

STATE OF ALASKA REQUEST FOR PROPOSALS



Grant Project Analysis – State & Federally Funded

RFP 2523H011

Issued June 12, 2023

This RFP is intended to result in multiple contract awards to establish a pre-qualified vendor pool to assist DOT&PF with the management of a discretionary grants program that involves coordination among multiple agencies, project prioritization, and the submission of nationally competitive applications for discretionary federal grant opportunities for the Division of Planning and Program Development.

ISSUED BY:

Department of Transportation & Public Facilities
Division of Planning and Program Development

PRIMARY CONTACT:

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OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.

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SECTION 1. INTRODUCTION & INSTRUCTIONS

SEC. 1.01 PURPOSE OF THE RFP

The Department of Transportation and Public Facilities (DOT&PF), Division of Planning and Program Development (PPD), is soliciting proposals from vendors to result in the award of up to five (5) contracts to establish a pre-qualified contractor pool for the solicitation and award of individual Notice to Proceed (NTP) to assist DOT&PF in managing a discretionary grants program that involves coordination among multiple agencies, project prioritization, and the submission of nationally competitive applications for discretionary federal grant opportunities; conduct varying degrees of risk-assessments and benefit-cost analysis for projects prior to applying for federal grant opportunities or as part of a grant application; and provide technical grant writing assistance, quality assurance reviews of prepared applications, and prepare complete applications for federal grant opportunities.

To facilitate this work, the Department intends to establish multiple fixed price term contracts with annual adjustments, with vendors deemed responsive and qualified with respect to this Request for Proposal.

Technical Support and Service Tasks

The Term Contract resulting from this RFP will create a pool of pre-qualified Contractors that shall perform and provide services and materials necessary for technical assistance related to assisting DOT&PF with managing its discretionary grant program as proposed in Section 3 of this RFP. This shall include assistance in completing Tasks related to managing and submitting competitive discretionary grant applications. Situations or events that require these services to be performed are typically referred to as a “Task” by DOT&PF. DOT&PF does not guarantee the issuance of a TRFP or award, however DOT&PF estimates 2-5 TRFPs per year. In the event a Task is identified, a TRFPs and awards would be issued only to the pre-qualified pool of Contractors that are awarded a Term Contract resulting from this RFP.

When DOT&PF identifies the need for a Task, a specific scope of work and related terms are developed and issued to the pool of Term Contractors through a Task Request for Proposal (TRFP). The TRFP contains the details specific to a particular event or situation, and identifies the services or Tasks to be rendered at that time. Each Term Contractor then has the opportunity to provide a Task specific proposal, which goes through an evaluation and award process as described in subsection 3.05 below. The award of a TRFP will be accomplished using an NTP.

More detailed information regarding the type of work to be performed is presented in Section 3, Scope of Work.

SEC. 1.02 FEDERAL CONTRACT PROVISIONS:

Required Contract Provisions for Federal-Aid Contracts, Form Federal Aid Provisions U.S. Federal Highways Administration (FHWA) pages 1 through 13 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 FHWA. Federal funds are identified and appropriated for the first 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 FHWA.

ALASKA STATUTE SECTION. 36.30.890. FEDERAL ASSISTANCE

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

2 AAC 12.730. Federal Assistance

If a procurement involves the expenditure of federal funds or requires federal assistance and there is a conflict between a provision of this chapter and federal statute, regulation, policy, or requirement, the procurement officer shall comply with the federal statute, regulation, policy, or requirement. Authority: AS 36.30.040; AS 36.30.890

SEC. 1.03 BUDGET

DOT&PF, PPD, estimates a budget of \$600,000.00 dollars for completion of this project. Proposals priced at more than \$600,000.00 will be considered non-responsive. Project Funding will be either fully State Funding, Fully Federal Highway Administration (FHWA), or a combination of both Federal and State funds.

The Division has dedicated funding for this proposed work through state fiscal year (SFY) 2024, additional funding to support task orders beyond SFY 2024 will be requested in future capital budget cycles. Vendors shall provide hourly rates for the 3 types of services being requested. Over the performance period of the contract, the Division anticipates that roughly 20-25% of billed services will go toward task (1); 20% to task (2); 20% to task (3); 20% to Task 4; and 15 - 20% to Task 5.

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

SEC. 1.04 DEADLINE FOR RECEIPT OF PROPOSALS

Proposals must be received no later than 2:00 p.m. prevailing Alaska Time on July 13, 2023. Late proposals or amendments will be disqualified and not opened or accepted for evaluation.

SEC. 1.05 PRIOR EXPERIENCE

In order for offers to be considered responsive, offerors must meet these minimum prior experience requirements.

- A minimum of five (5) years of experience in the design, engineering and or construction of transportation projects in Alaska.
- A minimum of five (5) years of experience conducting risk assessments, benefit-cost analysis, value engineering studies, or similar for transportation projects.
- A minimum of five (5) years of experience in technical grant writing for federal grants.

These minimum prior experience requirements will be demonstrated by submission of Attachment #3 Demonstration of Required Minimum Prior Experience Form with their proposal.

An offeror's failure to meet these minimum prior experience requirements and provide the documentation listed will cause their proposal to be considered non-responsive and rejected.

SEC. 1.06 REQUIRED REVIEW

Offerors should carefully review this solicitation for defects and questionable or objectionable material. Comments concerning defects and questionable or objectionable material should be made in writing and received by the procurement officer at least ten days before the deadline for receipt of proposals. This will allow time for the issuance of any necessary amendments. It will also help prevent the opening of a defective proposal and exposure of offeror's proposals upon which award could not be made.

SEC. 1.07 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS

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 RFP. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The procurement officer will make that decision.

PROCUREMENT OFFICER:	Chris Hunt	PHONE:	907-465-8448
EMAIL:	chris.hunt@alaska.gov	FAX:	907-465-3124

SEC. 1.08 RETURN INSTRUCTIONS

Offerors must submit **Five (5)** hard copies (one (1) original and four (4) copies) of their proposal, in writing, and **TWO** thumb drives containing electronic copies of the entire proposal. **One** thumb drive will contain the transmittal information and the technical proposal. **One** thumb drive will contain the cost proposal. The proposal response should be addressed to the procurement officer in a sealed package. The cost proposal included with the package must be sealed separately from the rest of the proposal and must be clearly identified.

Emailed, faxed or oral proposals **will not be accepted.**

The sealed proposal package(s) must be addressed and mailed as follows:

Department of Transportation & Public Facilities
Division of Administrative Services
Attention: Chris Hunt
Request for Proposal (RFP) Number: 2523H011
RFP Title: Grant Project Analysis – State & Federally Funded
PO Box 112500
3132 Channel Drive, Room 350
Juneau, Alaska 99811-2500

If using a **delivery service**, please use the following address:

Department of Transportation & Public Facilities
Attention: Chris Hunt
3132 Channel Drive, Room 350
Juneau, Alaska 99801

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.

Please take into consideration that due to weather, scheduling, and location there is no overnight delivery service to Juneau, Alaska.

SEC. 1.09 PROPOSAL CONTENTS

The following information must be included in all proposals.

(a) AUTHORIZED SIGNATURE

All proposals must be signed by an individual authorized to bind the offeror to the provisions of the RFP. Proposals must remain open and valid for at least 90-days from the date set as the deadline for receipt of proposals.

(b) OFFEROR'S CERTIFICATION

By signature on the proposal, offerors certify 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 federal government;
- D. the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government;
- E. all terms and conditions set out in this RFP;
- F. a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
- G. that the offers will remain open and valid for at least 90 days.

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

(c) VENDOR TAX ID

A valid Vendor Tax ID must be submitted to the issuing office with the proposal or within five days of the state's request.

(d) CONFLICT OF INTEREST

Each proposal shall include a statement indicating whether or not the firm 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 proposal 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 offeror.

(e) FEDERAL REQUIREMENTS

The offeror must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

SEC. 1.10 ASSISTANCE TO OFFERORS WITH A DISABILITY

Offerors with a disability may receive accommodation regarding the means of communicating this RFP 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 proposals.

SEC. 1.11 AMENDMENTS TO PROPOSALS

Amendments to or withdrawals of proposals will only be allowed if acceptable requests are received prior to the deadline that is set for receipt of proposals. No amendments or withdrawals will be accepted after the deadline unless they are in response to the state's request in accordance with 2 AAC 12.290.

SEC. 1.12 AMENDMENTS TO THE RFP

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

SEC. 1.13 RFP SCHEDULE

The RFP 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 proposals, is delayed, the rest of the schedule may be shifted accordingly. All times are Alaska Time.

- Issue RFP June 12, 2023,
- Pre-proposal Conference June 26, 2023 at 11:00 AM Alaska Time via a Microsoft Teams meeting,
- Deadline for Receipt of Proposals July 13, 2023 at 2:00 PM Alaska Time,
- Proposal Evaluation Committee complete evaluation by July 24, 2023,
- State of Alaska issues Notice of Intent to Award a Contract July 24, 2023,
- State of Alaska issues contract(s) August 4, 2023,
- Contract(s) start August 4, 2023,

This RFP 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 & 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.

SEC. 1.14 PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held via Microsoft Teams meeting on June 22, 2023, 2023 at 11:00 AM Alaska Time.

