of its employees, associates, and representatives in connection with the performance of the services outlined herein.

ARTICLE 6 – NON-DISCRIMINATION

The Consultant agrees to abide by and be in compliance with the following laws concerning to non-discrimination including the Authority's lease with the City of Flint:

- a) Title VI of the Civil Rights Act of 1964
- b) City of Flint Lease provision – the Consultant shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or any matter related to employment because of such applicant's race, color, religion, national origin, ancestry, age or sex, except where a requirement as to age or sex is based on a bona fide occupational qualification.
- c) P.A. 453 of 1976 – Elliot-Larsen Civil Rights Act
- d) P.A. 220 of 1976 as amended – Persons with Disabilities Civil Rights Act

Additional non-discrimination provisions are included as part of federally required provisions and included in Exhibit B.

A breach in the above covenants shall be regarded as a material breach of this Agreement.

ARTICLE 7 - GENERAL PROVISIONS

7.1. Construction of Terms. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, that provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.

7.2. Governing Law. This Agreement, the rights and obligations of the Parties hereto, and any claims or disputes relating thereto shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of Michigan.

7.3. Entire Agreement. This Agreement, together with Exhibit A and Exhibit B, constitutes the entire agreement and sets forth the entire understanding and agreement of the parties as to the subject matter

of this Agreement and supersedes all prior discussions and understandings in respect to the subject of this Agreement, whether written or oral.

7.4. Dispute Resolution. If there is any dispute or controversy between the parties arising out of or relating to this Agreement, the parties agree that such dispute or controversy shall be attempted to be resolved through direct discussions and negotiations. If the dispute cannot be resolved by the parties, and if all parties agree, it may be submitted to arbitrated in accordance with proceedings under American Arbitration Association Commercial Arbitration Rules, and such arbitration will be the exclusive dispute resolution method under this Agreement within the State of Michigan. The decision and award determined by such arbitration will be final and binding upon both parties. Each parties' costs and expenses incurred in any dispute which is determined and/or settled by arbitration pursuant to this Agreement will be borne by the respective party. Except where clearly prevented by the area in dispute, both parties agree to continue performing their respective obligations under this Agreement until the dispute is resolved unless terminated by either party under section 4.2.

7.5. Modification. No modification, termination or attempted waiver of this Agreement, or any provision thereof, shall be valid unless in writing signed by the party against whom the same is sought to be enforced.

7.6. Waiver of Breach. The waiver by a party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any other or subsequent breach by the party in breach.

7.7. Successors and Assigns. This Agreement may not be assigned by either party without the prior written consent of the other party. Furthermore, the benefits and obligations of this Agreement shall be binding upon and inure to the parties hereto, their successors and assigns. Any use of subcontractors by the Consultant for performance of this Agreement must be accepted in writing by the Authority.

7.8. No Conflict. The Consultant warrants that the Consultant has not previously assumed any obligations inconsistent with those undertaken by the Consultant under this Agreement.

7.9 Records. The Consultant shall maintain comprehensive, complete and accurate books, records, documents, deliverables, design calculations, notes and emails related to the Project or the performance hereunder for a period of three (3) years after completion of all services. Upon request by the Authority, the Consultant shall provide a copy of the requested records or documents at actual cost of duplication to the Consultant.

7.10 Notice. Any written notice required by this Agreement shall be deemed delivered through any of the following: (1) hand delivery to the person at the address below, (2) sent by overnight courier service, or (3) sent by certified or registered mail, postage prepaid, return receipt requested to the address as follows:

To the Authority:	Bishop International Airport Authority 3425 West Bristol Road Flint, Michigan 48507 ATTN: Chief Executive Officer
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To Consultant:

7.11 Federal Contract Provisions. If the Work Order relates to professional services for a project funded through any federal funding mechanisms, then the Federal Contract Provisions set out in Exhibit B, or as updated by the Federal Aviation Administration, shall be part of this agreement, without modification, as well as a part of each subconsultant agreement executed by the Consultant relative to each Work Order. In the event of a conflict between the provisions of this Agreement and the provisions of Exhibit B, the provisions of Exhibit B shall take precedence.

