

# STATE OF ALASKA

## INVITATION TO BID (ITB)



TITLE: E-1 AGGREGATE FOR PORT LIONS AIRPORT  
ITB #2524S073

DATE ITB ISSUED: MARCH 20, 2024

**Project Description:** This Invitation to Bid (ITB) is intended to result in a one-time purchase of surface course aggregate for Port Lions Airport, Alaska.

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

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

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

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

Heather Pedersen Procurement Officer	1) _____ COMPANY SUBMITTING BID	5) _____ TELEPHONE NUMBER
	2) _____ AUTHORIZED SIGNATURE	6) _____ ALASKA BUSINESS LICENSE NUMBER (Is name on license the same as Item 1?)
	3) _____ PRINTED NAME	7) _____ FEDERAL TAX ID NUMBER
	4) _____ DATE	8) _____ E-MAIL ADDRESS

Phone: (907) 465-8558  
Email: heather.pedersen@alaska.gov

This procurement is being processed and administered under the DOT&PF delegation of procurement authority in accordance with AS 36.30.270 and COB #03-006.

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## SECTION 1. INTRODUCTION & INSTRUCTIONS

### SEC. 1.01 PURPOSE OF THE ITB

This Invitation to Bid (ITB) is intended to result in a one-time purchase of E-1 surface course aggregate that will be applied to the surface for the Runway, Taxiway and Apron at the airport in Port Lions, Alaska.

### SEC. 1.02 BUDGET

Department of Transportation and Public Facilities, Division of Maintenance and Operation, estimates a budget of \$646,050 dollars for this contract. Bids priced at more than \$700,000 will be considered non-responsive.

Approval or continuation of a contract resulting from this ITB is contingent upon FAA funding.

### SEC. 1.03 DEADLINE FOR RECEIPT OF BIDS & BID OPENING

Bids must be received no later **than 2:00 PM prevailing Alaska Time on April 10, 2024**, at which time they will be publicly opened. Late bids or amendments will be disqualified and not opened or accepted for evaluation.

### SEC. 1.04 PRIOR EXPERIENCE

No specific minimums have been set for this ITB.

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

Bidders shall carefully review this ITB for defects and questionable or objectionable material. Comments concerning defects and questionable or objectionable material in the ITB should be made in writing and received by the procurement officer at least ten days before the bid opening date. This will allow time for an amendment to be issued if one is required. It will also help prevent the opening of a defective bid, upon which award cannot be made, and the resultant exposure of bidders' prices.

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

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

PROCUREMENT OFFICER: Heather Pedersen  
PHONE: 907-465-8558  
EMAIL: [heather.pedersen@alaska.gov](mailto:heather.pedersen@alaska.gov)

### SEC. 1.07 SUBMITTING BIDS

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

One original hard copy of the bid and all other required documentation to the procurement officer in a sealed package

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

An electronic copy of the bid and all other required documentation and Attachment A, Bid Schedule must be submitted on a thumb drive with the bid.

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

Submitting by US Mail:	Submitting by Courier Service
Department of Transportation and Public Facilities Division of Administrative Services Attn: Heather Pedersen ITB: 2524S073 E-1 Aggregate for Port Lions Airport P.O. Box 112500 Juneau, AK 99811-2500	Department of Transportation and Public Facilities Division of Administrative Services Attn: Heather Pedersen ITB: 2524S073 E-1 Aggregate for Port Lions Airport 3132 Channel Drive, Suite 350 Juneau, AK 99801

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

#### **ELECTRONIC SUBMISSION**

If submitting electronically, please see electronic submission guidance provided below.

**ELECTRONIC SUBMISSION GUIDANCE:** If submitting a bid via email, the bid must be emailed to:

Bid Submission Email Address: [dotstatewideprocurement@alaska.gov](mailto:dotstatewideprocurement@alaska.gov)

Subject Line for Email Submission: ITB 2524S073 – E-1 Aggregate for Port Lions Airport

**NOTE:** The Bid and all other required documentation and Attachment A, Bid Schedule, must be submitted as separate attached documents when submitting by email.

The maximum size of a single email (including all text and attachments) that can be received by the state is 20mb (megabytes). If the email containing the bid exceeds this size, the bid must be sent in multiple emails that are each less than 20 megabytes and each email must comply with the requirements described above.

Please note that email transmission is not instantaneous. Similar to sending a hard copy bid, if you are emailing your bid, the state recommends sending it enough ahead of time to ensure the email is delivered by the deadline for receipt of bid.

It is the bidder's responsibility to contact the issuing agency at 907-465-8558 to confirm that the bid has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

A Bidders failure to submit its bid prior to the deadline will cause the bid to be disqualified. Late bids or amendments will not be opened or accepted for evaluation.

