

# STATE OF ALASKA INVITATION TO BID (ITB)



## **TITLE OF ITB:** Northern Region FAA Funded Traffic Marking Paint and Paint Beads

**ITB NUMBER:** 2522N045

**ISSUE DATE:** JUNE 8, 2022

**IMPORTANT:** If you received this solicitation from the State of Alaska’s “Online Public Notice” web site, you must register with the procurement officer listed below in order to receive notification of subsequent amendments to the solicitation. Failure to register with the procurement officer may result in the rejection of your offer.

**BIDDER'S NOTICE:** By signature on this form, the bidder certifies that they comply with the following:

- (1) the bidder has a valid Alaska business license or will obtain one prior to award of any contract resulting from this ITB. If the bidder possesses a valid Alaska business license, the license number must be written below or one the following forms of evidence submitted with the bid:
  - a canceled check for the business license fee;
  - a copy of the business license application with a receipt date stamp from the State's business license office;
  - a receipt from the State’s business license office for the license fee;
  - a copy of the bidder’s valid business license;
  - a sworn notarized affidavit that the bidder has applied and paid for a business license;
- (2) the price(s) submitted was arrived at independently and without collusion, under penalty of perjury, and that the bidder is complying with:
  - the laws of the State of Alaska;
  - the applicable portion of the Federal Civil Rights Act of 1964;
  - the Equal Employment Opportunity Act and the regulations issued thereunder by the state and federal Government;
  - the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the state and federal government;
  - the bid will remain open and valid for at least 90 days;
  - all terms and conditions set out in this Invitation to Bid (ITB).

If a bidder does not hold an Alaska Business License (1) at the time designated in the ITB for opening the state will disallow the Alaska Bidder Preference. Bids must also be submitted under the name as appearing on the bidder’s current Alaska business license in order to receive the Alaska Bidder Preference. If a bidder fails to comply with (2) of this paragraph, the state may reject the bid, terminate the contract, or consider the contractor in default.

Eric Johnson, Procurement Officer	<b>Company Submitting Bid</b>	
Telephone: 907-451-5102	<b>Printed Name</b>	
Fax: 907-451-2313	<b>Authorized Signature</b>	
Email: eric.johnson@alaska.gov	<b>Date</b>	
	<b>Federal Tax ID Number</b>	
	<b>Telephone Number</b>	
	<b>Email Address</b>	
	<b>Alaska Business License #</b>	

## SECTION 1 INTRODUCTION & INSTRUCTIONS

### SEC. 1.01 PURPOSE OF THE ITB

The Department of Transportation and Public Facilities, Statewide Contracting and Procurement, is soliciting bids for FHWA Funded Traffic Marking Paint, Solvent, and Reflective beads to be delivered to various locations throughout the DOT&PF Northern Region as seen on **Attachment A, Bid Schedule**.

### SEC. 1.02 DEADLINE FOR RECEIPT OF BIDS

Bids must be received no later than **10:00 AM Prevailing Alaska Time on June 29, 2022**, at which time they will be publicly opened. Late bids or amendments will be disqualified and not opened or accepted for evaluation.

### SEC. 1.03 LATE BIDS

Late bids are bids received after the time and date set for receipt of bids. Late bids will not be accepted.

### SEC. 1.04 PRIOR EXPERIENCE

In order for a bid to be considered responsive the bidder must have sold traffic marking paint and reflective beads for at least three years.

**BIDDERS RESPONSE:** Bidders must submit a narrative statement that defines and describes specifically how the bidder meets or exceeds the above minimum prior experience requirement.

A bidder's failure to meet these minimum prior experience requirements will cause their bid to be considered non-responsive and rejected.

### SEC. 1.05 INVITATION TO BID (ITB) REVIEW

Bidders shall carefully review this ITB for defects and questionable or objectionable material. Comments concerning defects and questionable or objectionable material in the ITB should be made in writing and received by the procurement officer at least ten 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.

### SEC. 1.06 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF BIDS

All questions must be in writing and directed to the procurement officer. The interested party must confirm telephone conversations in writing. Two types of questions generally arise. One may be answered by directing the questioner to a specific section of the ITB. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the ITB. The procurement officer will make that decision.

### SEC. 1.07 SUBMITTING BIDS

**BIDDERS RESPONSE:** If submitting via U.S. Mail or Courier Delivery Service, Offerors must submit:

One original hard copy of their bid in writing, to the procurement officer in a sealed package.

One original hard copy of **Attachment A, Bid Schedule**. **Attachment A, Bid Schedule** must be included with the package and must be in a separately sealed envelope from the rest of the bid documents and must be clearly identified.

A separate electronic copy of both the bid documents and Attachment A, Bid Schedule must be submitted on a thumb drive with the proposal.

The sealed bid package(s) must be addressed as follows:

<b>Submitting by US Mail:</b>	<b>Submitting by Courier Delivery Service</b>
Department of Transportation and Public Facilities Attn: Eric Johnson ITB: 2522N045 NR Traffic Marking Paint and Reflective Beads 2301 Peger Road Fairbanks, AK 99709	Department of Transportation and Public Facilities Attn: Eric Johnson ITB: 2522N045 NR Traffic Marking Paint and Reflective Beads 2301 Peger Road Fairbanks, AK 99709

**IMPORTANT NOTE: There are no overnight express mail or courier delivery services to Fairbanks, Alaska.** All expedited mail or courier services take at least 2 nights. This is true for other courier vendors as well such as Federal Express.

It is the bidder’s responsibility to contact the issuing agency at 907-451-5102 to confirm the proposal has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

An offeror’s failure to submit its proposal prior to the deadline will cause the proposal to be disqualified. Late proposals or amendments will not be opened or accepted for evaluation.

### SEC. 1.08 BID FORMS

Bidders shall use the front page of this ITB and any other forms identified in this ITB for submitting bids. All bids must be signed by an individual authorized to bind the bidder to the provisions of the ITB.

#### BIDDER’S CERTIFICATION

By signature on the bid, the bidder certifies that they comply with the following:

- A. the laws of the State of Alaska;
- B. the applicable portion of the Federal Civil Rights Act of 1964;
- C. the Equal Employment Opportunity Act and the regulations issued thereunder by the state and federal government;
- D. the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the state and federal government;
- E. all terms and conditions set out in this ITB;
- F. the price(s) submitted was arrived at independently arrived and without collusion, under penalty of perjury; and
- G. that the bid will remain open and valid for at least 90 days.

If any bidder fails to comply with [a] through [g] of this paragraph, the state reserves the right to disregard the bid, terminate the contract, or consider the contractor in default.

CONFLICT OF INTEREST

**BIDDER RESPONSE:** Each bid shall include a statement indicating whether or not the company or any individuals working on the contract has a possible conflict of interest (e.g., currently employed by the State of Alaska or formerly employed by the State of Alaska within the past two years) and, if so, the nature of that conflict. The procurement officer reserves the right to **consider a bid non-responsive and reject it** or cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the contract to be performed by the bidder.

**SEC. 1.09 PRICES**

The bidder shall state prices in the units of issue on this ITB. 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.

**SEC. 1.10 PRE-BID CONFERENCE**

A pre-bid conference will not be held for this project.

**SEC. 1.11 ASSISTANCE TO BIDDERS WITH A DISABILITY**

Bidders with a disability may receive accommodation regarding the means of communicating this ITB or participating in the procurement process. For more information, contact the procurement officer no later than ten days prior to the deadline for receipt of bids.

**SEC. 1.12 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 Statewide Contracting and Procurement office at one of the following numbers no later than ten days prior to bid opening to make any necessary arrangements.

Telephone: (907) 451-5102

Fax: (907) 451-2313

Callers with telephone accessibility needs are encouraged to call the Alaska Relay Service. The Alaska Relay Service provides telephone accessibility to people who are deaf, hard-of-hearing or speech disabled. Callers should be prepared to provide the specific phone number at the Department of Transportation & Public Facilities that they wish to call:

Alaska Relay Service Phone Numbers and websites:

Voice or TTY: dial 711 (if voice, wait on line for representative to answer)

TTY: 1-800-770-8973 (text only)

Voice: 1-800-770-8255

VCO Direct: 1-800-770-6108 (Voice Carry Over)

ASCII: 1-800-770-3919

STS: 1-866-355-6198 (Speech to Speech)

Spanish: 1-866-355-6199

IP Relay: [www.sprintrelayonline.com](http://www.sprintrelayonline.com) (Internet Relay)

Website: [www.AlaskaRelay.com](http://www.AlaskaRelay.com)

### SEC. 1.13 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.

### SEC. 1.14 AMENDMENTS TO BIDS

Amendments to or withdrawals of bids will only be allowed if acceptable requests are received prior to the deadline that is set for receipt of bids, in accordance with 2 AAC 12.140. No amendments or withdrawals will be accepted after the deadline unless the delay is due to an error of the contracting agency, in accordance with 2 AAC 12.160.

### SEC. 1.15 AMENDMENTS TO THE ITB

If an amendment is issued, it will be provided to all who were notified of the ITB and to those who have registered with the procurement officer after receiving the ITB from the State of Alaska Online Public Notice website.

### SEC. 1.16 ITB SCHEDULE

The ITB schedule set out herein represents the State of Alaska’s best estimate of the schedule that will be followed. If a component of this schedule, such as the deadline for receipt of bids, is delayed, the rest of the schedule may be shifted accordingly. All times are Alaska Time.

ACTIVITY	TIME	DATE
Issue Date / ITB Released		6/8/2022
Deadline for Receipt of Bids / Bid Due Date	10:00 AM	6/29/2022
Bid Evaluations Complete		7/7/2022
Notice of Intent to Award		7/8/2022
Contract Issued		7/20/2022

This ITB does not, by itself, obligate the state. The state's obligation will commence when the contract is approved by the Commissioner of the Department of Transportation and Public Facilities, or the Commissioner's designee. Upon written notice to the contractor, the state may set a different starting date for the contract. The state will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the state.

Notice of Intent (NOI) may be delayed while FAA concurrence is requested. The NOI will be issued as soon as approval has been granted.

### SEC. 1.17 ALTERNATE BIDS

Bidders may only submit one bid for evaluation. In accordance with 2 AAC 12.830 alternate bids (bids that offer something different than what is asked for) will be rejected.

### SEC. 1.18 SUPPORTING INFORMATION

Bidders shall submit all required technical, specification, and other supporting information with their bid, so that a detailed analysis and determination can be made by the procurement 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 or services 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.

#### **SEC. 1.19 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 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.

## SECTION 2. CONTRACT INFORMATION

### SEC. 2.01 CONTRACT INTENT

This Invitation to Bid (ITB) is intended to result in a fixed price contract for the purchase of FAA Funded Paint and reflective beads to be delivered to various locations in the Southcoast Region as seen in **Attachment A, Bid Schedule** for the Alaska Department of Transportation & Public Facilities.

### SEC. 2.02 CONTRACT PROVISIONS

**FEDERAL CONTRACT PROVISIONS: The following provisions apply:**

**REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONTRACTS:** Form Fed-Aid (09/11) pages 1 through 7 is attached to this document. This contract incorporates the provisions by reference, with the same force and effect as if they were given in full text. The contractor must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

**CONTRACT FUNDING:** The funding of the resultant contract will be provided by the U.S. Federal Aviation Administration (FAA). Federal funds are identified and appropriated for the term of the contract. Payment and performance obligations for additional terms of the contract are subject to the availability and appropriation of funds.

**STATEMENT OF FINANCIAL ASSISTANCE:** Statement of Financial Assistance: This procurement is subject in part to financial assistance grants agreement between the State of Alaska and both the U.S. Department of Transportation and the Federal Aviation Administration.

**FEDERAL FUNDS OR ASSISTANCE:** Per AS36.30.890, 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.

**FEDERAL FUNDS OR ASSISTANCE:** Per 2 AAC 12.730, if a procurement involves the expenditure or 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.

This contract incorporates the Required Contract Provisions for Federal-Aid (FHWA) Contracts, Form 25D-55 H (02/16), attached to this ITB.

**Reference:** Alaska Department of Transportation and Public Facilities Standard Specifications for Highway Construction –2017 Edition as seen at the link below:

<http://www.dot.state.ak.us/stwddes/dcscsspecs/assets/pdf/hwyspecs/sshc2017.pdf>

**NOTE:** In order to be responsive, bidders must complete, sign, date and return the following forms with their bid:

- (1) **Attachment C** - Certificate of Buy America Act Compliance Form 25D-62
- (2) **Attachment E** - Material Origin Certificate, Form 25D-60

Failure to return the completed forms with your bid may cause the bid to be deemed non-responsive and rejected.

**Section 106 – Control of Material, Section 106.101 Source of Supply and Quality Requirements**

**BUY AMERICA PROVISION:** On projects using federal funds, the Contractor shall comply with the requirements of 23 CFR 635.410, Buy America requirements, and shall submit a completed Material Origin Certificate, Form 25D-60, prior to award of the contract. When the Contractor becomes aware of a change from or error in a previously submitted Material Origin Certificate (Form 25D-60), the Contractor shall submit an updated Material Origin Certificate (Form 25D-60). All steel and iron products which are incorporated into the work, shall be manufactured in the United States except that minor amounts of steel and iron products of foreign manufacture may be used, provided the aggregate cost of such does not exceed one tenth of one percent (0.001) of the total contract amount, or \$2,500, whichever is greater. For the purposes of this paragraph, the cost is the value of the products as they are delivered to the project including freight.

**If the product contains a portion of iron or steel and meets this criteria, the bidder’s completion and return of Forms 25D-60 and 25D-62 (above) is required. Bidders must explain on the forms (or as an attachment) how their product meets 23 CFR 635.410, sign and date the forms and submit with their bid.**

“Manufactured in the United States” means all manufacturing processes starting with the initial mixing and melting through the final shaping, welding, and coating processes must be undertaken in the United States.