Call in Phone Number [+1 907-202-7104](tel:+19072027104) United States, Anchorage

Phone Conference ID: 893 124 091#

SEC. 1.15 ALTERNATE PROPOSALS

Offerors may only submit one proposal for evaluation.

In accordance with 2 AAC 12.830 alternate proposals (proposals that offer something different than what is asked for) will be rejected.

SEC. 1.16 NEWS RELEASES

News releases related to this RFP will not be made without prior approval of the project director.

SECTION 2. BACKGROUND INFORMATION

SEC. 2.01 BACKGROUND INFORMATION

The Infrastructure Investment and Jobs Act, a.k.a., the Bipartisan Infrastructure Law (BIL) provides dozens of opportunities annually for states, local governments, tribal, and some non-governmental entities to apply for transportation related infrastructure grants administered by the FHWA, FAA, and FTA through 2026. DOT&PF strives to establish a highly coordinated, integrated, and scalable assessment system that benefits the state & community partners by advancing nationally competitive grant applications. DOT&PF has established a public facing website that functions as a clearinghouse for information on grant opportunities and as an aggregator of project proposals for both federal and state funded opportunities. DOT&PF seeks assistance from qualified vendors to assist with tasks related to establishing and managing a nationally competitive grant program. This may include managing and coordinating the prioritization of projects and preparation of project applications for a grant opportunity or a group of grant opportunities. DOT&PF may also request assistance with managing aspects of state-ran programs that offer funding opportunities to Alaskan communities.

SECTION 3. SCOPE OF WORK & CONTRACT INFORMATION

SEC. 3.01 SCOPE OF WORK AND DELIVERABLES

Scope of Work:

Depending on DOT&PF project needs, the contractor may be required to perform all of the tasks listed in this Scope of Work. Individual task orders and deliverables may include:

For nationally competitive funding opportunities that DOT&PF pursues:

- (1) Oversee statewide national competitive grant project lists and coordination, ensure accurate tracking and updates to DOT&PF. Including:
 - A. Using the State Transportation Improvement Program (STIP) and other DOT&PF sources to prepare a list of projects that could be eligible for future funding opportunities.
 - B. Develop and or provide a tool for analyzing large data sets related to project attributes that will assist in pairing projects with appropriate funding opportunities, project prioritization and scoring.
 - C. Produce reports that discuss a project's or group of projects' strengths and weaknesses in relation to the merit criteria used for evaluation, and rank multiple projects based on competitiveness. Additionally, vendors may be requested to conduct a gap analysis for projects to determine additional information or data needs for a project or projects that will assist with performing competitiveness assessments.
- (2) Manage the project intake process for a specific grant opportunity or a group of grant opportunities, conduct and draft project assessments, and prioritize projects for specific upcoming grant opportunities in coordination with and with the support of DOT&PF staff and DOT&PF's interagency partners.
- (3) Conduct risk-assessments and benefit-cost analysis for projects as specified in task orders, and:
- (4) Provide technical grant writing assistance, including, grant writing, application design, and quality control review of drafted applications as specified in task orders.

For statewide competitive programs ran by DOT&PF:

- (5) With direction from DOT&PF provide program management assistance for running a competitive funding program using state and federal funding as the source of awards. Tasks may include providing program management and administrative support for select programs, and the development of guidance documents for external and internal stakeholders. Tasks may also include assisting DOT&PF with public outreach and engagement for a funding or group of funding opportunities.

DELIVERABLES

The contractor will be required to provide all of the following deliverables under a single task order, or as separate distinct tasks under individual task orders depending on the department's needs and requirements.

Task 1 Deliverables:

- Produce a prioritized list or lists of projects paired to grant opportunities and update regularly upon request from DOT&PF.
- Draft competitiveness assessments for a project or a group of projects based on the available information and scored against specific grant criteria and other factors of competitiveness
- Conduct and draft gap analysis for a project or a group of projects and propose data and information needed to enhance the utility of competitiveness assessments

Task 2 Deliverables:

- Manage and run project prioritization and selection for a grant cycle for a specific grant or a set of grant opportunities. Conduct and draft summary project assessments and prioritize projects for upcoming grant opportunities in coordination with and with the support of DOT&PF staff and DOT&PF's interagency partners.

Task 3 Deliverables:

- Conduct and draft risk-assessments and or benefit-cost analysis for projects under the direction and coordination of DOT&PF

Task 4 Deliverables:

- Assist DOT&PF staff in drafting, editing, formatting and designing grant applications
- Conduct quality control reviews of draft applications

Task 5 Deliverables:

- Assist DOT&PF to draft, edit, and design guidance documents for state-ran funding opportunities.
- Assist DOT&PF to implement state-ran funding opportunities by coordinating with partners, eligible applicants and DOT&PF staff. Assist DOT&PF track projects and assess performance of state-ran programs, identify and collect data related to tracking program success and develop public facing dashboards.

SEC. 3.02 CONTRACT TERM AND WORK SCHEDULE

The length of the contracts will be from the date of award, approximately August 4, 2023 through September 30, 2025. The contracts contain one (1) one (1) year renewal options to be executed solely by the State.

SEC. 3.03 CONTRACT TYPE

This will be a firm fixed price with annual adjustments term contract. Adjustments will only be allowed to the contracted hourly billing rate.

The primary contracts resulting from this RFP will be Term Contracts that set forth the governing terms and conditions and the not to exceed contract values and memorialize hourly billing rates.

The secondary contracts, issued under the Term Contract, for the assignment of project work, will be a Task Contract(s) awarded through the issuance of a Notice to Proceed (NTP) that sets forth Task specific work, deliverables, compensation and authorizes funding. The NTP contract type will be either a firm fixed price or time and materials contract and will be specified in each Task request for proposal (TRFP).

The Term Contractor with the highest overall combined scored proposal in response to a TRFP will be awarded the NTP.

For the purposes of this RFP, “contract” collectively refers to both Term Contracts and Task Contracts. All price adjustments will be considered in accordance with Section **3.12 Cost Price Adjustments**.

SEC. 3.04 CONTRACT APPROVAL

This RFP and an issued Task RFP (TRFP) does not, by itself, obligate the State. The State’s obligation will commence when a contract is approved and executed via signature by the Director of the Division of Program Development or the Director's designee. The State will not be responsible for any work done by the Contractor, even work done in good faith, if it occurs outside of the effective dates of the contract as set forth by DOT&PF in the Standard Agreement Form or NTP.

SEC. 3.05 CONTRACTOR SELECTION METHOD FOR TASK REQUEST FOR PROPOSAL (TRFP) THAT RESULT IN NTPS

Each TRFP will be issued to all awarded Term Contractors. When a TRFP is issued, it will contain a project specific scope of work, will provide a brief background on the project and will establish the objectives, tasks, deliverables, evaluation criteria, response format and schedule. The contractors will respond with a negotiable cost estimate and a proposal letter which outlines the approach to completing the project and meeting the objectives of the task description, a list of individuals who will be working on the specific project, and will disclose if there is a potential conflict of interest for that particular project. The Procurement Officer, or a Procurement Evaluation Committee (PEC) made up of at least 3 state employees or public officials, will evaluate proposals based solely on the evaluation factors set forth therein.

After the completion of proposal evaluations and contract negotiation, if any, the Procurement Officer will issue a written Notice of Award (NOA). This will start the protest period for the NTP, the protest period for the NOA will be no more than 3 calendar days. The Term Contractor with the highest overall combined score will be awarded the NTP.

The tables below indicates the total number of points assigned to each category of the TRFP proposal evaluation depending on project funding source:

For projects funded by Federal or combination of State and Federal funds

Technical Proposal	60 Points
Cost Proposal	40 Points
Total	100 Points

For projects funded by State funds only

Technical Proposal	50 Points
Alaska Offerors Preference	10 Points
Cost Proposal	40 Points
Total	100 Points

Technical proposals will be scored using the evaluation criteria and point factors noted within the TRFP. The scores for each proposal will be based upon the assigned scores identified through the evaluation process, and will not be normalized.

The scores for the cost proposal portion of the evaluation will be normalized as follows: The offeror's cost proposal with the lowest Total Cost Proposal will receive 40 points. All other responsive cost proposals will be assigned a portion of the maximum score using the following formula: The lowest Total Cost Proposal amount shall be multiplied by 40 then divided into the next lowest Total Cost Proposal to determine the points awarded.

Example: [Offeror 1: Total Cost Proposal of \$6,000.00] [Offeror 2: Total Cost Proposal of \$6,800.00]
[Offeror 1 receives 40 points] [Offeror 2: $\$6,000.00 \times 40 / \$6,800.00$ points = 35 points]

Cost proposals should be made by determining the hourly billing rates and job categories needed for firm fixed price or for time and materials, the total number of hours and hourly billing rates and job categories required to complete a task as described in the TRFP.

Depending on the funding source for each project, the following preferences apply to proposal evaluation:

- For projects funded by Federal or combination of State and Federal funds, no preferences apply.
- For projects funded by State funds only, the following preferences listed in RFP section 3.06 – 3.09 apply to the evaluation of proposals submitted in response to TRFPs.

Sec. 3.06 APPLICATION OF PREFERENCES FOR TRFP EVALUATION OF STATE FUNDED PROJECTS

Certain preferences apply to all state contracts, regardless of their dollar value. The Alaska Bidder, Alaska Veteran, and Alaska Offeror preferences are the most common preferences involved in the RFP 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:

Application of Preferences

- 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)
- Alaska Veteran's Preference - AS 36.30.321(f)

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. Offerors must attach a copy of their certification letter to the proposal.