Bidders must submit one hard copy of their bid, in writing, to the procurement officer in a sealed package. The sealed bid package must be addressed as follows:

## SEC. 1.08 BID FORMS

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

### BIDDER'S CERTIFICATION

By signature on the bid, ITB page 1. The bidder certifies that they comply with the following:

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

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

### CONFLICT OF INTEREST

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

## SEC. 1.09 PRICES

The bidder shall state prices in the units of issue on this ITB. Prices quoted for commodities must be in U.S. funds and include applicable federal duty, brokerage fees, packaging, and transportation cost to the FOB point so that upon transfer of title the commodity can be utilized without further cost. Prices quoted for services must be quoted in U.S. funds and include applicable federal duty, brokerage fee, packaging, and transportation cost so that the services can be provided without further cost. Prices quoted in bids must be exclusive of federal, state, and local taxes. If the bidder believes that certain taxes are payable by the State, the bidder may list such taxes separately, directly below the bid price for the affected item. The State is exempt from Federal Excise Tax except the following:

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

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

#### SEC. 1.10 VENDOR TAX ID NUMBER

If goods or services procured through this ITB are of a type that is required to be included on a Miscellaneous Tax Statement, as described in the Internal Revenue Code, a valid tax identification number must be provided to the State of Alaska before payment will be made.

#### SEC. 1.11 PRE-BID CONFERENCE

No pre-bid conference will be held for this solicitation.

#### SEC. 1.12 ASSISTANCE TO BIDDERS WITH A DISABILITY

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

#### SEC. 1.13 AMENDMENTS TO BIDS

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

#### SEC. 1.14 AMENDMENTS TO THE ITB

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

#### SEC. 1.15 ITB SCHEDULE

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

ACTIVITY	TIME	DATE
Issue Date / ITB Released		March 20, 2024
Deadline for Receipt of Bids / Bid Opening	2:00 PM Alaska Time	April 10, 2024
Bid Evaluations Complete		April 11, 2024
Notice of Intent to Award		April 11, 2024
Delivery Order Issued		TBD

This ITB does not, by itself, obligate the state. The state's obligation will commence when the contract is approved by the Commissioner of the Department of Transportation & Public Facilities (DOT&PF), 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. 1.16 ALTERNATE BIDS

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

### **SEC. 1.17 ANNOTATED LITERATURE**

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

### **SEC. 1.18 SUPPORTING INFORMATION**

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

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

### **SEC. 1.19 FIRM, UNQUALIFIED, AND UNCONDITIONAL OFFER**

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



## SECTION 2. CONTRACT INFORMATION

### SEC. 2.01 CONTRACT PERIOD

The length of the contract will be from the date of award, through final delivery. This contract contains no renewal options.

### SEC. 2.02 CONTRACT ADMINISTRATION

The administration of this contract is the responsibility of the procurement officer of record within the Department of Transportation & Public Facilities, Statewide Contracting & Procurement.

### SEC. 2.03 CONTRACT FUNDING

Approval or continuation of a contract resulting from this ITB is contingent upon federal appropriation.

### SEC. 2.04 CONTRACT EXTENSION

Unless otherwise provided in this ITB, the state and the successful bidder/contractor agree: (1) that any extension of the contract excluding any exercised renewal options, will be considered as a month-to-month extension, and all other terms and conditions shall remain in full force and effect and (2) the procurement officer will provide written notice to the contractor of the intent to cancel the month-to-month extension at least thirty (30) days before the date of cancellation. A month-to-month extension may only be executed by the procurement officer via a written contract amendment.

### SEC. 2.05 CONTRACT CHANGES – UNANTICIPATED AMENDMENTS

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

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

### SEC. 2.06 SUBCONTRACTORS

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

If a bid with subcontractors is selected, the bidder 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; and
- a written statement signed by each proposed subcontractor that clearly verifies that the subcontractor is committed to render the services required by the contract.

A bidder's failure to provide this information, within the time set, may cause the state to consider their bid non-responsive and reject it.

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

## SEC. 2.07 JOINT VENTURES

Joint ventures will not be allowed.

## SEC. 2.08 CONTRACT PERFORMANCE LOCATION

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

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

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

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

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

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

## SEC. 2.09 RIGHT TO INSPECT PLACE OF BUSINESS

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

## SEC. 2.10 SPECIFICATIONS

### DESCRIPTION

**299-1.1** This item consists of an aggregate surface course composed of crushed coarse aggregate bonded with either soil or fine aggregate or both. It shall be constructed on a prepared course according to these Specifications and to the dimensions and typical cross section shown on the Plans.

### MATERIALS

**299-2.1 GENERAL.** Aggregates shall consist of hard, durable particles or fragments of stone or gravel mixed or blended with sand, stone dust, or other similar binding or filler materials produced from approved sources. The aggregate shall be free from vegetation, lumps, or excessive amounts of clay and other objectionable substances. The coarse aggregate shall have a maximum Micro-Deval value of 21% when tested according to AASHTO T 327. The aggregate shall have a percent of wear not more than 50 at 500 revolutions as determined by AASHTO T 96 and shall not show evidence of disintegration nor show loss greater than 12% when subjected to 5 cycles of sodium sulfate accelerated soundness test using AASHTO T 104.

- a. **Crushed Aggregate Surface Course.** The aggregates shall consist of both fine and coarse fragments of crushed stone or crushed gravel mixed or blended with sand, screenings, or other similar approved materials. The material shall consist of hard, durable particles or fragments of stone and shall be free from excess soft or disintegrated pieces, dirt, or other objectionable matter.