7.12 Ownership and Use of Documents. Ownership of deliverables prepared by the Consultant as related exclusively to the services pertaining to this agreement shall transfer to the Authority following the Authority's satisfaction of its obligations under this Agreement and associated Work Orders. The Consultant assigns to the Authority the copyrights of all work prepared, developed or created pursuant to this Agreement, including the right to: (1) reproduce the work; (2) prepare derivative works, (3) distribute copies to the public, (4) perform the works publicly, and (5) to display the work publicly. All documents prepared by the Consultant are instruments of service in which the Consultant shall retain an ownership and property interest (including the right of reuse for marketing purposes and professional presentations, articles, speeches and other business purposes by the Consultant). Any modification of the deliverables hereunder or their reuse on another project by the Authority without the approval of the Consultant shall be at the Authority's sole risk and without liability to the Consultant.

7.13 Privileged Information. The Consultant agrees to keep confidential and not to disclose to any person or entity, other than the Consultants employees, subconsultants and general contractor and subcontractors, if appropriate, any data and information not previously known to and generated by the Consultant or furnished to the Consultant and marked "Confidential" by the Authority. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Consultant to defend itself from any suit or claim. The Authority agrees that the technical methods, techniques and pricing information contained in any proposal submitted by the Consultant pertaining to any Project or Work Order associated with this Agreement are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of the Consultant. The Consultant agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of this Agreement without first notifying the Authority and securing its consent in writing.

7.14 Delays. Any delay or default in the performance of any obligation of the Consultant under this Agreement resulting from any cause beyond the Consultants reasonable control shall not be deemed a breach of this Agreement. The occurrence of such event shall suspend the obligations of the Consultant as long as performance is delayed or prevented thereby, and the compensation due the Consultant hereunder shall be equitably adjusted.

7.15 Compliance with Law. The Consultant agrees that the Consultant, the Consultants employees or other Consultant representatives will comply with all local, state and federal laws, applicable national and local codes, and Bishop International Airport Rules and Regulations. The Consultant shall obtain all necessary permits, fees and licenses necessary for the proper execution and completion of the services, pay all required fees and taxes, and otherwise perform these services in a legal manner.

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth above.

Consultant

Bishop International Airport Authority

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

By: _____

Print Name: _____

Title: _____

Witnessed by:

EXHIBIT A

INSURANCE REQUIREMENTS

All required insurance must be in effect and so continue during the life of this agreement in not less than the following amounts. The insurance requirements herein are minimum requirements for this Agreement. The Authority in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this Agreement by the Consultant, its agents, representatives, employees or subcontractors. The Consultant shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages.

- Workers' Compensation Insurance in compliance with the Workers' Compensation laws of the State of Michigan.
- Comprehensive General Liability Insurance with a combined single limit of \$2,000,000 per occurrence including bodily injury and property damage liability.
- Professional Liability Insurance in the amount of \$5,000,000 per claim.
- Automobile Liability Insurance including bodily injury and property damage in the amount of \$1,000,000.

The Consultant shall provide the Authority with a certificate of insurance evidencing such coverages and shall name the Authority, Genesee County, and the City of Flint and their respective directors, officers, agents, appointed officials, and employees as additional insureds.

EXHIBIT B

Federal Contract Provisions for Professional Planning and Environmental Services

1. ACCESS TO RECORDS AND REPORTS

Reference: 2 CFR § 200.334, 2 CFR § 200.337, FAA Order 5100.38

This provision is mandatory for all Federally funded project contracts.

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.

2. AFFIRMATIVE ACTION REQUIREMENT

Reference: 41 CFR Part 60-4, Executive Order 11246

This provision must be incorporated if the professional services agreement includes tasks that meet the definition of construction work [as defined by the U.S. Department of Labor (DOL)] and exceeds \$10,000.

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity

1. The Offeror's or bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specification" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade:	12.6%
Goals for female participation in each trade:	6.9%

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

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities

and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is Michigan, Genesee County, Flint.

3. BREACH OF CONTACT

Reference: 2 CFR § 200 Appendix II(A)

This provision is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II(A).

Breach of Contract Terms

Any violation or breach of terms of this contract on the part of the 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 Consultant written notice that describes the nature of the breach and corrective actions- the Consultant must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Consultant until such time the Consultant corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Consultant must correct the breach. Owner may proceed with termination of the contract if the 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.