An offeror's failure to provide this certification letter with their proposal will cause the state to disallow the preference.

Sec. 3.07 ALASKA BIDDER PREFERENCE

An Alaska Bidder Preference of 5% will be applied to the price in the proposal. The preference will be given to an offeror who:

- 1) holds a current Alaska business license prior to the deadline for receipt of proposals;
- 2) submits a proposal for goods or services under the name appearing on the offeror's current Alaska business license;
- 3) has maintained a place of business within the state staffed by the offeror, or an employee of the offeror, for a period of six months immediately preceding the date of the proposal;
- 4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company (LLC) organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
- 5) if a joint venture, is composed entirely of ventures that qualify under (1)-(4) of this subsection.

Alaska Bidder Preference Certification Form

SEC. 3.08 In order to receive the Alaska Bidder Preference, the proposal must include the Alaska Bidder Preference Certification Form attached to this RFP. An offeror does not need to complete the Alaska Veteran Preference questions on the form if not claiming the Alaska Veteran Preference. An offeror's failure to provide this completed form with their proposal will cause the state to disallow the preference

Sec. 3.09 ALASKA VETERAN PREFERENCE

An Alaska Veteran Preference of 5%, not to exceed \$5,000, will be applied to the price in the proposal. The preference will be given to an offeror who qualifies under AS 36.30.990(2) as an Alaska bidder and is a:

- A. sole proprietorship owned by an Alaska veteran;
- B. partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;
- C. limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or

D. corporation that is wholly owned by individuals, and a majority of the individuals are Alaska veterans.

In accordance with AS 36.30.321(i), the bidder must also add value by actually performing, controlling, managing, and supervising the services provided, or for supplies, the bidder must have sold supplies of the general nature solicited to other state agencies, other government, or the general public.

Alaska Veteran Preference Certification

In order to receive the Alaska Veteran Preference, the proposal must include the Alaska Bidder Preference Certification Form attached to this RFP. An offeror's failure to provide this completed form with their proposal will cause the state to disallow the preference.

SEC. 3.10 ALASKA OFFEROR PREFERENCE

2 AAC 12.260(e) provides Alaska offerors a 10% overall evaluation point preference. Alaska bidders, as defined in AS 36.30.990(2), are eligible for the preference. An Alaska offeror will receive 10 percent of the total available points added to their overall evaluation score as a preference.

SEC. 3.11 PROPOSED PAYMENT PROCEDURES

The state will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and invoice has been approved by the project director.

SEC. 3.12 COST PRICE ADJUSTMENTS

Consumer Price Index (CPI):

Contracted hourly billing rates will remain firm through September 30, 2025.

The contractor may request price adjustments, in writing, 30 days prior to the contract renewal date. Requests must be in writing and must be received 30 days prior to the contract renewal date. If the contractor fails to request a CPI price adjustment 30 days prior to the contract renewal date, the adjustment will be effective 30 days after the state receives their written request. Adjustments will only be allowed to the contracted hourly billing rate.

Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, Urban Alaska.

The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average January through June 2025; and each January through June six-month average thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive contract price adjustments will be allowed.

All price adjustments must be approved by the procurement officer prior to the implementation of the adjusted pricing. Approval shall be in the form of a contract amendment issued by the procurement officer.

SEC. 3.13 CONTRACT PAYMENT

No payment will be made until the contract is approved by the Commissioner of the Department of Transportation & Public Facilities or the Commissioner's designee. Under no conditions will the state be liable for the payment of any interest charges associated with the cost of the contract. The state is not responsible for

and will not pay local, state, or federal taxes. All costs associated with the contract must be stated in U.S. currency.

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

SEC. 3.14 LOCATION OF WORK

The location(s) the work is to be performed, completed and managed the contractor's place of business anywhere in the United States of America.

The State will not provide workspace for the contractor. The contractor must provide its own workspace.

The contractor shall include in their price proposal: transportation, lodging, and per diem costs sufficient to pay for **2** person(s) to make **2** roundtrip(s) to Juneau, AK. Travel to other locations will not be required.

By signature on their proposal, the offeror certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States.

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

SEC. 3.15 THIRD-PARTY SERVICE PROVIDERS

Third-Party Service Providers will not be allowed.

SEC. 3.16 SUBCONTRACTORS

Subcontractors may be used to perform work under this contract. If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

Subcontractor experience shall be considered in determining whether the offeror meets the requirements set forth in SEC. 1.05 PRIOR EXPERIENCE.

If a proposal with subcontractors is selected, the offeror must provide the following information concerning each prospective subcontractor within five working days from the date of the state's request:

- complete name of the subcontractor;
- complete address of the subcontractor;
- type of work the subcontractor will be performing;
- percentage of work the subcontractor will be providing;
- evidence that the subcontractor holds a valid Alaska business license;

If a subcontractor on the list did not have a valid Alaska business license at the close of the RFP, the Offeror may not use the subcontractor in the performance of the contract and shall replace the subcontractor with a subcontractor who had a valid Alaska business license at the close of the RFP.

- a written statement, signed by each proposed subcontractor that clearly verifies that the subcontractor is committed to render the services required by the contract.

An offeror's failure to provide this information, within the time set, may cause the state to consider their proposal non-responsive and reject it. The substitution of one subcontractor for another may be made only at the discretion and prior written approval of the project director.

Note that if the subcontractor will not be performing work within Alaska, they will not be required to hold an Alaska business license.

SEC. 3.17 JOINT VENTURES

Joint ventures will not be allowed.

SEC. 3.18 CONTRACT PERSONNEL

Any change of the project team members named in the proposal must be approved, in advance and in writing, by the project director or procurement officer. Changes that are not approved by the state may be grounds for the state to terminate the contract.

SEC. 3.19 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project director. The state may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. The project director or procurement officer 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 work received) and may seek associated damages.

SEC. 3.20 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 project director 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 any required state approvals necessary for the amendment and issued a written contract amendment, approved by the Commissioner of the Department of Transportation & Public Facilities or the Commissioner's designee.

SEC. 3.21 NONDISCLOSURE AND CONFIDENTIALITY

Contractor agrees that all confidential information shall be used only for purposes of providing the deliverables and performing the services specified herein and shall not disseminate or allow dissemination of confidential information except as provided for in this section. The contractor shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access

by, storage, disclosure, publication, dissemination to and/or use by third parties of, the confidential information. “Reasonable care” means compliance by the contractor with all applicable federal and state law, including the Social Security Act and HIPAA. The contractor must promptly notify the state in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

Confidential information, as used herein, means any data, files, software, information or materials (whether prepared by the state or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is classified confidential as defined by State of Alaska classification and categorization guidelines provided by the state to the contractor or a contractor agent or otherwise made available to the contractor or a contractor agent in connection with this contract, or acquired, obtained or learned by the contractor or a contractor agent in the performance of this contract. Examples of confidential information include, but are not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses, etc).

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

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

SEC. 3.22 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. 3.23 INSURANCE REQUIREMENTS

Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If

the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits.

Certificates of Insurance must be furnished to the procurement officer prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

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 claim.

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 claim.

Professional Liability Insurance: covering all errors, omissions or negligent acts in the performance of professional services under this agreement. Limits required per the following schedule:

Contract Amount	Minimum Required Limits
Under \$100,000	\$300,000 per Claim / Annual Aggregate
\$100,000-\$499,999	\$500,000 per Claim / Annual Aggregate
\$500,000-\$999,999	\$1,000,000 per Claim / Annual Aggregate
\$1,000,000 or over	Refer to Risk Management

SEC. 3.24 TERMINATION FOR DEFAULT

If the project director or procurement determines that the contractor has refused to perform the work or has failed to perform the work with such diligence as to ensure its timely and accurate completion, the state may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the state's termination rights under the contract provisions of Appendix A, attached in **SECTION 8. ATTACHMENTS**.

SECTION 4. PROPOSAL FORMAT AND CONTENT

SEC. 4.01 PROPOSAL FORMAT AND CONTENT

The state discourages overly lengthy and costly proposals, however, in order for the state to evaluate proposals fairly and completely, offerors must follow the format set out in this RFP and provide all information requested.

The following instructions describe the format of how the offeror's proposals should be assembled, and the order in which the proposal is to be submitted. These instructions are provided to ensure a complete submission of the information necessary for an equitable analysis and evaluation of proposals submitted in response to this RFP. Each offeror must provide every component listed below, in the order shown, using the format described for each component. A proposal may be rejected if it is incomplete or conditional in nature.

The RFP response will contain three (3) sections: (1) Proposal Transmittal with Checklist, (2) Technical Component, and (3) Cost Proposal.

Proposal Transmittal <<< SECTION A>>>

The following summary provides the required content and sequential order in which proposals are to be presented. For easier identification of RFP requirements and documentation, DOT&PF recommends that all proposals are assembled as indicated in this section. An offeror's failure to include these items in their proposal may cause their proposal to be determined non-responsive and the proposal may be rejected. At the discretion of the offeror, other items not identified may be supplied with the proposal if the offeror feels that the additional information is pertinent to their proposal response. This list is not all inclusive.