The fractured particles in the finished product shall be as uniform as practicable. At least 75% by weight of material retained on the No. 4 sieve shall have one or more fractured faces, when tested according to ATM 305.

If necessary to meet this requirement, or to eliminate an excess of fine, uncrushed particles, the gravel shall be screened before crushing.

The fine, aggregate portion, defined as the portion passing the No. 4 sieve, produced in crushing operations, shall be incorporated in the base material to the extent permitted by the gradation requirements.

- b. Uncrushed Aggregate Surface Course.** This material may consist of natural pit-run aggregate. However, screening, blending, ripping, washing, and/or necessary mixing of the material or other processing may be necessary to meet the gradation and performance requirements of this specification.

**299-2.2 GRADATION.** The gradation of the uncrushed or crushed material shall meet the requirements of the gradations indicated in Table 1, when tested according to ATM 304.

**TABLE 1**  
**AGGREGATE GRADATION REQUIREMENTS**

<b>Sieve Designation(Square Openings)</b>	<b>Percentage by weight passing sieves For E-1</b>
1.0 in.	100
3/4 in.	70-100
3/8 in.	50-85
No. 4	35-65
No. 8	20-50
No. 50	15-30
No. 200	8-15

The specified gradations represent the limits of suitability of aggregate for use from the sources of supply. The final gradations decided on, within the specified limits, shall be well graded from coarse to fine and shall not vary from the low limit on one sieve to the high limit on the adjacent sieves, or vice versa.

The portion of the material passing the No. 40 sieve shall have a liquid limit not more than 35 and a plasticity index not more than 10, when tested according to ATM 204 and ATM 205.

**299-2.3 FINES FOR BLENDING.** If additional fine material is necessary, it shall be obtained from approved sources and uniformly blended with the aggregate at the crushing plant, the mixing plant, or as approved by the Engineer. Silt, stone dust, or other similar fine material may be used as binder.

#### **MATERIALS TESTING**

Sampling of materials for quality and acceptance shall be directed by State DOT WAQTC certified technicians. Quality test results are due after issuing the NOIA and prior to crushing. Material quality and acceptance testing, shall be performed by an AASHTO accredited laboratory, indicating that the material meets state specifications for E-1. Quality control sampling and testing may be conducted at any time at the discretion of the State.

## SEC. 2.11 PRODUCT REJECTION

Any product may be rejected if it fails to conform to the specifications. This includes the material, the packaging and the delivery requirements. If the product fails to meet specifications, the State will at its option cancel the contract or allow the contractor to replace the defective product. In no instance will the State pay any cost associated with the remedy for the defective product. The return shipment of refused product will be at the Contractor's expense at no additional cost to the State. At its option, the State may consider a cost adjustment from the contractor in lieu of replacement product. The cost reduction shall be based on the State's assessment of damages as a result from either sampling and testing or the condition of the shipment upon delivery.

## SEC. 2.12 F.O.B. POINT

The F.O.B. destination points specific address, contact name and phone number is specified on the "Bid Schedule". The contractor will be required to prepare the items for shipping and to ship them to the ultimate destination specified in the State's order. Ownership of and title to the ordered items remains with the contractor until the items have been delivered to their final destination and are accepted by the State. **The cost of all shipping, delivery and any associated fee's must be included in the bid price.**

## SEC. 2.13 PACKAGING

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

## SEC. 2.14 WARRANTY

This section does not apply to this ITB.

## SEC. 2.15 WORKMANSHIP & MATERIALS

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

## SEC. 2.16 ALTERATIONS

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

## SEC. 2.17 DELIVERY

Bid price must include freight to the final destination. The contractor shall determine the type of vehicle used for all deliveries. The contractor shall remedy the rejected shipment within 72 hours.

Delivery must be made within the timeframe specified in the "Bid Schedule" with no exceptions. The Bid Schedule identifies a date for the delivery. This date represents a "no later than" delivery requirements. Delivery **MUST** be made by this time. By signature on page one of the ITB, the bidder guarantees delivery to each location within the timeframe set forth in the "Bid Schedule".

## **SEC. 2.18 PROOF OF DELIVERY OR WEIGHT TICKETS**

Cubic Yard Vehicle Measure (CYVM). Material measured by volume in the hauling vehicle will be measured at the point of delivery. Vehicles may be of any acceptable size or type provided that the volume of the actual contents may be readily and accurately determined. Vehicles shall be loaded to the measured vehicle volume. If vehicles are not loaded to the measured vehicle volume, the Engineer at their discretion, may apply a percentage of full factor to the measured volume. Loads shall be leveled when directed. No payment will be made for loads that exceed the legal capacity of the vehicle. The contractor will need to schedule with project manager to inspect.

## **SEC. 2.19 DELIVERY TIME**

The elapsed time between the time the state places an order and the time that order is actually shipped from the contractor's place of business must be entered in space provided under "BID SCHEDULE". This processing time is to remain constant throughout the life of the contract(s).

