

RETURN THIS BID TO THE ISSUING OFFICE AT:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PROCUREMENT OFFICE
2301 PEGER ROAD
FAIRBANKS, ALASKA 99709

THIS IS NOT AN ORDER**DATE ITB ISSUED: October 5, 2017**

**Dust Palliative – Rural Airports – Northern Region
(Federally Funded)**

Sealed bids must be submitted to the State of Alaska, Department of Transportation and Public Facilities, Statewide Procurement Office from which they were issued, and must be time and date stamped by the purchasing section **prior to 10:00 AM on October 26, 2017**, at which time they will be publicly opened.

DELIVERY LOCATION: Multiple Locations – See Bid Schedule

DELIVERY DATE: Multiple Dates – See Bid Schedule

IMPORTANT NOTICE: If you received this solicitation from the State's "Online Public Notice" web site, you must register with the Procurement Officer listed on this document to receive subsequent amendments. Failure to contact the Procurement Officer may result in the rejection of your offer.

BIDDER'S NOTICE:

Contracts for purchases resulting from this bid will be made utilizing Federal Funds. As such, and per AS 36.30.890, no State of Alaska Bidder or Product Preferences may apply.

Sec. 36.30.890. Federal Assistance

If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision of this chapter and a federal statute, regulation, policy, or requirement, the federal statute, regulation, policy, or requirement shall prevail.

2 AAC 12.730. Federal Assistance

If a procurement involves the expenditure of federal funds or requires federal assistance and there is a conflict between a provision of this chapter and federal statute, regulation, policy, or requirement, the procurement officer shall comply with the federal statute, regulation, policy, or requirement.

Authority: AS 36.30.040; AS 36.30.890

Eric Johnson, Northern Region Procurement Officer eric.johnson@alaska.gov	_____ COMPANY SUBMITTING BID	Note: An Alaska Business License will be required prior to award. Out-of-State bidders must also comply with all corporate laws of the State of Alaska regarding performing business in the State.
PH: 907-451-5102 FX: 907-451-5238	_____ AUTHORIZED SIGNATURE	_____ ALASKA BUSINESS LICENSE NUMBER
	_____ PRINTED NAME	_____ VENDOR TAX ID NUMBER
Pages 1 through 29	_____ DATE	

INSTRUCTIONS TO BIDDERS:

1. **INVITATION TO BID (ITB) REVIEW:** Bidders shall carefully review this ITB for defects and questionable or objectionable material. Bidders' comments concerning defects and questionable or objectionable material in the ITB must be made in writing and received by the purchasing authority at least ten (10) days before the bid opening date. This will allow time for an amendment to be issued if one is required. It will also help prevent the opening of a defective bid, upon which award cannot be made, and the resultant exposure of bidders' prices. Bidders' original comments should be sent to the purchasing authority listed on the front of this ITB.
2. **BID FORMS:** Bidders shall use this and attached forms in submitting bids. A photocopied bid may be submitted.
3. **SUBMITTING BIDS:** Envelopes containing bids must be sealed, marked, and addressed as shown in the example below. Do not put the ITB number and opening date on the envelope of a request for bid information. Envelopes with ITB numbers annotated on the outside will not be opened until the scheduled date and time.

Bidder's Return Address

State of Alaska
Department of Transportation
Procurement Office
2301 Peger Road
Fairbanks, AK 99709

ITB Name: Dust Palliative – Rural Airports – Northern Region (Federally Funded)

ITB No.: **2518N003**

Opening Date & Time: **October 26, 2017 at 10:00 AM**

4. **PRICES:** The bidder shall state prices in the units of issue on this ITB. Prices quoted for commodities must be in U.S. funds and include applicable federal duty, brokerage fees, packaging, and transportation cost to the FOB point so that upon transfer of title the commodity can be utilized without further cost. Prices quoted for services must be quoted in U.S. funds and include applicable federal duty, brokerage fee, packaging, and transportation cost so that the services can be provided without further cost. Prices quoted in bids must be exclusive of federal, state, and local taxes. If the bidder believes that certain taxes are payable by the State, the bidder may list such taxes separately, directly below the bid price for the affected item. The State is exempt from Federal Excise Tax except the following:
 - Coal - Internal Revenue Code of 1986 (IRC), Section 4121 - on the purchase of coal;
 - "Gas Guzzler" - IRC, Section 4064 - on the purchase of low m.p.g. automobiles, except that police and other emergency type vehicles are not subject to the tax;
 - Air Cargo - IRC, Section 4271 - on the purchase of property transportation services by air;
 - Air Passenger - IRC, Section 4261 - on the purchase of passenger transportation services by air carriers.
5. **VENDOR TAX ID NUMBER:** If goods or services procured through this ITB are of a type that is required to be included on a Miscellaneous Tax Statement, as described in the Internal Revenue Code, a valid tax identification number must be provided to the State of Alaska before payment will be made.
6. **FILING A PROTEST:** A bidder may protest the award of a contract or the proposed award of a contract for supplies, services, or professional services. The protest must be filed in writing and include the following information: (1) the name, address, and telephone number of the protester; (2) the signature of the protester or the protester's representative; (3) identification of the contracting agency and the solicitation or contract at issue; (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and (5) the form of relief requested. Protests will be treated in accordance with Alaska Statutes (AS)36.30.560-36.30.610.

CONDITIONS:

1. **AUTHORITY:** This ITB is written in accordance with AS 36.30 and 2 AAC 12.
2. **COMPLIANCE:** In the performance of a contract that results from this ITB, the Contractor must comply with all applicable federal, state, and borough regulations, codes, and laws; and be liable for all required insurance, licenses, permits and bonds; and pay all applicable federal, state, and borough taxes.
3. **SUITABLE MATERIALS, ETC.:** Unless otherwise specified, all materials, supplies or equipment offered by a bidder shall be new, unused, and of the latest edition, version, model or crop and of recent manufacture.
4. **SPECIFICATIONS:** Unless otherwise specified in the ITB, product brand names or model numbers specified in this ITB are examples of the type and qualities of product required, and are not statements of preference. If the specifications describing an item conflict with a brand name or model number describes the item, the specifications govern. Reference to brand name or number does not preclude an offer of a comparable or better product, if full specifications and descriptive literature are provided for the product. Failure to provide such specifications and descriptive literature may be cause for rejection of the offer.
5. **FIRM OFFER:** For the purpose of award, offers made in accordance with this ITB must be good and firm for a period of ninety (90) days from the date of bid opening.
6. **EXTENSION OF PRICES:** In case of error in the extension of prices in the bid, the unit prices will govern; in a lot bid, the lot prices will govern.