The definition of “manufacturing process” is smelting or any subsequent process that alters the material’s physical form, shape or chemical composition. These processes include rolling, extruding, machining, bending, grinding, drilling, etc. The application of coatings, such as epoxy coating, galvanizing, painting or any other coating that protects or enhances the value of steel or iron materials shall also be considered a manufacturing process subject to the requirements of Section 106-1.01, Buy America Provision and of the Buy America Act.

Buy America does not apply to raw materials (iron ore), pig iron, and processed, pelletized and reduced iron ore. It also does not apply to temporary steel items (e.g., temporary sheet piling, temporary bridges, steel scaffolding, and falsework). Further, it does not apply to materials which remain in place at the Contractor’s convenience (e.g., sheet pilings, and forms).

The United States-Mexico-Canada Trade Agreement (USMCA) does not apply to the Buy America requirement. There is a specific exemption within USMCA (USMCA Chapter 13) for grant programs such as the Federal-aid highway program.

When steel and iron products manufactured in the United States are shipped to a foreign country where non steel or iron products are installed on or in them (e.g., electronic components in a steel cabinet), the steel and iron is considered to meet the requirements of this subsection.

The Contractor shall ensure that all manufacturing processes for each covered product comply with this provision. Non-conforming products shall be replaced at no expense to the State. Failure to comply may also subject the Contractor to default and debarment.

Provide a Certificate of Buy America Act Compliance Form 25D-62 from the supplier for each steel or iron product and each component that is manufactured predominantly of steel or iron, prior to incorporating



any steel or iron products or any components manufactured predominantly of steel or iron into the project. The supplier certifying Form 25D-62 may be the original manufacturer, fabricator, vendor, or subcontractor; provided the supplier has sufficient control and knowledge of the manufacturing process to accept responsibility and certify full and complete conformance with 23 CFR 635.410. Provide mill certificates when required by the Engineer. False statements may result in criminal penalties prescribed under AS 36.30.687 and Title 18 US Code Section 1001 and 1020.

**END OF FEDERAL SPECIFIC CONTRACT PROVISIONS**

**SEC. 2.03 CONTRACT TERM**

The length of the contract will be from the date of award through July 30, 2023

**SEC. 2.04 CONTRACT ADMINISTRATION**

The administration of this contract is the responsibility of the procurement officer or person appointed by the Department of Transportation and Public Facilities, Northern Region Contracting and Procurement.

**SEC. 2.05 CONTRACT FUNDING**

Payment for the contract is subject to funds already appropriated and identified.

**SEC. 2.06 CONTRACT PRICING**

The total product price per gallon or pound, as appropriate, plus the total shipping cost per gallon or pound, as appropriate, shall be added together to equal the total price per gallon or pound offered in response to this ITB for Traffic Paint, Solvent, Airport Beads, and Highway Beads shall remain firm through the end of the contract.

**SEC. 2.07 CONTRACT EXTENSION**

Unless otherwise provided in this ITB, the state and the successful bidder/contractor agree: (1) that any extension 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) the procurement officer will provide written notice to the contractor of the intent to cancel the month-to-month extension at least thirty (30) days before the date of cancellation. A month-to-month extension may only be executed by the procurement officer via a written contract amendment.

**SEC. 2.08 CONTRACT CHANGES – UNANTICIPATED AMENDMENTS**

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the state will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of such amendments per AS 36.30.400.

The contractor will not commence additional work until the procurement officer has secured required state approvals necessary for the amendment and issued a written contract amendment.

**SEC. 2.09 SUBCONTRACTORS**

Subcontractors will not be allowed.

**SEC. 2.10 JOINT VENTURES**

Joint ventures will not be allowed.

### SEC. 2.11 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.

### SEC. 2.12 RIGHT TO INSPECT PLACE OF BUSINESS

At reasonable times, the state may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the state makes such an inspection, the contractor must provide reasonable assistance.

### SEC. 2.13 WORKMANSHIP AND MATERIALS

All work must be performed in a thorough and workmanlike manner and in accordance with current industry practices. The contractor will be held responsible for the quality of the finished item. The state will reject any item that does not meet the specifications of the ITB. Rejected items will be returned to the contractor at the contractor's risk and expense.

### SEC. 2.14 ORDER PLACEMENT

The states traffic paint, solvent, highway and airport bead quantities as seen on **Attachment A, Bid Schedule** are the states firm order quantities for this contract. Upon contract award, a purchase order will be issued to the contractor by the regional procurement office, for each location. It is the Department's intent to place orders within seven working days following the award of the contract. Some purchase orders may be issued out of the states' procurement systems, IRIS.

### SEC. 2.15 ALTERATIONS

The contractor must obtain the written approval from the procurement officer of record 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 procurement officer via a contract amendment.

### SEC. 2.16 F.O.B. POINT

The F.O.B. point for all items purchased under this contract is the final destination anywhere within the State of Alaska as stated on Attachment A or Purchase Order. 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. All orders shall be F.O.B. Destination.

### SEC. 2.17 PACKAGING

The cost of all packaging must be included in the price bid. All packaging must meet specifications and be suitable for shipment and warehouse storage.

## SEC. 2.18 SHIPPING CHARGES

Shipments to all locations for all products types shall be F.O.B. Destination. Shipping is considered a pass-through cost and as such, the state shall only pay actual shipping costs. For the firm order quantities and locations seen on **Attachment A, Bid Schedule**, the state shall pay the shipping cost per gallon or pound (as appropriate) offered in response to this ITB for each lot and location.

## SEC. 2.19 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.

## SEC. 2.20 ADVANCE NOTICE OF DELIVERY

The contractor must notify and inform the delivering freight company of the state's advance notice of delivery requirement to ensure the freight company is fully aware that each state facility receiving an order requires 48 hours advance notice of delivery.

## SEC. 2.21 DELIVERY

The following applies to deliveries under the contract intended to result from this ITB. **Attachment A, "Bid Schedule"**, identifies a delivery date for each F.O.B. Destination delivery location. In most cases, this date represents a "no sooner than" or "no later than" date for delivery. However, the "Bid Schedule" may also simply identify a targeted barge sailing for some of the more remote areas of Alaska. Deliveries shall be made by the date specified on the Bid Schedule for each specific location. Please see **Attachment C** for ship to addresses and points of contact for each lot and location.

By signature on page one of this ITB, the bidder guarantees delivery to each location within the timeframe set forth in the Bid Schedule.

## SEC. 2.22 DELIVERY REQUIREMENTS

Deliveries shall comply with the following:

- Deliveries will only be accepted at the final destination during normal State working hours (8am – 4:30pm), Monday through Friday.
- Deliveries shall be made to the State's maintenance yards on open flat-bed trailers only. **Deliveries made in enclosed vans shall be refused.**
- Drums of paint and palletized beads shall be loaded on open flat-bed trailers in a single tier ONLY. There shall be no double stacking of product.
- Any additional costs to re-deliver products to meet the above requirements shall be the sole responsibility of the contractor.

## SEC. 2.23 LIQUIDATED DAMAGES FOR LATE DELIVERY

Late delivery will cause the State to suffer damages. Actual damages will be difficult to assess; therefore, it is mutually agreed that the contractor will pay the state damages at the rate of \$100 dollars per occurrence for each calendar day beyond the delivery date called for in the ITB.

## SEC. 2.24 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

The contractor is responsible for proving all products or the completion of all work set out in the contract. All products or work is subject to inspection, evaluation, and approval by the state. The state may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. The state may instruct the contractor to make corrections or modifications if needed in order to accomplish the contract's intent. The contractor will not unreasonably withhold such changes.

Substantial failure of the contractor to perform the contract may cause the state to terminate the contract. In this event, the state may require the contractor to reimburse monies paid (based on the identified portion of unacceptable products or work received) and may seek associated damages.

## SEC. 2.25 PERFORMANCE BOND

A posted performance bond 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. The performance bond is to be in the amount of 100 percent (100%) of the total bid amount (applicable only to bids in excess of \$250,000.00).

## SEC. 2.26 PAYMENT BOND

A Payment Bond in the amount of 100% of the total contract must be submitted. A posted payment bond guarantees the successful payment to all subcontractors and suppliers during the performance of this contract over the entire term of the contract. If the contractor fails to provide payment for labor performed and materials and supplies furnished during the performance of this contract, regardless of the circumstances or time remaining on the contract, the bonding company shall well and truly complete all payment obligations under said contract in accordance with the terms of the payment bond. A payment bond is to be in the amount of 100 percent (100%) of the total bid amount (applicable only to bids in excess of \$250,000).

## SEC. 2.27 INDIVIDUAL SURETY

In lieu of a performance bond, a successful bidder may post an individual surety to 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 individual surety will be declared as liquidated damages and become due and payable to the state. By signature on this ITB, the bidder acknowledges this condition and voluntarily relinquishes any and all claims to the entire individual surety. The individual surety may be in any of the following forms:

- **CERTIFIED OR CASHIER'S CHECK:** A certified or cashier's check, made payable to the State of Alaska in the amount of one hundred percent (100%) of the total bid amount (applicable only to bids in excess of \$250,000).

OR

- **SPECIAL NOTICE ACCOUNT OR CERTIFICATE OF DEPOSIT:** A special notice account book or certificate of deposit, made payable to the State of Alaska in the amount of one hundred percent (100%) of the total bid amount (applicable only to bids in excess of \$250,000).

Failure to provide the Performance Bond or Individual Surety within the time required will cause the State to declare the bidder non-responsible and reject the bid.

### SEC. 2.28 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.

### SEC. 2.29 CONTRACT PRICE ADJUSTMENTS

Does not apply to this project.

### SEC. 2.30 INFORMAL DEBRIEFING

When the contract is completed, an informal debriefing may be performed at the discretion of the procurement officer. If performed, the scope of the debriefing will be limited to the products provided or work performed by the contractor.

### SEC. 2.31 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.

### SEC. 2.32 INSURANCE

Without limiting the contractor's indemnification, it is agreed that the 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 procurement officer prior to contract approval 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.

### SEC. 2.33 MANDATORY REPORTING

Does not apply to this project.

## SECTION 3. SPECIFICATIONS

### SEC. 3.01 POINTS OF CONTACT

Please see **Attachment C, Contact Information by Lot**, for detailed Point of Contact information for each lot and location.

### SEC. 3.02 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.

### SEC. 3.03 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.

### SEC. 3.04 GENERAL PRODUCT STANDARDS

**HIGHWAY STANDARDS:** The following sections of the Alaska DOT&PF Standard Specifications for Highways, 2017 apply to this project.

- Section 643-2.01-8: Traffic Maintenance – Materials – Interim Pavement Markings;
- Section 670: Traffic Markings;
- Section 708-2.03: Paints – Paint for Traffic Marking;
- Section 712: Miscellaneous, as cited herein;
- Section 712.08: Glass Beads; and,
- Section 106-1.05: Certificates of Compliance.

**SECTION 643-2.01, TRAFFIC MAINTENANCE - MATERIALS:** In accordance with this section, the contractor shall provide materials for traffic control devices conforming to the following requirements:

- **Per section 643.2.01.8, Traffic Maintenance – Materials - Interim Pavement Markings**, the contractor shall apply markings according to **Section 670** and the manufacturer's recommendations. Use:
  - a) Paint meeting **Subsection 708-2.03** with glass beads meeting **Subsection 712-2.08**

**SECTION 708-2.03, PAINTS - PAINT FOR TRAFFIC MARKING:** In accordance with this section, the contractor shall use the following:

- **Per section 708-2.03.3, Paint for Traffic Marking**, the contractor shall use a product that meets “The current State of Alaska DOT&PF maintenance specification for pavement marking paint”. Please see page 24 of this ITB for additional information regarding this specification.

**SECTION 712-2.08, GLASS BEADS:** In accordance with this section, **bidders must** submit certifications of compliance as specified in Section 106-1.05 for each lot of glass beads used on the contract.

- **Per section 106-1.05, Certificates of Compliance**, the contractor shall submit with the bid certifications of compliance that verifies the glass beads contain no more than 200 ppm of lead or 200 ppm of arsenic when tested in accordance with EPA testing methods 3062, 6010B, or 6010C.

Glass Beads shall meet AASHTO M 247, Type 1, with a moisture resistant coating when tested in accordance with AASHTO T346.

The Alaska DOT&PF Standard Specifications for Highways, 2017 edition may be found at the following link:

<http://www.dot.state.ak.us/stwddes/dcspsecs/index.shtml>

Please see the specification sections of this ITB sections for information regarding specifications for each type of product.

**AIRPORT STANDARDS:** The following sections of the Alaska DOT&PF Standard Specifications for Highways, 2017 apply to this project.

- Section P-620: Runway and Taxiway Painting as cited herein.

**SECTION 620-2.2 MATERIALS – PAINT:** In accordance with this section, the paint provided by the contractor shall be:

1. Waterborne or solvent base according to the requirements of Subsection 620-2.2, a. or b.
  - a. **Waterborne:** Paint shall meet the requirements of Federal Specification TT-P1952F, Type II.
  - b. **Solvent Base:** Paint shall meet the requirements of Federal Specification A-A-2886B, Type II, or the State of Alaska DOT&PF maintenance specification for "Traffic Paint - No-Heat Instant Dry Pavement Marking Material".
2. Paint shall be furnished in white (37925), yellow (33538 or 33655), red (31136) and black (37038) according to Federal Standard No 595.
3. Paint shall be furnished in Type II (fast drying time for no-pick-up) when tested according to ASTM D 711.