1. Required proposal copies:

Offerors must submit **Five (5)** hard copies (one (1) original and four (4) copies) of their proposal, in writing, and **TWO** thumb drives containing electronic copies of the entire proposal. **One** thumb drive will contain the transmittal information and the technical proposal. **One** thumb drive will contain the cost proposal. The proposal response should be addressed to the procurement officer in a sealed package. The cost proposal included with the package must be sealed separately from the rest of the proposal and must be clearly identified.

Emailed, faxed or oral proposals **will not be accepted.**

2. Proposal Submittal Letter: Include a transmittal letter containing the complete name (as it appears on the business license) and mailing address of the firm, telephone number, and email address of the contact person for the proposal.

The following information **MUST** be addressed in the letter or as an attachment within the transmittal section.

- ☐ Authorized signature (Section 1.09 (a))
- ☐ Offeror's Certification A-H (Section 1.09 (b))
- ☐ Vendor Tax ID proof OR Vendor Tax ID number (Section 1.09 (c))
- ☐ Conflict of Interest Disclosure (Section 1.09 (d))
- ☐ Federal Requirements (Section 1.09 (e))
- ☐ Review Insurance Requirements (Section 3.23) Attachment #5
- ☐ Valid Alaska Business License Proof (Section 6.02)

- ☐ Review & Agree to Standard Contract Provisions (Section 7.01) Attachment #4
- ☐ Disclosure of Proposal Contents <if applicable> Section 7.08
 - **NOTE:** Offeror's shall **not** include a disclaimer on all of the proposal pages. If the offeror's proposal includes trade secrets, confidential and other proprietary information, this information must be individually identified and shall include the reason(s) for confidentiality.
 - The Procurement officer will make the determination in writing if the information is to be maintained confidential. Following the Notice of Intent to Award, proposals become public information. Procurement records must include information to support the selection of contractor(s), typically this includes cost, qualifications, and other key components of a proposal.
- ☐ RFP Amendments: All amendments issued for this RFP that require acknowledgement must be signed and included with the proposal [enclose only required signed amendments].
- ☐ RFP Submittal Checklist: The checklist is an integral part of the RFP, it must be signed and be included in the Proposal Transmittal Section (Attachment #9).

Proposal [Technical Component] <<< SECTION B>>>

- ☐ Title Page
- ☐ Table of Contents
- ☐ Prior Experience Evidence (Section 1.05)
- ☐ Understanding of the project (Section 4.03)
- ☐ Methodology used for the project (Section 4.04)
- ☐ Management Plan for the Project (Section 4.05)
- ☐ Experience and Qualifications (Section 4.06)

Overall Technical Proposal Contents: The technical proposal must include the information outlined in Section 1.05 Prior Experience, Section 4.03 Understanding of the project, Section 4.04 Methodology used for the project, Section 4.05 Management Plan for the Project and Section 4.06 Experience and Qualifications of this RFP. All proposals will be evaluated against Section 5 of this RFP. At a minimum, the following sections must be addressed within the Technical Proposal. No cost information may be included in the technical proposal.

- 4.03 – Understanding of the project
- 4.04 – Methodology used for the project
- 4.05 – Management Plan for the Project
- 4.06 – Experience and Qualifications including resumes that demonstrate the required prior experiences listed in Section 1.05 Prior Experience.
- Prior Experience (Section 1.05) and Attachment #3 Demonstration of Required Minimum Prior Experience Form

COST PROPOSAL <<< SECTION C>>>

1. **Title Page:** Title page must include the name of the Company/Firm submitting the proposal, RFP Title, RFP number, Proposal Due Date, and must be labeled as Cost Proposal.

2. Cost Proposal Contents: The Cost Proposal Attachment #2 included with the package must be sealed separately from the rest of the proposal and must be clearly identified, and submitted based on the instructions provided in Section 1.08, Section 4.01 and Section 4.07 of this RFP.

SEC. 4.02 INTRODUCTION

Proposals must include the complete name and address of offeror's firm and the name, mailing address, and telephone number of the person the state should contact regarding the proposal.

Proposals must confirm that the offeror will comply with all provisions in this RFP; and, if applicable, provide notice that the firm qualifies as an Alaskan bidder. Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

SEC. 4.03 UNDERSTANDING OF THE PROJECT

Offerors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project and the project schedule.

SEC. 4.04 METHODOLOGY USED FOR THE PROJECT

Offerors must provide comprehensive narrative statements that set out the methodology they intend to employ and illustrate how the methodology will serve to accomplish the work and meet the state's need for increased capacity through the TRPF process.

SEC. 4.05 MANAGEMENT PLAN FOR THE PROJECT

Offerors must provide comprehensive narrative statements that set out the management plan they intend to follow and illustrate how the plan will serve to accomplish the work and meet the state's need for increased capacity through the TRPF process.

SEC. 4.06 EXPERIENCE AND QUALIFICATIONS

Offerors must provide an organizational chart specific to the personnel assigned to accomplish the work called for in this RFP; illustrate the lines of authority; designate the individual responsible and accountable for the completion of each component and deliverable of the RFP.

Offerors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed:

- title, and
- resume that demonstrate the required prior experiences listed in Section 1.05 Prior Experience.

SEC. 4.07 COST PROPOSAL

Offerors must complete and submit this Submittal Form. Proposed costs must all direct and indirect costs associated with the performance of the contract, including, but not limited to, total number of hours at various hourly rates, direct expenses, payroll, supplies, overhead assigned to each person working on the project, percentage of each person's time devoted to the project, and profit. The costs identified on the cost proposal are the total amount of costs to be paid by the state. No additional charges shall be allowed.

SEC. 4.08 EVALUATION CRITERIA

All proposals will be reviewed to determine if they are responsive. Proposals determined to be responsive will be evaluated using the criterion that is set out in **SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION**.

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 offeror.

SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS PROPOSAL IS 100

SEC. 5.01 UNDERSTANDING OF THE PROJECT (15%)

Proposals will be evaluated against the questions set out below:

- 1) How well has the offeror demonstrated a thorough understanding of the purpose and scope of the project?
- 2) How well has the offeror identified pertinent issues and potential problems related to the project?
- 3) To what degree has the offeror demonstrated an understanding of the deliverables the state expects it to provide?
- 4) Has the offeror demonstrated an understanding of the state's needs and how they can meet them?

SEC. 5.02 METHODOLOGY USED FOR THE PROJECT (10%)

Proposals will be evaluated against the questions set out below:

- 1) How comprehensive is the methodology and does it depict a logical approach to fulfilling the requirements of the RFP?
- 2) How well does the methodology match and achieve the objectives set out in the RFP?

SEC. 5.03 MANAGEMENT PLAN FOR THE PROJECT (15%)

Proposals will be evaluated against the questions set out below:

- 1) How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?
- 2) How well is accountability completely and clearly defined?
- 3) Is the organization of the project team clear?
- 4) How well does the management plan illustrate the lines of authority and communication?
- 5) To what extent does the offeror already have the hardware, software, equipment, and licenses necessary to perform the contract?
- 6) Does it appear that the offeror can meet the schedule set out in the RFP?
- 7) Has the offeror gone beyond the minimum tasks necessary to meet the objectives of the RFP?
- 8) To what degree is the proposal practical and feasible?
- 9) To what extent has the offeror identified potential problems?

SEC. 5.04 EXPERIENCE AND QUALIFICATIONS (20%)

Proposals will be evaluated against the questions set out below:

1) *Questions regarding the personnel:*

- a) Do the individuals assigned to the project have experience on similar projects?
- b) Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?
- c) How extensive is the applicable education and experience of the personnel designated to work on the project?

2) *Questions regarding the firm and subcontractor (if used):*

- a) How well has the firm demonstrated experience in completing similar projects on time and within budget?
- b) How successful is the general history of the firm regarding timely and successful completion of projects?

SEC. 5.05 CONTRACT COST (40%)

Overall, a minimum of 40% of the total evaluation points will be assigned to cost.

Converting Cost to Points

The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined through the method set out in Section 6.11.

SECTION 6. GENERAL PROCESS INFORMATION

SEC. 6.01 INFORMAL DEBRIEFING

When the contract is completed, an informal debriefing may be performed at the discretion of the project director. If performed, the scope of the debriefing will be limited to the work performed by the contractor.

SEC. 6.02 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES

Prior to the award of a contract, an offeror 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 Alaska Offeror Preference, an offeror must hold a valid Alaska business license prior to the deadline for receipt of proposals. Offerors should contact the **Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing, PO Box 110806, Juneau, Alaska 99811-0806**, for information on these licenses. Acceptable evidence that the offeror possesses a valid Alaska business license may consist of any one of the following:

- copy of an Alaska business license;
- certification on the proposal that the offeror has a valid Alaska business license and has included the license number in the proposal;
- 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 offeror has applied and paid for the Alaska business license.

You are not required to hold a valid Alaska business license at the time proposals 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 proposals, all offerors must hold any other necessary applicable professional licenses required by Alaska Statute.

SEC. 6.03 SITE INSPECTION

The state may conduct on-site visits to evaluate the offeror's capacity to perform the contract. An offeror must agree, at risk of being found non-responsive and having its proposal 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. 6.04 CLARIFICATION OF OFFERS

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee (PEC) are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Clarifications may not result in a material or substantive change to the proposal. The evaluation by the procurement officer or the PEC may be adjusted as a result of a clarification under this section.