7. **BID PREPARATION COSTS:** The State is not liable for any costs incurred by the bidder in bid preparation.
8. **CONSOLIDATION OF AWARDS:** Due to high administrative costs associated with processing of purchase orders, a single low bid of \$50 or less may, at the discretion of the State, be awarded to the next low bidder receiving other awards for consolidation purposes. This paragraph is not subject to the protest terms enumerated in "INSTRUCTION TO BIDDERS", "FILING A PROTEST" above.
9. **CONTRACT FUNDING:** Bidders are advised that funds are available for the initial purchase and/or the first term of the contract. Payment and performance obligations for succeeding purchases and/or additional terms of the contract are subject to the availability and appropriation of funds.
10. **CONFLICT OF INTEREST:** An officer or employee of the State of Alaska may not seek to acquire, be a party to, or possess a financial interest in, this contract if; 1) the officer or employee is an employee of the administrative unit that supervises the award of this contract; or 2) the officer or employee has the power to take or withhold official action so as to affect the award or execution of the contract.
11. **ASSIGNMENT(S):** Assignment of rights, duties, or payments under a contract resulting from this ITB is not permitted unless authorized in writing by the State of Alaska, Department of Administration, Division of General Services. Bids that are conditioned upon the State's approval of an assignment will be rejected as non-responsive.
12. **SUBCONTRACTOR(S):** Within five (5) working days of notice, the apparent low bidder must submit a list of the subcontractors that will be used in the performance of the contract. The list must include the name of each subcontractor and the location of the place of business for each subcontractor and evidence of each subcontractor's valid Alaska business license. Subcontractors can only be changed per AS 36.30.115 (b).
13. **FORCE MAJEURE:** (Impossibility to perform) The Contractor is not liable for the consequences of any failure to perform, or default in performing, any of its obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the Contractor. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.
14. **LATE BIDS:** Late bids are bids received after the time and date set for receipt of the bids. Late bids will not be accepted.
15. **CONTRACT EXTENSION:** Unless otherwise provided in this ITB, the State and the successful bidder/Contractor agree: (1) that any holding over of the contract excluding any exercised renewal options, will be considered as a month-to-month extension, and all other terms and conditions shall remain in full force and effect and (2) to provide written notice to the other party of the intent to cancel such month-to-month extension at least thirty (30) days before the desired date of cancellation.
16. **DEFAULT:** In case of default by the Contractor, for any reason whatsoever, the State of Alaska may procure the goods or services from another source and hold the Contractor responsible for any resulting excess cost and may seek other remedies under law or equity.
17. **DISPUTES:** Any dispute arising out of this agreement shall be resolved under the laws of Alaska. Any appeal of an administrative order or any original action to enforce any provision of this agreement or to obtain any relief from or remedy in connection with this agreement may be brought only in the superior court for the First Judicial District of Alaska.
18. **CONSUMER ELECTRICAL PRODUCT:** AS 45.45.910 requires that "...a person may not sell, offer to sell, or otherwise transfer in the course of the person's business a consumer electrical product that is manufactured after August 14, 1990, unless the product is clearly marked as being listed by an approved third party certification program." Electrical consumer products manufactured before August 14, 1990, must either be clearly marked as being third party certified or be marked with a warning label that complies with AS 45.45.910(e). Even exempted electrical products must be marked with the warning label. By signature on this bid the bidder certifies that the product offered is in compliance with the law. A list of approved third party certifiers, warning labels and additional information is available from: Department of Labor, Labor Standards & Safety Division, Mechanical Inspection Section, P.O. Box 107020, Anchorage, Alaska 99510-7020, (907)269-4925.

SPECIAL CONDITIONS:

1. **ORDER DOCUMENTS:** Except as specifically allowed under this ITB, an ordering agency will not sign any vendor contract. The State is not bound by a vendor contract signed by a person who is not specifically authorized to sign for the State under this ITB. The State of Alaska Purchase Order, Contract Award and Delivery Order are the only order documents that may be used to place orders against the contract(s) resulting from this ITB.
2. **BILLING INSTRUCTIONS:** Invoices must be billed to the ordering agency's address shown on the individual Purchase Order, Contract Award or Delivery Order, not to the Division of General Services. The ordering agency will make payment after it receives the merchandise or service and the invoice. Questions concerning payment must be addressed to the ordering agency.
3. **CONTINUING OBLIGATION OF CONTRACTOR:** Notwithstanding the expiration date of a contract resulting from this ITB, the Contractor is obligated to fulfill its responsibilities until warranty, guarantee, maintenance and parts availability requirements have completely expired.

ALASKA VENDOR & PRODUCT PREFERENCES:

State and local preferences will not be applied to federally funded projects.

FEDERAL REQUIREMENTS & CONDITONS

FEDERALLY FUNDED PROJECT(S) / ALASKA BUSINESS LICENSE REQUIREMENTS

When Federal funds are involved, the Alaska Business License must be obtained prior to the award of a contract.

23 CFR 635.110; "Licensing and qualification of contractors", (c) reads:

"No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract"

Offerors should contact the Department of Community and Economic Development, Division of Occupational Licensing, P. O. Box 110806, Juneau, Alaska 99811-0806, for information on obtaining applicable licenses.

CERTIFICATIONS

The Contractor must meet the following Federal certification requirements:

1. Debarment, suspension, and other responsibility matters for primary covered transactions

The Contractor certifies, to the best of its knowledge and belief, that it and its principles:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification: and
- d) Have not within three (3)-year period preceding this certification had one or more public transaction (federal, state, or local) terminated from clause or default.
- e) Contractor also certifies that, if it later becomes aware of any information contradicting the statements of paragraph a) above, it will promptly provide that information to the Alaska Department of Transportation.