**SECTION 620-2.3 REFLECTIVE MEDIA:** In accordance with this section, all glass beads provided by the contractor shall meet the requirements of Fed. Spec. TT-B-1325D, Type I, gradation A. Glass beads shall be treated with adhesion promoting and/or flotation coatings as specified by the manufacturer of the paint. The Alaska DOT&PF Standard Specifications for Airports may be found at the following link:

<http://www.dot.state.ak.us/stwddes/dcspsecs/index.shtml>

### SEC. 3.05 INDEPENDENT LAB TEST RESULTS

Bidders must submit with their bid, certified test results performed by independent lab certifying that all products offered are in compliance with the State's paint and reflective glass bead specifications. The test results submitted must be signed by the independent lab and the testing must have been performed and certified no more than 180 days prior to the bid opening date.

Certified test results for each type and color of paint must be submitted. In addition, both airport and highway reflective glass beads must be tested individually. Failure to submit the required certified test results with the bid may cause the State to determine the bid non-responsive and reject the bid.

The contractor shall bear all costs associated with the independent laboratory acceptance testing of the material and such testing costs shall be considered subsidiary to the product's unit price.



### SEC. 3.06 PRODUCT SAMPLES

The contractor may be required to submit samples of the products offered for inspection and evaluation to the department or its designated agent, as specified under Product Testing. The contractor's failure to submit the samples may cause the State to consider the contractor in default.

### SEC. 3.07 PRE SHIPPING PRODUCT TESTING

**After award, but prior to shipping,** the Department, or its designated agent, will be given safe access to the plant to inspect and randomly sample all products being offered for shipment. Samples obtained for Quality Assurance purposes will be tested by an independent laboratory for compliance with the State's paint and reflective glass bead specifications.

Product testing shall be arranged by the contractor in cooperation with the states Welding and Coatings Inspection Consultant as identified below.

Testing will be performed by the Alaska DOT&PF's, Welding and Coatings Inspection Consultant Mayes Testing Engineers Inc. Mayes Testing Engineers, Inc. will act as DOT&PF's Agent to randomly select bulk paint containers for sampling, witness the sampling by the paint manufacturer, secure the sample(s) and ensure delivery to a qualified paint testing laboratory for the performance of DOT&PF selected test procedures.

The contractor shall bear all costs associated with quality assurance and independent laboratory acceptance testing of the material and such testing costs shall be considered subsidiary to the product's unit price.

The Department will reject materials when the samples do not meet product quality specifications. If the product does not pass the acceptance testing, the contractor will have 72 hours to correct the product before shipment.

#### **Process to Arrange Product Testing:**

1. Upon award, the contractor shall contact Mayes Testing Engineers, Inc. by phone to inform them of the contract award and to provide anticipated testing windows. The state Procurement Officer of Record and the DOT&PF Materials Lab must be notified via email that contact has been made with Mayes Testing Engineers, Inc. **This contact must occur within 14 days of contract award.**

Mayes Testing Engineers Inc.  
20225 Cedar Valley Road, Suite 110  
Lynnwood, WA 98036  
425-742-9360

2. Once testing windows are determined, the contractor shall notify the Procurement Officer of Record via email of the testing window when sampling will be witnessed by Mayes Testing Engineers, Inc. If testing windows change, the state must be notified of the new testing window.
3. Upon the collection of samples, the contractor shall notify the Procurement Officer of Record via email that samples taken were witnessed by Mayes Testing Engineers, Inc. The samples shall be shipped by the contractor to the paint testing laboratory for testing.
4. Upon completion of the testing, the independent lab will email copies of the final test results to:

[eric.johnson@alaska.gov](mailto:eric.johnson@alaska.gov)

## SEC. 3.08 GENERAL REQUIREMENTS

By signature of the bid, the bidder certifies that they comply or shall comply with the following general requirements:

- A. **FEDERAL COMPLIANCE:** Throughout the execution of this contract, the contractor must adhere to the Code of Federal Regulations, Title 49, Part 180.605
- B. **SILENCE OF SPECIFICATION:** The apparent silence of this specification and supplemental specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail, and that only materials and workmanship of first quality are to be used. **ANY** exception to this specification may be cause for rejection of the bid.
- C. **MANUFACTURE:** The ingredient materials shall be mixed and ground to produce a homogeneous paint free of foreign material, which will not thicken, liver, gel, curdle, or settle during storage of up to six months. The paint must dry to an elastic adherent finish and show no appreciable discoloration when a thin section is exposed to sunlight. The contractor shall replace any paint which has become unfit for use, either due to leakage of containers or any other reason not due to handling by user.
- D. **FORMULATION:** The manufacturer who furnishes paint under this specification **must supply the formulation of their product with their bid** and no deviation from this formulation will be permitted without authorization from the State of Alaska. Samples of ingredient materials may be required at any time. The manufacturer's formulation will be treated as a confidential matter and will not be divulged without their consent.
- E. **TEST RESULTS:** All State decisions related to product acceptability shall be considered final.
- F. **FRESH PAINT ONLY:** All paint supplied under this contract must be fresh. The paint may not be re-manufactured, reconditioned or made in part using any components extracted from previous batches. Paint must be clean, bright and mixed no more than 60 days prior to shipment. All paint containers shall clearly show the date of manufacture on the outside of the drum. Paint received in non-compliance will be refused at the contractor's expense.

It is the contractor's responsibility to ensure that each container of paint delivered is compliant to State specifications. A contractor's failure to comply with this requirement will cause the State to seek remedies under breach of contract.

- G. **PROCESS:** The manufacturer shall assume all costs arising from the use of patented materials, equipment, devices or processes used on, or incorporated in the work, and agrees to indemnify and save harmless the Department and its duly authorized agents from suits of law, or actions of any nature for, or on account of the use of any patented materials equipment, devices, or processes.
- H. **SUITABILITY:** All paints supplied under this contract must be suitable for application using standard or airless traffic painting equipment. All paints supplied shall provide durable pavement markings, primarily on asphalt concrete surfaces but must also be suitable for Portland cement concrete applications. All paints supplied shall be of the fast-dry type, suitable for lowest temperature and highest humidity applications.

Bidders must submit any and all paint limitations, recommended storage, as well as recommended equipment and methods of application with the Compliance with Specifications section included under each specification below.

- I. **PRODUCT SUPPORT:** The contractor must email and telephonic support for users to contact with any questions or comments about the use and storage of the materials provided herein. The contractor agrees to respond to all email and telephone inquiries from Alaska DOT&PF personnel within 1 business day. If at all possible, to help ensure a timely response to DOT&PF inquiries, the contractor should provide personnel living in Alaska for product support inquiries.

### SEC. 3.09 PRODUCT SPECIFICATIONS

**Please see Attachment B-Product Specifications.**

## SECTION 4. CONTRACT INVOICING AND PAYMENTS

### SEC. 4.01 INVOICING

Upon completion of delivery to each location, the contractor shall issue a single invoice per lot. The invoice submitted for each lot must:

1. Clearly identify the Purchase Order number, Lot, Location, product description(s), quantity(s), price per gallon or pound, and the extended price; and,
2. Include a Proof of Delivery (POD) receipt signed by a state employee to include a legible printed name for the state employee accepting the delivery.
3. The invoice must also include a copy of the actual freight bill for the specific location to allow for shipping cost validation.

### SEC. 4.02 INVOICE SUBMISSION

Invoices must be submitted to the regional office based on the regional location of each lot as identified on the Bid Schedule. All invoices and any questions regarding payment should be directed to the appropriate region as seen below.

<b>Northern Region</b>
DOT&PF
Northern Region Procurement Office
2301 Peger Road
Fairbanks, AK 99709-5316
907-451-5102
eric.johnson@alaska.gov

Invoices may be submitted to the regional office as described above upon the complete delivery and acceptance at each specific location. Each invoice must have individual lines for each product type and shipping. Shipping costs shall be reimbursed at the actual cost and a shipping invoice shall be included as verification of the shipping cost as seen on the invoice.

Invoices for partial deliveries to a location will not be accepted. Partial payments for individual locations will not be made. Regions will not make payment until after the receipt of the products and the proper submission of an invoice for each individual location.

### SEC. 4.03 PROOF OF DELIVERY RECEIPT

When shipments are delivered to their final destination, a Proof of Delivery (POD) receipt must be signed by a state employee on site at the time of delivery. Each POD must include the following:

- Signature and printed name of the state employee on site at the time of delivery.
- Date of Delivery, description of item to include paint color, container number(s), and total quantity.
- The Contractor’s Delivery agent is responsible for ensuring the printed name is legible on the POD.

#### **SEC. 4.04 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.

Any single contract payments of \$1 million or higher must be accepted by the contractor via Electronic Funds Transfer (EFT).

#### **SEC. 4.05 PROMPT PAYMENT FOR STATE PURCHASES**

The state is eligible to receive a **5%** discount for all invoices paid within **15** business days from the date of receipt of the commodities or services and/or a correct invoice, whichever is later. The discount shall be taken on the full invoice amount. The state shall consider payment being made as either the date a printed warrant is issued or the date an electronic funds transfer (EFT) is initiated.

#### **SEC. 4.06 THIRD-PARTY FINANCING AGREEMENTS NOT ALLOWED**

Because of the additional administrative and accounting time required of the state when third party financing agreements are permitted, they will not be allowed under this contract.

## SECTION 5. EVALUATION AND CONTRACTOR SELECTION

### SEC. 5.01 EVALUATION OF BIDS

After bid opening, the procurement officer will evaluate the bids for responsiveness. Bids deemed non-responsive will be eliminated from further consideration. An evaluation may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the bidder.

### SEC. 5.02 APPLICATION OF PREFERENCES

Certain preferences apply to all state contracts, regardless of their dollar value. The Alaska Bidder and Alaska Veteran preferences are the most common preferences involved in the ITB process. Additional preferences that may apply to this procurement are listed below. Guides that contain excerpts from the relevant statutes and codes, explain when the preferences apply and provide examples of how to calculate the preferences are available at the following website:

<http://doa.alaska.gov/dgs/pdf/pref1.pdf>

- Alaska Products Preference - AS 36.30.332
- Recycled Products Preference - AS 36.30.337
- Local Agriculture and Fisheries Products Preference - AS 36.15.050
- Employment Program Preference - AS 36.30.321(b)
- Alaskans with Disabilities Preference - AS 36.30.321(d)

The Division of Vocational Rehabilitation in the Department of Labor and Workforce Development keeps a list of qualified employment programs and individuals who qualify as persons with a disability. As evidence of a business' or an individual's right to the Employment Program or Alaskans with Disabilities preferences, the Division of Vocational Rehabilitation will issue a certification letter. To take advantage of these preferences, a business or individual must be on the appropriate Division of Vocational Rehabilitation list prior to the time designated for receipt of proposals. Bidders must attach a copy of their certification letter to the proposal. A bidder's failure to provide this certification letter with their proposal will cause the state to disallow the preference.

### SEC. 5.03 ALASKA BIDDER PREFERENCE

Does not apply, federally funded project.

### SEC. 5.04 ALASKA VETERAN PREFERENCE

Does not apply, federally funded project. Use of Local Forest Products Preference

Does not apply to this project.

### SEC. 5.05 LOCAL AGRICULTURAL AND FISHERIES PRODUCT PREFERENCE

Does not apply to this project

### SEC. 5.06 ALASKA PRODUCT PREFERENCE

Does not apply to this project.

### SEC. 5.07 EMPLOYMENT PROGRAM PREFERENCE

Does not apply, federally funded project.

**SEC. 5.08 ALASKANS WITH DISABILITIES PREFERENCE**

Does not apply, federally funded project.

**SEC. 5.09 PREFERENCE QUALIFICATION LETTER**

Does not apply to this project.

**SEC. 5.10 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.

**SEC. 5.11 METHOD OF AWARD**

Award will be made by Lot to the lowest responsive and responsible bidder. In order to be considered responsive, bidders must bid on all items within a lot. There is one lot as defined below.

**SEC. 5.12 BID SCHEDULE**

In order to be considered responsive, Bidders must complete and submit **Attachment A, Bid Schedule**. A printed hard copy of **Attachment A** must be submitted with the bid. In addition, an electronic file of Attachment A may also be submitted via email.

**SEC. 5.13 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 procurement 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 procurement officer does so without a contract and at their own risk.

## SECTION 6. GENERAL PROCESS AND LEGAL INFORMATION

### SEC. 6.01 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES

Prior to the award of a contract, a bidder must hold a valid Alaska business license. ~~However, in order to receive the Alaska Bidder Preference and other related preferences, such as the Alaska Veteran Preference and Alaskans with Disabilities Preference, a bidder must hold a valid Alaska business license prior to the deadline for receipt of bids.~~ Bidders should contact the **Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing,**

Website: <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing.aspx>

Phone: (907) 465-2550

Email: [license@alaska.gov](mailto:license@alaska.gov)

Acceptable evidence that the bidder possesses a valid Alaska business license may consist of any one of the following:

- copy of an Alaska business license;
- certification on the bid that the bidder has a valid Alaska business license and has included the license number in the bid;
- a canceled check for the Alaska business license fee;
- a copy of the Alaska business license application with a receipt stamp from the state's occupational licensing office; or
- a sworn and notarized statement that the bidder has applied and paid for the Alaska business license.

You are not required to hold a valid Alaska business license at the time bids are opened if you possess one of the following licenses and are offering services or supplies under that specific line of business:

- fisheries business licenses issued by Alaska Department of Revenue or Alaska Department of Fish and Game,
- liquor licenses issued by Alaska Department of Revenue for alcohol sales only,
- insurance licenses issued by Alaska Department of Commerce, Community and Economic Development, Division of Insurance, or
- Mining licenses issued by Alaska Department of Revenue.

Prior the deadline for receipt of bids, all bidders must hold any other necessary applicable professional licenses required by Alaska Statute.

### SEC. 6.02 AUTHORITY

This ITB is written in accordance with AS 36.30 and 2 AAC 12.

### SEC. 6.03 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; be liable for all required insurance, licenses, permits and bonds; and pay all applicable federal, state, and borough taxes.