4. BUY AMERICAN PREFERENCE

Reference Title 49 USC § 50101, Executive Order 14005, Bipartisan Infrastructure Law (Pub. L. No. 117-58), Build America, Buy America (BABA)

Professional Service Agreements 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 tasks deliverables under a Professional Service Agreement may include a manufactured product. If a Professional Service Agreement includes providing a manufactured good as a deliverable under the contract, the language included in 49 USC § 50101 and BABA will apply. It is not intended for

any manufactured product to be produced through this agreement.

5. GENERAL CIVIL RIGHTS PROVISION

Reference: 49 USC § 47123

This provision is mandatory for all contracts regardless of funding source.

General Civil Rights Provisions

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

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

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

6. CIVIL RIGHTS – TITLE VI ASSURANCES

Reference: 49 USC § 47123, FAA Order 1400.11

This provision is mandatory for all contracts regardless of funding source.

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:

- a) **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.
- b) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c) **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 contractor 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.

- d) **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.
- e) **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the nondiscrimination provision 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:
 - i. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - ii. Cancelling, terminating, or suspending a contract, in whole or in part.
- f) **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 exempted 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 interest 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.

7. CIVIL RIGHTS – TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

Reference: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration.

This provision is mandatory for all contracts regardless of funding source.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation – Effectuation of the Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (24 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of the 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, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. at 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, *et seq*).

8. CLEAN AIR AND WATER POLLUTION CONTROL

Reference: 2 CFR § 200, Appendix II (G), 42 USC § 7401, et seq, 33 USC § 1251, et seq

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

Clean Air and Water Pollution Control

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

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

9. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

Reference: 2 CFR Part 200, Appendix II(E), 2 CFR § 5.5(b), 40 USC § 3702, 40 USC § 3704

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.

Contract Workhours and Safety Standards 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.

10. COPELAND “ANTI-KICKBACK” ACT

Reference: 2 CFR Part 2, Appendix II(D), 29 CFR Parts 3 and 5

The emergency of different project delivery methods has created situations where Professional Service Agreements include tasks that meet the definition of construction, alteration, or repair as defined in 20 CFR Part 5. If there are such tasks included as part of this agreement and work qualifies as construction, alteration, or repair and it exceeds \$2,000, the 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. It is not intended for any construction, alteration, or repair to be assigned through this agreement.

11. DAVIS-BACON REQUIREMENTS

Reference: 2 CFR § 200, Appendix II (D), 29 CFR Part 5, 40 USC § 47112(b), 40 USC §§ 3141-3144, 3146, and 3147

The emergency of different project delivery methods has created situations where Professional Service Agreements include tasks that meet the definition of construction, alteration, or repair as defined in 20 CFR Part 5. If there are such tasks included as part of this agreement and work qualifies as construction, alteration, or repair and it exceeds \$2,000, the following language included in 29 CFR Part 5.5 will apply. It is not intended for any construction, alteration, or repair to be assigned through this agreement.

This provision applies to all construction contracts and subcontracts and situations that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5 that exceed \$2,000 for all federally funded contracts.

Davis-Bacon Requirements

1. Minimum Wages.

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed,

without regard to skill, except as provided in 29 CFR Part 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 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 <http://www.dol.gov/esa/whd/forms/wh347instr.htm> 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) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually

performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

5. Compliance with Copeland Act Requirements.

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

6. Subcontracts.

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

12. DEBARMENT AND SUSPENSION

Reference: 2 CFR § 180 (Subpart B), 2 CFR Part 200, Appendix II(H), 2 CFR part 1200, DOT Order 4200.5, Executive Orders 12549 and 12689

This provision applies to all contracts and subcontracts that equals or exceeds \$25,000 (if applicable).

Certification of Offeror/Bidder Regarding Debarment and Suspension

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

Certification of Lower Tier Contractors Regarding Debarment

The successful consultant, 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 Maintenance 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 the 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.

13. DISADVANTAGE BUSINESS ENTERPRISE

Reference: 49 CFR part 26

Mandatory language that must be used on AIP funded project contracts is as follows and must not be modified.

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

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;

- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (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 Sponsor. This clause applies to both DBE and non-DBE subcontractors.

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

The prime contractor must not terminate a DBE subcontractor listed in response to the Disadvantaged Business Enterprise (DBE) provision included in the Professional On-Call Airport Planning and Environmental Services Request for Qualifications (or an approved substitute DBE firm) without prior written consent of the Sponsor. 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 from the Sponsor. Unless the Sponsor 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.

The Sponsor may provide such written consent only if the Sponsor 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 the Sponsor its requires to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Sponsor, 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 the Sponsor and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Sponsor should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Sponsor may provide a response period shorter than five days.

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

14. DISTRACTED DRIVING

Reference: Executive Order 13513, DOT Order 3902.10

This provision applies to all AIP funded contracts that exceed the micro purchase threshold of 2 CFR § 200.320.

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 decreases crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

15. DOMESTIC PREFERENCES FOR PROCUREMENTS

Reference: 2 CFR § 200.322, 2 CFR § 200, Appendix II(H)

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

16. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Reference: 2 CFR 200, Appendix II(C), 41 CFR § 60-1.4, 41 CFR § 60-4.3, Executive Order 11246

This provision is required on all contracts and subcontracts that exceed \$10,000.

Equal Opportunity Clause

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

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

**Standard Federal Equal Employment Opportunity
Construction Contract Specifications**

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items, with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar groups of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a specific minority group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

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

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

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these

specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

17. FEDERAL FAIR LABOR STANDARDS ACT

Reference: 29 USC § 201, et seq 2 CFR § 200.430

This provision applies to all contracts and subcontracts and must comply with the FLSA, including the recordkeeping standards of the Act.

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

18. FOREIGN TRADE RESTRICTION

Reference: 49 USC § 50104, 49 CFR Part 30

This provision applies to all AIP funded projects and applies to all contracts and subcontracts.

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 is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR, unless the Offeror has knowledge that the certification was 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 as 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.

19. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

Reference: 31 USC § 1352 – Byrd Anti-Lobbying Amendment, 2 CFR part 200, Appendix II(I), 49 CFR part 20, Appendix A

This provision applies to all federally funded projects and must be incorporated in all contracts exceeding \$100,000.

Certification Regarding Lobbying

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

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

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

20. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Reference: 29 CFR part 1910

This provision applies to all contracts and subcontracts.

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 (20 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.

21. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Reference: 2 CFR § 200, Appendix II(K), 2 CFR § 200.216

This provision must be included in all AIP funded contracts and lower-tier contracts.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

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

22. PROHIBITION OF SEGREGATED FACILITIES

Reference: 2 CFR Part 200, Appendix II(C), 41 CFR Part 60-1

This provision must be included in all contracts that include the equal opportunity clause, regardless of the amount of the contract.

Prohibition of Segregated Facilities

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-use rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

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

23. PROCUREMENT OF RECOVERED MATERIALS

Reference: 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))

This provision must be included in any contract that include procurements of products designed 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.

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/coprehensive-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.

24. RIGHTS TO INVENTIONS

Reference: 2 CFR 200, Appendix II(F), 37 CFR 401

This provision applies to all contracts and subcontracts with small business firms or nonprofit organizations that include performance of experimental, developmental, or research work.

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.

25. TAX DELINQUENCY AND FELONY CONVICTIONS

Reference: Section 8113 of the Consolidated Appropriations Act, 2022 (Published Law 117-103) and similar provisions in subsequent appropriations acts; DOT Order 4200.6 – Appropriations Act Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

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

Certification of Offeror/Bidder Regarding Tax Delinquency and Felony Convictions

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the

space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification into 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 U.S.C. § 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.

26. TERMINATION OF CONTRACT

Reference: 2 CFR § 200 Appendix II(B), FAA Advisory Circular 150/5370-10, Section 80-09

This provision applies to all contracts and subcontracts that exceed \$10,000.

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

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 seven (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 under law or under this agreement.

- a) **Termination by Owner:** The Owner may terminate this Agreement 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 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 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.

21. VETERANS PREFERENCE

Reference: 49 USC § 47112(c)

This provision applies to all AIP funded contract and subcontracts that involve labor to carry out the project.

Veteran's Preference

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