DISADVANTAGE BUSINESS ENTERPRISE ASSURANCE

In accordance with 49 CFR 26.13(a), contractor assures that it shall not discriminate on the basis of race, color, national origin, or sex in the implementation of the project and in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirement of 49 CFR part 26. The recipient assures that it shall take all necessary and reasonable steps under 49CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreement supported with Federal assistance derived from the U.S. Department of Transportation.

BIDDERS WITH DISABILITIES: The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to participate in this procurement should contact the Department of Transportation & Public Facilities at one of the following numbers no later than 10 days prior to the bid opening to make any necessary arrangements.

Telephone: (907) 451-5102
Fax: (907) 451-2313
TDD: (907) 451-2363

COMPLIANCE WITH ADA: By signature of their bid the bidder certifies that they comply with the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government.

Services or activities furnished to the general public on behalf of the state must be fully accessible. This is intended to ensure that agencies are in accordance with 28 CFR Part 35 Section 35.130 and that services, programs or activities furnished to the public through a contract do not subject qualified individuals with a disability to discrimination based on the disability.

CONTRACT PERFORMANCE LOCATION: By signature on their bid, the bidder certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States.

If the bidder cannot certify that all work will be performed in the United States, the bidder must contact the procurement officer in writing to request a waiver at least 10 days prior to the deadline for receipt of bids.

The request must include a detailed description of the portion of work that will be performed outside the United States, where, by whom, and the reason the waiver is necessary.

Failure to comply with these requirements may cause the state to reject the bid as non-responsive, or cancel the contract.

HUMAN TRAFFICKING: By signature on their bid, the bidder certifies that the bidder is not established and headquartered or incorporated and headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website: <http://www.state.gov/g/tip/>

Failure to comply with this requirement will cause the state to reject the bid as non-responsive, or cancel the contract

CONTRACT INTENT: This Invitation to Bid (ITB) is intended to result in the purchase of Dust Palliative, at multiple rural airports located in the Northern Region, for the Department of Transportation & Public Facilities.

NOTICE OF INTENT TO AWARD: After the responses to this ITB have been opened and evaluated, a tabulation of the bids will be prepared. This tabulation, called a Notice of Intent to Award, serves two purposes. It lists the name of each company or person that offered a bid and the price they bid. It also provides notice of the state's intent to award a contract(s) to the bidder(s) indicated. A copy of the Notice of Intent will be mailed to each company or person who responded to the ITB. Bidders identified as the apparent low responsive bidders are instructed not to proceed until a Purchase Order, Contract Award, Lease, or some other form of written notice is given by the contracting officer. A company or person who proceeds prior to receiving a Purchase Order, Contract Award, Lease, or some other form of written notice from the contracting officer does so without a contract and at their own risk.

PAYMENT FOR STATE PURCHASES: Payment for agreements under \$500,000 for the undisputed purchase of goods or services provided to a state agency, will be made within 30 days of the receipt of a proper billing or the delivery of the goods or services to the location(s) specified in the agreement, whichever is later. A late payment is subject to 1.5% interest per month on the unpaid balance. Interest will not be paid if there is a dispute or if there is an agreement that establishes a lower interest rate or precludes the charging of interest.

FEDERAL EXCISE TAX: The State of Alaska is exempt from Federal Excise Tax except for the following:

- Coal - Internal Revenue Code of 1986 (IRC), Section 4121 - on the purchase of coal;
- "Gas Guzzler" - IRC, Section 4064 - on the purchase of low m.p.g. automobiles, except that police and other emergency type vehicles are not subject to the tax;
- Air Cargo - IRC, Section 4271 - on the purchase of property transportation services by air;
- Air Passenger - IRC, Section 4261 - on the purchase of passenger transportation services by air charter.
- Leaking Underground Storage Tank Trust Fund Tax (LUST) - IRC, Section 4081 - on the purchase of Aviation gasoline, Diesel Fuel, Gasoline, and Kerosene.

The State of Alaska is also exempt from State Motor Fuel Taxes. The appropriate exemption forms will accompany a contract(s) resulting from this ITB. The state is not exempt from the Federal Superfund Tax.

CONTRACT ADMINISTRATION: The administration of this contract is the responsibility of Dan Adamczack, Project Manager, Department of Transportation & Public Facilities.

SHIPPING DAMAGE: The state will not accept or pay for damaged goods. The contractor must file all claims against the carrier(s) for damages incurred to items in transit from the point of origin to the ultimate destination. The state will provide the contractor with written notice when damaged goods are received. The state will deduct the cost of the damaged goods from the invoice prior to payment. The contractor must file all claims against the carrier(s) for reimbursement of the loss.

INDEMNIFICATION: The contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the contractor under this agreement. The contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. “Contractor” and “Contracting agency”, as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term “independent negligence” is negligence other than in the Contracting agency’s selection, administration, monitoring, or controlling of the contractor and in approving or accepting the contractor’s work.

INSURANCE: Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the contracting officer prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under AS 21.

Proof of insurance is required for the following:

Workers' Compensation Insurance: The contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the state.

Commercial General Liability Insurance: covering all business premises and operations used by the contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

Commercial Automobile Liability Insurance: covering all vehicles used by the contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

Failure to supply satisfactory proof of insurance within the time required will cause the state to declare the bidder non-responsible and to reject the bid.

BRAND AND MODEL OFFERED: Unless otherwise specified, when brand names and model numbers are used to specify the type and quality of the goods desired, bidders must clearly indicate the brand names and model numbers they intend to provide. The bidder's failure to

identify the brand and model offered will cause the state to consider the offer non-responsive and reject the bid.

ANNOTATED LITERATURE: Bidders must annotate their product literature to identify for the state the location of the supporting information regarding each product specification set out in this ITB. A bidder's failure to comply with this clause, within the time set by the state, will cause the state to consider the offer non-responsive and reject the bid.

SUPPORTING INFORMATION: The state strongly desires that bidders submit all required technical, specification, and other supporting information with their bid, so that a detailed analysis and determination can be made by the contracting officer that the product offered meets the ITB specifications and that other requirements of the ITB have been met. However, provided a bid meets the requirements for a definite, firm, unqualified, and unconditional offer, the state reserves the right to request supplemental information from the bidder, after the bids have been opened, to ensure that the products offered completely meet the ITB requirements. The requirement for such supplemental information will be at the reasonable discretion of the state and may include the requirement that a bidder will provide a sample product(s) so that the state can make a first-hand examination and determination.