#### SEC. 6.04 SUITABLE MATERIALS, ETC.

Unless otherwise specified in this ITB, 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.

#### SEC. 6.05 SPECIFICATIONS

Unless otherwise specified in this ITB, product brand names or model numbers specified in this ITB are examples of the type and quality of product required, and are not statements of preference. If the specifications describing an item conflict with a brand name or model number describing 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.

#### SEC. 6.06 CONTRACTOR SITE INSPECTION

The state may conduct on-site visits to evaluate the bidder's capacity to perform the contract. A bidder must agree, at risk of being found non-responsive and having its bid rejected, to provide the state reasonable access to relevant portions of its work sites. Individuals designated by the procurement officer at the state's expense will make site inspection.

#### SEC. 6.07 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. Unless otherwise specified in 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.

#### SEC. 6.08 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/j/tip/>

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

#### SEC. 6.09 RIGHT OF REJECTION

Bidders must comply with all of the terms of the ITB, the State Procurement Code (AS 36.30), and all applicable local, state, and federal laws, codes, and regulations. The procurement officer may reject any bid that does not comply with all of the material and substantial terms, conditions, and performance requirements of the ITB.

Bidders may not qualify the bid nor restrict the rights of the state. If a bidder does so, the procurement officer may determine the bid to be a non-responsive counter-offer and the bid may be rejected.

Minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;

- do not change the meaning or scope of the RFP;
- are trivial, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision;

may be waived by the procurement officer.

The state reserves the right to refrain from making an award if it determines that to be in its best interest.

**A bid from a debarred or suspended bidder shall be rejected.**

### SEC. 6.10 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

The state will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any bid.

### SEC. 6.11 DISCLOSURE OF BID CONTENTS

All bid prices become public information at the bid opening. After the deadline for receipt of bids, all other bid material submitted become the property of the State of Alaska and may be returned only at the state's option. AS 40.25.110 requires public records to be open to reasonable inspection. All other bid information will be held in confidence during the evaluation process and prior to the time a Notice of Intent to Award is issued. Thereafter, bids will become public information.

Trade secrets and other proprietary data contained in bids may be held confidential if the bidder requests, in writing, that the procurement officer does so, and if the procurement officer agrees, in writing, to do so. The bidder's request must be included with the bid, must clearly identify the information they wish to be held confidential, and include a statement that sets out the reasons for confidentiality. Unless the procurement officer agrees in writing to hold the requested information confidential, that information will also become public after the Notice of Intent to Award is issued.

### SEC. 6.12 ASSIGNMENTS

Per 2 AAC 12.480, the contractor may not transfer or assign any portion of the contract without prior written approval from the procurement officer. Bids that are conditioned upon the state's approval of an assignment will be rejected as non-responsive.

### SEC. 6.13 FORCE MAJEURE (IMPOSSIBILITY TO PERFORM)

The parties to a contract resulting from this ITB are not liable for the consequences of any failure to perform, or default in performing, any of its obligations under the contract, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party.

For the purposes of this ITB, 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.

#### **SEC. 6.14 DEFAULT**

In case of default by the contractor, for any reason whatsoever, the state may procurement 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.

#### **SEC. 6.15 DISPUTES**

If the contractor has a claim arising in connection with the contract that it cannot resolve with the state by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – AS 36.30.632.

#### **SEC. 6.16 SEVERABILITY**

-If any provision of the contract or agreement is found to be invalid or declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

#### **SEC. 6.17 CONTRACT CANCELLATION**

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

#### **SEC. 6.18 GOVERNING LAW; FORUM SELECTION**

A contract resulting from this ITB is governed by the laws of the State of Alaska. To the extent not otherwise governed by Section 5.15 of this ITB, any claim concerning the contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

#### **SEC. 6.19 SOLICITATION ADVERTISING**

Public notice has been provided in accordance with 2 AAC 12.220.

#### **SEC. 6.20 QUALIFIED BIDDERS**

Per 2 AAC 12.875, unless provided for otherwise in the ITB, to qualify as a bidder for award of a contract issued under AS 36.30, the bidder must:

- 1) Add value in the contract by actually performing, controlling, managing, or supervising the services to be provided; or
- 2) Be in the business of selling and have actually sold on a regular basis the supplies that are the subject of the ITB.

If the bidder leases services or supplies or acts as a broker or agency in providing the services or supplies in order to meet these requirements, the procurement officer may not accept the bidder as a qualified bidder under AS 36.30.

#### **SEC. 6.21 FEDERALLY IMPOSED TARIFFS**

Changes in price (increase or decrease) resulting directly from a new or updated federal tariff, excise tax, or duty, imposed after contract award may be adjusted during the contract period or before delivery into the United States via contract amendment.

- **Notification of Changes:** The contractor must promptly notify the procurement officer in writing of any new, increased, or decreased federal excise tax or duty that may result in either an increase or decrease in the contact price and shall take appropriate action as directed by the procurement officer.
- **After-imposed or Increased Taxes and Duties:** Any federal excise tax or duty for goods or services covered by this contract that was exempted or excluded on the contract award date but later imposed on the contractor during the contract period, as the result of legislative, judicial, or administrative action may result in a price increase provided:
  - a) The tax or duty takes effect after the contract award date and isn't otherwise addressed by the contract;
  - b) The contractor warrants, in writing, that no amount of the newly imposed federal excise tax or duty or rate increase was included in the contract price, as a contingency or otherwise.
- **After-relieved or Decreased Taxes and Duties:** The contract price shall be decreased by the amount of any decrease in federal excise tax or duty for goods or services under the contract, except social security or other employment [taxes](#), that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the procurement officer.
- **State's Ability to Make Changes:** The state reserves the right to request verification of federal excise tax or duty amounts on goods or services covered by this contract and increase or decrease the contract price accordingly.
- **Price Change Threshold:** No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

## SEC. 6.22 PROTEST

AS 36.30.560 provides that an interested party may protest the content of the ITB.

An interested party is defined in 2 AAC 12.990(a) (7) as "an actual or prospective bidder or offeror whose economic interest might be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract."

If an interested party wishes to protest the content of a solicitation, the protest must be received, in writing, by the procurement officer at least ten days prior to the deadline for receipt of bids.

AS 36.30.560 also provides that an interested party may protest the award of a contract or the proposed award of a contract.

If a bidder wishes to protest the award of a contract or the proposed award of a contract, the protest must be received, in writing, by the procurement officer within ten days after the date the Notice of Intent to Award the contract is issued.

A protester must have submitted a bid in order to have sufficient standing to protest the proposed award of a contract. Protests must include the following information:

- the name, address, and telephone number of the protester;
- the signature of the protester or the protester's representative;
- identification of the contracting agency and the solicitation or contract at issue;

- a detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and the form of relief requested.

Protests filed by telex or telegram are not acceptable because they do not contain a signature. Fax copies containing a signature are acceptable.

The procurement officer will issue a written response to the protest. The response will set out the procurement officer's decision and contain the basis of the decision within the statutory time limit in AS 36.30.580. A copy of the decision will be furnished to the protester by certified mail, fax or another method that provides evidence of receipt.

All bidders will be notified of any protest. The review of protests, decisions of the procurement officer, appeals, and hearings, will be conducted in accordance with the State Procurement Code (AS 36.30), Article 8 "Legal and Contractual Remedies."

## SECTION 7. ATTACHMENTS

### SEC. 7.01 ATTACHMENTS

- 1) Attachment A Product Specifications
- 2) Attachment B ITB 2522H045 - Bid Schedule
- 3) Attachment C Certificate of Buy American Act Compliance Form 25D-62
- 4) Attachment D Federal Aid Contract Provisions (FAA)
- 5) Attachment E Material Origin Certificate Form 25D-60

**PRODUCT SPECIFICATIONS**

**SPECIFICATION NUMBER ONE:**

**DESCRIPTION: LOW VOC SOLVENT BASED TRAFFIC MARKING PAINT IN WHITE, YELLOW, BLACK, BLUE, AND RED**

**SPECIFICATION:** All paint provided under this specification must meet the requirements of Federal Specification AA-2886B, Type II, and be formulated with a minimum of 70% Acrylic Copolymer resins.

**SOLVENT PAINT TESTING REQUIREMENTS:** The following solvent paint testing requirements shall apply to all paint delivered under Specification Number One.

- The contractor shall submit with the bid testing results for Federal Specification AA-2886B, Type II tests on solvent paint formulated within the two years preceding the Invitation to Bid (ITB) issuance date.
- The contractor shall submit with the bid, test results for the reduced suite of tests as seen in Table 1 for paint formulated within the 180 days prior to the bid opening date.

All costs associated with independent laboratory testing are the sole responsibility of the bidder awarded the contract, including the cost of Quality Assurance "Fingerprint" testing on two samples of the paint randomly selected from the Alaska order by the Alaska DOT&PF's Quality Assurance Consultant.

Alaska DOT&PF will pay for the consultant, acting as DOT&PF's Agent, to randomly select two bulk paint containers for sampling, witness the sampling by the paint manufacturer, secure the sample(s) and ensure delivery to a qualified independent paint testing laboratory, for the performance of the following three selected test procedures:

**QUALITY ASSURANCE TESTING FOR SOLVENT PAINT:** The following tests must be performed.

1. ASTM D562 Consistency (Viscosity)
2. ASTM E1347 (or E1349) Directional Reflectance of white and yellow paint with 45:0 or 0:45 Geometry
3. ASTM D2369 (or D2832) Total Solids, % by Weight

Test results shall be reported by email to the following DOT&PF Staff:

Procurement Specialist	Tom Mayer	<a href="mailto:tom.mayer@alaska.gov">tom.mayer@alaska.gov</a>
Statewide Materials	Richard Giessel	<a href="mailto:richard.giessel@alaska.gov">richard.giessel@alaska.gov</a>

**COMPOSITIONAL REQUIREMENTS:**

- A. **Pigment Composition:** Pigments shall be first quality paint grade pigments. The inert or filler pigments must be of a type and quality generally recognized as first quality paint grade products, and shall not contribute to settling of the paint in storage or be so hard as to cause excessive wear of the spray application equipment.
- B. **Vehicle or Resinous Binder Composition:** The vehicle may be any combination of natural or synthetic resinous materials that are not prohibited per this specification. All resins used must be permanently capable of re-dissolving in the solvent combination used in the paint. Paint and binder combinations shall minimize build-up of the paint on the sides of tanks, paint lines, and clogging of spray equipment from un-dissolvable skins.

**TABLE 1 SOLVENT PAINT PRIMARY QUANTITATIVE REQUIREMENTS**

CHARACTERISTIC	MINIMUM	MAXIMUM	TEST METHOD
Viscosity @ 77°F (25°C), Krebs units	75	90	ASTM D562
Weight (lb) per Gallon at 77°F (25°C)	11.0		ASTM D1475
Fineness of Grind, Hegman	2		ASTM D1210
Drying time for no-pick-up, Minutes	---	5	ASTM D711
Contrast Ratio @ 5 mils DFT, White and Colors (Black)	0.95 (1.0)	---	See "H" below
Colors: Yellow 33538; White: 37925; Blue 35180; Red 31136; Black 37038 or approved equals	Pass		FED-STD-595C
Directional reflectance of white paint applied at 15 mils wet film, percent (Measured with 45°:0° or 0°:45° geometry)	85	---	ASTM E1347
Directional reflectance of yellow paint applied at 15 mils wet film, percent (Measured with 45°:0° or 0°:45° geometry)	45	---	ASTM E1347
Volatile Organic Compounds (VOC), grams/liter (lbs./gallon)		150 (1.25)	EPA 40, CFR Part 59, ASTM D3960
Total Solids, % by Weight	70		ASTM D2369
Total Solids, % by Volume	43		ASTM D2697

- C. **Prohibited Materials:** *The manufacturer must submit documentation certifying the product does not contain mercury, lead, hexavalent chromium, halogenated solvents (such as Methylene Chloride), or any carcinogen, as defined in 29 CFR 1910.1200.*
- D. **Application and Storage:** Follow Manufacturer’s recommended equipment, temperatures, humidity and any other limits for safe and proper application, use, as well as storage of these materials and containers.



- 
- E. **Condition in Container:** For a minimum of one year from the date of manufacture, the paint must meet each of the following conditions:
- (1) Not show excessive settling in a freshly opened full can
  - (2) Show no curdling, livering, caking, lumps, skins, or color separation
  - (3) Be easily re-dispersed when mixed with a paddle
  - (4) Be easily re-dispersed after 5 minutes of mechanical shaking using a standard commercial paint shaker
  - (5) Water Resistance: Guaranteed water resistant when applied properly.
- F. **Weathering:** Guaranteed against cracking and weathering under extreme conditions when applied properly.
- G. **Storage Stability:**
- (1) The material must not show evidence of heavy caking or settling which requires mechanical means to return the product to usable condition for a period of one year from the date received by the State of Alaska.
  - (2) There must be no viscosity increase of 5 Krebs Units over the originally reported viscosity after aging in the container or decomposition of the product. Field examination of previously unopened containers must not disclose evidence of un-dissolvable gelatinous vehicle separation, heavy skin formation, or corrosion of the container of batches in storage one year or less. Containers stored under adverse conditions such as uncovered areas unprotected from the elements must show no evidence of the above conditions over a period of 6 months from date of shipment from manufacturer.
- H. **Application Temperature:** The manufacturer's recommended minimum application temperature (air, surface and material) must be 40° Fahrenheit or lower.
- I. **Dry opacity for both Solvent and Waterborne Paints:** (Note: This procedure is derived from Section 4121 of Federal Standard 141.) On a black/white Leneta chart, Form 2A Opacity, draw down a film of the sample covering both black and white portions of the chart. Use an appropriate gap draw-down blade that will produce a 5 mil Dry Film Thickness (DFT).