## **SEC. 2.20 DELIVERY CONFIRMATION**

Bidders must obtain a written confirmation from both the supplier and the shipper that the items offered are scheduled for production and transport in sufficient time to meet scheduled delivery dates. A copy of the supplier's and shipper's confirmation may be included with the bid or submitted within 30 calendar days of State's request. The bidder's failure to provide these confirmation documents as required will cause the State to consider the bid non-responsive and reject the bid.

## **SEC. 2.21 ADVANCED NOTICE OF DELIVERY**

The contractor must provide the State 48 hours advance notice of each delivery. Failure to provide advance notice may delay the State's ability to accept the shipment. The contact information for the delivery location will be provided to the selected contractor.

After normal business hours, most State maintenance yards are unattended, yet secured and therefore inaccessible. Therefore, deliveries will only be accepted at the final destination during normal State business hours; Monday through Friday, excluding State holidays, 8am to 4:30pm unless other prior arrangements are made with the State's designated contact as instructed above. All stations must be available for deliveries with no penalty to the contractor during those designated normal business hours. All after normal business hour deliveries must be pre-approved by the State's designated contact for that destination. However, prior approval to deliver outside normal business hours is not guaranteed due to lack of available personnel or other scheduling conflicts. Any additional costs (personnel and equipment) incurred by the State to accommodate deliveries made outside normal business hours will be solely at the contractor's expense. Note: Overtime wages and minimum call out requirements are subject to the State Office of Personnel and union bargaining agreements. Disclosure of the approximate amount of additional costs may be acquired upon request from the State's designated contact at the time the arrangement is made. Upon the State's request, the contractor shall submit in writing, their acceptance of responsibility for any additional costs and their intended delivery schedule.

## **SEC. 2.22 LIQUIDATED DAMAGES FOR LATE DELIVERY**

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

## **SEC. 2.23 ORDERS**

Orders under this ITB will be placed by Delivery Order issued from the Statewide Contracting and Procurement Office.

## **SEC. 2.24 FIRM QUANTITIES**

The firm quantities referenced in this ITB represent the State's firm quantity purchase.

## **SEC. 2.25 SHIPPING DAMAGE**

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

## **SEC. 2.26 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES**

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

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

## **SEC. 2.27 CONTINUING OBLIGATION OF CONTRACTOR**

Notwithstanding the expiration date of a contract resulting from this ITB, the contractor is obligated to fulfill its responsibilities until warranty, guarantee, maintenance, and parts availability requirements have completely expired.

## **SEC. 2.28 PRICE DECREASES**

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

## **SEC. 2.29 INFORMAL DEBRIEFING**

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

## **SEC. 2.30 INDEMNIFICATION**

The contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the contractor under this agreement. The contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the contractor and the independent negligence of the contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis.

“Contractor” and “contracting agency”, as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term “independent negligence” is negligence other than in the contracting agency’s selection, administration, monitoring, or controlling of the contractor and in approving or accepting the contractor’s work.

## SEC. 2.31 INSURANCE

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

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

### **Proof of insurance is required for the following:**

- **Workers' Compensation Insurance:** The contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the state.
- **Commercial General Liability Insurance:** covering all business premises and operations used by the contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.
- **Commercial Automobile Liability Insurance:** covering all vehicles used by the contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

## SECTION 3. CONTRACT INVOICING AND PAYMENTS

### SEC. 3.01 BILLING INSTRUCTIONS - INVOICES

Invoices must be sent directly to the ordering Regional Office as identified below. The ordering agency will only make payment after receipt of product, the itemized invoice and weight ticket or Proof of Delivery (POD). Question concerning payment must be addressed to the ordering Region.

Invoices must be submitted as follows:

1. One invoice for the complete order.
2. Invoices must clearly identify the Purchase Order and Lot number, item description, quantity, unit price and extended price.

Invoices for partial deliveries will not be accepted. Partial payments will not be made. Invoices must be submitted to the appropriate regional office as follows:

Southcoast Region: DOT/PF  
Southcoast Region Finance Office  
P.O. Box 112506  
Juneau AK 99811-2506  
Phone: (907) 465-4484  
Attention: Spencer Gates

### SEC. 3.02 PAYMENT FOR STATE PURCHASES

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

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

### SEC. 3.03 THIRD-PARTY FINANCING AGREEMENTS NOT ALLOWED

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



## SECTION 4. EVALUATION AND CONTRACTOR SELECTION

### SEC. 4.01 EVALUATION OF BIDS

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

### SEC. 4.02 APPLICATION OF PREFERENCES

This Section does not apply to this solicitation.

### SEC. 4.03 EXTENSION OF PRICES

In case of error in the extension of prices in the bid, the unit prices will govern; in a lot bid, the lot prices will govern.

### SEC. 4.04 METHOD OF AWARD

Award will be made as one lot to the lowest responsive and responsible bidder. To be considered responsive, bidders must bid on all items.