A bidder's failure to provide this supplemental information or the product sample(s), within the time set by the state, will cause the state to consider the offer non-responsive and reject the bid.

FIRM, UNQUALIFIED AND UNCONDITIONAL OFFER: Bidders must provide enough information with their bid to constitute a definite, firm, unqualified and unconditional offer. To be responsive a bid must constitute a definite, firm, unqualified and unconditional offer to meet all of the material terms of the ITB. Material terms are those that could affect the price, quantity, quality, or delivery. Also included as material terms are those which are clearly identified in the ITB and which, for reasons of policy, must be complied with at risk of bid rejection for non-responsiveness.

NONDISCLOSURE AND CONFIDENTIALITY: Contractor agrees that all confidential information shall be used only for purposes of providing the deliverables and performing the services specified herein and shall not disseminate or allow dissemination of confidential information except as provided for in this section. The contractor shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the confidential information. "Reasonable care" means compliance by the contractor with all applicable federal and state law, including the Social Security Act and HIPAA. The contractor must promptly notify the state in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

Confidential information, as used herein, means any data, files, software, information or materials (whether prepared by the state or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is classified confidential as defined by State of Alaska classification and categorization guidelines (i) provided by the state to the contractor or a contractor agent or otherwise made available to the contractor or a contractor

agent in connection with this contract, or (ii) acquired, obtained or learned by the contractor or a contractor agent in the performance of this contract. Examples of confidential information include, but are not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses, etc).

If confidential information is requested to be disclosed by the contractor pursuant to a request received by a third party and such disclosure of the confidential information is required under applicable state or federal law, regulation, governmental or regulatory authority, the contractor may disclose the confidential information after providing the state with written notice of the requested disclosure (to the extent such notice to the state is permitted by applicable law) and giving the state opportunity to review the request. If the contractor receives no objection from the state, it may release the confidential information within 30 days. Notice of the requested disclosure of confidential information by the contractor must be provided to the state within a reasonable time after the contractor's receipt of notice of the requested disclosure and, upon request of the state, shall seek to obtain legal protection from the release of the confidential information.

The following information shall not be considered confidential information: information previously known to be public information when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach of confidentiality hereof; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

CONTRACT PERIOD: This contract establishes a one-time purchase for Dust Palliative. Palliative is to be delivered to specific locations identified on the bid schedule by the date listed for that line item.

PRICE DECREASES: During the period of the contract all price decreases experienced by the contractor must be passed on to the state. A contractor's failure to strictly and faithfully adhere to this clause, within the time required, will be considered in breach of contract.

ALTERATIONS: The contractor must obtain the written approval from the contracting officer prior to making any alterations to the specifications contained in this ITB. The state will not pay for alterations that are not approved in advance and in writing by the contracting officer.

DELIVERY: Please initial next to the date required listed on the bid schedule that it is your intent to delivery by the date required. If there are no initials or if dates are listed in excess of this requirement the State may determine your submission for that line item as non-responsive, and may be rejected

DELIVERY CONFIRMATION: Bidders must obtain a confirmation from the manufacturer that the items offered are scheduled for production in sufficient time to meet the scheduled delivery dates. A copy of the manufacturer's confirmation may be included with the bid or submitted within 10 days of the state's request. The bidder's failure to provide the manufacturers

confirmation as required will cause the state to consider the bid non-responsive and reject the bid.

ADVANCE NOTICE OF DELIVERY: The contractor must notify the Project Manager which barge sailing (if applicable) the products are on, as well as estimated delivery time once shipping for the products has begun.

BID GUARANTEE: Bids must be accompanied by a bid guarantee in the form of a Certified or Cashier's check or Bid Bond in the amount of \$5,000.00 made payable to the State of Alaska. The bid guarantee of each successful bidder will be retained until that bidder has furnished a satisfactory Performance Bond or Individual Surety. If the successful bidder fails to deliver the required Performance Bond or Individual Surety within the time required, the bid guarantee may be forfeited to the State of Alaska. The bid guarantee of each unsuccessful bidder will be returned as soon as practical after award has been made.

Bidders must submit their bid guarantee with their bid in order to be considered responsive.

PERFORMANCE BOND: Any posted performance bonds will ensure performance over the entire term of the contract. In the event it becomes necessary for the state to cancel the contract issued as a result of this ITB due to non-compliance during the term of the contract, regardless of the circumstances or time remaining on the contract, the bonding company shall well and truly perform and complete all obligations and work under said contract in accordance with the terms of the performance bond. A performance bond is to be in the amount of 100% of the awarded contract(s). These bonds will be kept active until the full warranty period has lapsed (24 months from delivery date).

F.O.B. POINT: The F.O.B. point for all items purchased under this contract is the final destination listed on the Bid Schedule. Ownership of and title to the ordered items remains with the contractor until the items have been delivered to their final destination and are accepted by the State. Coordination of deliveries and off-loading material is the responsibility of the Contractor, DOT & PF will only provide contact information for the Airport Manager for each location.

The cost of shipping, delivery, and off-loading to those locations is to be included in the bid price. There will be no additional charge for shipping, delivery, off-loading, and retention of any containers for One (1) year. Rental charges for containers will be allowed if required longer than One (1) year.

INVOICES: Invoices must be sent directly to the ordering agency's address shown on the individual Purchase Order, Contract Award or Delivery Order. The ordering agency will only make payment after it receives the merchandise or service and the invoice. Question concerning payment must be addressed to the ordering agency.

THIRD-PARTY FINANCING AGREEMENTS NOT ALLOWED: Because of the additional administrative and accounting time required of state agencies when third party financing agreements are permitted, they will not be allowed under this contract.

CONTINUING OBLIGATION OF CONTRACTOR: Regardless of the terms and conditions of any third-party financing agreement, the contractor agrees that none of its responsibilities under this contract are transferable and that the contractor alone will continue to be solely responsible until the expiration date of the contract. Such responsibilities include, but are not limited to, the provision of equipment, training, warranty service, maintenance, parts and the provision of consumable supplies. By signature on the face page of this ITB the bidder acknowledges this requirement and indicates unconditional acceptance of this continuing obligation clause.