Dry the specimen 24 hours at 25°C. Use a suitably calibrated filter photometer, conforming to ASTM Designation: E 1347, to measure alternately the 45°/0° daylight luminous directional reflectance (Y) of the specimen over the white and black portions of the chart. Calculate dry opacity as follows:

Dry Opacity = Reflectance over black / Reflectance over white. (Example: Dry Opacity = 82% ÷ 85% = 0.965).

ASTM D2805 is an acceptable alternative for the specified Dry Opacity test in Section H. When ASTM D2805 is used the Contrast Ratio required must be a minimum of 0.95 for White and Yellow. The thickness requirement is changed to 5 mils Dry Film thickness (DFT).

**SOLVENT BASE PAINT PACKAGING:** Solvent based paint shall be shipped in containers constructed of Carbon

Steel or Stainless Steel. Where specified, solvent based materials shall be supplied in either:

1. **55-GALLON NON-RETURNABLE AND DISPOSABLE STEEL DRUM**

**When specified on the bid schedule**, the Solvent Based Paint shall be supplied in new or reconditioned 55-gallon, pressure-tested, removable-lid carbon steel drums that conform to all applicable DOT, EPA OSHA or other Federal requirements. The following applies:

1. All paint furnished shall be shipped in clean, open head drums. One end of the drum shall have a completely detachable head. "Clean" is defined as drums that are free of any debris or paint remnants from previous shipments.
2. The heads shall be of uniform size and type, so that the recessed part of the head will make contact with the top edge of drum over the entire circumference.
3. The head shall be securely fastened to the top of the drum by means of a lever ring lock or by ring lock with bolt fastener.
4. The hardware shall be galvanized or of non-corrosive metal. The assembly shall be coated with a lubricant to further protect from corrosion and facilitate easy removal.
5. Drums must have new gaskets to ensure an airtight seal.
6. The head and a portion on the side of each drum shall be painted the same color as the traffic paint contained therein.
7. Each barrel shall be filled to four inches from the top edge of the barrel rim.

**Drums of paint are to be shipped single tier only on open bed trailers (enclosed containers to Unalaska only).**

2. **250 or 345 GALLON STEEL REUSABLE AND RETURNABLE BULK CONTAINER**

**When specified on the bid schedule**, the Solvent Based Paint shall be supplied in new or clean reconditioned, 250 or 345-gallon reusable and returnable bulk carbon steel containers that comply with all applicable DOT, EPA OSHA or other Federal and State requirements. The following applies:

1. All paint furnished shall be shipped in containers that are clean and free of debris. "Clean" is defined as containers that are free of any debris or paint remnants from previous shipments.
2. The containers shall be sized to safely contain for transport and use in Alaska, 250 or 345 gallons of solvent-based paint.
3. The containers shall be provided with 2" male cam-lock fittings on top and bottom and a top opening with a new gasket of at least 16 inches in diameter.
4. The container shall have vents designed to prevent rain-water from entering the vents and seeping inside the containers.
5. The bottom of the containers shall be fitted for forklift pickup from all four sides.

Any paint or container received with debris or obvious contamination will be returned to the contractor for replacement. The contractor's failure to provide replacement containers in the time specified will result in forfeiture of the contractor's bond.

In order to ensure the containers' fit existing DOT&PF equipment, the contractor must supply the specific sized reusable and returnable steel containers as noted in the Bid Schedule.

3. **345-GALLON STEEL ROUND REUSABLE AND RETURNABLE BULK CONTAINER WITH A 48" X 48" SQUARE PALLET BASE**

**When specified on the bid schedule**, the Solvent Based Paint shall be supplied in new or clean reconditioned, 345-gallon round reusable and returnable bulk steel containers with a 48" x 48" square pallet that comply with all applicable DOT, EPA OSHA or other Federal and State requirements. The following applies:

1. All paint furnished shall be shipped in containers that clean and free of debris. "Clean" is defined as containers that are free of any debris or paint remnants from previous shipments.
2. The containers shall be sized to safely contain for transport and use in Alaska 345 gallons of solvent-based paint.
3. The containers shall be provided with 2" male cam-lock fittings on top and bottom and a top opening with a new gasket of at least 16 inches in diameter.
4. A liquid capacity of 355 gallons
5. Lifting lugs that are attached to the container may extend no more than 1 inch beyond the actual diameter of the tank.
6. The container shall have vents designed to prevent rain-water from entering the vents and seeping inside the containers.
7. The bottom of the containers shall be fitted for forklift pickup from all four sides.
8. The bottom of the shipping pallet shall measure a minimum of 44 inches by 47 inches and a maximum 48 inches by 48 inches.
9. The combined height of the tote feet and the forklift holes shall be a minimum of 6 inches and a maximum of 7.75 inches.

Any paint or container received with debris or obvious contamination will be returned to the contractor for replacement. The contractor's failure to provide replacement containers in the time specified will result in forfeiture of the contractor's bond.

In order to ensure the container fits existing DOT&PF equipment, the contractor must supply the specific sized and shape of returnable steel containers as noted in the Bid Schedule. Specific requirements include a specific sized round shaped container with a square bottom pallet dimension in compliance with item 8 above.

#### 4. **345-GALLON STEEL SQUARE REUSABLE AND RETURNABLE BULK CONTAINER**

**When specified on the bid schedule**, the Solvent Based Paint shall be supplied in new or clean reconditioned, 345-gallon square bulk steel containers that comply with all applicable DOT, EPA OSHA or other Federal and State requirements. The following applies:

1. All paint furnished shall be shipped in containers that clean and free of debris. "Clean" is defined as containers that are free of any debris or paint remnants from previous shipments.
2. The containers shall be sized to safely contain for transport and use in Alaska 345 gallons of paint.
3. The containers shall be provided with 2" male cam-lock fittings on top and bottom and a top opening with a new gasket of at least 16 inches in diameter.
4. The container shall have vents designed to prevent rain-water from entering the vents and seeping inside the containers.
5. The bottom of the containers shall be fitted for forklift pickup from all four sides.

Any paint or container received with debris or obvious contamination will be returned to the contractor for replacement. The contractor's failure to provide replacement containers in the time specified will result in forfeiture of the contractor's bond.

In order to ensure the container fits existing DOT&PF equipment, the contractor will supply the specific sized returnable steel containers as noted in the Bid Schedule. Specific requirements include a specific sized square shaped container.

**SOLVENT BASE PAINT PACKAGE MARKING:** Each container shall be labeled or stenciled to show the following information (abbreviations may be used):

1. Specification Number One
2. Color (letters minimum 3" high on 55 gallon and larger containers)
3. Batch Number
4. Date of Manufacture
5. Quantity in Container
6. Container ID number (letters minimum 3" high on 55 gallon and larger containers)
7. Manufacturer's Name and Address
8. Information and Warnings as may be required by Federal and State Laws
9. Tare Weight of Empty Container

In addition to the above, each container or barrel must be labeled or stenciled to clearly identify the contents and have a paint patch on the side of each barrel. **Example:** SOLVENT BASED PAINT

**RETURN OF SOLVENT BASE PAINT BULK CONTAINERS:** The bid price submitted must include the cost to return the "returnable" solvent-based paint containers from the final destination. The following applies:

1. The State will ship returnable containers, freight collect, per instructions provided by the contractor.
2. Partial to full containers may be held by the State for up to 27 months with no additional cost to the State.
3. The State reserves the right to relocate the bulk containers for use at other regional destinations. However, any additional charges related to relocation shall be the State's responsibility.
4. The State may request a container be shipped from a location other than the containers original destination only after the State has negotiated additional shipping costs, if any, with the contractor.
5. If a container is lost or damaged beyond repair while in the possession of the State, the State shall reimburse the contractor the replacement cost.

Bidders shall indicate on **Attachment C, Bidder Questionnaire** the State's cost to replace lost or damaged containers. A Bidders failure to identify the replacement cost on **Attachment C, Bidder Questionnaire**, will be construed by the State as there is "no cost" to the state for the replacement container.

**COMPLIANCE TO SPECIFICATIONS NUMBER ONE:**

To ensure compliance for Specification Number One, Bidders must submit the following documentation with their bid in order to be considered responsive:

For ease of review, the following should be provided in a single standalone set of documents.

- (1) Cover sheet indicating the Bidder, ITB number, and the Specification Number;
- (2) Testing results for Federal Specification AA-2886B, Type II tests on solvent paint formulated within the two years preceding the Invitation to Bid (ITB) issuance date.

- (3) Certified test reports for all colors of solvent-based paint from an independent laboratory. Testing must have been performed within 180 days prior to the bid opening date and must confirm compliance with bid specifications as seen in Table 1;
- (4) Manufacturer's recommended coating for solvent-based marking paint adhesion to glass beads;
- (5) Material Safety Data Sheets for each formulation;
- (6) Notarized Affidavits of Compliance signed by the authorized representative of both the manufacturer and the bidder, indicating all paint product(s) submitted for bid are compliant with these specifications.
- (7) Notarized Affidavits of Compliance signed by the authorized representative of both the manufacturer and the bidder, indicating all drums and containers submitted for bid are compliant with these specifications.
- (8) Manufacturer's recommended equipment, temperatures, humidity and any other limits for safe and proper application, use, as well as storage of these materials and containers.
- (9) Product Support Contact: name, address, email and telephone number(s).

**END OF SPECIFICATION ONE**

**SPECIFICATION NUMBER TWO****DESCRIPTION: TRAFFIC PAINT SOLVENT**

**SPECIFICATION:** All Traffic Paint Solvent shall be the traffic paint manufacturers recommended solvent for use in cleaning State painting equipment to ensure total compatibility between the solvent and paint and shall provide total paint performance per the paint specifications.

**TRAFFIC PAINT SOLVENT PACKAGING:** All solvent packaging must be suitable for the contents and must meet all applicable safety and transportation requirements. **When specified on the bid schedule**, solvent materials shall be supplied in either:

1. **5-GALLON NON-RETURNABLE AND DISPOSABLE DRUM**

**When specified on the bid schedule**, the product must be supplied in 5-gallon sealed drums with an integrated handle.

2. **55-GALLON NON-RETURNABLE AND DISPOSABLE STEEL DRUM**

**When specified on the bid schedule**, the solvent shall be supplied in new or reconditioned 55-gallon, pressure-tested, removable-lid steel drums that conform to all applicable DOT, EPA OSHA or other Federal requirements. The following applies:

1. All paint furnished shall be shipped in clean, open head drums. One end of the drum shall have a completely detachable head. "Clean" is defined as drums that are free of any debris or paint remnants from previous shipments.
2. The heads shall be of uniform size and type, so that the recessed part of the head will make contact with the top edge of drum over the entire circumference.
3. The head shall be securely fastened to the top of the drum by means of a lever ring lock or by ring lock with bolt fastener.
4. The hardware shall be galvanized or of non-corrosive metal. The assembly shall be coated with a lubricant to further protect from corrosion and facilitate easy removal.
5. Drums must have new gaskets to ensure an airtight seal.
6. The head and a portion on the side of each drum shall be painted the same color as the traffic paint contained therein.
7. Each barrel shall be filled to four inches from the top edge of the barrel rim.

**Drums of paint are to be shipped single tier only on open bed trailers (enclose trailers to Unalaska only).**

**TRAFFIC PAINT SOLVENT PACKAGE MARKING:** Each container shall be labeled or stenciled to show the following information (abbreviations may be used):

1. Specification Number Two
2. Color (letters minimum 3" high on 55-gallon drums)
3. Batch Number
4. Date of Manufacture
5. Quantity in Container
6. Container ID number (letters minimum 3" high on 55 gallon and larger containers)

7. Manufacturer's Name and Address
8. Information and Warnings as may be required by Federal and State Laws
9. Tare Weight of Empty Container

In addition to the above, each container must be labeled or stenciled to clearly identify the contents and have a paint patch on the side of each barrel. **Example:** PAINT SOLVENT

**PROHIBITED MATERIALS:** The manufacturer must submit documentation certifying the Traffic Paint Solvent does not contain mercury, lead, hexavalent chromium, halogenated solvents (such as Methylene Chloride), or any carcinogen, as defined in 29 CFR 1910.1200.

**END OF SPECIFICATION TWO**

**SPECIFICATION NUMBER THREE**

**DESCRIPTION: LOW VOC ACRYLIC WATERBORNE TRAFFIC MARKING PAINT IN WHITE, BLACK, YELLOW, AND RED**

**SPECIFICATION:** All paint provided under this specification must meet the requirements of Federal Specification TT-P1952F, Type II.

**WATERBORNE PAINT TESTING REQUIREMENT:** The following waterborne paint testing procedures shall apply to all paint delivered under Specification Number Three.

- The contractor shall submit Federal Specification TT-P-1952F, Type III tests on waterborne paint formulated within the two years preceding the Invitation to Bid (ITB).
- The contractor shall submit with the bid, test results for the reduced suite of tests as seen in Table 2 for paint formulated within the 180 days prior to the bid opening date.

All costs associated with laboratory testing are the sole responsibility of the supplier awarded the contract, including the cost of Quality Assurance “Fingerprint” testing on two samples of the paint randomly selected from the Alaska order by Alaska DOT&PF’s Quality Assurance Consultant.