### SEC. 4.05 NOTICE OF INTENT TO AWARD

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

## SECTION 5. GENERAL PROCESS AND LEGAL INFORMATION

### SEC. 5.01 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES

Prior to the award of a contract, a bidder must hold a valid Alaska business license. However, in order to receive the Alaska Bidder Preference and other related preferences, such as the Alaska Veteran Preference and Alaskans with Disabilities Preference, a bidder must hold a valid Alaska business license prior to the deadline for receipt of bids. Bidders should contact the **Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing, PO Box 110806, Juneau, Alaska 99811-0806**, for information on these licenses. Acceptable evidence that the bidder possesses a valid Alaska business license may consist of any one of the following:

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

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

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

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

### SEC. 5.02 FEDERAL CONTRACT PROVISIONS

**Required Contract Provisions for Federal-Aid Contracts**, Form Federal Aid Provisions (FAA) pages 1-10 are attached to this document. This contract incorporates the provisions by reference, with the same force and effect as if they were given in full text. The Contractor must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

#### **CONTRACT FUNDING:**

The funding of the resultant contract will be provided by the U.S. Federal Aviation Administration (FAA). Federal funds are identified and appropriated for the 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 the U.S. Federal Aviation Administration.

**Sec. 36.30.890. Federal Assistance**

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

**2 AAC 12.730. Federal Assistance**

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

**SEC. 5.03 AUTHORITY**

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

**SEC. 5.04 COMPLIANCE**

In the performance of a contract that results from this ITB, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws; be liable for all required insurance, licenses, permits and bonds; and pay all applicable federal, state, and borough taxes.

**SEC. 5.05 SUITABLE MATERIALS, ETC.**

Unless otherwise specified in this ITB, all materials, supplies or equipment offered by a bidder shall be new, unused, and of the latest edition, version, model or crop and of recent manufacture.

**SEC. 5.06 SPECIFICATIONS**

Unless otherwise specified in this ITB, product brand names or model numbers specified in this ITB are examples of the type and quality of product required, and are not statements of preference. If the specifications describing an item conflict with a brand name or model number describing the item, the specifications govern. Reference to brand name or number does not preclude an offer of a comparable or better product, if full specifications and descriptive literature are provided for the product. Failure to provide such specifications and descriptive literature may be cause for rejection of the offer.

**SEC. 5.07 BRAND AND MODEL OFFERED**

When brand names and model numbers are used to specify the type and quality of the goods desired ("or equivalent"), bidders must clearly indicate the brand names and model numbers they intend to provide. The bidder's failure to identify the brand and model offered may cause the state to consider the offer non-responsive and reject the bid.

**SEC. 5.08 CONTRACTOR SITE INSPECTION**

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

## SEC. 5.09 ORDER DOCUMENTS

Except as specifically allowed under this ITB, an ordering agency will not sign any vendor contract. The state is not bound by a vendor contract signed by a person who is not specifically authorized to sign for the state under this ITB. Unless otherwise specified in this ITB, the State of Alaska Purchase Order, Contract Award and Delivery Order are the only order documents that may be used to place orders against the contract(s) resulting from this ITB.

## SEC. 5.10 HUMAN TRAFFICKING

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

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

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

## SEC. 5.11 RIGHT OF REJECTION

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

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

Minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the ITB;
- are trivial, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision;

may be waived by the procurement officer.

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

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

## SEC. 5.12 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

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

### SEC. 5.13 DISCLOSURE OF BID CONTENTS

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

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

### SEC. 5.14 ASSIGNMENTS

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

### SEC. 5.15 FORCE MAJEURE (IMPOSSIBILITY TO PERFORM)

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

For the purposes of this ITB, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

### SEC. 5.16 DEFAULT

In case of default by the contractor, for any reason whatsoever, the state may procurement the goods or services from another source and hold the contractor responsible for any resulting excess cost and may seek other remedies under law or equity.

### SEC. 5.17 DISPUTES

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

### SEC. 5.18 SEVERABILITY

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

## **SEC. 5.19 CONSUMER ELECTRICAL PRODUCT**

AS 45.45.910 requires that "...a person may not sell, offer to sell, or otherwise transfer in the course of the person's business a consumer electrical product that is manufactured after August 14, 1990, unless the product is clearly marked as being listed by an approved third party certification program." Electrical consumer products manufactured before August 14, 1990, must either be clearly marked as being third party certified or be marked with a warning label that complies with AS 45.45.910(e). Even exempted electrical products must be marked with the warning label. By signature on this bid the bidder certifies that the product offered is in compliance with the law. A list of approved third party certifiers, warning labels and additional information is available from: Department of Labor and Workforce Development, Labor Standards & Safety Division, Mechanical Inspection Section, P.O. Box 107020, Anchorage, Alaska 99510-7020, (907)269-4925.

## **SEC. 5.20 CONTRACT CANCELLATION**

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

## **SEC. 5.21 GOVERNING LAW; FORUM SELECTION**

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

## **SEC. 5.22 SOLICITATION ADVERTISING**

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

## **SEC. 5.23 QUALIFIED BIDDERS**

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

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

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

## **SEC. 5.24 PROTEST**

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

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

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

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

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

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

- The name, address, and telephone number of the protester;
- the signature of the protester or the protester's representative;
- identification of the contracting agency and the solicitation or contract at issue;
- a detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and the form of relief requested.