PACKAGING: The cost of all packaging must be included in the price bid. All packaging must be new and suitable for shipment and short-term warehouse storage.

WARRANTY: The contractor warrants every unit purchased against faulty materials and workmanship for a minimum period of at least Twenty-four (24) months from date of delivery to each specific location. If, during this period, faults develop with the unit or components of the unit, they will be repaired or replaced without any cost, including any transportation or freight cost, to the State. Bids, which include supplemental warranties, will be accepted, but supplemental warranties that conflict with or diminish the state's rights under this warranty clause will be considered null and void. The state is not responsible for identifying conflicting warranty conditions before issuing a contract award. After award of the contract:

1. if a conflict arises between the supplemental warranty and the warranty in this ITB, the warranty in the ITB will prevail; and
2. if the state's rights are diminished as a result of application of the supplemental warranty, the supplemental warranty will be considered null and void and the ITB warranty will prevail.

By signature on the face page of this ITB the bidder acknowledges this requirement and indicates unconditional acceptance of this warranty clause.

CONTRACT CANCELLATION: The state reserves the right to cancel the contract at its convenience upon 30 calendar days written notice to the contractor. The state is liable only for payment in accordance with the payment provisions of this contract for services or supplies provided before the effective date of termination.

METHOD OF AWARD: Award will be made by line item to the lowest responsive and responsible bidder(s).

SPECIFICATIONS

Non-Soluble Liquid Dust Palliative Product(s) Specifications

Any of the dust palliative product(s) proposed for use on the Northern Region ADOT&PF's five, individual-lot airport dust suppression projects for purchase during 2017 must meet or exceed the following specifications:

1. Be a **non-soluble liquid dust palliative**; which is hereby defined as a dust suppression product which has all of the following characteristics:
 - Is non-soluble, and does not require the addition of any water before application as a dust suppression product.
 - A freeze point below -55⁰ Fahrenheit.
2. **Have an effective and long-term dust palliative result** (substantial diminishment of fugitive dust release) for at least two full years after ADOT&PF personnel complete the application of the palliative product. Fugitive dust measurements will be collected and recorded soon after each airport's product application is completed, which will be executed by personnel provided or authorized by the Alaska University Transportation Center (AUTC) or qualified Departmental staff, in order to objectively evaluate whether or not the dust suppression requirement stated above and elaborated below has been met. Within the time period of 7 to 30 days after final placement of the dust palliative product, measurements will be made with the UAF's DUST-M device, and an average reduction of no less than 85% in the fugitive dust amount must be measured by the instrument for 85% or more of the palliative treated surface area of the runway, in comparison to the adjacent, untreated area of runway, or else the fugitive dust suppression result will be considered to be inadequate.

If the "after palliative application" DUST-M measurement, does not indicate at least an 85% reduction in fugitive dust release the dust palliative bidder/supplier will be expected to provide additional palliative product and deliver it to the airport at no additional cost to the AKDOT&PF, enabling us to re-treat the airport's aggregate surfaces and reduce dust releases to the specified level.

3. **Material Requirements (Corrosion Testing):** The product must be confirmed by an independent certified laboratory to have passed all the requirements of Boeing's D6-17487, Rev. P "Testing of Airplane Maintenance Materials" within the last 5 years. Specifically:
 - Sandwich Corrosion Test, ASTM F1110-90
 - Acrylic Crazeing Test, ASTM F484-83 using Type C acrylic
 - Paint Softening Test, ASTM F502
 - Hydrogen Embrittlement Test, ASTM F519

The test results MUST be provided at the time of bid as part of the bidder's package. If a bidder/supplier doesn't provide satisfactory documentation showing the product meets or exceed the testing requirement above it will be considered clear cause for rejection and disqualification of the bid as non-responsive.

4. **Material Requirements (Environmental Testing):** No environmental constraints or negative impacts associated with the palliative products' use; for example there must not

be any hazardous-materials transport requirements which affect the handling, shipping, storage or transport of the dust control product, and no specialized response or clean-up requirements triggered or needed if an inadvertent spill occurs, whether to the ground or directly to a water body. The formal environmental tests which must be performed and the laboratory results provided with the bid, in order to provide strong and convincing evidence that a dust palliative product is suitably environmentally benign, are:

- A. Bulk Analysis: Analytical data must be provided which indicate that environmentally detrimental chemical constituents are not present in the concentrated palliative product at levels which appear to have a potential for negative environmental or human health impact. The two, common environmental laboratory tests which must be provided in order to have a palliative product bid considered to be both responsive and responsible are:
 - 1. Volatiles, priority pollutants; EPA Method # 8260
 - 2. Semi-volatiles, priority pollutants; EPA Method # 8270
- B. Toxic Characteristic Leaching Procedure (TCLP): Analytical data from TCLP testing (EPA Method #1311) must be provided and show that the palliative product being bid does not contain any constituents exceeding TCLP regulatory levels for metals, volatiles, semi-volatiles, pesticides and herbicides.
- C. Aquatic toxicity: The product must have been tested and proven by a reputable laboratory to have a U.S. EPA Toxicity rating of ‘slightly toxic’ ($LC_{50} > 10$ mg/L) or better as described in EPA guidelines – see this URL for details. (http://www.epa.gov/oppefed1/ecorisk_ders/toera_analysis_eco.htm#Ecotox). Acute and chronic toxicity testing must have been performed (following EPA guidelines) and the test results provided with the bid for review; for three or more of these species: Cladoceran (ceriodaphnia dubia), fathead minnow (pimephales promelas), mysid shrimp and 7-day rainbow trout (oncorhynchus mykiss).

Similar to the strictures of specification in section #3 above, the bidder/supplier will be expected to provide the environmental test data and/or environmental evaluation reports along with their bid package. If the State of Alaska’s review process determines that the documentation provided by the product bidder/supplier is not sufficient to prove the presence of adequate environmental protection for our sites’ circumstances, and Alaska’s rigorous environmental laws, this lack of adequate documentation will be considered cause for the rejection or disqualification of the bidder/supplier’s bid.