Alaska DOT&PF will pay for the consultant, acting as DOT&PF’s Agent, to randomly select two bulk paint containers for sampling, witness the sampling by the paint manufacturer, secure the sample(s) and ensure delivery to a qualified independent paint testing laboratory, for the performance of the following selected test procedures:

**QUALITY ASSURANCE TESTING FOR WATERBORNE PAINT:**

1. ASTM D562 Consistency (Viscosity)
2. ASTM E1347 or E1349 Directional Reflectance of white or yellow paint with 45:0 or 0:45 Geometry
3. ASTM D711 Drying time for no-pick-up
4. ASTM D522 Cold Flexibility (Section F, below)
5. ASTM D2621 Infrared Identification (Section G, below)

Test results shall be reported by email to the following DOT&PF Staff:

Procurement Specialist	Tom Mayer	<a href="mailto:tom.mayer@alaska.gov">tom.mayer@alaska.gov</a>
Statewide Materials	Rich Giessel	<a href="mailto:richard.giessel@alaska.gov">richard.giessel@alaska.gov</a>

**COMPOSITIONAL REQUIREMENTS:**

- A. **Low VOC:** Paint offered must be a low VOC, ready-mixed, one-component 100% acrylic waterborne airfield and traffic marking paint, of either polymer grade FASTRACK 5408A or FASTRACK HD21A, meeting the requirements of Federal Specification TT-P-1952F, Type II made for fast drying, and Federal Specification TT-P-1952F, Table 1 tests except that Dry Opacity required for White and colors must meet or exceed 0.95 when tested as specified in section H under Table 2 “Waterborne Paint Primary Quantitative Requirements” (below). These paints must have a no-pick-up time of no more than 10 minutes when tested in accordance with ASTM D711. The product must not promote asphalt cracking.



Product must have the ability to be applied hot or cold with waterborne compatible striping equipment. Product must be available in bulk containers of no less than 250 gallons or 55 gallon drums or, where specified, 5 gallon containers.

**TABLE 2 WATERBORNE PAINT PRIMARY QUANTITATIVE REQUIREMENTS**

CHARACTERISTIC	MINIMUM	MAXIMUM	TEST METHOD
Consistency (Krebs units)	80	90	ASTM D562
Freeze-Thaw Stability (3 cycles, <10KU increase in consistency)	Pass		ASTM D2243
Solids by volume			ASTM D2697
Yellow or white	60	---	
Other Colors	58	---	
Pigment, percent by weight	60	62	ASTM D3723
Dry opacity - White and colors	0.95	---	See "H" below
Black	1.00		
Colors: Yellow 33538; White: 37925; Blue 35180; Red 31136; Black 37038 or approved equals	Pass		FED-STD-595C
Directional reflectance of white paint applied at 13 mils wet film, percent (Measured with 45°:0° or 0°:45° geometry)	85	---	ASTM E1347
Directional reflectance of yellow paint applied at 13 mils wet film, percent (Measured with 45°:0° or 0°:45° geometry)	45	---	ASTM E1347
Drying time for no-pick-up, Minutes	---	10	ASTM D711
Mandrel Bend Test, Method B, Pass 1/2" diameter mandrel bend at 40°F	Pass		ASTM D522
Fineness of dispersion, Hegman	3.0	---	ASTM D1210
Accelerated Package Stability (<5KU increase)		5 KU	ASTM D1849
Heat-shear stability, consistency, KU <sup>1</sup>	68	105	TT-P-1952F
FTIR	Match		See "G"

<sup>1</sup> Mandrel bend at 40°F and fluorescent marker test are not required when polymer grade is FASTRACK HD21A.

<sup>2</sup> TT-P-1952F, Section 4.3.13 Heat-shear stability. One pint of the paint is sheared in a kitchen blender at high speed to 65°C. The blender should have a tight-fitting lid and taped to minimize volatile loss. When the paint reaches 65°C, stop the blender, immediately can and apply a cover. Let cool a minimum of 12 hours and examine for gelling or other signs of instability. Evaluate for compliance with 3.2.8.

3.2.8 Heat-shear stability. When tested as specified in 4.3.13, the sample must not show signs of gelling or other instability. The consistency must comply with Table 2.

**B. Colors:** Per Federal Standard 595C: White - 37925; Black – 37038; Yellow - 33538 and; Red – 31136.

- C. **Application Temperature:** The manufacturer's recommended minimum application temperature (air, surface and material) must be 40° Fahrenheit or lower.
- D. **Water Resistant:** Guaranteed water resistant and resistant to weathering or cracking under extreme conditions, when applied properly.
- E. **Prohibited Materials:** The manufacturer must certify that the product does not contain mercury, lead, hexavalent chromium, toluene, chlorinated solvents, hydrolysable chlorine derivatives, ethylene-based glycol ethers and their acetates, or any carcinogen, as defined in 29 CFR 1910.1200. Test for lead and chromium to show that the paint meets the requirements of Federal Specification TT-P-1952F.
- F. **Cold Flexibility:** Apply the paint to an aluminum Q panel at a wet film thickness of 15 mils and allow to dry at room temperature (65-80F) and ambient humidity (40-70% RH) for 24 hours. Place a cylindrical mandrel apparatus (per ASTM D522 method B) in a 40 F refrigerator when the paint is drawn down. After 24 hours, put the aluminum panel with dry paint in the 40 F refrigerator with the mandrel apparatus for 2 hours. After 2 hours remove the panel and test apparatus and immediately test according to ASTM D522 to evaluate cold flexibility. Paint must show no evidence of cracking, chipping or flaking when bent 180 degrees over a 12.7mm (0.5 inch) mandrel. It is important that neither the paint nor apparatus warm up, owing to handling or exposure to warm air, any more than necessary.
- G. **Polymer Identity:** Use 100% of either FASTRACK 5408A or FASTRACK HD21A as the sole binder material. Polymer identity must also be confirmed by Fourier Transform Infrared Spectroscopy (FTIR) match in the polymeric fingerprint region to a known reference polymer sample. A variation of ASTM D2372 may be followed to extract the resin and a variation of ASTM D2621 may be followed in running the FTIR scan. FASTRACK 5408A (only) must also be confirmed using the fluorescent marker test provided by the polymer manufacturer.
- H. **Dry opacity for both Solvent and Waterborne Paints:** (Note: This procedure is derived from Section 4121 of Federal Standard 141.) On a black/white Leneta chart, Form 2A Opacity, draw down a film of the sample covering both black and white portions of the chart. Use an appropriate gap draw-down blade that will produce a 5 mil Dry Film Thickness (DFT). Dry the specimen 24 hours at 25°C. Use a suitably calibrated filter photometer, conforming to ASTM Designation: E 1347, to measure alternately the 45°/0° daylight luminous directional reflectance (Y) of the specimen over the white and black portions of the chart. Calculate dry opacity as follows: Dry Opacity = Reflectance over black / Reflectance over white. (Example: Dry Opacity = 82% ÷ 85% = 0.965).

ASTM D2805 is an acceptable alternative for the specified Dry Opacity test in Section H. When ASTM D2805 is used the Contrast Ratio required must be a minimum of 0.95 for White and Yellow. The thickness requirement is changed to 5 mils Dry Film thickness (DFT).

**ACRYLIC WATERBORNE TRAFFIC PAINT PACKAGING:** When specified on the bid schedule, acrylic waterborne materials shall be supplied in either:

**1. 55-GALLON POLYMER COATED INTERIOR NON-RETURNABLE AND DISPOSABLE DRUM**

**When specified on the bid schedule,** the Acrylic Waterborne Paint shall be supplied in new or reconditioned 55-gallon, polymer coated interior, pressure-tested, removable-lid steel drums that conform to all applicable DOT, EPA OSHA or other Federal requirements. The following applies:

1. All paint furnished shall be shipped in clean, open head drums. One end of the drum shall have a completely detachable head. "Clean" is defined as drums that are free of any debris or paint remnants from previous shipments.
2. The heads shall be of uniform size and type, so that the recessed part of the head will make contact with the top edge of drum over the entire circumference.
3. The head shall be securely fastened to the top of the drum by means of a lever ring lock or by ring lock with bolt fastener.
4. The hardware shall be galvanized or of non-corrosive metal. The assembly shall be coated with a lubricant to further protect from corrosion and facilitate easy removal.
5. Drums must have new gaskets to ensure an airtight seal.
6. The head and a portion on the side of each drum shall be painted the same color as the traffic paint contained therein.
7. Each barrel shall be filled to four inches from the top edge of the barrel rim.

**Drums of paint are to be shipped single tier only on open bed trailers (enclosed containers to Unalaska only).**

## **2. 250-GALLON STAINLESS STEEL REUSABLE AND RETURNABLE BULK CONTAINER**

**When specified on the bid schedule**, the Acrylic Waterborne Paint shall be supplied in new or clean reconditioned, reusable and returnable bulk stainless steel containers that comply with all applicable DOT, EPA OSHA or other Federal and State requirements. The following applies:

1. All paint furnished shall be shipped in containers that are clean and free of debris. "Clean" is defined as containers that are free of any debris or paint remnants from previous shipments.
2. The containers shall be sized to safely contain for transport and use in Alaska 250 gallons of Acrylic Waterborne Paint.
3. The containers shall be provided with 2" male cam-lock fittings on top and bottom and a top opening with new gasket of at least 16 inches in diameter.
4. The container shall have vents that prevent rain water entering the vents and seeping inside.
5. The bottom of containers shall be fitted for forklift pickup from all four sides.

Any paint or container received with debris or obvious contamination will be returned to the contractor for replacement. The contractor's failure to provide replacement containers in the time specified will result in forfeiture of the contractor's bond.

In order to ensure containers to fit existing DOT&PF equipment, the contractor must supply the specific sized reusable and returnable containers as noted in the Bid Schedule.

## **3. 250-GALLON POLY NON-RETURNABLE AND DISPOSABLE BULK CONTAINER**

**When specified on the bid schedule**, the Acrylic Waterborne paint shall be supplied in non-returnable, new or clean recycled intermediate bulk containers that comply with all applicable DOT, EPA OSHA or other Federal and State requirements. The following applies:

1. Containers shall be built to safely contain acrylic waterborne traffic paints for transport and use in Alaska.
2. The bottom of containers shall be fitted for forklift pickup from all four sides and will have a 2"

- male cam-lock fitting on top and bottom.
3. The **Outer Container** construction shall consist of a rectangular grid box made of tubular steel material for protection of the polyethylene inner tank.
  4. The **Inner Container** construction shall consist of a rectangular blow molded tank of high-density polyethylene (HDPE) with filling opening in the middle of the top section.
  5. The discharge opening shall be at the bottom of the front side.

**Example:**

**ACRYLIC WATERBORNE TRAFFIC PAINT CONTAINER MARKING:** Each container shall be labeled or stenciled to show the following (abbreviations may be used):

1. Name: Paint, Traffic and Airfield Marking, Waterborne
2. Specification Number Three and TT-P-1952F, Type II
3. Color (letters minimum 3" high on 55 gallon and larger containers)
4. Batch Number
5. Date of Manufacture
6. Quantity Paint in Container
7. Container ID number (letters minimum 3" high on 55 gallon and larger containers)
8. Information and Warnings as may be required by Federal and State Laws
9. Manufacturer's Name and Address
10. Tare weight of empty container

In addition, a paint patch on the side of each paint container or barrel is required to facilitate identification of contents. **Example:** WATERBORNE TRAFFIC PAINT

**RETURN OF ACRYLIC WATERBORNE PAINT BULK CONTAINERS:**

The bid price submitted must include the cost to return the "returnable" solvent-based paint containers from the final destination. The following applies:

1. The State will ship returnable containers, freight collect, per instructions provided by the contractor.
2. Partial to full containers may be held by the State for up to 27 months with no additional cost to the State.
3. The State reserves the right to relocate the bulk containers for use at other regional destinations. However, any additional charges related to relocation shall be the State's responsibility.
4. The State may request a container be shipped from a location other than the containers original destination only after the State has negotiated additional shipping costs, if any, with the contractor.
5. If a container is lost or damaged beyond repair while in the possession of the State, the State shall reimburse the contractor the replacement cost.

Bidders shall indicate on the **Attachment C, Bidder Questionnaire** the State's cost to replace lost or damaged containers. A Bidders failure to identify the replacement cost on **Attachment C, Bidder Questionnaire** will be

construed by the State as there is “no cost” to the state for the replacement container.

**COMPLIANCE TO SPECIFICATION NUMBER THREE:**

**To ensure compliance for Specification Number Three**, Bidders must submit the following documentation with their bid in order to be considered responsive:

For ease of review, the following should be provided as a single standalone set of documents.

1. Cover sheet indicating the bidder, ITB number, and the Specification Number;
2. Testing results for Federal Specification TT-P-1952F, Type III tests on waterborne paint formulated within the two years preceding the Invitation to Bid (ITB).
3. Certified test reports of all colors of waterborne paint from an independent laboratory. Testing must have been performed within 180 days prior to the bid opening date and must confirm compliance with bid specifications as seen in Table 2;
4. Manufacturer’s recommended coating for waterborne paint adhesion to glass beads
5. Material Safety Data Sheets for each formulation
6. Notarized Affidavits of Compliance signed by the authorized representative of both the manufacturer and the bidder, indicating all product(s) submitted for bid are compliant with these specifications.
7. Notarized Affidavits of Compliance signed by the authorized representative of both the manufacturer and the bidder, indicating all drums and containers submitted for bid are compliant with these specifications.
8. Manufacturer’s recommended equipment, temperatures, humidity and any other limits for safe and proper application, use, as well as storage of these materials and containers.
9. Product Support Contact name, address, email and telephone number(s).

**END OF SPECIFICATION THREE**

**SPECIFICATION NUMBER FOUR**

**DESCRIPTION: REFLECTIVE GLASS BEADS FOR HIGHWAYS OR AIRPORTS**

**SPECIFICATION:** This specification covers glass beads to be dropped or sprayed upon pavement markings so as to produce a reflectorized pavement marking. Use glass bead coatings that provide a moisture resistant coating to prevent clumping. Glass beads shall also be treated with adhesion promoting and/or flotation coatings for each bead and paint combination as specified by the manufacturer of the paint. Ensure that beads conform to the heavy metal toxicity limits of EPA 40 CFR 261.24.