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

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

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

## SECTION 6. ATTACHMENTS

### SEC. 6.01 ATTACHMENTS

- |                  |  |
|------------------|--|
| 1) Attachment A: | Bid Schedule   |
| 2) Attachment B: | Bid Response Deliverables Checklist                    |
| 3) Attachment C: | Required Contract Provisions for Federal-Aid Contracts |
| 4) Attachment D: | Material Submittal for Buy American Compliance         |
| 5) Attachment E: | Delivery Map   |



**Attachment A - Bid Schedule**

**LOT 1: FIRM QUANTITY**

**Instructions: Input the Price for the Quantity. Please note that the price is inclusive of all shipping and handling and any fee's associated with delivery and storage.**

**F.O.B. Destination: Port Lions, AK, see attachment E: Delivery Map**

**Contact Name: Spencer Gates**

**Contact Phone Number: 907-465-1014**

Item #	Aggregate Type	Description	Quantity (Tons)	Price
1	E-1 Aggregate	Per ITB Specifications	8,100	\$

**Firm Quantity Guaranteed Delivery Date:** \_\_\_\_\_

Bids which specify a date **later than July 15, 2024** may be considered non-responsive and the bid rejected.

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**Attachment B: BID RESPONSE DELIVERABLES CHECKLIST:**

This checklist is not intended to be an all-inclusive list for all requirements of the ITB. It is the offerors responsibility to ensure all required items and information are addressed in their Bid.

**BID RESPONSE CHECKLIST ITEMS:**

1. Completed and signed Front Page of this ITB
2. Sign and Submit all mandatory return amendments issued to this ITB
3. Conflict of Interest Statement per Section 1.08 (see below)
4. Bid Schedule - Attachment A.
5. Completed Material Submittal for Buy American Compliance Form 25D-154. Attachment D
6. Bid Response Deliverables Checklist – Attachment B

**Conflict of Interest Statement:**

Does the company or any individual working on the contract have a possible conflict of interest No ☐ Yes ☐

If yes, please explain the nature of that conflict. \_\_\_\_\_

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

A0	GENERAL	A15	DRUG FREE WORKPLACE REQUIREMENTS
A1	ACCESS TO RECORDS AND REPORTS	A16	EQUAL EMPLOYMENT OPPORTUNITY (EEO)
A2	AFFIRMATIVE ACTION REQUIREMENT	A17	FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)
A3	BREACH OF CONTRACT TERMS	A18	LOBBYING AND INFLUENCING FEDERAL EMPLOYEES
A4	BUY AMERICAN PREFERENCE	A19	PROHIBITION of SEGREGATED FACILITIES
A5	CIVIL RIGHTS - GENERAL	A20	OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970
A6	CIVIL RIGHTS – TITLE VI ASSURANCE	A21	PROCUREMENT OF RECOVERED MATERIALS
A7	CLEAN AIR AND WATER POLLUTION CONTROL	A22	RIGHT TO INVENTIONS
A8	CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS	A23	SEISMIC SAFETY
A9	COPELAND “ANTI-KICKBACK” ACT	A24	TAX DELINQUENCY AND FELONY CONVICTIONS
A10	DAVIS-BACON REQUIREMENTS	A25	TERMINATION OF CONTRACT
A11	DEBARMENT AND SUSPENSION	A26	TRADE RESTRICTION CERTIFICATION
A12	DISADVANTAGED BUSINESS ENTERPRISE	A27	VETERAN’S PREFERENCE
A13	DISTRACTED DRIVING	A28	DOMESTIC PREFERENCES FOR PROCUREMENTS
A14	PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT		

### Section A0 GENERAL

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

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

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

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

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

### Section A1 ACCESS TO RECORDS AND REPORTS

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

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Department, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

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

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

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

### **Timetables**

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

Goals for female participation in each trade: 6.9%

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

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

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

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

## **Section A3 BREACH OF CONTRACT TERMS**

[ Source: 2 CFR § 200 Appendix II(A). Include in all contracts and subcontracts that exceed \$250,000)]

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

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

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

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

[ Source: Title 49 USC § 50101, Executive Order 14005, Public Law No. 117-58. Also referenced in Department's GCP 60-09. Include in all contracts and subcontracts. ]

Specification GCP 60-09 establishes standard language for compliance with the Buy American Preference required by A4.3.1.

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

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

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

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

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

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

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

#### **Section A6.4.1 TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES**

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

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27; and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended, (42 USC § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49

- CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. at 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681 et seq).

#### **Section A6.4.2 COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS**

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

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

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Department or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor’s noncompliance with the non-discrimination provisions of this contract, the Department will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies;
  - and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Department or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Department to enter into any litigation to protect the interests of the Department.

In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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

[ Source: 2 CFR § 200, Appendix II(G), 42 USC § 7401, et seq., 33 USC § 1251, et seq. Include in all contracts and subcontracts that exceed \$150,000.]

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

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

[ Mandatory Language. Source: 2 CFR § 200, Appendix II(E), 2 CFR § 5.5(b), 40 USC § 3702, 40 USC § 3704. Include in all contracts and subcontracts in excess of \$100,000.]