SEC. 6.05 DISCUSSIONS WITH OFFERORS

The state may conduct discussions with offerors in accordance with AS 36.30.240 and 2 AAC 12.290. The purpose of these discussions will be to ensure full understanding of the requirements of the RFP and proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions will only be held with offerors who have submitted a proposal deemed reasonably susceptible for award by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the procurement officer or the PEC. If modifications are made as a result of these discussions they will be put in writing. Following discussions, the procurement officer may set a time for best and final proposal submissions from those offerors with whom discussions were held. Proposals may be reevaluated after receipt of best and final proposal submissions.

If an offeror does not submit a best and final proposal or a notice of withdrawal, the offeror's immediate previous proposal is considered the offeror's best and final proposal.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that reasonable accommodation can be made. Any oral modification of a proposal must be reduced to writing by the offeror.

SEC. 6.06 EVALUATION OF PROPOSALS

The procurement officer, or an evaluation committee made up of at least three state employees or public officials, will evaluate proposals. The evaluation will be based solely on the evaluation factors set out in **SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION.**

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

SEC. 6.07 CONTRACT NEGOTIATION

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, shall be within the scope of the request for proposals and limited to those items which would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the state may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal. If contract negotiations are commenced, they may be held in the Administrative Services Director's conference room on the 3rd floor of the Department of Transportation & Public Facilities Building in Juneau, Alaska.

If the contract negotiations take place in Juneau, Alaska, the offeror will be responsible for their travel and per diem expenses

SEC. 6.08 FAILURE TO NEGOTIATE

If the selected offeror

- fails to provide the information required to begin negotiations in a timely manner; or
- fails to negotiate in good faith; or
- indicates they cannot perform the contract within the budgeted funds available for the project; or
- if the offeror and the state, after a good faith effort, simply cannot come to terms,

the state may terminate negotiations with the offeror initially selected and commence negotiations with the next highest ranked offeror.

SEC. 6.09 OFFEROR NOTIFICATION OF SELECTION FOR TERM CONTRACTORS

After the completion of contract negotiation, the procurement officer will issue a written Notice of Intent to Award and send copies of that notice to all offerors who submitted proposals. The notice will set out the names of all offerors and identify the offeror selected for award.

DOT&PF intends to issue up to five (5) term contracts, one to each of the top five (5) highest scoring proposers.

SEC. 6.10 PROTEST

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

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 proposals.

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 an offeror 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 proposal 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 offerors 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."

SEC. 6.11 APPLICATION OF PREFERENCES FOR THE AWARD TERM CONTRACTS

For the purpose of this solicitation, and award of the term contracts under this RFP, this section does not apply.

SEC. 6.12 FORMULA USED TO CONVERT COST TO POINTS FOR THE AWARD TERM CONTRACTS

The distribution of points based on cost will be determined as set out in 2 AAC 12.260(c). The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined using the formula:

$$[(\text{Price of Lowest Cost Proposal}) \times (\text{Maximum Points for Cost})] \div (\text{Cost of Each Higher Priced Proposal})$$

SEC. 6.13 EXAMPLES: CONVERTING COST TO POINTS FOR THE AWARD OF THE TERM CONTRACTS – NO PREFERENCES APPLY

(a) FORMULA USED TO CONVERT COST TO POINTS

STEP 1

List all proposal prices, adjusted where appropriate by the application of applicable preferences claimed by the offeror.

Offeror #1	\$40,000
Offeror #2	\$42,750
Offeror #3	\$47,500

STEP 2

In this example, the RFP allotted 40% of the available 100 points to cost. This means that the lowest cost will receive the maximum number of points.

Offeror #1 receives 40 points.

The reason they receive that amount is because the lowest cost proposal, in this case \$40,000, receives the maximum number of points allocated to cost, 40 points.

Offeror #2 receives 37.4 points.

$$\$40,000 \text{ lowest cost} \times 40 \text{ maximum points for cost} = 1,600,000 \div \$42,750 \text{ cost of Offeror \#2's proposal} = \mathbf{37.4}$$

Offeror #3 receives 33.7 points.

\$40,000 lowest cost x 40 maximum points for cost = 1,600,000 ÷ \$47,500 cost of Offeror #3's proposal = 33.7

SEC. 6.14 FORMULA USED TO CONVERT COST TO POINTS FOR AWARD OF TERM CONTRACTS AND NTPS

The distribution of points based on cost will be determined as set out in 2 AAC 12.260(c). The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined using the formula:

$[(\text{Price of Lowest Cost Proposal}) \times (\text{Maximum Points for Cost})] \div (\text{Cost of Each Higher Priced Proposal})$

SEC. 6.15 EXAMPLES: CONVERTING COST TO POINTS FOR EVALUATION TO PROPOSALS SUBMITTED FOR TRFP FOR THE AWARD OF THE NTPS FOR STATE FUNDED PROJECTS & APPLYING STATE PREFERENCES

(a) FORMULA USED TO CONVERT COST TO POINTS

STEP 1

List all proposal prices, adjusted where appropriate by the application of applicable preferences claimed by the offeror.

Offeror #1	\$40,000
Offeror #2	\$42,750
Offeror #3	\$47,500

STEP 2

In this example, the RFP allotted 40% of the available 100 points to cost. This means that the lowest cost will receive the maximum number of points.

Offeror #1 receives 40 points.

The reason they receive that amount is because the lowest cost proposal, in this case \$40,000, receives the maximum number of points allocated to cost, 40 points.

Offeror #2 receives 37.4 points.

\$40,000 lowest cost x 40 maximum points for cost = 1,600,000 ÷ \$42,750 cost of Offeror #2's proposal = 37.4

Offeror #3 receives 33.7 points.

\$40,000 lowest cost x 40 maximum points for cost = 1,600,000 ÷ \$47,500 cost of Offeror #3's proposal = 33.7

(B) ALASKA OFFEROR PREFERENCE

STEP 1

Determine the number of points available to qualifying offerors under this preference.

100 Total Points Available in RFP x 10% Alaska offerors preference = 10 Points for the Preference

Step 2

Determine which offerors qualify as Alaska bidders and thus, are eligible for the Alaska offerors preference. For the purpose of this example, presume that all of the proposals have been completely evaluated based on the evaluation criteria in the RFP. The scores at this point are:

Offeror #1	83 points	No Preference	0 points
Offeror #2	74 points	Alaska Offerors Preference	10 points
Offeror #3	80 points	Alaska Offerors Preference	10 points

Step 3

Add the applicable Alaska offerors preference amounts to the offeror's scores:

Offeror #1	83 points	
Offeror #2	84 points	(74 points + 10 points)
Offeror #3	90 points	(80 points + 10 points)

Step 4

Offeror #3 is the highest scoring offeror and would get the award, provided their proposal is responsible and responsive.

SEC. 6.16 EXAMPLES: CONVERTING COST TO POINTS FOR EVALUATION TO PROPOSALS SUBMITTED FOR TRFP FOR THE AWARD OF THE NTPS FOR FEDERAL OR COMBINATION FEDERAL AND STATE FUNDED PROJECTS – NO PREFERENCES APPLY

(a) FORMULA USED TO CONVERT COST TO POINTS

STEP 1

List all proposal prices, adjusted where appropriate by the application of applicable preferences claimed by the offeror.

Offeror #1	\$40,000
Offeror #2	\$42,750
Offeror #3	\$47,500

STEP 2

In this example, the RFP allotted 40% of the available 100 points to cost. This means that the lowest cost will receive the maximum number of points.

Offeror #1 receives 40 points.

The reason they receive that amount is because the lowest cost proposal, in this case \$40,000, receives the maximum number of points allocated to cost, 40 points.

Offeror #2 receives 37.4 points.

$\$40,000 \text{ lowest cost} \times 40 \text{ maximum points for cost} = 1,600,000 \div \$42,750 \text{ cost of Offeror \#2's proposal} = 37.4$

Offeror #3 receives 33.7 points.

$\$40,000 \text{ lowest cost} \times 40 \text{ maximum points for cost} = 1,600,000 \div \$47,500 \text{ cost of Offeror \#3's proposal} = 33.7$

SECTION 7. GENERAL LEGAL INFORMATION

SEC. 7.01 STANDARD CONTRACT PROVISIONS

The contractor will be required to sign and submit the State's Standard Agreement Form for Professional Services Contracts (form SAF.DOC/Appendix A) This form is attached in **SECTION 8. ATTACHMENTS** for your review. The contractor must comply with the contract provisions set out in this attachment. No alteration of these provisions will be permitted without prior written approval from the Department of Law. Objections to any of the provisions in Appendix A must be set out in the offeror's proposal in a separate document. Please include the following information with any change that you are proposing:

1. Identify the provision the offeror takes exception with.
2. Identify why the provision is unjust, unreasonable, etc.
3. Identify exactly what suggested changes should be made.

SEC. 7.02 QUALIFIED OFFERORS

Per 2 AAC 12.875, unless provided for otherwise in the RFP, to qualify as an offeror for award of a contract issued under AS 36.30, the offeror 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 RFP.

If the offeror 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 offeror as a qualified offeror under AS 36.30.

SEC. 7.03 PROPOSAL AS PART OF THE CONTRACT

Part of all of this RFP and the successful proposal may be incorporated into the contract.