- 5. **Material Viscosity & Material Settlement** – The product provided shall not separate during periods of nonuse or require stirring prior to use. The application equipment, which will be used to apply this product, utilize industry standard nozzles specifically model (H1/4U-11020 & 11030) VeeJet spray nozzles. These nozzles feature a spray angle of 110 degrees with a flow rate of 2-3 gpm utilizing chemical/water as media. The supplied product shall be able to be applied at these rates utilizing the nozzles specified above at a temperature as low as 45 degrees Fahrenheit and the pump pressures shall not exceed a maximum operating pressure of 50 PSI. The manufacturer shall submit a certification of compliance which states the product supplied meets these conditions.

If a bidder/supplier doesn't provide this Certification of Compliance it will be considered a clear cause for rejection and disqualification of a bid, as non-responsive.

If the palliative product separates or doesn't meet the viscosity requirements at any time during the shipping, storage, or application of the material (Material may be stored up to 2 years) the supplier shall replace the material and deliver the new product to the project worksite at no additional cost to the Department.

6. **Rate of Application:** The minimum rate of application shall be 1 gallon per 30 square feet for products that do not contain a binder (ex. Durasoil) and 1 gallon per 40 square feet for products that do contain a binder (ex. EK-35). Examples of binders available for use are esters, polyolefins, polymers, tall oil pitch, rosins, silicates, or petroleum resins. If the contractor chooses to use a product containing a binder, then documentation must be submitted to the Engineer proving that the product contains a binder prior to the Notice to Proceed being issued. Minimum application rates listed in this section are not assured by the Department to meet the performance testing requirements. The manufacturer shall be consulted for an appropriate application rate to ensure performance requirements can be met. If the contractor proposes any application rate lower than those identified above, a manufacturer's recommended application rate shall be submitted to the Supply Section (fax: 907-451-5238) at least 10 days before bid opening for approval prior to award of the contract. If an alternate application rate is approved, an addendum will be issued before bid opening. Submit the manufacturer's recommended application rate with supporting documentation showing how the new application rate was determined. The manufacturer's recommended application rate shall result in a design life matching the requirements listed in Section 2 above.
7. **Simple palliative application process**, which does not require specialized training or extensive experience for the workmen executing the dust product's application. Our definition of "simple application process" is that no more than 100 man-hours of work (including foreman supervision time) will be necessary to complete the application of proposed dust control product at each of the identified 2016 project airports, once the product, personnel, and required equipment are all assembled and the application process can be started; namely:
 - Buckland Airport (272,500 SF for runway/taxiway/apron to be treated)
 - Noatak Airport (359,500 SF for runway/taxiway/apron to be treated)
 - Noorvik Airport (367,500 SF for runway/taxiway/apron to be treated)
 - Savoonga Airport (395,750 SF for runway/taxiway/apron to be treated)
 - Mountain Village Airport (265,565 SF for runway/taxiway/apron to be treated)

The palliative bidder/supplier will be expected to carefully evaluate before bidding whether or not their dust palliative product will be able to provide the appropriate level of dust suppression protection.

The palliative provided at each airport, will be applied to the aggregate surfaces stated above by personnel working under the guidance of the Northern Region DOT&PF.

The product is to be delivered to the specified locations in 275 gallon totes.

8. The **product must be able to be applied**, and work effectively, as a **topical, prepared-surface application**: The typical process used for applying products to our airport surfaces will be to have them scarified and graded with a motor grader, watered, shaped and compacted to a reasonably well-crowned surface condition, and then the dust control product will be applied/sprayed atop that smooth, compacted surface to cure or hold the aggregate surfaces in that general shape and condition for at least two years, under normal aviation vehicle and traffic loading. Please note that it is likely that these airport sites will sometimes experience an average daily temperature as low as 45⁰ F, or as high as 80⁰ F, while the DOT&PF is applying the dust palliative product at the airport sites. In addition, there are instances when it can rain within 24-hours after the product application. Vendors should also note that many of our airport sites experience temperatures as low as -55⁰ F during the average winter. This may affect palliative performance, and is a significant factor in over-wintering of these products, either outdoors or in unheated spaces, before they are applied to the airport's aggregate surfaces the next spring.
9. **Delivery and Storage of Materials On site**: The contractor shall make all arrangements and payments for equipment and labor for loading and unloading and transport to the location designated including any equipment and labor required to unload and move palliative to an approved location near the SREB. The contractor shall also provide the name and contact information for the shipping company for each lot.

If the palliative will be delivered by barge or other means and not brought to the airport the Contractor shall include in his bid 1 year of storage of the materials in the containers in which the materials were shipped to the site (Connex's). The rent due for these connex's shall be subsidiary to unit bid prices for the Dust Palliative Materials. This duration of 1 year shall be measured from the delivery date listed below in each individual Lot. Example: if the delivery date for materials is October 31, 2017 then the Contractor will be responsible for rent of the shipping containers until October 31st, 2018. If the Department requires storage of these material beyond this 1 year they will be responsible for the rental cost of the connex's.

If the contractor delivers the totes to an area on the apron or near the SREB as designated after award by the Department. Airport palliative totes do not need to be placed in connexes but shall be placed in a neat and orderly manner at the location designated by a Department designee. This will typically involve totes placed directly adjacent to each other with all valves facing inward.

10. Any unusual weather or inappropriate vehicle-related damage to the aggregate surfaces treated with the supplier's dust palliative product is acknowledged to be the responsibility of the AKDOT&PF. Repairing such damage is also the responsibility of the AKDOT&PF. Repairs may include grading, compacting at near-optimum moisture content and possible replacement of dust palliative product. The dust palliative product supplier(s) will not be held responsible for the performance of any repaired surfaces that have been treated with dust palliative product as specified herein if the supplier's guidelines for maintenance have not been followed during the DOT&PF's application and maintenance program. This repair waiver will apply only if the referenced manufacturer's

maintenance guidelines, as well as the product's application guidelines, are provided to the ADOT&PF along with the supplier's bid.