- (1) *Overtime Requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$31 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).
- (3) *Withholding for unpaid wages and liquidated damages —*
  - (i) *Withholding process.* The Federal Aviation Administration or the Department may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this Section A8 on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.
  - (ii) *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph (2)(i) of Section A10 or (3)(i) of this section, or both, over claims to those funds by:
    - (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
    - (B) A contracting agency for its procurement costs;
    - (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
    - (D) A contractor's assignee(s);
    - (E) A contractor's successor(s); or
    - (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

- (4) *Subcontracts*. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
- (5) *Anti-retaliation*. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
  - (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
  - (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
  - (iv) Informing any other person about their rights under CWHSSA or this part.

#### **Section A9 COPELAND “ANTI-KICKBACK” ACT**

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

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

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

[ Mandatory Language. Source: 2 CFR § 200, Appendix II(D), 29 CFR Part 5, 49 USC § 47112(b), 40 USC §§ 3141-3144, 3146, and 3147. Include in contracts and subcontracts exceeding \$2,000.]

##### **1. *Minimum Wages*—**

- (i) *Wage rates and fringe benefits*. All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR § 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (a)(4) of this section. 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 classifications and wage rates conformed under paragraph (1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must 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.

(ii) *Frequently recurring classifications.*

- (A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (1)(iii) of this section, provided that:
- (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
  - (2) The classification is used in the area by the construction industry; and
  - (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.
- (B) The Administrator will establish wage rates for such classifications in accordance with paragraph (1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) *Conformance.*

- (A) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is used in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.
- (C) 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 will be sent by the contracting officer by email to DBAconformance@dol.gov. 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.
- (D) 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 will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (1)(iii)(C) or (D) of this section must 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.

- (iv) *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (v) *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.
- (vi) *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) *Withholding—*

- (i) *Withholding requirements.* The Federal Aviation Administration or the Department may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this Section A10 for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (3)(iv) of this section, the Federal Aviation Administration may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, 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.
- (ii) *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph (2)(i) of this section or (3)(i) of Section A8, or both, over claims to those funds by:
  - (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
  - (B) A contracting agency for its procurement costs;
  - (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
  - (D) A contractor's assignee(s);
  - (E) A contractor's successor(s); or
  - (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(3) *Records and certified payrolls —*

(i) *Basic record requirements —*

- (A) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

- (B) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.
- (C) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph (1)(v) of this section 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must 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.
- (D) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) *Certified payroll requirements—*

- (A) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the Federal Aviation Administration. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.
- (B) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).
- (C) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:
- (1) That the certified payroll for the payroll period contains the information required to be provided under paragraph (3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (3)(i) of this section, and such information and records are correct and complete;
  - (2) That each laborer or mechanic (including each helper and apprentice) working 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 29 CFR part 3; and
  - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

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

(E) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(G) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iii) *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iv) *Required disclosures and access—*

(A) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs (3)(i) through (iii) of this section, and any other documents that the Federal Aviation Administration or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the Federal Aviation Administration or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the Federal Aviation Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) *Apprentices and equal employment opportunity —*

(i) *Apprentices —*

(A) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for

the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) *Fringe benefits.* Apprentices must 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, fringe benefits must be paid in accordance with that determination.

(C) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (4)(i)(A) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act Requirements.* The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the Federal Aviation Administration may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(7) *Contract Termination: Debarment.* A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act Requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

(10) *Certification of eligibility.*

(i) By entering into this contract, the contractor certifies that neither it nor 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 40 U.S.C. 3144(b) or § 5.12(a).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

(iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

(11) *Anti-retaliation.* It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or
- (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

## **Section A11 DEBARMENT AND SUSPENSION**

[ Source: 2 CFR part 180 (Subpart C), 2 CFR Part 200, Appendix II(H), 2 CFR part 1200, DOT Order 4200.5, Executive Orders 12549 and 12689. Use for any contract, regardless of tier, that is awarded by a Contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000.]

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

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

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

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

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

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

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

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

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

[ Source: 49 CFR §26 and 49 CFR §26.53. Department specification G-120. This language is not required for projects where DBE participation is by race/gender neutral means. ]

Specification G-120 establishes standard language for participation by Disadvantaged Business Enterprises, required by A12.3.1 and A12.3.2.

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

[ Mandatory Language. Source: 49 CFR § 26, Department specifications GCP-80 and G-120. Include in all contracts and subcontracts. ]

**Contract Assurance (49 CFR § 26.13)** - The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of U.S. Department of Transportation assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate, which may include, but is not limited to:

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

**Prompt Payment (49 CFR §26.29 and Department GCP 80-01)** – The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than eight (8) working days from the receipt of each payment the prime Contractor receives from the Department. The prime Contractor agrees further to return retainage payments to each subcontractor within eight (8) working days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Department. This clause applies to both DBE and non-DBE subcontractors.

**Termination of DBE Subcontracts (49 CFR §26.53(f) and Department G-120)** – The prime contractor must not terminate a DBE subcontractor listed on form 25A-325C (or an approved substitute DBE firm) without prior written consent of the Department as described in G-120.