SEC. 7.04 ADDITIONAL TERMS AND CONDITIONS

The state reserves the right to add terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

SEC. 7.05 HUMAN TRAFFICKING

By signature on their proposal, the offeror certifies that the offeror 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: <https://www.state.gov/trafficking-in-persons-report/>

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

SEC. 7.06 RIGHT OF REJECTION

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

Offerors may not qualify the proposal nor restrict the rights of the state. If an offeror does so, the procurement officer may determine the proposal to be a non-responsive counter-offer and the proposal 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 proposal from a debarred or suspended offeror shall be rejected.

SEC. 7.07 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

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

SEC. 7.08 DISCLOSURE OF PROPOSAL CONTENTS

All proposals and other 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 proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and prior to the time a Notice of Intent to Award is issued. Thereafter, proposals will become public information.

The Office of Procurement and Property Management (OPPM) recognizes that some information an offeror submits might be confidential under the United States or the State of Alaska Constitution, a federal statute or regulation, or a State of Alaska statute: i.e., might be confidential business information (CBI). *See, e.g.*, article 1, section 1 of the Alaska Constitution; AS 45.50.910 – 45.50.945 (the Alaska Uniform Trade Secrets Act); *DNR v. Arctic Slope Regional Corp.*, 834 P.2d 134, 137-39 (Alaska 1991). For OPPM to treat information an offeror submits with its proposal as CBI, the offeror must do the following when it submits its proposal: (1) mark the specific information it asserts is CBI; and (2) for each discrete set of such information, identify, in writing, each authority the offeror asserts make the information CBI. If the offeror does not do these things, the information will become public after the Notice of Intent to Award is issued. If the offeror does these things, OPPM will evaluate the

offeror's assertion upon receiving a request for the information. If OPPM rejects the assertion, it will, to the extent permitted by federal and State of Alaska law, undertake reasonable measures to give the offeror an opportunity to object to the disclosure of the information.

SEC. 7.09 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. Proposals that are conditioned upon the state's approval of an assignment will be rejected as non-responsive.

SEC. 7.10 DISPUTES

A contract resulting from this RFP is governed by the laws of the State of Alaska. If the contractor has a claim arising in connection with the agreement 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. To the extent not otherwise governed by the preceding, the claim shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

SEC. 7.11 SEVERABILITY

If any provision of the contract 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. 7.12 SUPPLEMENTAL TERMS AND CONDITIONS

Proposals must comply with **SEC. 7.06 RIGHT OF REJECTION**. However, if the state fails to identify or detect supplemental terms or conditions that conflict with those contained in this RFP or that diminish the state's rights under any contract resulting from the RFP, the term(s) or condition(s) will be considered null and void. After award of contract:

if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and

if the state's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

SEC. 7.13 SOLICITATION ADVERTISING

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

SEC. 7.14 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 contract 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.

SECTION 8. ATTACHMENTS

SEC. 8.01 ATTACHMENTS

Attachments:

- 1) Proposal Evaluation Form
- 2) Cost Proposal Form
- 3) Demonstration of Required Minimum Prior Experience Form
- 4) Standard Contract Form & Appendix A
- 5) Appendix B2 Indemnity and Insurance
- 6) Notice of Intent to Award Form
- 7) Alaska Bidders Preference Certification Form
- 8) Example Notice to Proceed Form
- 9) RFP Submittal Checklist
- 10) Federal Provisions

ATTACHMENT #1

PROPOSAL EVALUATION FORM

All proposals will be reviewed for responsiveness and then evaluated using the criteria set out herein.

Offeror Name: _____
Evaluator Name: _____
Date of Review: _____
RFP Number: 2523H011 _____

EVALUATION CRITERIA AND SCORING

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS PROPOSAL IS 100

5.01 Understanding of the Project

Proposals will be evaluated against the questions set out below.

1) How well has the offeror demonstrated a thorough understanding of the purpose and scope of the project?

NOTES: _____

2) How well has the offeror identified pertinent issues and potential problems related to the project?

NOTES: _____

3) To what degree has the offeror demonstrated an understanding of the deliverables the state expects it to provide?

NOTES: _____

4) Has the offeror demonstrated an understanding of the state's needs and how they can meet them?

NOTES: _____

EVALUATOR'S POINT TOTAL FOR 5.01: _____

Maximum Point Value for this Section - 15 Points

5.02 Methodology Used for the Project

Proposals will be evaluated against the questions set out below.

- 1) How comprehensive is the methodology and does it depict a logical approach to fulfilling the requirements of the RFP?

NOTES: _____

- 2) How well does the methodology match and achieve the objectives set out in the RFP?

NOTES: _____

EVALUATOR'S POINT TOTAL FOR 5.02: _____

Maximum Point Value for this Section - 10 Points

5.03 Management Plan for the Project**Proposals will be evaluated against the questions set out below.**

- 1) How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?

NOTES: _____

- 2) How well is accountability completely and clearly defined?

NOTES: _____

- 3) Is the organization of the project team clear?

NOTES: _____

- 4) How well does the management plan illustrate the lines of authority and communication?

NOTES: _____

- 5) To what extent does the offeror already have the hardware, software, equipment, and licenses necessary to perform the contract?

NOTES: _____

- 6) Does it appear that the offeror can meet the schedule set out in the RFP?

NOTES: _____

7) Has the offeror gone beyond the minimum tasks necessary to meet the objectives of the RFP?

NOTES: _____

8) To what degree is the proposal practical and feasible?

NOTES: _____

9) To what extent has the offeror identified potential problems?

NOTES: _____

EVALUATOR'S POINT TOTAL FOR 5.03: _____
Maximum Point Value for this Section - 15 Points

5.04 Experience and Qualifications

Proposals will be evaluated against the questions set out below.

1) Questions regarding the personnel.

- a) Do the individuals assigned to the project have experience on similar projects?

NOTES: _____

- b) Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?

NOTES: _____

- c) How extensive is the applicable education and experience of the personnel designated to work on the project?

NOTES: _____

2) Questions regarding the firm.

- a) How well has the firm demonstrated experience in completing similar projects on time and within budget?

NOTES: _____

- b) How successful is the general history of the firm regarding timely and successful completion of projects?

NOTES: _____

EVALUATOR'S POINT TOTAL FOR 5.04: _____

Maximum Point Value for this Section - 20 Points

EVALUATOR'S COMBINED POINT TOTAL FOR ALL EVALUATED SECTIONS: _____

5.05 Contract Cost**Maximum Point Value for this Section 40 Points**

Overall, a minimum of 40 percent of the total evaluation points will be assigned to cost.

Converting Cost to Points

The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined through the method set out in SECTION 6.12.

ATTACHMENT #2 COST PROPOSAL

This Cost Proposal must be submitted in response to this Request for Proposal. A failure to submit this Cost Proposal will result in the proposal submission being considered non-responsive. Offerors must complete and submit all portions of this cost proposal. Failure to do so may result in the proposal being declared non-responsive and rejected.

Part A. For evaluation purposes only, proposers will complete the sample firm fixed price cost proposal below. Costs submitted for part A will be the costs evaluated for award.

Job Class	Employee Name	Total Hours	Fully Loaded Hourly Rate	Total extended Hourly Rates
Project Manager		3		
Grant Writer		20		
Editor		5		
Administrative Staff		10		

Evaluated Grand Total \$ _____

Offeror Name: _____

Part B.

The following proposed rates will not be evaluated for award, however, they will become the established contracted hourly rates for the personnel proposed.

Offerors must identify the employee, applicable job class, hourly rate and the fully loaded hourly billing rate for each proposed employee essential for the completion of Task 1 through 5.

The State guarantees no minimum or maximum number of hours.

If Add additional page(s) are needed to identify each proposed employee they shall be provided in the format below.

PERSONNEL LIST & FIXED RATES

(All staff proposed for Tasks 1-5.)

Name	Job Class	Hourly Rate	Hourly Billing Rate
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

ATTACHMENT #3**DEMONSTRATION OF REQUIRED MINIMUM PRIOR EXPERIENCE FORM****SEC. 1.05 Prior Experience**

In order for offers to be found responsive, offerors must provide evidence in writing that clearly demonstrates how that they meet these minimum prior experience requirements: Proposers may attach additional pages if necessary to answer the questions posed. If additional pages are added, please add continuation to proposer's response and the item number for the continuation to the header of the additional pages.

1. Provide a description of how your firm specifically meets the following requirement:

- a. A minimum of five (5) years of experience in the planning, design, engineering and or construction of transportation projects in Alaska.

Proposer's response to 1. a. A minimum of five (5) years of experience in the planning, design, engineering and or construction of transportation projects in Alaska., item a above:

2. Provide a description of how your firm specifically meets the following requirement:

- a. A minimum of five (5) years of experience conducting risk assessments, benefit-cost analysis, value engineering studies, or similar for transportation projects.

Proposer's response to 2. a. A minimum of five (5) years of experience conducting risk assessments, benefit-cost analysis, value engineering studies, or similar for transportation projects., item a above:

3. Provide a description of how your firm specifically meets the following requirement:

- a. A minimum of five (5) years of experience in technical grant writing for federal grants.

Proposer's response to 3. a. A minimum of five (5) years of experience in technical grant writing for federal grants., item a above:

An offeror's failure to clearly demonstrate they meet these mandatory prior experience requirements will cause their proposal to be found non-responsive and rejected.