Dust Palliative Product Documentation

As noted in several of the specification items above, each bidding vendor/supplier will be expected to provide ADOT&PF with the following dust palliative product paperwork along with their bid, to evaluate bid responsiveness:

- A. **Catalog cut and/or paperwork which provide a complete product description,** detailing: the product's general composition and primary characteristics, uses, delivery options, application rates, temperature limitations, environmental acceptability, MSDS sheet, etc. Be aware that one mandatory aspect of the product material bid submission paperwork is written documentation (test results from a laboratory), which clearly indicates that the product being offered is non-corrosive. (See specification section 3, above) Another mandatory aspect of the product material bid submission paperwork is documentation of the environmental testing requirements noted in specification section 4, above.
- B. **Detailed product preparation, mixing, surface application and routine maintenance instructions;** include recommended application rate per square unit of ground surface, any warnings about how improper application, temperature fluctuations, or weather events can cause palliative product service reductions, clean-up procedures for the equipment used to mix and/or apply the product to road/airport surfaces, and maintenance or repair guidelines for circumstances when the product application has somehow been compromised.
- C. The manufacture shall submit a certification of compliance for both requirements list in Section 5 of these specifications Material Viscosity and Material Settlement.

BID SCHEDULE

LOT 1

ITEM NO.	<u>Application Rate (Gal/SF)</u>	<u>Treatment Area (SF)</u>	<u>Total Gallons Extended (Gal.)</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE W/Shipping</u>	<u>EXTENDED PRICE W/ SHIPPING</u>
1.	_____	<u>272,500 SF</u>	_____	Delivered to FOB Point: State of Alaska, Dept of Transportation Buckland Airport - apronside Buckland, AK, 99727 To be delivered to airport apron no later than June 1st, 2018	\$_____	\$_____
						<i>TOTAL \$</i> _____

Dust Product Offered: _____
Delivery Date: _____

LOT 2

ITEM NO.	<u>Application Rate (Gal/SF)</u>	<u>Treatment Area (SF)</u>	<u>Total Gallons Extended (Gal.)</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE W/Shipping</u>	<u>EXTENDED PRICE W/ SHIPPING</u>
1.	_____	<u>359,500 SF</u>	_____	Delivered to FOB Point: State of Alaska, Dept of Transportation Noatak Airport - apronside Noatak, AK, 99761 To be delivered to airport apron no later than June 1st, 2018	\$_____	\$_____
						<i>TOTAL \$</i> _____

Dust Product Offered: _____
Delivery Date: _____

STATE OF ALASKA ITB # 2518N003
Dust Palliative – Rural Airports – Northern Region (Federally Funded)

LOT 3

ITEM NO.	<u>Application Rate (Gal/SF)</u>	<u>Treatment Area (SF)</u>	<u>Total Gallons Extended (Gal.)</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE W/Shipping</u>	<u>EXTENDED PRICE W/ SHIPPING</u>
1.	_____	<u>367,500 SF</u>	_____	Delivered to FOB Point: State of Alaska, Dept of Transportation Noorvik Airport - apronside Noorvik, AK, 99763 To be delivered to airport apron no later than June 1st, 2018	\$_____	\$_____
						<i>TOTAL \$</i> _____

Dust Product Offered: _____
Delivery Date: _____

LOT 4

ITEM NO.	<u>Application Rate (Gal/SF)</u>	<u>Treatment Area (SF)</u>	<u>Total Gallons Extended (Gal.)</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE W/Shipping</u>	<u>EXTENDED PRICE W/ SHIPPING</u>
1.	_____	<u>403,750 SF</u>	_____	Delivered to FOB Point: State of Alaska, Dept of Transportation Savoonga Airport - apronside Savoonga, AK, 99769 To be delivered to airport apron no later than June 1st, 2018	\$_____	\$_____
						<i>TOTAL \$</i> _____

Dust Product Offered: _____
Delivery Date: _____

STATE OF ALASKA ITB # 2518N003
Dust Palliative – Rural Airports – Northern Region (Federally Funded)

LOT 5

ITEM	<u>Application</u>	<u>Treatment</u>	<u>Total Gallons</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>EXTENDED</u>
<u>NO.</u>	<u>Rate (Gal/SF)</u>	<u>Area (SF)</u>	<u>Extended (Gal.)</u>		<u>PRICE</u>	<u>PRICE W/</u>
					<u>W/Shipping</u>	<u>SHIPPING</u>
1.	_____	<u>265,565 SF</u>	_____	Delivered to FOB Point: State of Alaska, Dept of Transportation Mountain Village Airport - apronside Mountain Village, AK, 99632 To be delivered to airport apron no later than June 1st, 2018	\$_____	\$_____
						<i>TOTAL \$</i> _____

Dust Product Offered: _____
Delivery Date: _____

ORDERING ADDRESS: _____

Contact: _____

Phone: _____

Email: _____



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

REQUIRED CONTRACT PROVISIONS
for
FEDERAL-AID (FAA) CONTRACTS

	Page
I. General	1
II. Civil Rights Act of 1964, Title VI	1
III. Buy American Preferences	2
IV. Davis-Bacon Labor Provisions	2
V. Contract Work Hours and Safety Standards Act	6
VI. Subletting or Assigning the Contract	7
VII. Access to Records and Reports	7
VIII. Certification of Nonsegregated Facilities	7
IX. Clean Air and Water Pollution Control	8
X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion	8
XI. Lobbying and Influencing Federal Employees	8
XII. Equal Employment Opportunity	8
XIII. Disadvantaged Business Enterprises	9
XIV. Rights to Inventions	9
XV. Trade Restriction Clause	9
XVI. Veteran's Preference	10
XVII. Termination of Contract	10

I. GENERAL

Procurements made under the Airport Improvement Program, AIP, must adhere to the provisions outlined in Title 49 CFR Part 18.36. This regulation provides for policies and procedures to be applied to typical procurement actions under the AIP, such as construction development, equipment purchases, and selection for professional services (engineering consultants etc.)

The Federal Aviation Administration, FAA, is not a party to the contracts, the Alaska Department of Transportation and Public Facilities, DOT&PF, executes in support of the AIP. The DOT&PF is the contractual authority for establishing and administering the contract agreements and is responsible for all contractual matters, including evaluation and award of contract, resolution of claims and disputes, and settlement of litigation issues.

A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the DOT&PF and FAA.

II. CIVIL RIGHTS ACT OF 1964, TITLE VI

(Required in all contracts and subcontracts)

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

1.1 Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

1.2 Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

1.4 Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the DOT&PF or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the DOT&PF or the FAA, as appropriate,

and shall set forth what efforts it has made to obtain the information.