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

[ Source: Executive Order 13513, DOT Order 3902.10. Use for all AIP funded contracts that exceed the micro-purchase threshold of 2 CFR §200.67 (currently set at \$10,000).]

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

In support of this initiative, the Department encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

### **Section A14 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

[ Source: 2 CFR § 200, Appendix II(K), 2 CFR § 200.216. Department specification GCP-60-01. Include in all contracts and subcontracts.]

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

### **Section A15 DRUG FREE WORKPLACE REQUIREMENTS**

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

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

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

[ Mandatory Language. Source: 2 CFR 200, Appendix II(C), 41 CFR § 60-1.4, 41 CFR § 60-4.3, Executive Order 11246. Department Form 25A-301 and 25A-304. Use for any contract or subcontract when the amount exceeds \$10,000. ]

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

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

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

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

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1962, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

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

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

The language in Department Form 25A-301 contains the mandatory FAA language in A16.3.2 EEO Specification. The language in Department Form 25A-301 is hereby incorporated into these contract provisions for EEO.

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

[ Source: 29 USC § 201, et seq, 2 CFR § 200.430. All consultants, sub-consultants, Contractors and subcontractors employed under this federally assisted project must comply with the FLSA.]

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets



minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

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

#### **Section A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

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

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

#### **Section A19 PROHIBITION OF SEGREGATED FACILITIES**

[ Source: 2 CFR Part 200, Appendix II(C), 41 CFR § 60. Include in all contracts and subcontracts subject to EEO. ]

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

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

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

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

[ Source: 29 CFR part 1910. Include in all contracts and subcontracts. ]

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

requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## **Section A 21      PROCUREMENT OF RECOVERED MATERIALS**

[ Source: 2 CFR § 200.322, 2 CFR Part 200, Appendix II(J), 40 CFR part 247, 42 USC § 6901, et seq (Resource Conservation and Recovery Act (RCR)). ]

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

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

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products).

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the Contractor can demonstrate the item is:

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

## **Section A 22      RIGHTS TO INVENTIONS**

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

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

## **Section A23      SEISMIC SAFETY**

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

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

## **Section A24 TAX DELINQUENCY AND FELONY CONVICTIONS**

[Source: Section 8113 of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103), and similar provisions in subsequent appropriations acts. DOT Order 4200.6 - Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions. Include in all contracts and subcontracts.]

The language in Department Form 25D-159 contains the language required by A24 Tax Delinquency and Felony Convictions. The Contractor shall submit a completed Form 25D-159 according to specification GCP 30-03, and require each subcontractor and each lower tier subcontractor to complete Form 25D-159 according to specification GCP 80-01.

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

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

Specification GCP 80-09 establishes standard language for conditions, rights, and remedies associated with Department termination of this contract for convenience, required by A25.3.1. Under no circumstance will the Department pay Contractor

for loss of anticipated profits or revenue, or other economic loss, in connection with work that is not performed prior to the Department's termination action.

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

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

Specification GCP 80-08 establishes standard language for conditions, rights, and remedies associated with Department termination of this contract for cause due to default of the Contractor, required by A25.3.2. Under no circumstance will the Department pay Contractor for loss of anticipated profits or revenue, or other economic loss, in connection with work that is not performed prior to the Department's termination action.

#### **Section A26 TRADE RESTRICTION CERTIFICATION**

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

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

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

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

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

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

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

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

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

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

#### **Section A 27 VETERAN'S PREFERENCE**

[ Source: 49 USC § 47112(c). Include in all contracts and subcontracts.]

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

**Section A 28 DOMESTIC PREFERENCES FOR PROCUREMENTS**

[ Source: 2 CFR § 200.322, 2 CFR Part 200, Appendix II(L). Include in all contracts and subcontracts.]

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offer has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

**END**



Attachment D  
Material Submittal for Buy American Compliance  
Federal-Aid Airport Contracts

**PART 1:**

Project Name and Number	
Supplier Company Name	
Supplied to: Contractor or Subcontractor Company Name	
Materials: Bid Item No. / Bid Item Description	Quantity
Description of Steel and Manufactured Goods (attach material documentation and mill certifications):	
Steel or Manufactured Good is (check one box):	
Produced in the United States	<input type="checkbox"/>
FAA has issued a Type 1, 2, or 3 Waiver (type) ____	<input type="checkbox"/>
FAA lists it as an Excepted Article, Material or Supply	<input type="checkbox"/>
FAA has issued a Nationwide Waiver	<input type="checkbox"/>

I certify under penalty of law that the steel and manufactured goods listed on this form (or attachment), comply with the requirements of 49 USC § 50101 and Contract subsection GCP 60-09 Buy American Preference.

Steel and manufactured goods submittals may be approved when:

- (1) They are produced in the United States;
- (2) The FAA has issued a waiver for the product;
- (3) The product is listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation subpart 25.108; or
- (4) The product is included in the FAA Nationwide Buy American Waivers Issued list.

I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

_____ Authorized Corporate Signature	_____ Date
_____ Printed Name	_____ Supplier's Company Name
_____ Position Title	

Attachment E-Delivery Map