ATTACHMENT #4: STANDARD AGREEMENT FORM & APPENDIX A

STANDARD AGREEMENT FORM FOR PROFESSIONAL SERVICES

The parties' contract comprises this Standard Agreement Form, as well as its referenced Articles and their associated Appendices

1. Agency Contract Number ■	2. Contract Title ■	3. Agency Fund Code ■	4. Agency Appropriation Code ■
5. Vendor Number ■	6. IRIS GAE Number (if used) ■	7. Alaska Business License Number ■	
This contract is between the State of Alaska,			
8. Department of ■		Division ■	hereafter the State, and
9. Contractor ■		hereafter the contractor	
Mailing Address ■	Street or P.O. Box ■	City ■	State ■ ZIP+4 ■
<p>10. ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it.</p> <p>ARTICLE 2. Performance of Service:</p> <p>2.1 Appendix A (General Provisions), Articles 1 through 16, governs the performance of services under this contract.</p> <p>2.2 Appendix B sets forth the liability and insurance provisions of this contract.</p> <p>2.3 Appendix C sets forth the services to be performed by the contractor.</p> <p>ARTICLE 3. Period of Performance: The period of performance for this contract begins ■, and ends ■.</p> <p>ARTICLE 4. Considerations:</p> <p>4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor a sum not to exceed \$■ in accordance with the provisions of Appendix D.</p> <p>4.2 When billing the State, the contractor shall refer to the Authority Number or the Agency Contract Number and send the billing to:</p>			
11. Department of ■		Attention: Division of ■	
Mailing Address ■		Attention: ■	
12. CONTRACTOR		14. CERTIFICATION: I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alternations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.	
Name of Firm ■			
Signature of Authorized Representative ■			
Date ■			
Typed or Printed Name of Authorized Representative ■			
Title ■			
13. CONTRACTING AGENCY		Signature of Head of Contracting Agency or Designee ■	
Department/Division ■		Date ■	
Signature of Project Director ■		Typed or Printed Name ■	
Typed or Printed Name of Project Director ■		Title ■	
Title ■			

NOTICE: This contract has no effect until signed by the head of contracting agency or designee.

APPENDIX A**GENERAL PROVISIONS****Article 1. Definitions.**

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

Article 2. Inspections and Reports.

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

Article 3. Disputes.

- 3.1 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 – 632.

Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

Article 5. Termination.

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. In the absence of a breach of contract by the contractor, the State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

Article 6. No Assignment or Delegation.

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

Article 7. No Additional Work or Material.

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor.

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

Article 9. Payment of Taxes.

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

Article 10. Ownership of Documents.

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. Nevertheless, if the contractor does mark such documents with a statement suggesting they are trademarked, copyrighted, or otherwise protected against the State's unencumbered use or distribution, the contractor agrees that this paragraph supersedes any such statement and renders it void. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

Article 11. Governing Law; Forum Selection

This contract is governed by the laws of the State of Alaska. To the extent not otherwise governed by Article 3 of this Appendix, any claim concerning this contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

Article 12. Conflicting Provisions.

Unless specifically amended and approved by the Department of Law, the terms of this contract supersede any provisions the contractor may seek to add. The contractor may not add additional or different terms to this contract; AS 45.02.207(b)(1). The contractor specifically acknowledges and agrees that, among other things, provisions in any documents it seeks to append hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska, or (3) limit liability of the contractor for acts of contractor negligence, are expressly superseded by this contract and are void.

Article 13. Officials Not to Benefit.

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

Article 14. Covenant Against Contingent Fees.

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

Article 15. Compliance.

In the performance of this contract, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws, and be liable for all required insurance, licenses, permits and bonds.

Article 16. Force Majeure:

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any of their obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

ATTACHMENT #5: APPENDIX B2 INDEMNITY AND INSURANCE

APPENDIX B² INDEMNITY AND INSURANCE

Article 1. 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.

Article 2. Insurance

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

2.1 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.

2.2 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 claim.

2.3 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 claim.

2.4 Professional Liability Insurance: covering all errors, omissions or negligent acts in the performance of professional services under this agreement. Limits required per the following schedule:

Contract Amount	Minimum Required Limits
Under \$100,000	\$300,000 per Claim / Annual Aggregate
\$100,000-\$499,999	\$500,000 per Claim / Annual Aggregate
\$500,000-\$999,999	\$1,000,000 per Claim / Annual Aggregate
\$1,000,000 or over	Refer to Risk Management

ATTACHMENT #6: NOTICE OF INTENT TO AWARD**NOTICE OF INTENT TO AWARD A CONTRACT**

Department of Administration
 Division of General Services
 Seventh Floor - State Office Bldg.
 333 Willoughby Street
 P.O. Box 110210
 Juneau, Alaska 99811-0210

THIS IS NOT AN ORDER**DATE ISSUED: TBD****RFP NO.:** 2523H011**RFP DEADLINE:** Month, Day Year**RFP SUBJECT:** Grant Project Analysis**CONTRACTING OFFICER:** Chris Hunt**SIGNATURE:** _____

This is notice of the state's intent to award a contract. The figures shown here are a tabulation of the offers received. The responsible and responsive offeror whose proposal was determined in writing to be the most advantageous is indicated. An offeror who wishes to protest this Notice of Intent must file the protest within ten calendar days following the date this notice is issued. If the tenth day falls on a weekend or holiday, the last day of the protest period is the first working day following the tenth day. **The offeror identified here as submitting the most advantageous proposal is instructed not to proceed until a contract, or other form of notice is given by the contracting officer.** A company or person who proceeds prior to receiving a contract, Contract Award, or other form of notice of Award does so without a contract and at their own risk. AS 36.30.365.

Responsive Yes or No	Award	Total Score	<u>Offerors</u>

LEGEND: @ -- MOST ADVANTAGEOUS
 Y -- RESPONSIVE PROPOSAL
 N -- NON-RESPONSIVE PROPOSAL

SUMMARYA contract shall be awarded as follows:

Company

Address

City, State & Zip

The proposal submitted by Company has been deemed responsive and responsible and has been determined to be the most advantageous.



ATTACHMENT #7 ALASKA BIDDERS PREFERENCE CERTIFICATION

ALASKA BIDDER PREFERENCE CERTIFICATION

AS 36.30.321(A) / AS 36.30.990(2)

BUSINESS NAME:

Alaska Bidder Preference: Do you believe that your firm qualifies for the Alaska Bidder Preference?						<input type="checkbox"/> Yes <input type="checkbox"/> No
Alaska Veteran Preference: Do you believe that your firm qualifies for the Alaska Veteran Preference?						<input type="checkbox"/> Yes <input type="checkbox"/> No
Please list any additional Alaska Preferences below that you believe your firm qualifies for.						
1.	2.	3.	4.	5.	6.	

To qualify for and claim the Alaska Bidder Preference you must answer **YES** to all questions below in the Alaska Bidder Preference Questions section. To qualify for and claim the Alaska Veteran Preference, you must answer **YES** to these questions as well as answer **YES** to all the questions in the Alaska Veteran Preference section. A signed copy of this form must be included with your bid no later than the deadline set for receipt of bids.

If you are submitting a bid as a **JOINT VENTURE**, all members of the joint venture must complete and submit this form before the deadline set for receipt of bids. [AS 36.30.990\(2\)\(E\)](#)

If the procuring agency is unable to verify a response, the preference may not be applied. Knowingly or intentionally making false or misleading statements on this form, whether it succeeds in deceiving or misleading, constitutes misrepresentation per [AS 36.30.687](#) and may result in criminal penalties.

Alaska Bidder Preference Questions:

- 1) Does your business hold a current Alaska business license per [AS 36.30.990\(2\)\(A\)](#)?
☐ YES ☐ NO
 If YES, enter your current **Alaska business license number**: [Click or tap here to enter text.](#)
- 2) Is your business submitting a bid under the name appearing on the Alaska business license noted in **Question 1** per [AS 36.30.990\(2\)\(B\)](#)?
☐ YES ☐ NO

- 3) Has your business maintained a **place of business** within the state **staffed by the bidder or offeror** or an employee of the bidder or offeror for a period of six months immediately preceding the date of the bid per [AS 36.30.990\(2\)\(C\)](#)?

☐ YES ☐ NO

If **YES**, please complete the following information:

A. Place of Business

Street Address: _____

City: _____

ZIP: _____

“**Place of business**” is defined as a location at which normal business activities are conducted, services are rendered, or goods are made, stored, or processed; a post office box, mail drop, telephone, or answering service does not, by itself, constitute a place of business per [2 AAC 12.990\(b\)\(3\)](#).

Do you certify that the **Place of Business** described in **Question 3A** meets this definition?

☐ YES ☐ NO

- B.** The bidder or offeror, or at least one employee of the bidder or offeror, must be a resident of the state under [AS 16.05.415\(a\)](#) per [2 AAC 12.990\(b\)\(7\)](#).

- 1) Do you certify that the bidder or offeror OR at least one employee of the bidder or offeror is physically present in the state with the intent to remain in Alaska indefinitely and to make a home in the state per [AS 16.05.415\(a\)\(1\)](#)?

☐ YES ☐ NO

- 2) Do you certify that that the resident(s) used to meet this requirement has maintained their domicile in Alaska for the 12 consecutive months immediately preceding the deadline set for receipt of bids per [AS 16.05.415\(a\)\(2\)](#)?