- A. **HIGHWAY BEADS:** Meet AASHTO M 247, Type I
- B. **AIRPORT BEADS:** Meet Federal Specification TT-B-1325D, Type I, Gradation A

**REFLECTIVE GLASS BEAD FOR HIGHWAYS OR AIRPORT PACKAGING:** When specified on the bid schedule, beads reflective glass beads shall be supplied in either:

1. **FULL PALLET-48, 50LB BAGS**

**When specified on the bid schedule**, airport or highway reflective glass beads shall be supplied in moisture resistant, clean, leak proof multi-wall bags of pinch bottom construction (glued top and bottom, not stitched) suitable for the extreme circumstances presented during transportation to remote areas of Alaska. The following applies:

- 1. The State will order full pallets only;
- 2. A full pallet is defined as 48, 50-pound bags;
- 3. Bag construction shall consist of four, 50 lb. natural kraft layers and one, 8 mil HDPE layer.
- 4. Bags shall be palletized and shrink wrapped with plastic of minimum thickness of 5 mils to prevent water seepage and bursting during shipment;
- 5. All 50 lb. bags supplied by this contract must be new and delivered dry and undamaged;
- 6. Open, torn or ripped bags shall be rejected; and,
- 7. Rejected bags and replacement product shall be at the contractor’s expense.

All bags shall be non-returnable and become the property of the State upon receipt and acceptance at the final destination.

All orders placed by the **Anchorage or Fairbanks International Airports** shall be delivered on a plastic pallet, sample below:



**2. BULK CONTAINER BAGS 2400 LBS**

**When specified on the bid schedule**, airport or highway reflective glass beads will be shipped in new or reconditioned 34" x 34" x 36" "chase type polypropylene bags. The following applies:

1. The bags shall be made of 6 oz. weave material;
2. The bags shall have a fully opening closure skirt on top;
3. The bags shall have a 20" discharge chute on bottom with block on spout – 2 cm wide with a PolyPropylene woven tie;
4. The bags shall have 4 top-lift loops of adequate length to allow lifting by a control hook when the bags are full;
5. The bags must have a 40" X 40" X 88" – 2.5 mil. polyethylene inner liner assembled to prevent the liner from slipping and clogging the discharge chute during discharge;
6. The bags shall be secured to standard wooden 42" x 42" non-returnable type pallets; full coverage with pallet jack accessible bottom
7. The pallets must a 2" maximum gap and be of appropriate strength to prevent bags from sagging through the top deck;
8. After loading, the pallets shall be shrink wrapped with plastic of minimum thickness of 5 mils for protection and to prevent water seepage; and,
9. At time of delivery, all pallet loads must be straight and stable, suitable for reshipping without further adjustments.

All bulk 2,400 lb. bags supplied by this contract must be new and be delivered dry and undamaged. Open, torn or ripped bags shall be rejected. Rejected bags and replacement product shall be at the contractor's expense. All bags shall be non-returnable and become the property of the State upon receipt and acceptance at the final destination.

**REFLECTIVE GLASS BEAD BAG MARKING:** Each bag shall be labeled to show the following (abbreviations may be used):

- 1) Reflective Glass Beads, Highway or Airport
- 2) Specification Number Four and AASHTO M 247, Type I or F.S. TT-B-1325D, Type IA
- 3) Batch Number
- 4) Date of Manufacturer;
- 5) Net Quantity in Container(s)
- 6) MSDS and any other information and/or warnings as may be required by Federal and State Laws
- 7) Manufacturer's Name and Address

**COMPLIANCE TO SPECIFICATION NUMBER FOUR:**

**To ensure compliance for Specification Number Four**, Bidders must submit the following documentation with their bid in order to be considered responsive:

For ease of review, the following should be provided as a single standalone set of documents.

- (1) Cover sheet indicating the bidder, ITB number, and the Specification Number;
- (2) Certified test reports for each type of (highway/airport runway) reflective glass beads from an independent laboratory (performed within 180 days of bid opening) confirming compliance with bid specifications for each type of glass bead;
- (3) Material Safety Data Sheets for each type of glass bead
- (4) Statement of Compliance signed by authorized representative of the firm verifying that bead

coatings used for the solvent based and waterborne traffic paints meet the paint manufacturer's recommendations.

- (5) Notarized Affidavits of Compliance signed by the authorized representative of both the manufacturer and the bidder indicating all products submitted for bid are compliant with these specifications
- (6) Notarized Affidavit of Compliance signed by authorized representative of both the manufacturer and the bidder, indicating all containers submitted for bid are compliant with these specifications
- (7) Manufacturer's recommended equipment and any other limits for safe and proper application, use, as well as storage of these materials and containers
- (8) Product Support point of contact to include the contact name, address, email and telephone number(s)

Materials and containers used in this contract on the basis of a manufacturer's certificate of compliance may be tested at any time, whether in place or not. If the materials or containers are found to not meet contract specifications, they may be rejected and ordered removed and replaced with acceptable materials at no extra charge to the State.

**END OF SPECIFICATION FOUR**



**DETAILED SHIPPING MANIFEST REQUIRED PRIOR TO DELIVERY:** The contractor must submit a detailed shipping manifest in a Microsoft Excel format to the Procurement Specialist prior to each shipment. Failure to provide the manifest in advance of delivery may result in refusal of the shipment at the F.O.B. destination.

The manifests must include a header with the contract number and manifest submission date and have separate columns for each of the following items for each returnable bulk container:

1. F.O.B. Point(s)
2. Region (Southcoast, Northern or Central)
3. State Purchase Order Number
4. Container ID Number
5. Color of Paint
6. Size of Container
7. Sailing date (or indicate if shipment is pending)

Weekly, starting within 15 days of contract award and until all orders have been scheduled for shipment, the contractor must update the manifests and submit electronically to the Procurement Specialist at:

[tom.mayer@alaska.gov](mailto:tom.mayer@alaska.gov)

**EXAMPLE OF SHIPPING MANIFESTS:**

**Contract Number: 2522N045**

**Date Submitted: 3/23/21**

F.O.B. Point	Region	State's Purchase Order	Container # or PS=Pending Shipment	Paint Color	Container Size	Sailing Date or PS=Pending Shipment
Haines	Southcoast	16000005506	5555	Yellow	345 gal.	3/22/17
Haines	Southcoast	16000005516	29305	White	345 gal.	3/29/17
Haines	Southcoast	16000005529	PS	Black	345 gal.	PS
Fairbanks	Northern	16000005530	PS	White	345 gal.	PS
Deadhorse	Northern	16000005555	7777	Yellow	345 gal.	3/20/17
Anchorage	Central	16000005557	2530	Black	345 gal.	3/20/17
Anchorage	Central	16000005566	PS	Blue	345 gal.	PS

**REPORTING, TRACKING AND INVENTORY OF RETURNABLE BULK CONTAINERS:** This section applies to returnable containers only. The following containers shall be returnable:

All other types of containers shall be non-returnable and disposable.

Reporting, tracking and inventory of bulk steel containers is required for northbound and southbound shipments for the purpose of ensuring each container is returned to the contractor per the terms of the contract.

Specification	Product Description	Packaging Identifier Number	Packaging Definition
One	Solvent Based Paint	2	250 or 345-Gallon Steel Reusable and Returnable Bulk Container
One	Solvent Based Paint	3	345-Gallon Steel Round Reusable and Returnable Bulk Container with a 48" x 48" Square Bottom
One	Solvent Based Paint	4	345-Gallon Steel Square Reusable and Returnable Bulk Container
Three	Waterborne Paint	2	250-Gallon Stainless Steel Reusable and Returnable Bulk Container

**RELOCATION OF BULK CONTAINERS:** If the State exercises its right to relocate a bulk container from the original ship F.O.B. to destination, the location of the container must be reported to the contractor on a Container Relocation Form. The contractor and the Procurement Specialist shall develop the form cooperatively.

**RETURN OF BULK CONTAINERS:** The return of bulk containers shall proceed as follows:

1. State maintenance station personnel will provide notice to the contractor and identify the container number(s) for return; and,
2. The contractor shall provide instructions and a written Return Authorization (RA) number that identifies all containers being returned under that RA.

**CONTAINER INVENTORY:** The contractor must maintain a current inventory of all bulk containers shipped and returned by the State under this contract. Upon the State’s written request, the contractor must submit the most current inventory within 20 business days.

Example of Contractor’s Inventory:

CA 2522N045

Southeast Region:

Date: 12/1/21

F.O.B.	State Purchase Order	Container # PS=Pending Shipment	Paint Color	Container Size	Sailing Date PS=Pending Shipment	Relocate to City/RA #	Return to FOB/RA	RA #	Date Rcv'd
Haines	16000005630	5555	Y	345 gal.	3/22/17	Skagway/173	174	159	09/17/17
Haines	16000005632	29305	Y	345 gal.	3/22/17			7644	09/20/17
Haines	16000005647	5442	W	345 gal.	4/1/17			3255	11/15/17
Haines	16000005649	89654	W	345 gal.	4/1/17				
Haines	16000005652	77755	W	345 gal.	4/1/17				

All correspondence related to the tracking of returned containers must be directed through the following:

Northern Region: Eric Johnson

[eric.johnson@alaska.gov](mailto:eric.johnson@alaska.gov)

907 451-5102

<u>Item Number</u>	<u>Quantity</u>	<u>Unit</u>	<u>Description</u>	<u>Unit Price</u>	<u>Extended Price</u>
<b>Lot 1 - Shishmaref</b>					
1.1	275	Gallons	Paint, Waterborne, White, 55 Gallon Non-Returnable, Disposable Drum	\$	\$
1.2	2,400	Pounds	Beads, Airport Spec, 50 Pound Bags	\$	\$
<b>Total Lot 1</b>				<b>\$</b>	

Deliver to: Dockside, Shishmaref, Alaska 99772

Contact Person: Calvin Schaeffer (907) 443-3443

Delivery Dates: First Barge of 2023

<b>Lot 2 - Gambell</b>					
2.1	550	Gallons	Paint, Waterborne, White, 55 Gallon Non-Returnable, Disposable Drum	\$	\$
2.2	2,400	Pounds	Beads, Airport Spec, 50 Pound Bags	\$	\$
<b>Total Lot 2</b>				<b>\$</b>	

Deliver to: Dockside, Gambell, Alaska 99742

Contact Person: Calvin Schaeffer (907) 443-3443

Delivery Dates: First Barge of 2023

<b>Lot 3 - Unalakleet</b>					
3.1	880	Gallons	Paint, Waterborne, White, 55 Gallon Non-Returnable, Disposable Drum	\$	\$
3.2	4,800	Pounds	Beads, Airport Spec, 50 Pound Bags	\$	\$
<b>Total Lot 3</b>				<b>\$</b>	

Deliver to: Dockside, Unalakleet, Alaska 99684

Contact Person: Calvin Schaeffer (907) 443-3443

Delivery Dates: First Barge of 2023



## Certificate of Buy America Act Compliance

Federal-Aid Highway Contracts

### PART 1:

Project Name and Number	
Supplier Company Name	
Supplied to: Contractor or Subcontractor Company Name	
Materials: Bid Item No. / Bid Item Description	Quantity
Description of Material Manufactured in United States:	

### PART 2: IF MATERIAL IS NOT COMPLIANT WITH BUY AMERICA THEN FILL OUT THE TWO BOXES BELOW:

Description of foreign-made materials and the Country of Origin:
The Cost for the foreign-made materials (invoice cost for foreign manufactured products as delivered to the project including freight):

I certify under penalty of law that the steel or iron product identified on Part 1 of this form is manufactured in the United States, and complies with the requirements of 23 CFR 635.410 and Contract subsection 106-1.01, Buy America Provision. The steel or iron product identified on Part 2 of this form or an attachment is a foreign manufactured product. The term "Manufactured in the United States" is defined in Contract subsection 106-1.01, Buy America Provision. The qualification of who may make this certification is included in Contract subsection 106-1.01, Buy America Provision.

I certify that I have knowledge that submitting false statements and/or information may result in civil and criminal penalties.

\_\_\_\_\_  
Authorized Corporate Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Supplier's Company Name

\_\_\_\_\_  
Position Title



STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

**REQUIRED CONTRACT PROVISIONS  
for  
FEDERAL-AID (FAA) CONSTRUCTION CONTRACTS**

A0	GENERAL	A15	ENERGY CONSERVATION REQUIREMENTS
A1	ACCESS TO RECORDS AND REPORTS	A16	EQUAL EMPLOYEMENT OPPORTUNITY (E.E.O.)
A2	AFFIRMATIVE ACTION REQUIREMENT	A17	FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)
A3	BREACH OF CONTRACT TERMS	A18	LOBBYING AND INFLUENCING FEDERAL EMPLOYEES
A4	BUY AMERICAN PREFERENCE	A19	PROHIBITION of SEGREGATED FACILITIES
A5	CIVIL RIGHTS - GENERAL	A20	OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970
A6	CIVIL RIGHTS – TITLE VI ASSURANCE	A21	PROCUREMENT OF RECOVERED MATERIALS
A7	CLEAN AIR AND WATER POLLUTION CONTROL	A22	RIGHT TO INVENTIONS
A8	CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS	A23	SEISMIC SAFETY
A9	COPELAND “ANTI-KICKBACK” ACT	A24	TAX DELINQUENCY AND FELONY CONVICTIONS
A10	DAVIS-BACON REQUIREMENTS	A25	TERMINATION OF CONTRACT
A11	DEBARMENT AND SUSPENSION	A26	TRADE RESTRICTION CERTIFICATION
A12	DISADVANTAGED BUSINESS ENTERPRISE	A27	VETERAN’S PREFERENCE
A13	DISTRACTED DRIVING		
A14	DRUG FREE WORKPLACE REQUIREMENTS		

**Section A0 GENERAL**

[ Source: From previous Form 25D-55A]

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 State of Alaska Department of Transportation and Public Facilities, (Department), executes in support of the AIP. The Department 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 Department and FAA.

Language within brackets [example] is considered as reference or instructional for program administration.

**Section A1 ACCESS TO RECORDS AND REPORTS**

[ Source: 2 CFR § 200.333, 2 CFR § 200.336, FAA Order 5100.38. Include this provision in all contracts and subcontracts.]

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Department, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized

representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

**Section A2 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

[ Mandatory Language. Source: 41 CFR part 60-4, Executive Order 11246. Incorporate in all bids, RFPs, contracts and subcontracts; that exceed \$10,000.]

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard

Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

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

**Timetables**

Goals for minority participation for each trade: Is listed on the Invitation to Bid, Form 25D-7; if not listed it is 0.0%

Goals for female participation in each trade: 6.9%

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

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

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

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is the State of Alaska.

**Section A3 BREACH OF CONTRACT TERMS**

[ Source: 2 CFR § 200 Appendix II(A). Include in all contracts and subcontracts that exceed \$150,000)]

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

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

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

#### **Section A4.3.1 BUY AMERICAN PREFERENCE**

[ Source: Title 49 USC § 50101. Also referenced in Department's GCP 60-09, Forms 25D-151, 25D-152, 25D-153, 25D-154, 25D-155, 25D-156. Include in all contracts and subcontracts. ]

The Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the FAA:

1. has issued a waiver for the product;
2. the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or
3. the product is included in the FAA Nationwide Buy American Waivers Issued list.

The Department will include a Certificate of Buy American Compliance for Total Facility (Department Form 25D-151) or a Certificate of Buy American Compliance for Manufactured Products (Department Form 25D-152) in the bid documents.

A Bidder or Offeror must complete and submit the Certificate of Buy American Compliance (Department Form 25D-151 or Form 25D-152) included in the bid documents with their bid or offer. The Department will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

#### **Section A4.3.2 and A4.3.3 CERTIFICATE OF BUY AMERICAN COMPLIANCE**

The language in A4.3.2 Certificate of Buy American Compliance for Total Facility (Department Form 25D-151); and in A4.3.3 Certificate of Buy American Compliance for Manufactured Products (Department Form 25D-152); are hereby incorporated into these contract provisions for Buy American Preference.

#### **Section A5.3.1 GENERAL CIVIL RIGHTS PROVISIONS**

[ Mandatory Language. Source: 49 USC § 47123. Include in all contracts and subcontracts. ]

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

#### **Section A6.3.1 TITLE VI SOLICITATION NOTICE**

[ Mandatory Language. Source: 49 USC § 47123, FAA Order 1400.11. Include in all contracts and subcontracts ]

The Department, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Bidders or Offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

#### **Section A6.3.2 COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS**

[ Mandatory Language. Source: 49 USC § 47123, FAA Order 1400.11. Include 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. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the



discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Department or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Department will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies;
 

and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Department or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Department to enter into any litigation to protect the interests of the Department. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **Section A6.4.5 TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES**

[ Mandatory Language. Source: 49 USC § 47123, FAA Order 1400.11. Include 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 to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of The Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 USC § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

#### **Section A7 CLEAN AIR AND WATER POLLUTION CONTROL**

[ Source: 2 CFR § 200, Appendix II(G). Include in all contracts and subcontracts that exceed \$150,000.]

The Contractor must agree to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Department immediately upon discovery. The Department assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

#### **Section A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

[ Mandatory Language. Source: 2 CFR § 200, Appendix II(E). Use for Construction, Equipment and Professional Services contracts in excess of \$100,000.]

##### 1. Overtime Requirements.

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

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

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$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) of this clause.

##### 3. Withholding for Unpaid Wages and Liquidated Damages.

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

##### 4. Subcontractors.

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

responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

#### **Section A9 COPELAND "ANTI-KICKBACK" ACT**

[ Mandatory Language. Source: 2 CFR § 200, Appendix II(D), 29 CFR Parts 3 & 5. Include in contracts and subcontracts exceeding \$2,000.]

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

#### **Section A10 DAVIS-BACON REQUIREMENTS**

[ Mandatory Language. Source: 2 CFR § 200, Appendix II(D), 29 CFR Part 5. Include in contracts and subcontracts exceeding \$2,000.]

##### **1. Minimum Wages**

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

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

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

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

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the

contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs

(1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

## 2 Withholding.

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

## 3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Department, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be

submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm) or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, Department, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Department.

(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) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i) and that such information is correct and complete;
- (2) Each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;
- (3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

- (iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the Department, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, or Department, 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 that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

#### 5. Compliance with Copeland Act Requirements.

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

#### 6. Subcontracts.

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

#### 7. Contract Termination: Debarment.

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

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

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

#### 9. Disputes Concerning Labor Standards.

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

## 10. Certification of Eligibility.

- (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

### **Section A11.3.1 CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT**

[ Source: 2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5. Use for any contract, regardless of tier, that is awarded by a Contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000.]

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

### **Section A11.3.2 CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT**

[ Source: 2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5. Use for any contract, regardless of tier, that is awarded by a Contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000.]

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

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

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

### **Section A12.3.1 DISADVANTAGED BUSINESS ENTERPRISE - SOLICITATION LANGUAGE (RACE CONSCIOUS)**

[ Source: 49 CFR §26 and 49 CFR §26.53. Department GCP-120. Requires a Department's solicitation to address what a Contractor must submit on proposed (Race Conscious) DBE participation. This language is not required for projects where DBE participation is by race-gender neutral means. ]

#### Information Submitted as a matter of Bidder responsiveness:

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

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

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1)
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Department's project goal; and
- 5) If Bidder or Offeror cannot meet the advertised project DBE goal; evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in their commitment. This Bidder or Offeror must submit the DBE's written confirmation of participation within 5 days after bid opening, or for negotiated agreements submit with the proposal documents, as a condition of bid

responsiveness.

**Section A12.3.2 DISADVANTAGED BUSINESS ENTERPRISE - SOLICITATION LANGUAGE (RACE/GENDER NEUTRAL)**

[ Source: 49 CFR §26.53. Department GCP-120.Contractor ]

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

**Section A12.3.3 DISADVANTAGED BUSINESS ENTERPRISES (Program Goals)**

[ Mandatory Language. Source: 49 CFR §26, Department G-120. Use for projects where DBE participation is obtained through race-gender neutral means (i.e. no project goal). Sections §26.13 and §26.29 and Department GCP 80-01, establish mandatory language for Contractor assurance and prompt payment. ]

**Contract Assurance (§ 26.13)** - 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 Department of Transportation 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 Department deems appropriate, which may include, but is not limited to:

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

**Prompt Payment (§26.29 and Department GCP 80-01)** – The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than eight (8) working days from the receipt of each payment the prime Contractor receives from the Department. The prime Contractor agrees further to return retainage payments to each subcontractor within eight (8) 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 Department. This clause applies to both DBE and non-DBE subcontractors.

**Section A13 DISTRACTED DRIVING - TEXTING WHEN DRIVING**

[ Source: Executive Order 13513, DOT Order 3902.10. Use for all AIP funded contracts that exceed the micro-purchase threshold of 2 CFR §200.67 (currently set at \$3,500).]

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

In support of this initiative, the Department encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

**Section A14 DRUG FREE WORKPLACE REQUIREMENTS**

[ (A15 in Federal) Source: 49 CFR part 32, Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) ]

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



**Section A15 ENERGY CONSERVATION REQUIREMENTS**

[ (A14 in Federal) Source: 2 CFR § 200, Appendix II(H). Use for all contracts and subcontracts.]

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act

(42 USC 6201*et seq.*)

**Section A16.3.1 EQUAL OPPORTUNITY CLAUSE (EEO Contract Clause)**

[ Mandatory Language. Source: 2 CFR 200, Appendix II(C), 41 CFR § 60-1.4, 41 CFR § 60-4.3, Executive Order 11246. Department Form 25A-301 and 25A-304. Use for any contract or subcontract when the amount exceeds \$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, sexual orientation, gender identify 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 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, 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 procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(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 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 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.

**Section A16.3.2 EQUAL EMPLOYMENT OPPORTUNITY SPECIFICATION**

The language in Department Form 25A-301 is similar to the FAA language in A16.3.2 EEO specification. The language in Department Form 25A-301 is hereby incorporated into these contract provisions for EEO.

**Section A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

[ Source: 29 USC § 201, et seq. All consultants, sub-consultants, Contractors and subcontractors employed under this federally assisted project must comply with the FLSA.]

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of

29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

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

**Section A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

[ Mandatory Language. Source: 31 USC § 1352 – Byrd Anti-Lobbying Amendment; 2 CFR part 200, Appendix II(J); 49 CFR part 20, Appendix A. Consultants and Contractors that apply or bid for an award of \$100,000 or more must certify to these paragraphs by signing the bid documents.]

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Section A19 PROHIBITION OF SEGREGATED FACILITIES**

[ Source: 41 CFR § 60. Include in all contracts and subcontracts subject to EEO. ]

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

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

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

**Section A20 OCCUPATION SAFETY AND HEALTH ACT OF 1970**

[ Source: 20 CFR part 1910. Include in all contracts and subcontracts. ]

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**Section A 21 PROCUREMENT OF RECOVERED MATERIALS**

[ Source: 2 CFR § 200.322, and 40 CFR part 247. ]

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

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

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products). Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the Contractor can demonstrate the item is:

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

**Section A 22 RIGHTS TO INVENTIONS**

[ Source: 2 CFR § 200, Appendix II(F), and 37 CFR §401. ]

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

**Section A23 SEISMIC SAFETY**

[ Source: 49 CFR part 4. Clause used for construction of new buildings or structural addition to existing buildings.]

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

**Section A24 TAX DELINQUENCY AND FELONY CONVICTIONS**

[Source: Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76), and similar provisions in subsequent appropriations acts. DOT Order 4200.6 - Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions. Include in all contracts and subcontracts. ]

**CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

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

applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

### **Certifications – Use Department Form 25D-159 for signed certification**

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

### **Note**

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the Department has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the Department about its tax liability or conviction to the Department, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

### **Term Definitions**

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

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

### **Section A25.3.1 TERMINATION FOR CONVENIENCE (Construction & Equipment Contracts)**

[Source: 2 CFR § 200 Appendix II(B). Department GCP 80-09. The Department must include a clause for termination for convenience on all contracts and subcontracts in excess of \$10,000.]

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

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the Department all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Department to protect and preserve property and work related to this contract that Department will take possession.

Department agrees to pay Contractor for:

- 1) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- 2) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;

- 3) reasonable and substantiated claims, costs and damages incurred in settlement of terminated contracts with
- 4) Subcontractors and Suppliers; and
- 5) reasonable and substantiated expenses to the Contractor directly attributable to Department's termination action

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

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract in Department Standard Specification Section GCP 80-09.

**Section A 25.3.2 TERMINATION FOR DEFAULT (Construction)**

[ FAA Mandatory Language for Construction Contracts. Source: 2 CFR § 200 Appendix II(B), FAA Advisory Circular 150/5370-10, Section 80-09. Department Section GCP 80-08. ]

**FAA Advisory Circular, 80-09 Default and termination of contract.**

The Contractor shall be considered in default of his or her contract and such default will be considered as cause for the Department to terminate the contract for any of the following reasons if the Contractor:

- a. Fails to begin the work under the contract within the time specified in the Notice to Proceed, or
- b. Fails to perform the work or fails to provide sufficient workers, equipment and/or materials to assure completion of work in accordance with the terms of the contract, or
- c. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
- d. Discontinues the execution of the work, or
- e. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- g. Allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days, or
- h. Makes an assignment for the benefit of creditors, or
- i. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Should the Engineer consider the Contractor in default of the contract for any reason above, the Engineer shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Department's intentions to terminate the contract.

If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the Department will, upon written notification from the Engineer of the facts of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority without violating the contract, to take the execution of the work out of the hands of the Contractor. The Department may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of said contract in an acceptable manner.

All costs and charges incurred by the Department, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Department the amount of such excess.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract in the Department's Standard Specifications Section GCP 80-08.

**Section A26 TRADE RESTRICTION CERTIFICATION**

[ Mandatory Language. Source: 49 USC § 50104, 49 CFR part 30. Include in all contracts and subcontracts. ]

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

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

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

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

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with

49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

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

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

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

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

**Section A 27 VETERAN'S PREFERENCE**

[ Source: 49 USC § 47112(c). ]

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

**END**



## MATERIAL ORIGIN CERTIFICATE

Federal-Aid Highway Contracts

Project Name and Number: \_\_\_\_\_

FOREIGN MANUFACTURED PRODUCTS <sup>1</sup>	COUNTRY OF ORIGIN	COST <sup>2</sup>

I certify under penalty of law that all steel and iron products to be furnished for this project are manufactured in the United States, and comply with the requirements of 23 CFR 635.410 and Contract subsection 106-1.01, Buy America Provisions; except for those foreign manufactured products that are listed on this page or on a separate and clearly identified attachment.<sup>3</sup> The term “manufactured in the United States” is defined in Contract subsection 106-1.01, Buy America Provision.

I certify that I have knowledge that submitting false statements and/or information may result in civil and criminal penalties.

\_\_\_\_\_  
Authorized Corporate Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Contractor's Company Name

\_\_\_\_\_  
Position Title

## Form 25D-60 Instructions:

1. Enter "NONE" on the first line if there are no exceptions.
2. Invoice cost for foreign manufactured products as delivered to the project including freight.
3. When the Contractor becomes aware of a change from or error in a previously submitted Material Origin Certificate, the Contractor shall submit an updated Material Origin Certificate. The Department of Transportation and Public Facilities shall not accept or approve any Material Origin Certificate over the limit specified in the contract.
4. Attach additional complete form sheets if necessary to include more than one page of products.