1.5 Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

1.6 Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the DOT&PF or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the DOT&PF to enter into such litigation to protect the interests of the DOT&PF and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

1.7 Airport and Airway Improvement Act of 1982. The contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the DOT&PF or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the DOT&PF or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

III. BUY AMERICAN PREFERENCES

(Required in all contracts and subcontracts)

In accepting AIP funding, the DOT&PF is certifying that they will not acquire (or permit any contractor or subcontractor) to use any steel or manufactured products produced outside the United States on any portion of the project for which funds are provided, unless otherwise approved by the FAA. Therefore, for the AIP funded portion of a project, contractor must either:

1. Certify, in writing, all products are wholly produced in the US of US materials, or
2. Request a waiver to use non-US produced products, or
3. Certify that all equipment that is being used on the project is on the Nationwide Buy American conformance list.

The AIP funded portion of a project includes the grant recipient's local share.

Under 49 U.S.C. § 50101(b), the FAA has the authority to waive these Buy American Preferences if certain market or product conditions exist. These are:

1. Applying the Buy American Preferences would be inconsistent with the public interest;
2. The steel or goods produced in the U.S. are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;
3. When the cost of components and subcomponents produced in the U.S. is more than 60 percent of the cost of all components of the facility or equipment procured and final assembly occurs in the United States; or
4. Including domestic material will increase the cost of the overall project by more than 25 percent.

IV. DAVIS-BACON LABOR PROVISIONS

(Incorporate into all construction contracts and subcontracts that exceed \$2,000 and are financed under the AIP program.)

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; and

(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, Employment Standards

Administration, U.S. Department of Labor, Washington, D.C. 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 FAA or the DOT&PF 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 FAA may, after

written notice to the contractor, DOT&PF, 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 which 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 FAA, 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, DOT&PF, or owner, as the case may be, for transmission to the FAA. 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 FAA, 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, DOT&PF, or owner, as the case may be, for transmission to the FAA, 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 DOT&PF (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 § 5.5(a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the Sponsor, the FAA 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, DOT&PF, 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, 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 which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who 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 FAA 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 DOT&PF, 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 U.S.C. 1001.

V. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS, 29 CFR PART 5

(Incorporate into all construction contracts and subcontracts that exceed \$100,000 and are financed under the AIP program.)

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) above, 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 above, in the sum of \$10 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 above.

3. Withholding for Unpaid Wages and Liquidated Damages.

The FAA or the DOT&PF 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 monies 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 above.

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 section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

(Incorporate into all procurement contracts that are funded by AIP funds)

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the DOT&PF. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor remains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products

which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the DOT&PF has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, DOT&PF may establish their own self-performance requirements.

VII. ACCESS TO RECORDS AND REPORTS

(Incorporate into all procurement contracts that are funded by AIP funds)

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the DOT&PF, the FAA 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.

VIII. CERTIFICATION OF NONSEGREGATED FACILITIES

(Incorporate in all construction contracts and subcontracts that exceed \$10,000. The notices should be placed within the solicitation for proposals. The actual certification should be incorporated in the contract agreement.)

The federally-assisted construction contractor certifies that she or he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that she or he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies that she or he will not maintain or provide, for his employees, segregated facilities at any of his establishments and that she or he will not permit his

employees to perform their services at any location under his control where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The federally-assisted construction contractor agrees that (except where she or he has obtained identical certifications from proposed subcontractors for specific time periods) she or he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that she or he will retain such certifications in his files.

IX. CLEAN AIR AND WATER POLLUTION CONTROL

(Incorporate in all contracts and subcontracts that exceed \$100,000.)

Contractors and subcontractors agree:

a. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

b. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

c. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;

d. To include or cause to be included in any construction contract or subcontract which exceeds \$ 100,000 the aforementioned criteria and requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

(Incorporate into all contracts that exceed \$25,000, which funded under the AIP. Incorporate in all contracts for auditing services regardless of the contract amount.)

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

XI. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(Required in all contracts and subcontracts.)

(1) No Federal appropriated funds shall be paid, by or on behalf of the contractor, 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 the making of any Federal grant and the amendment or modification of any Federal grant.

(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 any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

XII. EQUAL EMPLOYMENT OPPORTUNITY

(Incorporate in all construction contracts and subcontracts that exceed \$10,000.)

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, 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, 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 considerations for employment without regard to race, color, religion, sex, or national origin.

3. The contractor will send to each labor union or representative of workers with which she/he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. 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 administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. 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 or federally assisted construction contracts in accordance with procedure 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.

7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 the administering agency may direct as a means of enforcing such provision, including sanctions for noncompliance: *Provided, however,* that in the event a contractor

becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

XIII. DISADVANTAGED BUSINESS ENTERPRISES

(The contract assurance clause shall be incorporated verbatim. The prompt payment clause represents sample language that meets the requirements of 49 CFR Part 26.29)

Contract Assurance - The contractor 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.

Prompt Payment - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than eight working days from the receipt of each payment the prime contractor receives from DOT&PF. The prime contractor agrees further to return retainage payments to each subcontractor within eight working 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 DOT&PF. This clause applies to both DBE and non-DBE subcontractors.

XIV. RIGHTS TO INVENTIONS

(Incorporate into all procurement contracts that funded by AIP funds.)

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the DOT&PF under which this contract is executed.

XV. TRADE RESTRICTION CLAUSE

(Incorporate into all contracts funded by AIP.)

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

a. 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 published by the Office of the United States Trade Representative (USTR);

b. 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 on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

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 a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the FAA may direct through the DOT&PF cancellation of the contract or subcontract for default at no cost to the Government.

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.

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, United States Code, Section 1001.

XVI. VETERAN'S PREFERENCE

(Incorporate into all construction contracts financed under the AIP program.)

In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 515(c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

XVII. TERMINATION OF CONTRACT

(Incorporate into all procurement contracts that funded by AIP funds that exceed \$10,000.)

a. The DOT&PF may, by written notice, terminate this contract in whole or in part at any time, either for the DOT&PF's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the DOT&PF.

b. If the termination is for the convenience of the DOT&PF, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

c. If the termination is due to failure to fulfill the contractor's obligations, the DOT&PF may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the DOT&PF for any additional cost occasioned to the DOT&PF thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the DOT&PF. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.

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