☐ YES ☐ NO

- 3) Do you certify that the resident(s) used to meet this requirement is claiming residency ONLY in the state of Alaska per [AS 16.05.415\(a\)\(3\)](#)?

☐ YES ☐ NO

- 4) Do you certify that the resident(s) used to meet this requirement is NOT obtaining benefits under a claim of residency in another state, territory, or country per [AS 16.05.415\(a\)\(4\)](#)?

☐ YES ☐ NO

- 4) Per [AS 36.30.990\(2\)\(D\)](#), is your business (**CHOOSE ONE**):

- A. Incorporated or qualified to do business under the laws of the state?**

☐ YES ☐ NO

If **YES**, enter your current **Alaska corporate entity number**: _____

- B. A sole proprietorship AND the proprietor is a resident of the state?**

☐ YES ☐ NO

- C. A **limited liability company** organized under AS 10.50 **AND** all members are residents of the state?

☐ YES ☐ NO

Please identify each member by name: _____

- D. A **partnership** under former AS 32.05, AS 32.06, or AS 32.11 **AND** all partners are residents of the state?

☐ YES ☐ NO

Please identify each partner by name: _____,

_____, _____,

_____.

Alaska Veteran Preference Questions:

1) Per [AS 36.30.321\(F\)](#), is your business (**CHOOSE ONE**):

- A. A **sole proprietorship** owned by an Alaska veteran?

☐ YES ☐ NO

- B. A **partnership** under AS 32.06 or AS 32.11 **AND** a majority of the partners are Alaska veterans?

☐ YES ☐ NO

- C. A **limited liability company** organized under AS 10.50 **AND** a majority of the members are Alaska veterans?

☐ YES ☐ NO

- D. A **corporation** that is wholly owned by individuals, **AND** a majority of the individuals are Alaska veterans?

☐ YES ☐ NO

Per [AS 36.30.321\(F\)\(3\)](#) “**Alaska veteran**” is defined as an individual who:

(A) Served in the

- (i) Armed forces of the United States, including a reserve unit of the United States armed forces; or
- (ii) Alaska Territorial Guard, the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia; and

(B) Was separated from service under a condition that was not dishonorable.

Do you certify that the individual(s) indicated in **Question 1A, 1B, 1C, or 1D** meet this definition and can provide documentation of their service and discharge if necessary?

☐ YES ☐ NO

SIGNATURE

By signature below, I certify under penalty of law that I am an authorized representative of _____ and all information on this form is true and correct to the best of my knowledge.
(Business Name)

Printed Name

Title

Date

Signature

ATTACHMENT #8 EXAMPLE NOTICE TO PROCEED

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

(3132 Channel Drive)
P.O. Box 112500
Juneau, Alaska 99811-2500

Phone (907) 465-8140
Fax (907) 465-XXXX

DATE

NOTICE TO PROCEED
CONTRACT #
VENDOR
NTP# AA-001

This document serves as the Notice to Proceed (NTP) for services as described in Tasks of Contract No.

Deliverable No.	Description of Task/Contractor Staff	Hourly Rate	Total Cost
1			\$
2			\$
3			\$
4			\$
5			\$
Total			\$

Travel Expenses:	Description	Cost
		\$
Grand Total ALL Costs:		\$

Applicable hourly rates:

Job Class	Employee Name	Fully Loaded Hourly Rate
	<i>not assigned</i>	
	<i>not assigned</i>	
	<i>not assigned</i>	
	<i>not assigned</i>	
	<i>not assigned</i>	

Please contact me for further information:

DOT/PF Project Manager

ATTACHMENT #9 RFP SUBMITTAL CHECKLIST

This checklist is an integral part of this RFP and the related proposal. The checklist **MUST** be included with the proposal. This checklist is not intended to be an all-inclusive list for all requirements of the RFP. It is the offerors responsibility to ensure all required items and information are addressed in their proposal. Signature on the checklist indicates that you have read the requirements stipulated by this RFP, and that the required information is submitted with your proposal. Signature of a binding officer of the proposing firm must sign the checklist. This signature will serve as the official signature of the proposal.

Pre-Proposal Activities:

- ☐ Register with Procurement Officer
- ☐ Request Disability Assistance (if needed) at least 10 days prior to proposal deadline (Section 1.10)
- ☐ Submit Written Questions in writing to Procurement Officer (Section 1.07)

Proposal Transmittal (Section A)

- ☐ Offerors must submit **Five (5)** hard copies (one (1) original and four (4) copies) of their proposal, in writing, and **TWO** thumb drives containing electronic copies of the entire proposal. **One** thumb drive will contain the transmittal information and the technical proposal. **One** thumb drive will contain the cost proposal. The proposal response should be addressed to the procurement officer in a sealed package. The cost proposal included with the package must be sealed separately from the rest of the proposal and must be clearly identified. Emailed, faxed or oral proposals will not be accepted.
- ☐ Proposal Submittal Letter (Section 4.01) (see minimum information below for requirements)
 - ☐ Authorized signature (Section 1.09(a))
 - ☐ Offeror's Certification A-H (Section 1.09(b))
 - ☐ Vendor Tax ID proof OR Vendor Tax ID number (Section 1.09(c))
 - ☐ Conflict of Interest Disclosure (Section 1.09(d))
 - ☐ Federal Requirements (Section 1.09(e))
 - ☐ Review Insurance Requirements (Section 3.23) Attachment #5
 - ☐ Valid Business License Proof (Section 6.02)
 - ☐ Review & Agree to Standard Contract Provisions (Section 7.01) Attachment #4
 - ☐ Disclosure of Proposal Contents <if applicable> (Section 7.08)
 - ☐ RFP Amendments: All amendments issued for this RFP that require acknowledgement must be signed and included with the proposal [enclose only required signed amendments].
 - ☐ RFP Submittal Checklist: The checklist is an integral part of the RFP, it must be signed and be included in the Proposal Transmittal Section (Attachment #9).

Proposal Technical Component (Section B)

Overall Technical Proposal –

The technical proposal must include the information outlined in Section 1.05 Prior Experience, Section 4.03 Understanding of the project, Section 4.04 Methodology used for the project, Section 4.05 Management Plan for the Project and Section 4.06 Experience and Qualifications of this RFP. All proposals will be evaluated against Section 5 of this RFP. At a minimum, the following sections must be addressed within the Technical Proposal. No cost information may be included in the technical proposal.

- 4.03 – Understanding of the project
- 4.04 – Methodology used for the project
- 4.05 – Management Plan for the Project
- 4.06 – Experience and Qualifications including resumes that demonstrate the required prior experiences listed in Section 1.05 Prior Experience.

- Prior Experience (Section 1.05) and Attachment #3 Demonstration of Required Minimum Prior Experience Form

- ☐ Title Page
- ☐ Table of Contents
- ☐ Prior Experience Evidence (Section 1.05)
- ☐ Understanding of the project (Section 4.03)
- ☐ Methodology used for the project (Section 4.04)
- ☐ Management Plan for the Project (Section 4.05)
- ☐ Experience and Qualifications (Section 4.06)
- ☐ Demonstration of Required Minimum Prior Experience Form (Attachment #3)

Cost Proposal (Section C)

- ☐ Cost Proposal, Attachment #2 **(Separate envelope addressed to the Procurement Officer)** (Section 1.08, Section 4.01 and Section 4.07)

RFP# 2523H011**Title:** Grant Project Analysis – State & Federally Funded**Proposal Due Date: July 13, 2023 at 2:00 p.m. [Alaska Time]**

Company Name

Printed Name of Binding Official

Signature of Binding Official / Date

ATTACHMENT #10 FEDERAL PROVISIONS



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

REQUIRED CONTRACT PROVISIONS
for
FEDERAL-AID (FHWA) CONTRACTS

FHWA-1273 – Revised May 1, 2012
Supplement – Cargo Preference Act – Effective February 15, 2016

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. ~~Nonsegregated~~ Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with ~~Governmentwide~~ Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's

immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. 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 contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27)

and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of

employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or ~~qualified~~ minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

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

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should

represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NON SEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. 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 regulations issued 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 equivalents 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.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein. Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. 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 be easily seen by the workers.

b.(1) 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:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) 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.

(3) 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 Wage and Hour Administrator for

determination. The Wage and Hour 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, 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.

c. 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.

d. 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 contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, 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

a. 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 section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that

the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost 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.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA 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 contracting agency..

(2) 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:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or 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;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed,

as specified in the applicable wage determination incorporated into the contract.

(3) 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.b.(2) of this section.

(4) 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.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, 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 FHWA may, after written notice to the contractor, the contracting agency or the State DOT, 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

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

c. 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.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

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 Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 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, 8, 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.

a. 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).

b. 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).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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 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 section, 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 section, 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 section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency 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 section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

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

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

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

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

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project.

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. 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 clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal 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.

b. 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 Federal 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.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**SUPPLEMENT to Form FHWA -1273
CARGO PREFERENCE ACT REQUIREMENTS**

This provision requires compliance with the Cargo Preference Act (CPA) and its implementing regulations in 46 CFR 381 for all Federal Aid Projects awarded after February 15, 2016.

In accordance with 46 CFR 381.7, the following language must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of 46 CFR 381.7 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

(a) Agreement Clauses. Use of United States-flag vessels:

(1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(2) Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section shall be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590."

(b) Contractor and Subcontractor Clauses. Use of United States-flag vessels: The contractor agrees—

(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract."