



# CONTRACT DOCUMENTS and SPECIFICATIONS for the construction of

## **FIXED BASED OPERATOR (FBO) BUILDING AND HISTORIC HANGAR REHABILITATION**

AIP PROJECT NO. 3-41-0001-021-2024

### **AR-24-21**

**Issue Date:** Wednesday, May 29, 2024

**Due Date:** Tuesday, June 18, 2024, 2:00 p.m. (Pacific Time)

<b>Public Works – Director of Public Works</b> .....	<b>Chris Bailey</b>
<b>Public Works – Operations Manager</b> .....	<b>Kristin Preston</b>
<b>Project Manager</b> .....	<b>Robb Romeo</b>
<b>Contracts &amp; Procurement Officer</b> .....	<b>Diane Murzynski, NIGP-CPP, CPPO</b>

**For more information on this project contact:**  
**Precision Approach Engineering, Inc.**  
**Geoff Vaughn, P.E.**  
**(541) 231-6645**

# **CONTRACT DOCUMENTS and SPECIFICATIONS**

for the construction of

## **FIXED BASED OPERATOR (FBO) BUILDING AND HISTORIC HANGAR REHABILITATION**

at

### **Albany Municipal Airport**

Airport Improvement Program (AIP) Project No. 3-41-0001-021-2024

Consisting of:

- Bidding Information
- Contract Forms
- Contract Conditions
- General Construction Items
- Technical Specifications
- Prevailing Wage Rates
- Drawings

**PRECISION APPROACH ENGINEERING, INC.**

Corvallis, Oregon

May 2024



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**BIDDING INFORMATION**

NOTICE TO CONTRACTORS  
CITY OF ALBANY, OREGON  
**INVITATION TO BID**

Category of Bid: Construction  
Engineer's Estimate: \$200,000 and \$250,000  
Bids due at 2:00 p.m., (Pacific Time), Tuesday, June 18, 2024

The City of Albany hereby extends an invitation to submit bids for:

**FIXED BASED OPERATOR (FBO) BUILDING AND HISTORIC HANGAR REHABILITATION, AIP Project No. 3-41-0001-021-2024.** Major elements of work for the project include but not limited to installation of new roof membranes on the FBO building and Historic Hangar. Work will also include removal of existing gas heaters in the hangar portion of the FBO building and in the Historic Hangar. New gas infrared heaters will be installed in the FBO hangar and new electric infrared heaters will be installed in the Historic Hangar.

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**OPTIONAL PRE-BID CONFERENCE:**

An optional pre-bid conference will be held at **10:00 a.m. on June 6th, 2024**, at the Albany Municipal Airport, 525 Aviation Way SE, Albany, OR 97322. Potential bidders are strongly encouraged to attend.

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Bids shall be submitted to Diane Murzynski in the Finance Department, at [procurement@albanyoregon.gov](mailto:procurement@albanyoregon.gov) and received **not later than 2:00 p.m., on Tuesday, June 18, 2024**, or any extension of the time made by addendum. Bids will be considered time-stamped and received by the City when received in the procurement email inbox. The email subject line must include the project number and name as follows: **AR-24-21, FBO BUILDING AND HISTORIC HANGAR REHABILITATION, AIP Project No. 3-41-0001-021-2024**. The body of the email should plainly identify (1) the project name, (2) the bid opening time and date, (3) the bidder's name, and (4) the contractor's license number (per ORS 701). Immediately following the filing deadline, the bids will be opened and publicly read using a virtual hosted meeting, <https://global.gotomeeting.com/join/623409989>. Interested parties may also dial in using their phones (1-571-317-3122, access code 623-409-989). Bid totals will be posted on the City's website at <https://albanyoregon.gov/bids>.

Contract bid documents may be downloaded from the City of Albany website at <https://albanyoregon.gov/bids>. It is imperative those who download the contract bid documents check the website regularly for addenda, clarifications, and other pertinent notifications. All who are known by the City of Albany to have received a complete set of the contract bid documents will receive notification when additional items are posted. Please email [contracts@albanyoregon.gov](mailto:contracts@albanyoregon.gov) to be added to the Plan Holder's list.

Contract Documents may be examined at either the Office of the Engineer, Precision Approach Engineering, Inc., 5125 SW Hout Street, Corvallis, OR 97333, or a printed set may be purchased from Precision Approach Engineering for \$75 by phoning (541) 754-0043. For project information concerning the proposed work, please contact Geoff Vaughn, Precision Approach Engineering, Inc., (541) 231-6645.

Each Bidder must have access to a current set of City of Albany *Standard Construction Specifications* which can be found on the City's website at <https://albanyoregon.gov/standard-construction-specifications>. All public improvements are required to conform to these specifications and bid prices must reflect these specifications. All questions will be addressed via an addendum to the solicitation documents and posted to the City website.

A 10% bid bond, certified check, or cashier's check must accompany each bid on all projects and must be forfeited if the bidder fails to enter into a Contract with the City of Albany within 10 days after the date of the Notice of Award. **A scanned copy must be submitted with the bid.**

This contract is for a public work subject to ORS 279C.800 to 279C.870 and the Davis-Bacon Act (40 U.S.C. 3141 et seq). The Bidder must agree that the requirements and conditions of employment be observed, and minimum wage rates as established by the U.S. Secretary of Labor or the Oregon Bureau of Labor and Industries, including any appropriate amendments. The contractor shall pay the state or federal prevailing wage rate, whichever is higher, and adhere to the most stringent requirements under this contract.

The City's contract contains a clause which incorporates by reference all of the provisions of ORS Chapter 279A-C which are applicable to public contracts. Bidders are expected to be familiar with these provisions including, but not limited to, recent changes to ORS Chapter 279C.

No bid for a construction contract shall be received or considered by the City of Albany unless the Bidder is registered with the Construction Contractors Board as required by ORS Chapter 701 or licensed by the State Landscape Contractors Board as required by ORS 671.530.

Each bidder shall furnish the owner satisfactory evidence of competency to perform the proposed work. Such evidence shall be submitted on the "Statement of Bidder's Qualifications" form in this document.

The successful Bidder will be required to furnish the necessary additional bond for the faithful performance of the Contract, as prescribed in the Contract Documents.

Before a contract will be awarded for the work contemplated herein, the Owner will conduct such investigation as is necessary to determine the performance record and ability of the apparent low Bidder to perform the size and type of work specified under this Contract. Upon request, the Bidder shall submit such information as deemed necessary by the Owner to evaluate the Bidder's qualifications.

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The requirements of 49 CFR part 26 apply to this contract. It is the policy of the City of Albany to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The City of Albany encourages participation by all firms qualifying under this solicitation regardless of business size or ownership. The City of Albany is an equal opportunity and affirmative action employer. Small, minority, veteran, and women-owned businesses are encouraged to submit bids. Refer to the City of Albany for a copy of the Disadvantage Business Enterprise (DBE) Program <https://www.albanyoregon.gov/transportation/airport#disadvantaged-business-enterprise-dbe-program>.

The City of Albany has a DBE contract goal of **5.17%** in compliance with their 49 CFR Part 26 program. The goal is a contractual obligation, and the Bidder is directed to refer to the City of Albany for a copy of the goal methodology. The Bidder shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

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The proposed project is subject to the following additional regulations:

1. The proposed Contract is under and subject to Executive Order 11246, as amended, of September 24, 1965, and to the Equal Employment Opportunity (EEO) and Federal Labor Provisions.
2. All labor on the project shall be paid no less than the minimum wage rates established by the U.S. Secretary of Labor, or the Oregon Bureau of Labor and Industry, whichever is higher.
3. Each Bidder must supply all the information required by the Bid Documents and Specifications.
4. The EEO requirements, labor provisions, and wage rates are included in the Specifications and Bid Documents and are available for inspection at the Office of the Engineer, Precision Approach Engineering, 5125 SW Hout Street, Corvallis, OR 97333.
5. Each Bidder must complete, sign, and furnish with his/her bid all required forms contained in the Bid Document.

6. A Contractor having 50 or more employees and his/her subcontractors having 50 or more employees and who may be awarded a contract of \$50,000 or more will be required to maintain an affirmative action program, the standards for which are contained in the Specifications.
7. Where the bid of the apparent low responsible Bidder is in the amount of \$1 million or more, the Bidder and his known first-tier subcontracts, which will be awarded subcontracts of \$1 million or more, will be subject to full, onsite, preaward equal opportunity compliance reviews before the award of the Contract for the purpose of determining whether the Bidder and his subcontractors are able to comply with the provisions of the equal opportunity clause.
8. To be eligible for an award, each Bidder must comply with the affirmative action requirements which are contained in the Specifications.
9. Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. The Owner's award of this contract is conditioned upon the Bidder satisfying the good faith effort requirements of 49 CFR §26.53.
10. Women will be afforded equal opportunity in all areas of employment. However, the employment of women shall not diminish the standards or requirements for the employment of minorities.
11. All solicitations, contracts, and subcontracts resulting from projects funded under the AIP must contain the foreign trade restriction required by 49 CFR Part 30, Denial of Public Works Contracts to Suppliers of Goods and Services of Countries that Deny Procurement Market Access to U.S. Contractors.
12. Bidders on this work will be required to comply with the provisions of the President's Executive Order No. 11246 concerning equal employment opportunity, including all amendments and requirements issued thereunder. The requirements for Bidders and Contractors under this Order are explained in the Contract Documents.
13. Bidders are not required to be licensed under ORS 468A.720 (concerning asbestos removal) to be awarded this contract.
14. If this contract requires demolition, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. (ORS 279C.510).
15. The Aviation Safety and Capacity Expansion Act of 1990 provides that preference be given to steel and manufactured products produced in the United States when funds are expended pursuant to a grant issued under the Airport Improvement Program.

The City of Albany reserves the right to waive any irregularities or informalities in the bid or bidding process. The City of Albany reserves the right to reject any bid or all bids not in compliance with all prescribed public bidding procedures and requirements and may reject for good cause any or all bids upon a finding of the agency that it is in the public interest to do so, and to postpone the award of the Contract for a period of time which, however, shall not extend beyond 120 days from the bid opening date. This project will be partially funded with a grant from the Federal Aviation Administration (FAA). The award of the contract is subject to the approval of the Federal Aviation Administration and availability of Federal Funding.

Dated this 29th day of May 2024.

Diane M. Murzynski, NIGP-CPP, CPPO, CPPB  
Contracts & Procurement Officer

PUBLISH: Daily Journal of Commerce on Wednesday, May 29, 2024  
City of Albany Website on Wednesday, May 29, 2024



## INSTRUCTIONS TO BIDDERS

For specific requirements and instructions relating to the submission of Proposals, refer to Section 20, "Proposal Requirements and Conditions" of the General Contract Provisions, and FAA Special Provisions for additional requirements associated with bidding and executing this contract.

Bids must be received by the time and date designated in the Invitation to Bid. It is the responsibility of the Bidder to submit the bid before the indicated deadline to the designated location. Bids received in the procurement email repository after the designated closing time will be determined nonresponsive and will not be accepted. The City is not responsible for late or mishandled delivery, equipment or software failure, internet or website downtime, corrupt or unreadable data, or other technical issues that may cause delay or non-delivery of a bid or inaccessibility of the submitted data.

If Bidder obtains these documents by means of a website or copied from a Plan Center, it is the responsibility of the Bidder to check for addenda to this solicitation prior to bid opening. To be notified of addenda, Bidder may email [contracts@albanyoregon.gov](mailto:contracts@albanyoregon.gov) and request to be added to the Plan Holder's list.

All bids must be submitted on City-provided forms that do not contain unauthorized alterations. Bids should be received in non-editable PDF format when submitted electronically, no links to documents will be accepted. The total size limit for each email submittal response should be less than 20 MB. An automated response will be generated back to the sender stating, "Proposal has been received by the City." If you do not receive a notification, you may contact Diane Murzynski at [contracts@albanyoregon.gov](mailto:contracts@albanyoregon.gov). Bidders must submit responses within a reasonable amount of time before the bid opening date and time to ensure timely email delivery.

A scanned copy of a bid bond is acceptable for the purposes of the bid opening. Original bid bonds must be received by the City, within seven days after bid opening, addressed to City of Albany, PW Contracting Coordinator, P.O. Box 490, Albany, OR 97321.

### BIDDER'S CHECKLIST

This checklist has been prepared and furnished to aid Bidders in including all necessary supporting information with their bid. Bidders' submittals shall include, but are not limited to, the following:

#### SUBMIT WITH BID:

- |    |   |       |
|----|---|-------|
| 1  | Proposal (Bid) Fully Executed   | _____ |
| 2  | Acknowledgement of Addenda (on Proposal)  | _____ |
| 3  | Bidder Certificate  | _____ |
| 4  | Bidder's Statement on Previous Contracts Subject to EEO Clause                        | _____ |
| 5  | Certificate of Buy American Compliance – Construction Projects                        | _____ |
| 6  | Buy America Conformance Listing   | _____ |
| 7  | Certification of Nonsegregated Facilities   | _____ |
| 8  | Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion | _____ |
| 9  | Non-Trafficking Certification   | _____ |
| 10 | Trade Restriction Clause  | _____ |
| 11 | Bid Bond or other security  | _____ |
| 12 | Non-Collusion Affidavit   | _____ |
| 13 | Statement of Bidder's Qualifications  | _____ |
| 14 | Authorization to Release Information  | _____ |

**SUBMIT WITHIN 2 HOURS AFTER BID OPENING TO OWNER:**

- 1 First-Tier Subcontractors Disclosure \_\_\_\_\_
- 2 Bidder's List \_\_\_\_\_

**SUBMIT WITHIN 2 DAYS AFTER BID OPENING TO OWNER:**

- 1 Disadvantage Business Enterprise (DBE) Utilization \_\_\_\_\_
- 2 DBE Letter of Intent Form(s) (if required) \_\_\_\_\_

**LOWEST RESPONSIBLE BIDDER TO SUBMIT WITHIN 15 DAYS AFTER BID OPENING TO OWNER: (IF NEEDED)**

- 1 Buy America Waiver Request \_\_\_\_\_
- 2 Buy American Preferences Construction Project Content Percentage Worksheet \_\_\_\_\_
- 3 Buy American Preferences – Final Assembly Questionnaire \_\_\_\_\_

**SECTION II**

**CONTRACT FORMS**

## PROPOSAL

TO: City of Albany, Oregon

ADDRESS: P.O. Box 490, Albany, OR 97321

PROJECT TITLE: FBO Building and Historic Hangar Rehabilitation

PROJECT NO. AIP 3-41-0001-021-2024

Bidder's person to contact for additional information on this bid:

Name: \_\_\_\_\_ Company: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

CCB#: \_\_\_\_\_ Email: \_\_\_\_\_

UEI #: \_\_\_\_\_ CAGE Code: \_\_\_\_\_

For additional information regarding this proposal, see GENERAL CONTRACT PROVISIONS.

### **BIDDER'S DECLARATION AND UNDERSTANDING**

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the Owner, and that the Proposal is made without any connection or collusion with any person submitting another Proposal on this Contract. The Bidder, and each person signing on behalf of the Bidder, certifies they do not have a personal or organizational conflict of interest and have not participated in drafting the scope of work or writing the specifications required for the project.

The Bidder further declares that they have carefully examined the Contract Documents for the construction of the project, that they have personally inspected the site, that they have satisfied themselves as to the quantities involved, including materials and equipment, and the conditions of work involved, including the fact that the description of the quantities of work and materials, as included herein, is brief and is intended only to indicate the general nature of the work and to identify the said quantities with the detailed requirements of the Contract Documents, and that this Proposal is made according to the provisions and under the terms of the Contract Documents, which Documents are hereby made a part of this Proposal.

Each Bidder must inform themselves of the conditions relating to the execution of the work, and it is assumed that they will inspect the site and make themselves thoroughly familiar with all the Contract Documents. Failure to do so will not relieve the successful Bidder of their obligation to enter into a Contract and complete the contemplated work in strict accordance with the Contract Documents. It shall be the Bidder's obligation to verify for themselves and to their complete satisfaction all information concerning site and subsurface conditions.

The Bidder further agrees that they have exercised their own judgment regarding the interpretation of subsurface information and has utilized all data which they believe pertinent from the Engineer, Owner, and other sources in arriving at their conclusions.

The Owner will make available to prospective Bidders upon request and at the office of the Engineer, prior to bid opening, any information that they may have as to subsurface conditions and surface topography at the worksite. Investigations conducted by the Engineer of subsurface conditions were made for the purpose of study and design, and neither the Owner nor the Engineer assumes any responsibility whatever in respect to the sufficiency or accuracy of borings, or of the logs of test borings, or of other investigations that have been made, or of the interpretations made thereof, and there is no warranty or guarantee, either expressed or implied, that the conditions indicated by such investigations are representative of those existing throughout such area, or any part thereof, or that unforeseen developments may not occur.

Logs of test borings, geotechnical reports, or topographic maps showing a record of the data obtained by the Engineer's investigations of surface and subsurface conditions that are made available shall not be considered a part of the Contract Documents, said logs representing only the opinion of the Engineer as to the character of the materials encountered by them in their investigations, and are available only for the convenience of the Bidders.

Information derived from inspection of logs of test borings, or pits, geotechnical reports, topographic maps, or from Drawings showing location of utilities and structures will not in any way relieve the Contractor from any risk or from properly examining the site and making such additional investigations as he may elect, or from properly fulfilling all the terms of the Contract Documents.

Each Bidder shall inform themselves of, and the Bidder awarded a Contract shall comply with, federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees, and similar subjects.

The Bidder further certifies that they have authority and knowledge regarding the payment of taxes and that to the best of their knowledge are not in violation of any Oregon Tax Laws as provided for in ORS 305.385(6). For purposes of this certification, "Oregon Tax Laws" are those tax laws imposed by ORS 320.005 to 320.150 and ORS 403.200 to 403.250 and ORS Chapters 118, 314, 316, 317, 318, 321, and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

**Conflict of Interest.** Contractor will prohibit any employee, governing body, subcontractor, volunteer, or organization from participating in this contract if the person(s) or entity has an actual or potential conflict of interest with regards to the funding provided under this agreement. Contractor must disclose in a timely manner and in writing to the City all violations of federal criminal law involving fraud, bribery, or gratuity potentially affecting funds provided under the agreement. Neither Contractor nor Contractor's principals or governing body shall be involved in any current or pending litigation that will be construed as a conflict of interest in the City's sole discretion.

## **DRAWINGS**

The Drawings bound in the Document are photographically reduced to 50 percent of the original size.

Contract bid documents may be downloaded from the City of Albany website at <https://albanyoregon.gov/bids>. It is imperative those who download the contract bid documents check the website regularly for addenda, clarifications, and other pertinent notifications. All who are known by the City of Albany to have received a complete set of the contract bid documents will receive notification when additional items are posted. Please email [contracts@albanyoregon.gov](mailto:contracts@albanyoregon.gov) to be added to the Plan Holder's list.

Contract Documents may be examined at the Office of the Engineer, Precision Approach Engineering, Inc., 5125 SW Hout Street, Corvallis, OR 97333, 541-754-0043; or a printed set may be purchased from Precision Approach Engineering for \$75 by phoning 541-754-0043.

Printed and bound sets of Drawings (22" x 34") may be obtained from Precision Approach Engineering, Inc., 5125 SW Hout Street, Corvallis, Oregon 97333, at the cost of reproduction and handling, plus postage for mailing (if mailing is requested). No return of these Drawings is required, and no refund will be made.

### **OPTIONAL PRE-BID CONFERENCE**

An optional pre-bid conference will be held at **10:00 a.m. on June 6th, 2024**, at the Albany Municipal Airport, 525 Aviation Way SE, Albany, OR 97322. Potential bidders are strongly encouraged to attend. All attendees must sign in to reflect pre-bid conference attendance.

### **DISADVANTAGED BUSINESS ENTERPRISE**

Bid Information submitted as a matter of responsibility:

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

As a condition of responsibility, every Bidder or Offeror must submit the following information on the forms provided herein within two days after bid opening.

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal;
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in Appendix A to 49 CFR Part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the Bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

### **UNDETECTED ENVIRONMENTAL CONDITIONS IN PUBLIC CONSTRUCTION PROJECTS**

The Owner will disclose all known or suspected environmental conditions and the laws, rules, or regulations that may be triggered by the presence of those conditions.

The Contractor shall inform the Owner of any environmental conditions suspected or observed while conducting a pre-bid site inspection or at any other time during the course of work on this project that may trigger laws, rules, or regulations controlling construction when these conditions are present.

If previously undetected environmental conditions are found to be present in the project work area, the Owner may, at its option, issue a contract change order or terminate the construction contract and pay costs and expenses incurred including overhead and profit in proportion to the percentage of work completed.

If the Owner terminates the contract or issues a change order, the Contractor shall furnish the Owner with appropriate bid documentation for the purpose of determining acceptable amounts of overhead and profit.

### **BID SECURITY**

Proposals must be accompanied by a certified check, or cashier's check drawn on a bank in good standing, or a bid bond issued by a Surety authorized to issue such bonds in the state where the work is located, in an amount not less than 10 percent of the total amount of the Proposal. This bid security shall be given as a guarantee that the Bidder will not withdraw their Proposal for a period of 120 days after bid opening, and that if awarded the Contract, the

successful Bidder will execute the attached Contract and furnish the required 100 percent Performance Bond and Payment Bonds.

If the Bidder elects to furnish a Bid Bond, they shall use the Bid Bond form bound herewith, or one conforming substantially in form and content.

The Attorney-in-Fact who executes this bond on behalf of the Surety must attach a notarized copy of their power-of-attorney as evidence of their authority to bind the Surety on the date of execution of the bond. Where State Statute requires, certification by a resident agent shall also be provided.

### **CERTIFICATES OF INSURANCE**

The Bidder further agrees to furnish the Owner, before commencing the work under this Contract, the certificates of insurance as specified in these Documents.

### **OWNER REQUIREMENTS**

- A Request for Taxpayer Identification Number and Certification (W-9) will be completed as a condition of the City's obligation to make payment. In the event the Bidder fails to complete and return the W-9 Form to the City, payment to Bidder may be delayed, or the City may, in its discretion, terminate the Contract.
- ACH Direct Payment Authorization. The City prefers to pay Contractor invoices via electronic funds transfers through the Automated Clearing House (ACH) network. To initiate this more timely, efficient, and secure payment method, Contractors must complete the City's ACH Vendor Direct Payment Authorization Form on the City website at <https://www.albanyoregon.gov/efiform>. Information provided on the form is exempt from public records disclosure under ORS 192.345(27).
- **For contracts that exceed \$500,000, the Contractor must elect retainage to be held in an interest-bearing escrow account, or an alternate method in lieu of cash retainage as a condition of payment and as required by ORS 279C.570(2).** Contractor must complete an Escrow Account Agreement if funds are to be held in an interest-bearing account, otherwise Contractor must provide a deposit of bonds, securities or other instruments, or Contractor must provide a surety bond in an amount equal to five percent of the total bid. City may recover from Contractor additional costs incurred in the handling of retainage alternatives, whether a deposit of bonds, securities, or other instruments, surety bond, or for an interest-bearing account, ORS 279C.560(3).

### **AWARD OF CONTRACT**

The contract will be awarded to the lowest responsible, responsive bidder.

This project contains a Base Bid and an Additive Alternate. Additive Alternates are portions of the project that will be included if adequate funding is available for construction costs. The proposal requires bidders to submit bids for all Bid Schedules. Failure to submit pricing on all schedules will render the bid non-responsive. The Owner intends to award a contract to the lowest responsive bidder for the AIP eligible Base Bid schedule.

The City reserves the right to reject any bid that is not in compliance with prescribed public contracting procedures and requirements, the requirements contained within this document, and may reject for good cause all bids upon the City's finding that it is in the public interest to do so.

**Electronic Signature.** Each Party agrees that electronic signatures, whether digital or encrypted, of the parties included in this Agreement, if any, are intended to authenticate this writing and to have the same force and effect as manual signatures. The term "electronic signature" means any electronic sound, symbol, or process attached to or logically associated with a contract or record and executed and adopted by a party with the intent to sign, authenticate or accept such contract or record. Any signature hereto or to any other certificate, agreement or document related to this transaction, and any contract formation or recordkeeping through electronic means will have the same legal validity and enforceability as a manually executed signature or use of a paper-based

recordkeeping system to the fullest extent permitted by applicable law and may not be denied legal effect ORS 84.019.

**Communicable Diseases.** Contractor understands the risk to have contact with individuals, who have been exposed to and/or have been diagnosed with one or more communicable diseases, including but not limited to COVID-19 or other medical conditions, diseases, or maladies that exist, and it is impossible to eliminate the risk that Contractor could be exposed to and/or become infected through contact with or close proximity with an individual with a communicable disease. CONTRACTOR KNOWINGLY AND FREELY ASSUMES ALL SUCH RISKS, both known and unknown, EVEN IF ARISING FROM THE NEGLIGENCE OF THE RELEASEES OR OTHERS, and assumes all full responsibility for Contractor's participation.

### **START OF CONSTRUCTION AND CONTRACT COMPLETION TIME**

The Bidder further agrees to begin work within 10 calendar days after the date of the Notice to Proceed with Construction issued by the Owner, and to complete the construction, in all respects, within **30 calendar days** from the effective date of the Notice to Proceed.

### **LIQUIDATED DAMAGES**

Time is of the essence in the performance of the provisions of this agreement. In the event the Bidder is awarded the Contract and shall fail to complete the work within the time limit or extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid to the Owner in the amounts indicated in Section 80 of the General Contract Provisions for all work awarded under one contract until the work shall have been satisfactorily completed as provided by the Contract Documents. Sundays and legal holidays shall be excluded in determining days in default.

### **ADDENDA**

The Bidder hereby acknowledges receipt of Addenda Nos. \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, (*Bidder shall insert No. of each Addendum received*) and agrees that all addenda issued are hereby made part of the Contract Documents, and the Bidder further agrees that their Bid(s) includes all impacts resulting from said addenda. Proposals received without acknowledgement of addenda or without addenda enclosed will be considered informal.

### **SALES AND USE TAXES**

The Bidder agrees that all required applicable federal, state, and local sales and use taxes are included in the stated bid prices for the work.

### **UNIT PRICE WORK**

The Bidder further proposes to accept as full payment for the work proposed herein the amounts computed under the provisions of the Contract Documents and based on the following unit price amounts, it being expressly understood that the unit prices are independent of the exact quantities involved. The Bidder agrees that the unit prices represent a true measure of the labor and materials required to perform the work, including all allowances for overhead and profit for each type and unit of work called for in these Contract Documents.

### **CONTRACT EXECUTION AND BONDS**

The Bidder hereby expressly acknowledges by the signing of this Proposal their understanding of and their agreement to comply during the performance of any work under any Contract resulting from this bid with all equal opportunity obligations as set forth in CFR Part 8 and 41 CFR Part 60.1.

The Bidder further certifies that they have exercised all options available to them toward reaching the goals for minority business enterprise utilization specified in these Documents.



The Bidder understands and agrees that the work to be done is being financed in whole or in part by means of a grant made or insured by the United States of America acting through the Federal Aviation Administration of the Department of Transportation.

The Federal Aviation Administration will, therefore, require approval by its representative of all contracts, attachments, and similar documents, all partial and final payment estimates, and all Change Orders.

FAA-required compliance statements are attached hereto as a part of this Proposal and shall be executed by the Bidder at the time the Proposal is submitted.

The Bidder agrees that if this Proposal is accepted, they will, within 10 days, not including Sundays and legal holidays, after notice of award, sign the Contract in the form annexed hereto, and will at that time, deliver to the Owner the Performance and Payment Bond required herein, and will, to the extent of their Proposal, furnish all machinery, tools, apparatus, and other means of construction and do the work and furnish all the materials necessary to complete all work as specified or indicated in the Contract Documents.

<b>ALBANY MUNICIPAL AIRPORT FBO BUILDING AND HISTORIC HANGAR REHABILITATION</b>	<b>BID SCHEDULES</b>	<b>AIP PROJECT NO. 3-41-0001-021-2024</b>
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<b>BASE BID SCHEDULE (AIP)</b>					
<b>Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Unit Bid Price</b>	<b>Amount Bid</b>
1	Mobilization	LS	1		
2	Roof Membrane	SY	1,891		
3	Electric Infrared Heater	EA	6		
4	Gas Infrared Heater	EA	8		
5	Miscellaneous Electrical and Gas Improvements	LS	1		
<i>Note 1: See specification section 105-2 Mobilization limit in Item C-105 Mobilization</i>					
<b>TOTAL OF EXTENDED UNIT PRICE ITEMS AND LUMP SUM ITEMS LISTED ABOVE</b>					\$

<b>ADDITIVE BID A SCHEDULE (NON-AIP)</b>					
<b>Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Unit Bid Price</b>	<b>Amount Bid</b>
A1	Roof Membrane	SY	767		
<i>Note 1: See specification section 105-2 Mobilization limit in Item C-105 Mobilization</i>					
<b>TOTAL OF EXTENDED UNIT PRICE ITEMS AND LUMP SUM ITEMS LISTED ABOVE</b>					\$
<b>GRAND TOTAL (BASE BID AND ADDITIVE BID A SCHEDULES)</b>					\$

**SURETY**

If the Bidder is awarded a construction Contract on this Proposal, the Surety who provides the Performance and Payment Bond will be \_\_\_\_\_

whose address is \_\_\_\_\_

\_\_\_\_\_  
City State Zip

**BIDDER**

The name of the Bidder submitting this Proposal is \_\_\_\_\_  
doing business at

\_\_\_\_\_  
Street City State Zip

which is the address to which all communications concerned with this Proposal and with the Contract shall be sent.

Bidder's Construction Contractor's Board Registration No. \_\_\_\_\_

Bidder's State Landscape Contractor's License No. \_\_\_\_\_

The names of the principal officers of the corporation submitting this Proposal, or of the partnership, or of all persons interested in this Proposal as principals are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IF SOLE PROPRIETOR OR PARTNERSHIP**

IN WITNESS hereto the undersigned has set their hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Title

**IF CORPORATION**

IN WITNESS WHEREOF, the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this day of \_\_\_\_\_, 20\_\_.

(SEAL)

\_\_\_\_\_  
Name of Corporation

By \_\_\_\_\_ Title \_\_\_\_\_

Attest \_\_\_\_\_  
Secretary

**FEDERAL SIGNATURE FORMS**

## BIDDER CERTIFICATE

THIS CERTIFICATION MUST BE COMPLETED, SIGNED AND RETURNED. FAILURE TO DO SO WILL RESULT IN BID DISQUALIFICATION.

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### CONSTRUCTION CONTRACTORS BOARD (CCB)

Bidder is in compliance with requirements for construction contractors and is licensed and bonded with the Construction Contractor's Board as follows:

**CCB REGISTRATION NO.:** \_\_\_\_\_ **EXPIRATION DATE:** \_\_\_\_\_

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### COMPLIANCE WITH OREGON TAX LAWS

For purposes of this certificate, "Oregon Tax Laws" means those programs listed in ORS 305.380(4), which is incorporated herein by this reference. Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Employer Payroll Tax, The County Metropolitan Transit District of Oregon "Tri-Met" Employer Payroll Tax, and Tri-Met Self-Employment Tax).

**CHECK ONE:** Bidder states that it  **Does**  **Does not** have authority and knowledge regarding the payment of taxes, and that Contractor is, to the best of its knowledge, not in violation of any Oregon tax laws.

### NON-DISCRIMINATION INFORMATION

ORS 279A.110(1) states: "A bidder . . . may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055. . . (4) A bidder . . . shall certify . . . that the bidder . . . has not discriminated and will not discriminate, in violation of subsection (1) . . ."

**CHECK ONE:** Bidder states that it  **Has discriminated**  **Has not discriminated and will not discriminate** against minority, women or emerging small business enterprises in obtaining any required subcontracts.

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### TAX DELINQUENCY AND FELONY CONVICTIONS

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

### CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

#### Certifications

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

- 2) The applicant represents that it is ( ) is not ( ) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

**Note**

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

**Term Definitions**

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

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

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**PREVAILING WAGE INFORMATION**

This contract is for a public works project subject to Oregon Bureau of Labor and Industries (ORS 279C.800 to 279C.870) and the Davis-Bacon Act (40 U.S.C. 3141, et seq). The Bidder must agree that the requirements and conditions of employment be observed and minimum wage rates, as established by the U.S. Secretary of Labor, or the Oregon Bureau of Labor and Industries, including any appropriate amendments. The contractor shall pay the state or federal prevailing wage rate, whichever is higher, and the most stringent requirements under this contract.

**CHECK ONE:** Bidder states that it [ ] **Will** [ ] **Will not** comply with ORS 279C.840 or 40 U.S.C. 276a.

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**CONTRACTOR'S CERTIFICATION OF DRUG TESTING PROGRAM ORS 279C.505(2)**

Bidder certifies that:

- The bidder will have a drug testing policy in place at time of contract award; and
- The bidder shall maintain the drug testing policy for the duration of the contract; and
- The bidder shall require each subcontractor providing labor to this contract to comply with the drug testing requirements.
- The bidder conducts random drug and alcohol testing for employees no less frequently than annually and assigned employees have successfully passed a minimum 12-panel drug test.

ORS 279C.505(2) requires that all public improvement contracts require contractors to demonstrate that it has an employee drug-testing program is in place that applies to all employees and will maintain a drug testing program at all times during the performance of the Contract awarded. Failure to maintain a program shall constitute a material breach of contract.

**CHECK ONE:** Bidder states that it [ ] **Does** [ ] **Does not** comply with ORS 279C.505(2).

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**ELIGIBILITY FOR PERFORMANCE OF WORK**

The Bidder certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental state department or agency.

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**PUBLIC WORKS BOND**

Bidder certifies he/she/it is in compliance with ORS 279C.836 Statutory Public Works Bond for contractor and all subcontractors.

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I, the undersigned, a duly authorized representative of the Bidder, hereby certify that the answers to the foregoing BIDDER CERTIFICATE questions and all statements therein contained are true and correct.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Firm: \_\_\_\_\_ Telephone: \_\_\_\_\_

**BIDDER'S STATEMENT ON PREVIOUS  
CONTRACTS SUBJECT TO EEO CLAUSE**

THE BIDDER (PROPOSER)     has     has not  
participated in a previous contract subject to the nondiscrimination clause prescribed by Section 202 of  
Executive Order No. 11246 dated 24 September 1965.

THE BIDDER (PROPOSER)     has     has not  
submitted compliance reports in connection with any such contract as required by applicable instructions.

If the Bidder (proposer) has participated in a previous contract subject to the nondiscrimination clause and  
has not submitted compliance reports as required by applicable instructions, the Bidder (proposer) shall  
submit Standard Form 100 (for federal construction contracts) with the bid or proposal indicating current  
compliance.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Signer (please type)



**DISADVANTAGE BUSINESS ENTERPRISE (DBE) UTILIZATION**

(Submit this form and attach one DBE Letter of Intent Form for each DBE subcontractor, supplier or manufacturer)

Airport Name: Albany Municipal Airport

Project Name: FBO Building and Historic Hangar Rehabilitation

FAA AIP Project No: 3-41-0001-021-2024 Total Bid Amount: \$ \_\_\_\_\_

Name of Bidder's Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

- The bidder/offeror is committed to a minimum of \_\_\_% DBE utilization on this contract.
- The bidder/offeror (if unable to meet the DBE goal of \_\_\_%) is committed to a minimum of \_\_\_% DBE utilization on this contract and should submit documentation demonstrating good faith efforts in seeking participation by certified DBE firms.

**DBE UTILIZATION SUMMARY**

	<u>DBE Contract Amount</u>	<u>DBE Value</u>	<u>Contract %</u>
DBE Prime Contractor	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Subcontractors	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Suppliers	\$ _____ x 0.60 =	\$ _____	_____ %
DBE Manufacturers	\$ _____ x 1.00 =	\$ _____	_____ %
* Total Proposed DBE Participation		\$ _____	_____ %
Established DBE Contract Goal		\$ _____	<b>5.17%</b>

*\* If the total proposed DBE participation is less than the established DBE goal, the Bidder shall provide written documentation of the good faith efforts as required by 40 CFR Part 26, including Appendix A, under sealed bid procedures as a matter of responsibility. No greater than 2 days after bid opening as a matter of responsibility.*

**Affirmation:**

The undersigned hereby assures that the information included herein is true and correct, and that the DBE firm(s) listed on the attached DBE Letter of Intent Forms have agreed to perform a commercially useful function in the work items noted for each firm. The undersigned further understands that no changes to this plan may be made without prior approval from the Civil Rights Staff of the Federal Aviation Administration.

Signature of Bidder's representative \_\_\_\_\_ Printed Name \_\_\_\_\_ Title \_\_\_\_\_

**DBE LETTER OF INTENT FORM**

*(Submit one form for each DBE subcontractor, supplier or manufacturer)*

Project Name: FBO Building and Historic Hangar Rehabilitation

FAA AIP Project No: 3-41-0001-021-2024

Name of Bidder's Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Email: \_\_\_\_\_

Certifying Agency: \_\_\_\_\_

***(DBE firm shall submit evidence, such as a photocopy, of their certification status)***

Classification:       Prime Contractor     Subcontractor     Manufacturer     Supplier

Disadvantaged Group (check one):

- Black       Hispanic       Native American       Asian-Pacific
- Subcontinent Asian American     Non-Minority Women     Other \_\_\_\_\_

**SUMMARY OF WORK ITEMS**

BID ITEM NUMBER	WORK ITEM(S) (NAICS)	DESCRIPTION OF WORK ITEM	TOTAL VALUE

The bidder is committed to utilizing the above-named DBE firm for the work described above. The total estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation:**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_

*(Signature of DBE firm's representative)*

*(Title)*

***If the bidder does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.***

## CERTIFICATION OF COMPLIANCE WITH FAA BUY AMERICAN PREFERENCE – CONSTRUCTION PROJECTS

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e., not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing iron, steel and manufactured products produced in the United States;
  - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
  - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- a) To provide to the Airport Sponsor or the FAA evidence that documents the source and origin of the iron, steel, and/or manufactured product.
  - b) To faithfully comply with providing U.S. domestic products.
  - c) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
  - d) Certify that all construction materials used in the project are manufactured in the U.S.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To the submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
  - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  - d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
  - e) To refrain from seeking a waiver request after establishment of the contract, unless

extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 2 Waiver (Nonavailability)** - The iron, steel, manufactured goods or construction materials or manufactured goods are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

**Type 3 Waiver** – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “facility/project.” The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- d) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver (Unreasonable Costs)** - Applying this provision for iron, steel, manufactured goods or construction materials would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) A completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bids and/or offers;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

# BUY AMERICA CONFORMANCE LISTING

Title 49 U.S.C Section 50101 (b)

## For Airfield Development Projects funded under the Airport Improvement Program

- Preparation of a Component Cost Calculation Table is not necessary for equipment listed on the FAA national listing: [https://www.faa.gov/airports/aip/buy\\_american/media/nationwide-buy-american-waivers-issued.pdf](https://www.faa.gov/airports/aip/buy_american/media/nationwide-buy-american-waivers-issued.pdf)
- Bidder shall submit a listing of equipment it proposes to install on the project that is included on the current National Buy American conformance list.

Equipment Type	Name of Manufacturer	Product Number

**Certification Signature:**

Bidder hereby certifies that the above listed equipment, which we propose for installation on the subject project, are on the current National Buy America Conformance list as established at:  
[https://www.faa.gov/airports/aip/buy\\_american/media/nationwide-buy-american-waivers-issued.pdf](https://www.faa.gov/airports/aip/buy_american/media/nationwide-buy-american-waivers-issued.pdf)

I hereby certify the above information is accurate and complete.

\_\_\_\_\_ Date

Signature

# BUY AMERICA WAIVER REQUEST

Title 49 U.S.C Section 50101 (b)

INSTRUCTIONS

## For Airfield Development Projects funded under the Airport Improvement Program

FORM REQUIRED AFTER BID OPENING, IF BIDDER ELECTS TO PURSUE A TYPE 3 OR TYPE 4 WAIVER UNDER 49 USC SECTION 50101(b). SEE CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR ADDITIONAL REQUIREMENTS.

### **NATIONWIDE WAIVERS:**

The FAA Office of Airports publishes national waivers for equipment and products that meet Buy American requirements under 49 USC 50101. Nationwide waivers are published at:

[https://www.faa.gov/airports/aip/buy\\_american/media/nationwide-buy-american-waivers-issued.pdf](https://www.faa.gov/airports/aip/buy_american/media/nationwide-buy-american-waivers-issued.pdf)

### **SECTION 50101(B)(1) & (B)(2) WAIVERS:**

The bidder may request a waiver based upon the best interests of the public, Section 50101 (b)(1) or request a waiver based upon insufficient supply of U.S. manufactured products, Section 50101 (b)(2), however approval is rare and waivers may only be approved by the FAA Office of Airports in Washington DC.

### **SECTION 50101(B)(3) WAIVER:**

The bidder may request a waiver if 60% or more of the components are produced in the United States and final assembly occurs in the U.S. Bidder is hereby advised that the Owner's approval with the bidder's waiver request is contingent upon FAA approval.

"Equipment" in Section 50101 shall mean the following:

- a) Individual type "L" items (Airfield Lighting Equipment) as listed in FAA Advisory Circular 150/5345-53.
  - b) Individual bid items as established within FAA Advisory Circular 150/5370-10.
  - c) A waiver request may only address one specific equipment item. Submit separate requests for each equipment item for which a waiver.
  - d) Items listed under the Nationwide Waiver referenced above do not require further review.
2. The bidder must base the U.S. percentage upon the value that results from completing a component cost calculation table similar to the attached format. The Bidder must submit the component cost calculation table as an attachment to the waiver request.
  3. Components/subcomponents are the material and products composing the "equipment".
  4. The final assembly of the AIP-funded "equipment" must be within the USA (*Section 50101(b)(3)(B)*). Final assembly is the substantial transformation of the components and subcomponents into the end product.
  5. All steel used in the "Equipment" must be produced in the United States.
  6. The Buy American requirements apply to all tier contractors and subcontractors. All contractors/subcontractors are required to provide appropriate documentation that indicates origin of manufacturer and percentage of domestic made product.
  7. The bidder is hereby advised there is no implied or expressed guarantee that a requested waiver will be issued by the Federal Aviation Administration (FAA). Less than 60% USA component/subcomponent proposed for this facility CANNOT be waived. Products made with foreign steel are not eligible for a waiver.
  8. North America Free Trade Act (NAFTA): Free Trade Agreements such as NAFTA do not apply to the AIP. Products and material made in Canada or Mexico must be considered as foreign made products.
  9. Preparation of a Component Cost Calculation Table is not necessary for equipment listed on the FAA national listing: [http://www.faa.gov/airports/aip/procurement/federal\\_contract\\_provisions/media/buy\\_american\\_waiver.xls](http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/media/buy_american_waiver.xls). Bidder however shall submit a listing of any equipment it proposes to install on the project that is included on the National Buy American conformance list.

### **INSTRUCTIONS FOR SECTION 50101(B)(4) WAIVER:**

The bidder may request a waiver if application of Buy America preferences results in a 25% cost increase in the overall project. This waiver is rarely applicable. Consult the Owner before making this request.

# BUY AMERICA WAIVER REQUEST

Title 49 U.S.C Section 50101 (b)(3)

SAMPLE

For Airfield Development Projects funded under the Airport Improvement Program

## COMPONENT COST CALCULATION TABLE (Type 3 Waiver)

- In lieu of completing this table, bidder may prepare a spreadsheet that addresses the same information and calculations as presented herein.
- Preparation of a Component Cost Calculation Table is not necessary for equipment listed on the FAA national listing: [https://www.faa.gov/airports/aip/buy\\_american/media/nationwide-buy-american-waivers-issued.pdf](https://www.faa.gov/airports/aip/buy_american/media/nationwide-buy-american-waivers-issued.pdf)
- The component breakout shall be along major components of the equipment. Submit separate calculation for each different equipment types. Do not combine the component cost calculations of different types of equipment.
- For Airfield development projects, equipment is defined as the "L" items (Airfield Lighting Equipment) as listed in FAA Advisory Circular 150/5345-53 and the b) individual bid items as established within FAA Advisory Circular 150/5370-10. The individual bid item method may not be applied to the "L" type items.
- An authorized person shall attest under signature and date that the submitted information is accurate and complete.

Equipment Type: \_\_\_\_\_

Component/Subcomponents	Name of Manufacturer	Country of Origin	Cost of Foreign Manufactured Components/Subcomponents	Cost of USA Manufactured Components/Subcomponents

Sum of US Manufactured Component/Subcomponent Costs: \_\_\_\_\_

Sum of all Equipment Components and Subcomponents: \_\_\_\_\_

Percentage of Equipment Components Manufactured in the United States: \_\_\_\_\_

Place of Final Assembly: \_\_\_\_\_

### Certification Signature

Bidder hereby requests a waiver to Buy America preferences based upon Section 50101(b)(3) for the equipment identified above. The bidder certifies that \_\_\_\_\_ % of the cost of components and subcomponents comprising the equipment are produced in the United States and that final assembly occurs within the United States.

I hereby certify the above information is accurate and complete.

\_\_\_\_\_  
Bidder's Firm Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature



U.S. Department  
of Transportation

**Federal  
Aviation  
Administration**

## **FAA Form 5100-136, Buy American Project/Product Content Percentage Calculation – Worksheet**

### **Paperwork Reduction Act Burden Statement**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120-0569. Public reporting for this collection of information is estimated to be approximately 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are required under 49 U.S.C. Section 47105 to retain a benefit and to meet the reporting requirements of 2 CFR 200. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177-1524.

### **Instructions for FAA Form 5100-136, Buy American Preference - Content Percentage Worksheet**

#### **General Instructions/Information**

This form is intended for use by applicants (manufacturers, contractors, suppliers) for an FAA Buy American Preference waiver of the requirements of section 70914 of the Build America, Buy America (BABA) Act included in the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58). This form and the Final Assembly Questionnaire (FAA form 137) must be submitted together for all waiver requests. Complete the below sections.

#### **Applicant Information Section**

Enter applicant and point-of-contact information.



## **Project/Product Information Section (The Final Project)**

Enter summary information about the specific FAA eligible project for which this waiver is requested, including the calculated costs and percentage information from the project material structure worksheet.

## **FAA Buy American Preference Compliance Section (“Construction Materials”)**

Enter summary cost and percentage information about the presence of non-domestic portions of iron, steel, or other singular “construction materials” that consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall which are not combined with any of other materials through a manufacturing process.

## **Use of Non-Domestic Construction Materials Justification Section**

Enter a description of your good faith efforts made to locate and secure domestic materials that are not 100% domestically produced in the United States, including the use of the Supplier Scouting by the Manufacturing Extension Partnership (MEP) or market research. This information is required for any non-U.S. portions of structural steel and or iron.

## **Project Material Structure Worksheet (Manufactured Goods)**

Enter onto the worksheet the final project and manufactured component/subcomponent items, prices and total costs, excluding labor and retail markup through level 2 only. Eligible materials below level two should be included with its associated component or subcomponent. Price multiplied by quantity equals costs.

For additional information on how to complete this form, contact the FAA regional or airport district office associated with the airport worksite, or for assistance for other waivers, contact FAA headquarters via the AIP Buy American Preference Requirements webpage.

**Level.** Enter material level 0, 1, or 2. Level 0 is the final product, Level 1 is a component, and Level 2 is a sub-component.

**Part Number.** Enter a reference number used to track the item.

**Item Description.** Enter a concise but clear description of the item.

**Quantity.** Enter the quantity of the item described in the product/project.

**Unit of Measure.** Enter the unit of measure used for the item. Examples: Each, Ton, or Sq. Ft.

**Price/Unit of Measure.** Enter the price for each unit of the item.

**U.S. Origin Price/Unit of Measure.** Enter the price for each unit of U.S. origin.

**U.S. Origin Cost.** Enter the total cost.

**Non-U.S. Price/Unit of Measure.** Enter the price for each unit not of U.S. origin.

**Non-U.S. Cost.** Enter the total cost of the item not of U.S. origin.

**Country of Non-U.S. Materials.** Enter the country or countries of origin for all non-U.S. materials. Enter “Not applicable” if only U.S. materials are used for the item.

#### **Example A – Completed Material Structure Worksheet**

On the next page is an illustration of a Project Material Structure Worksheet. In this illustration, the final project and each manufactured component/subcomponent costs, excluding labor and retail mark-up, are listed. The total cost of materials, excluding labor and retail mark-up is \$720,000 (\$565,000 of U.S. costs and \$155,000 Non-U.S. costs). Items [materials] combined through a manufacturing process may be indicated as a manufactured component/subcomponent.

Unit of measure prices are multiplied by the quantity to identify costs. The sum of each component/subcomponents is equal to the amounts in the final project. Eligible materials below level 2 may be included within a manufactured good in levels 1 or 2. Ineligible or excluded materials should be omitted.

The country of origin of all non-U.S. material are listed by each component and the final product. Other variations of the project components/subcomponents are possible as each manufacturer may produce or apply components/subcomponents differently.

Level (0, 1, 2)	Part Number	Item Description	Quantity	Unit of Measure	Price/Unit of Measure	U.S. Origin Price/Unit of Measure	U.S. Origin Cost	Non-U.S. Price/Unit of Measure	Non-U.S. Cost	Country of Non U.S. Materials
0	Ref #	Final Project	1	Each	\$720,000	\$425,000	\$565,000	\$72,500	\$155,000	Country A, Country B, Country C
1	Ref #	Manufactured Component	4	Ton	\$320,000	\$70,000	\$210,000	\$27,500	\$110,000	Non-U.S. Country A
1	Ref #	Manufactured Component	1	Each	\$100,000	\$100,000	\$100,000	\$0	\$0	Not Applicable
1	Ref #	Manufactured Component	1	Each	\$25,000	\$25,000	\$25,000	\$0	\$0	Not Applicable
1	Ref #	Manufactured Component	1	Sq. Ft.	\$100,000	\$60,000	\$60,000	\$40,000	\$40,000	Non-U.S. Country B
2	Ref #	Manufactured Subcomponent	1	Each	\$25,000	\$20,000	\$20,000	\$5,000	\$5,000	Non-U.S. Country C
1	Ref #	Manufactured Component	1	Each	\$50,000	\$50,000	\$50,000	\$0	\$0	Not Applicable
1	Ref #	Structural Steel Material	1	Tons	\$100,000	\$100,000	\$100,000	\$0	\$0	Not Applicable



## Buy American Project/Product Content Percentage Calculation – Worksheet

### Applicant Information

Date of Application: \_\_\_\_\_

Applicant Name: \_\_\_\_\_

Applicant Type (choose one):

Prime Contractor    Manufacturer    Supplier

Point of Contact (First and Last Name): \_\_\_\_\_

Applicant Business Address: \_\_\_\_\_

Email address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Extension: \_\_\_\_\_

### Project/Product Information

FAA Eligible Project: \_\_\_\_\_

Airport Sponsor: Airport LOCID: \_\_\_\_\_

FAA Award Number: \_\_\_\_\_

FAA Item Number (FAA Advisory Circular reference, if applicable): \_\_\_\_\_

Total Material Cost: \_\_\_\_\_

Total **U.S.** Material Content Cost: \_\_\_\_\_ Percentage: \_\_\_\_\_ %

Total **Non-U.S.** Material Content Cost: \_\_\_\_\_ Percentage: \_\_\_\_\_ %

## FAA Buy American Preference (including Buy American Build American) Compliance

Does this project include any iron, steel or any of the following construction materials, not 100% produced in the United States?

Yes  No

If "Yes," indicate the cost and percentage of the project below.

Steel (e.g., structural steel, rebar)	Cost:	Percentage:	%
Iron	Cost:	Percentage:	%
Non-ferrous metals	Cost:	Percentage:	%
Plastic and polymer-based products	Cost:	Percentage:	%
Glass (including optic glass)	Cost:	Percentage:	%
Lumber	Cost:	Percentage:	%
Drywall	Cost:	Percentage:	%

## Use of Non-Domestic Construction Materials Justification

Provide a description of your efforts to locate and secure a domestic source for those "construction materials" or final manufactured goods that are not 100% produced in the U.S., including use of the Manufacturing Extension Partnership (MEP) and market research.

### Project Material Structure Worksheet

Level (0, 1, 2)	Part Number	Item Description	Quantity	Unit of Measure	Price/Unit of Measure	U.S. Origin Price/Unit of Measure	U.S. Origin Cost (Each)	Non-U.S. Price/Unit of Measure	Non-U.S. Cost (Each)	Country of Non-U.S. Materials
0			1	Each						

Level (0, 1, 2)	Part Number	Item Description	Quantity	Unit of Measure	Price/Unit of Measure	U.S. Origin Price/Unit of Measure	U.S. Origin Cost (Each)	Non-U.S. Price/Unit of Measure	Non-U.S. Cost (Each)	Country of Non-U.S. Materials

NOT SUBJECT TO DISCLOSURE UNDER EXEMPTION # 4 OF THE FREEDOM OF INFORMATION ACT

Level (0, 1, 2)	Part Number	Item Description	Quantity	Unit of Measure	Price/Unit of Measure	U.S. Origin Price/Unit of Measure	U.S. Origin Cost (Each)	Non-U.S. Price/Unit of Measure	Non-U.S. Cost (Each)	Country of Non-U.S. Materials



Level (0, 1, 2)	Part Number	Item Description	Quantity	Unit of Measure	Price/Unit of Measure	U.S. Origin Price/Unit of Measure	U.S. Origin Cost (Each)	Non-U.S. Price/Unit of Measure	Non-U.S. Cost (Each)	Country of Non-U.S. Materials

### Certification

The undersigned certifies that this information is true and accurate to the best of their knowledge. A false certification represents a violation of 18 U.S.C § 1001 and 49 U.S.C § 47126. Signatory has the burden of proof to establish compliance.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Submit by Email**

#### FOR FAA USE ONLY

(Mark the appropriate Waiver Type & Scope)

#### Applicable FAA Waiver Type

- Type I Public Interest (HQ Only)
- Type II Nonavailability (HQ Only)
- Type III More than 60% and Final Assembly within the U.S.
- Type IV Unreasonable Cost (Requires MEP/requires HQ coordination)
- BABA Iron, Steel, or Construction Material (requires justification) (Apply BABA Flag)

#### Applicable FAA Waiver Scope

- Project Specific
- Nationwide – (General Applicability) (For HQ Only)

#### Justifications

- Manufacturing Extension Partnership (MEP) Coordinated

FAA Official's Signature: \_\_\_\_\_

**End of FAA-Use Only Section**



**-- CONFIDENTIAL --**  
**NOT SUBJECT TO DISCLOSURE UNDER EXEMPTION # 4 OF**  
**THE FREEDOM OF INFORMATION ACT**

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**Buy American Preferences – Final Assembly Questionnaire**

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To assist the Federal Aviation Administration (FAA) in making the determination of whether final assembly of the product occurs in the United States, please complete and submit this questionnaire when requesting a Buy American Waiver under 49 USC § 50101(b)(3)(A).

Company Name: \_\_\_\_\_ Date: \_\_\_\_\_

FAA Eligible Item: \_\_\_\_\_ FAA Item Number (if applicable): \_\_\_\_\_

Address of Final Assembly Location:

1. Provide a description of the assembly process occurring at the specified final location in the United States.
  - a. Describe the final assembly process and its various operations.
  
  - b. How long does the final assembly process take to complete?
  
2. Provide a description of the resources used to conduct the assembly of the product at the specified location in the United States.
  - a. How many employees are involved in the final assembly process and what is the general skill level of those employees?
  
  - b. What type of equipment is used during the final assembly process?
  
  - c. What is a rough estimate of the associated cost to conduct final assembly of the product at the specified location in the United States?

---

The undersigned certifies that this information is true and accurate to the best of their knowledge. A false certification represents a violation of 18 U.S.C § 1001 and 49 U.S.C § 47126. Signatory has the burden of proof to establish compliance.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

**CERTIFICATION OF NONSEGREGATED FACILITIES**

The federally assisted construction contractor certifies that they do not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not permit their employees to perform their services at any location, under the contractor's control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that they will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they will not permit his employees to perform services at any location, under the contractor's control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract.

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

CERTIFICATION: The information above is true and complete to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Signer (please type)

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY, AND VOLUNTARY EXCLUSION –48 CFR PART 9  
(2 CFR PART 180.995)**

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

---

Name and Title of Signer

---

Signature

---

Date

---

Company Name

---

UEI# (Sam.Gov)

---

Cage #

---

Business Address

**NON-TRAFFICKING CERTIFICATION**

Trafficking in persons:

**Provisions applicable to a recipient that is a private entity.**

- 1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not –
  - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - ii. Procure a commercial sex act during the period of time that the award is in effect; or
  - iii. Use forced labor in the performance of the award or subawards under the award.

Certification:

I, \_\_\_\_\_, being \_\_\_\_\_ (title) of \_\_\_\_\_, hereby certify that the information as stated above is true and complete to the best of my knowledge and belief and the above mentioned statement will be provided in writing to all Subcontractors hired for the above mentioned job.

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

## TRADE RESTRICTION CLAUSE

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

- a. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

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

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

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

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

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

---

Name and Title of Signer

---

Signature

---

Date

---

Company Name

---

Business Address

**BIDDER'S LIST**

**ALL FIRMS BIDDING OR QUOTING ON SUBCONTRACTS FOR THIS DOT-ASSISTED PROJECT ARE LISTED BELOW:**

<b>Firm Name</b>	<b>Address/Phone #</b>	<b>NAICS Code*</b> (applicable to each Scope of Work proposed)	<b>Certified DBE</b> (Y or N)	<b>Age of Firm</b>	<b>GRS**</b>

**THIS FORM IS REQUIRED TO BE COMPLETED AND SUBMITTED CONCURRENT WITH FIRST-TIER SUBCONTRACTORS DISCLOSURE FORM SUBMITTAL, REGARDLESS OF DBE UTILIZATION FOR THE CONTRACT**

\*per revised 49 CFR § 26.11, dated April 9, 2024  
\*\*GRS – Annual Gross Receipts  
Enter 1 for less than \$500K  
Enter 2 for more than \$500K, less than \$1 million  
Enter 3 for more than \$1 million, less than \$2 million  
Enter 4 for more than \$2 million, less than \$5 million  
Enter 5 for Greater than \$5 million



**STATE SIGNATURE FORMS**

**BID BOND**

BOND NO. \_\_\_\_\_

AMOUNT OF BID: \$ \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_  
hereinafter called the PRINCIPAL, and \_\_\_\_\_  
a corporation duly organized under the laws of the State of \_\_\_\_\_ having its principal place of business at  
\_\_\_\_\_, in the State of  
\_\_\_\_\_, and authorized to do business in the State of Oregon, as SURETY, are held firmly  
bound unto the City of Albany, Oregon, hereinafter called the OBLIGEE, in the sum of  
\_\_\_\_\_ DOLLARS (\$), for the payment of which we bind ourselves,  
our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND IS SUCH THAT:

WHEREAS, the PRINCIPAL is herewith submitting his/her Bid Proposal for **FBO BUILDING AND HISTORIC HANGAR REHABILITATION**, said Bid Proposal, by reference thereto, being hereby made a part hereof.

NOW, THEREFORE, if the Bid Proposal submitted by the PRINCIPAL is accepted, and the Contract awarded to the PRINCIPAL, and if the PRINCIPAL shall execute the proposed Contract and shall furnish such Performance Bond and Payment Bond as required by the Contract Documents within the time fixed by the documents, then this obligation shall be void; if the PRINCIPAL shall fail to execute the proposed Contract and furnish the bond, the SURETY hereby agrees to pay to the OBLIGEE the said sum as liquidated damages, within ten (15) days of such failure.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_

By: \_\_\_\_\_  
Attorney in Fact

**NON-COLLUSION AFFIDAVIT**

STATE OF \_\_\_\_\_ )

) SS.

COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_ being first duly sworn, on oath says that the bid submitted to which this affidavit is a part, is a genuine and not a sham or collusion bid, or made in the interest of or on behalf of any person not therein named; and that the person, firm, association, joint venture, partnership, co-partnership or corporation herein named, has not directly or indirectly induced or solicited any Bidder to put in a sham bid, nor directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competition bidding in the preparation and submission of a bid for consideration in the award of a Contract for **FBO BUILDING AND HISTORIC HANGAR REHABILITATION** sought by the **CITY OF ALBANY** described in the Contract Documents of which this affidavit is a part; and that said Bidder has not in any manner sought by collusion to secure to self an advantage over any other Bidder or Bidders.

\_\_\_\_\_  
(Bidder)

SUBSCRIBED AND SWORN TO before this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public in and for the State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

**NOTE: This form must be completed and submitted with the bid.**

## FIRST-TIER SUBCONTRACTOR DISCLOSURE

**PROJECT NAME:** FBO BUILDING AND HISTORIC HANGAR REHABILITATION

**BID NUMBER:** \_\_\_\_\_

**BID CLOSING DATE:** June 18, 2024

**TIME:** 2:00 p.m. (Pacific Time)

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract.

Enter **"NONE"** if there are no subcontractors that need to be disclosed.  
**(Attach additional sheets if needed.)**

\_\_\_\_\_  
 Failure to submit this signed form by the disclosure deadline will result in a non-responsive bid.  
 A non-responsive bid will not be considered for award.

Subcontractor's Name	Category of Work	Dollar Value
1.		\$
2.		\$
3.		\$
4.		\$
5.		\$
6.		\$

Form submitted by (bidder name): \_\_\_\_\_ Phone No.: \_\_\_\_\_  
*(Signature)*

Contact Name: \_\_\_\_\_ Company: \_\_\_\_\_

**ORS 279C.370 First-tier subcontractor disclosure.** (1)(a) Within two working hours after the date and time of the deadline when bids are due to a contracting agency for a public improvement contract, a bidder shall submit to the contracting agency a disclosure of the first-tier subcontractors that:

- (A) Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement contract; and
- (B) Will have a contract value that is equal to or greater than five percent of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid.

(b) For each contract to which this subsection applies, the contracting agency shall designate a deadline for submission of bids that has a date on a Tuesday, Wednesday or Thursday and a time between 2 p.m. and 5 p.m., except that this paragraph does not apply to public contracts for maintenance or construction of highways, bridges or other transportation facilities.

(c) This subsection applies only to public improvement contracts with a value, estimated by the contracting agency, of more than \$100,000.

(d) This subsection does not apply to public improvement contracts that have been exempted from competitive bidding requirements under ORS 279C.335 (2).

(2) The disclosure of first-tier subcontractors under subsection (1) of this section must include the name of each subcontractor, the category of work that each subcontractor will perform and the dollar value of each subcontract. The information shall be disclosed in substantially the following [above] form:

(3) A contracting agency shall accept the subcontractor disclosure. The contracting agency shall consider the bid of any contractor that does not submit a subcontractor disclosure to the contracting agency to be a nonresponsive bid and may not award the contract to the contractor. A contracting agency is not required to determine the accuracy or the completeness of the subcontractor disclosure.

(4) After the bids are opened, the subcontractor disclosures must be made available for public inspection.

(5) A contractor may substitute a first-tier subcontractor under the provisions of ORS 279C.585.

(6) A subcontractor may file a complaint under ORS 279C.590 based on the disclosure requirements of subsection (1) of this section.

*State of Oregon WH-179 (08-10-10)*

**SUPPLEMENTAL SIGNATURE FORMS**

**STATEMENT OF BIDDER'S QUALIFICATIONS**

*Meets the Qualification of Bidder's requirements contained in Section 20-02 of the General Contract Provisions  
(Evidence of Competency and financial responsibility)*

- 1. Name of Bidder: \_\_\_\_\_  
Address: \_\_\_\_\_
- 2. Number of years the Bidder has been engaged in the business under the present firm name indicated: \_\_\_\_\_.
- 3. Gross dollar amount of work completed during the past three (3) years: \_\_\_\_\_
- 4. Gross dollar amount of work under Contract not completed:  
2021 \_\_\_\_\_  
2022 \_\_\_\_\_  
2023 \_\_\_\_\_

Type of work generally performed by Bidder:

\_\_\_\_\_  
\_\_\_\_\_

- 5. For each of the most recent three projects in excess of \$50,000 of a nature similar to the this project which have been undertaken by the Bidder within the last three years state: (1) Name, address, representative and telephone number of the Owner; (2) a brief description of project, including location; (3) the gross dollar amount; (4) whether any dispute arose between you and the owner and/or project designer requiring dispute resolution by mediation, arbitration or court action and the result thereof. (Answer on separate sheet(s)) \*
- 6. List of three major pieces of equipment which are anticipated to be used on this project by the Bidder and note which items are owned by the Bidder and which are to be leased or rented from others:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. For each project over \$100,000 you anticipate you will undertake within Oregon state, other than this Project, during the contract period for this Project, state: (Answer on separate sheet(s) if more than one)

Owner: \_\_\_\_\_

Nature of project: \_\_\_\_\_

Contract price of project: \_\_\_\_\_

Dates of project: \_\_\_\_\_

Any major pieces of equipment or any superintendents devoted to said project and the Project subject to this bid: \_\_\_\_\_

8. Bank References: \_\_\_\_\_

\_\_\_\_\_

9. How many general superintendents or other responsible employees in a supervisory position for work in Oregon state do you have at this time and how long have they been with the Bidder?

\_\_\_\_\_

10. Have you changed bonding companies within the last three years? Yes\_\_\_ No\_\_\_

If so, why? (Optional): \_\_\_\_\_

11. Have you ever sued or been sued (court or arbitration case) by a special public purpose district, municipality, county, state or the federal government involving a public works contract?

Yes \_\_\_ No\_\_\_

If so, state: Owner's name and address; project description; nature of dispute; court and cause number; disposition of case, if resolved. (Answer on separate sheet for each)

12. Oregon State CCB No.: \_\_\_\_\_

13. Evidence of Financial Responsibility: ANSWER TO THIS QUESTION IS NOT REQUIRED AT THE TIME OF BID OPENING FOR THIS PROJECT. ALL OTHER QUESTION MUST BE ANSWERED AT TIME OF BID. Owner reserves the right to conduct such investigation as is necessary to to evaluate the apparent low Bidders evidence of financial responsibility, see General Contract Provision Section 20-02.

\* For each owner listed in No. 5 above, the contractor must complete and sign the form, "Authorization To Release Information " to bid the work.

**Note: This Bid Form must be completed in its entirety and submitted to bid the work.**

## AUTHORIZATION TO RELEASE INFORMATION

**TO:** \_\_\_\_\_  
*(Reference Project Owner)*

**FROM:** \_\_\_\_\_  
*(Bidding: Contractor, Principal Subcontractor, or Principal Supplier)*

**RE:** \_\_\_\_\_  
*(Reference Project Name and Date of Contract Documents)*

You are hereby authorized to release and disclose information to **CITY OF ALBANY** concerning the quality of performance and execution of contractual obligations by Contractor, Principal Subcontractor; or Principal Supplier (circle one) on your behalf on the above referenced project.

By: \_\_\_\_\_, Authorized Representative  
*(Bidding: Contractor, Principal Subcontractor, or Principal Supplier)*

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

Date: \_\_\_\_\_

**NOTE:**

This form must be completed by the Contractor for each owner listed on No. 5 of the forms: "Statement Of Bidder's Qualifications" and all completed forms must be submitted with the bid by Contractor.



**CONTRACT FORMS**

## SAMPLE CONTRACT

THIS CONTRACT is made between the CITY OF ALBANY, a municipal corporation, hereinafter called "City" and \_\_\_\_\_, hereinafter called "Contractor."

### WITNESSETH:

Contractor, in consideration of the sums to be paid and other covenants herein contained, agrees to perform and complete the work herein described and to furnish all necessary machinery, tools, apparatus, equipment, supplies, materials, and labor and perform all work in accordance with the applicable *Standard Construction Specifications*, the Special Specifications (aka Specifications, Special Provisions) found herewith, and in accordance with such alterations or modifications of the same as may be made by the City, and according to such directions as may from time to time be made or given by the Project Manager under the authority and within the meaning and purpose of this Contract. This agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of Contractor.

The applicable Drawings, the applicable *Standard Construction Specifications*, all sections of Special Provisions, and the Schedule of Contract Prices bound herewith are hereby specifically referred to and by reference made a part hereof and shall by such reference have the same force and effect as though all of the same were fully inserted herein.

Contractor must faithfully complete and perform all of the obligations of this Contract, and in particular, must promptly, as due, make payment of all just debts and obligations incurred in the performance of said Contract and must not permit any lien or claim to be filed or prosecuted against City.

Contractor must furnish City with a 100% Performance Bond and a 100% Payment Bond. In addition to the required Payment Bond and Performance Bond, unless exempt under ORS 279C.836 (7), (8), or (9), Contractor is required to file a \$30,000 Public Works Bond with the Construction Contractors Board to be used exclusively for unpaid wages determined to be due by BOLI. The general contractor is required to verify that subcontractors have filed a public works bond before permitting a subcontractor to start work on a project unless exempt under ORS 279C.836 (7), (8) or (9).

Contractor, its subcontractors, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law and must comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

Contractor agrees to protect, indemnify, and hold harmless the City against any and all loss, claims, or suits (including costs and attorney's fees) for or on account of injury to or death of persons, damage to, or destruction of property belonging to either the City or others occurring by reason of the act or neglect of Contractor, Contractor's employees, or agents (including subcontractors) in connection with the performance of this Contract.

Contractor, its subcontractors, if any, must certify that during the term of this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any local, state, or federal department or agency.

**Contractor must agree to abide by all applicable federal requirements for procurement, as defined in 2 CFR Part 200 and Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts under Federal Awards, if any federal funds are used for the Project.**

It is expressly understood that this Contract must be governed by the laws of the State of Oregon. The statutes of the State of Oregon for public works contracts, specifically but not exclusively ORS Chapter 279 A-C as amended or superseded, including the latest additions and revisions, are incorporated by reference as part of the contract documents, and the party contracting with the City of Albany hereby covenants and agrees to comply with all of the obligations and conditions applicable to public contracts pursuant to ORS 279 A-C, et seq, as though each

obligation or condition were set forth fully herein. In addition, if the contract identified above calls for a public improvement as that term is defined by ORS 279A.010, the party contracting with the City of Albany further agrees to comply with all obligations and conditions applicable to public contracts for public improvements pursuant to ORS 279C, et seq, as though each obligation or condition were set forth fully herein. Contractor and its subcontractors, if any, agree to comply with the Oregon Consumer Information Protection Act, ORS Sections 646A.600 through 646A.628.

Contractor further declares by the signing of this Contract that all the provisions required by ORS 279C.800 through 279C.870 relating to the payment of prevailing wage rates for work performed under the Contract with the City of Albany must be complied with, and that daily/weekly/holiday/weekend overtime will be paid, unless the amount of the contract is \$50,000 or less, in which case the prevailing wage rate requirement shall not apply. If Contractor fails, neglects, or refuses to make prompt payment for labor or services, the City can pay and withhold these amounts from payments due Contractor (ORS 279C.515). Contractor must indemnify the City from claims of damages resulting from actual or alleged violations of these obligations.

As required by ORS 279C.520, Contractor must comply with ORS 652.220 and ORS 659A, and must not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. Contractor's compliance with this section constitutes a material element of this Agreement and a failure to comply constitutes a breach that entitles the City to terminate this Agreement for cause. **Contracts valued at \$500,000 with employers that have 50 or more employees are required to take Pay Equity Training and submit a certificate as proof before being awarded a contract.** Contractor must certify it has taken the required Pay Equity Training and provide a certificate to the City.

**Contractor understands that if the price of this Contract exceeds \$500,000, the City will deposit amounts withheld as retainage into an interest-bearing escrow account for the benefit of the City as outlined in ORS 279C.570(2), unless Contractor elects an alternative in lieu of cash retainage, such as bonds, securities or other instruments, or a deposit of a surety bond. Contractor must receive interest on the retained moneys from the date Contractor's related payment request is fully approved by the City until the date the retained moneys are paid by the City to Contractor. Payment of retainage is deemed to be "paid" when the payment is transmitted to Contractor.**

In consideration of the faithful performance of all of the obligations herein set out, and in consideration of the faithful performance of this Contract, City agrees to pay to Contractor the amount earned, as determined from the actual quantities of work performed and prices and other basis of payment specified, taking into consideration any amounts that may be deductible, under the terms of the Contract.

Contractor agrees to complete the work within the time specified herein and to accept as full payment hereunder the amounts computed as determined by the Contract Documents and based on the said proposal.

Said improvements must be completed by the date specified in said Contract Documents and if not so completed, unless said time for completion is extended, as provided in the Contract Documents, or if extended, if the same is not completed within the time extended, City will be caused to incur liquidated damages as specified in the Contract Documents. Liquidated damages must be retained out of any monies due or to become due under this agreement.

Payments must be made as provided in the Contract Documents. Notwithstanding anything in this agreement to the contrary, the City's obligation to pay money beyond the current fiscal year shall be subject to and dependent upon appropriations being made from time to time by the City Council for such purpose; provided, however, that the city manager or other officer charged with the responsibility for preparing the City's biennial budget must include in the budget for each fiscal year the amount of the City financial obligation payable in such year and the city manager or such other officer must use his/her/their best efforts to obtain the annual appropriations required to authorize said payments.

The Parties acknowledge that the parties and their counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

Should suit or action be undertaken to enforce any of the terms of this agreement or to seek damages for its breach, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs, and expenses, including expert witness fees, incurred therein, and such costs and fees as may be required on appeal, including those incurred on appeal. Jurisdiction for litigation must be vested exclusively in the courts of Oregon, Oregon law must apply, and venue must lie in the Circuit Courts in and for Linn County, Oregon.

The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this Agreement. If a party signs but fails to date a signature the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this Agreement and the other party may inscribe that date as the date associated with the signing party's signature.

IN WITNESS WHEREOF, the undersigned duly authorized officials have caused this contract to be executed on behalf of their respective parties.

**CONTRACTOR:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

*(Note: Signatures of two officers are required for a corporation.)*

Construction Contractors Board License Number \_\_\_\_\_

UEI, if federal funded: \_\_\_\_\_

DBE, if applicable: \_\_\_\_\_

Tax Identification No.: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**CITY OF ALBANY, OREGON:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Chris Bailey, Public Works Director

APPROVED AS TO FORM:

\_\_\_\_\_

M. Sean Kidd, City Attorney

**PAYMENT BOND**

BOND NUMBER: \_\_\_\_\_

TOTAL BID AMOUNT: \$ \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS that we, \_\_\_\_\_, as  
CONTRACTOR (Principal), and \_\_\_\_\_, a  
corporation, duly authorized to do a general surety business in the State of Oregon as SURETY, are jointly  
and severally held and bound unto the City of Albany, Oregon, (Obligee) in the sum of (100% of Contract)

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the  
payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, and assigns  
or successors and assigns firmly by these presents.

THE CONDITION OF THIS BOND IS SUCH that, whereas the principal has made and entered into a  
certain contract, a copy of which is attached hereto, with the City of Albany, Oregon, which contract,  
together with the applicable plans, Standard Specifications, Special Provisions, and schedule of contract  
prices, is by this reference made a part, whereby the principal agrees to perform in accordance with the  
certain terms, conditions, requirements, plans, and specifications which are set out in the contract and all  
authorized modifications of the contract which increase the amount of the work and the amount of the  
contract. Notice to the surety of any of the immediately foregoing are waived.

NOW, THEREFORE, if CONTRACTOR shall make payment promptly, as due to all subcontractors  
and to all persons supplying to the Contractor or its subcontractors, equipment, supplies, labor, or materials  
for the prosecution of the work, or any part thereof, provided for in said contract; and shall in performing  
the contract pay and cause to be paid not less than the State of Oregon Bureau of Labor and Industries  
(BOLI) prevailing wage rates in effect as of the date of the bid advertisement by City of Albany, Oregon,  
unless the amount of the contract is \$50,000 or less, in which case the prevailing wage rate requirement  
shall not apply; and pay per hour, day, and week for and to each and every worker who may be employed  
in and about the performance of the contract; and pay all contributions or amounts due to the State Accident  
Insurance Fund and the State Unemployment Trust Fund from such Contractor or subcontractors; and pay  
all sums of money withheld from the Contractor's employees and payable to the State Department of  
Revenue; and shall pay all other just debts, dues, and demands incurred in the performance of the said  
contract; and shall pay the City of Albany, Oregon such damages as may accrue to the City of Albany,  
Oregon, under the contract, then this obligation is to be void, otherwise to remain in full force and effect,  
provided that surety will remain liable to satisfy the claim of any worker affected by the failure of the  
principal or any subcontractor under the contract to pay the minimum rate of wage in accordance with the  
contract in the amount of minimum wages and an additional amount equal thereto as liquidated damages.

a) All material suppliers and all persons who shall supply such laborers, mechanics, or subcontractors  
with material, supplies, or provisions for carrying on such work, shall have a direct right of action against  
CONTRACTOR and SURETY on this bond, second only the right of the City of Albany, Oregon, under  
this bond, which right of action shall be asserted in proceedings instituted in the name of the City of Albany,  
Oregon, to the use and benefit of the person, firm, or corporation instituting such action and all other  
persons, firms, or corporations having claims hereunder, shall have the right to be made a party to such  
proceeding and to have such claim adjudicated in such action and judgment rendered thereon.

b) The said SURETY, for the value received, hereby stipulates and agrees that no change, extension  
of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or the  
Specifications accompanying the same shall in any way affect its obligations of this bond; and it does hereby

waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work, or to the Contract Documents.

IN WITNESS THEREOF, the parties hereto have caused this bond to be executed this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
Principal

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print or type*

\_\_\_\_\_  
Street/City Address

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print or type*

\_\_\_\_\_  
Street/City Address

\_\_\_\_\_  
Telephone Number

Surety Witness:

By: \_\_\_\_\_

\_\_\_\_\_  
Street/City Address

**PERFORMANCE BOND**

BOND NUMBER: \_\_\_\_\_

TOTAL BID AMOUNT: \$ \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS that we, \_\_\_\_\_, as CONTRACTOR (Principal), and \_\_\_\_\_, a corporation, duly authorized to do a general surety business in the State of Oregon as SURETY, are jointly and severally held and bound unto the City of Albany, Oregon, (Obligee) in the sum of (100% of Contract)

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, and assigns or successors and assigns firmly by these presents.

THE CONDITION OF THIS BOND IS SUCH that, whereas the principal has made and entered into a certain contract, a copy of which is attached hereto, with the City of Albany, Oregon, which contract, together with the applicable plans, Standard Specifications, Special Provisions, and schedule of contract prices, is by this reference made a part, whereby the principal agrees to perform in accordance with the certain terms, conditions, requirements, plans, and specifications which are set out in the contract and all authorized modifications of the contract which increase the amount of the work and the amount of the contract. Notice to the surety of any of the immediately foregoing are waived.

NOW, THEREFORE, if CONTRACTOR shall faithfully and truly observe and comply with the terms, conditions, and provisions of the Contract, in all respects upon the terms set forth therein, and within the time prescribed therein and shall indemnify and save harmless the City of Albany, Oregon, its officers, employees, and agents against losses and expenses and any damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the said Contract and shall honor all claims for defective work within the warranty period(s) established by the *Standard Construction Specifications* and Special Provisions, after the acceptance of said Contract, then this obligation is to be void, otherwise to remain in full force and effect for the duration of the warranty period(s). The establishment and warranty periods for plantings shall be two years as outlined in Section 107.15.02 of the *Standard Construction Specifications*. The warranty for all other work shall be for a one-year period as outlined in Section 107.15.00.

PROVIDED, HOWEVER, that this bond is subject to the following further conditions:

a) Losses and expenses include but are not limited to attorney’s fees to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the fault of the principal, the principal’s agents, representatives, or subcontractors, in the performance of or failure to perform this contract. However, principal shall not be required to indemnify any indemnitee to the extent the damage, loss, or expense is caused by the indemnitee’s negligence and shall in all respects perform said contract according to law.

b) All material suppliers and all persons who shall supply such laborers, mechanics, or subcontractors with material, supplies, or provisions for carrying on such work, shall have a direct right of action against CONTRACTOR and SURETY on this bond, second only the right of the City of Albany, Oregon, under this bond, which right of action shall be asserted in proceedings instituted in the name of the City of Albany, Oregon, to the use and benefit of the person, firm, or corporation instituting such action and all other persons, firms, or corporations having claims hereunder, shall have the right to be made a party to such proceeding and to have such claim adjudicated in such action and judgment rendered thereon.

c) In no event shall SURETY be liable for a greater sum than the penalty of this Bond, or subject to any suit, action, or proceeding thereon that is instituted past the expiration of the warranty period(s) after the complete performance and acceptance of said Contract and final settlement thereof.

d) The said SURETY, for the value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations of this bond; and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work, or to the Contract Documents.

IN WITNESS THEREOF, the parties hereto have caused this bond to be executed this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
Principal

By: \_\_\_\_\_

*Signature*

\_\_\_\_\_  
*Print or type*

\_\_\_\_\_  
Street/City Address

\_\_\_\_\_  
Surety

By: \_\_\_\_\_

*Signature*

\_\_\_\_\_  
*Print or type*

\_\_\_\_\_  
Street/City Address

\_\_\_\_\_  
Telephone Number

Surety Witness:

By: \_\_\_\_\_

\_\_\_\_\_  
Street/City Address



## RETAINAGE ELECTION

In accordance with ORS 279C.570(2) and OAR 137-049-0820, contracts that exceed \$500,000 require the City to deposit amounts withheld as retainage into an interest-bearing escrow account in a bank, savings bank, trust company, or savings association. Retainage in the amount of five percent (5%) of the contract price of the work completed will be held by the City until such time as the project has been completed and accepted by the City.

Oregon law allows specific alternatives for the holding and accounting of retainage at the Contractor's election. If the City incurs additional costs as a result of the Contractor's election, the City may recover such costs from the Contractor, ORS 279C.560(3). Failure to execute and submit this form prior to execution of the contract agreement will result in the automatic selection of the first option. **Contractor must select one of the following options in providing for retainage for this project.**

**1. Interest-bearing escrow account.**

The City will set up an interest-bearing account in a bank, savings bank, trust company, or savings association in the name of the City of Albany. The City will make deposits of retainage withheld from each progress payment into the interest-bearing escrow account. Funds in the escrow account will be released to the Contractor within 30 days of final acceptance of the project by the City.

Contractor must execute documentation and instructions to establish the interest-bearing escrow account prior to contract execution. Interest earned on the account shall accrue to the Contractor. Amounts retained and interest earned will be included in the final payment and may be offset by costs incurred. Contractor shall receive interest from the date the Contractor's related payment request is fully approved by the City until the date the retained moneys are paid by the City to the Contractor. Retainage is deemed to be paid when the payment is transmitted to the Contractor.

**2. Deposit of bonds, securities, and other instruments.**

No later than the Contractor's execution of the contract, the Contractor will deposit acceptable bonds or securities, in an amount equivalent to five percent retainage of the contract amount, with the City or with a bank or trust company in Oregon. The bank or trust company will provide a safekeeping receipt to the City. The securities must cover all of the retainage.

**Name of Lending Institution:** \_\_\_\_\_

Acceptable bonds and securities to be held in lieu of retainage:

- a. Bills, certificates, notes, bonds or other obligations of the United States, its agencies or its wholly-owned corporations.
- b. Indebtedness of the Federal National Mortgage Association.
- c. General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.
- d. Irrevocable letters of credit issued by an insured institution, defined in ORS 706.008.

**3. Deposit of a retainage surety bond.**

The Contractor may, with approval of the City, deposit a surety bond for the benefit of the City, in a form acceptable to the City, in lieu of the five percent retainage. The bond should be received from the same surety providing the performance and payment bonds for the project.

**Name of Surety/Lending Institution:** \_\_\_\_\_

Therefore, by signing this retainage election the Bidder does hereby certify and confirm that as the general contractor for this City of Albany project, they have elected the above retainage option which satisfies the intent of the above-referenced legislation.

CONTRACTOR: \_\_\_\_\_ Project # \_\_\_\_\_

TITLE/SIGNATURE: \_\_\_\_\_

Date: \_\_\_\_\_

**SECTION III**  
**CONTRACT CONDITIONS**

**GENERAL CONTRACT PROVISIONS****SECTION 10 DEFINITION OF TERMS**

When the following terms are used in these specifications, in the contract, or in any documents or other instruments pertaining to construction where these specifications govern, the intent and meaning shall be defined as follows:

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
10-01	<b>AASHTO</b>	The American Association of State Highway and Transportation Officials.
10-02	<b>Access Road</b>	The right-of-way, the roadway and all improvements constructed thereon connecting the airport to a public roadway.
10-03	<b>Advertisement</b>	A public announcement, as required by local law, inviting bids for work to be performed and materials to be furnished.
10-04	<b>Airport</b>	Airport means an area of land or water which is used or intended to be used for the landing and takeoff of aircraft; an appurtenant area used or intended to be used for airport buildings or other airport facilities or rights of way; airport buildings and facilities located in any of these areas, and a heliport.
10-05	<b>Airport Improvement Program (AIP)</b>	A grant-in-aid program, administered by the Federal Aviation Administration (FAA).
10-06	<b>Air Operations Area (AOA)</b>	The term air operations area (AOA) shall mean any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operation area shall include such paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway, or apron.
10-07	<b>Apron</b>	Area where aircraft are parked, unloaded or loaded, fueled and/or serviced.
10-08	<b>ASTM International (ASTM)</b>	Formerly known as the American Society for Testing and Materials (ASTM).
10-09	<b>Award</b>	The Owner's notice to the successful bidder of the acceptance of the submitted bid.
10-10	<b>Bidder</b>	Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a proposal for the work contemplated.
10-11	<b>Building Area</b>	An area on the airport to be used, considered, or intended to be used for airport buildings or other airport facilities or rights-of-way together with all airport buildings and facilities located thereon.
10-12	<b>Calendar Day</b>	Every day shown on the calendar.
10-13	<b>Certificate of Analysis (COA)</b>	The COA is the manufacturer's Certificate of Compliance (COC) including all applicable test results required by the specifications.

Paragraph Number	Term	Definition
10-14	<b>Certificate of Compliance (COC)</b>	The manufacturer's certification stating that materials or assemblies furnished fully comply with the requirements of the contract. The certificate shall be signed by the manufacturer's authorized representative.
10-15	<b>Change Order</b>	A written order to the Contractor covering changes in the plans, specifications, or proposal quantities and establishing the basis of payment and contract time adjustment, if any, for work within the scope of the contract and necessary to complete the project.
10-16	<b>Contract</b>	<p>A written agreement between the Owner and the Contractor that establishes the obligations of the parties including but not limited to performance of work, furnishing of labor, equipment and materials and the basis of payment.</p> <p>The awarded contract includes but may not be limited to: Advertisement, Contract form, Proposal, Performance bond, payment bond, General provisions, certifications and representations, Technical Specifications, Plans, Supplemental Provisions, standards incorporated by reference and issued addenda.</p>
10-17	<b>Contract Item (Pay Item)</b>	A specific unit of work for which a price is provided in the contract.
10-18	<b>Contract Time</b>	The number of calendar days or working days, stated in the proposal, allowed for completion of the contract, including authorized time extensions. If a calendar date of completion is stated in the proposal, in lieu of a number of calendar or working days, the contract shall be completed by that date.
10-19	<b>Contractor</b>	The individual, partnership, firm, or corporation primarily liable for the acceptable performance of the work contracted and for the payment of all legal debts pertaining to the work who acts directly or through lawful agents or employees to complete the contract work.
10-20	<b>Contractors Quality Control (QC) Facilities</b>	The Contractor's QC facilities in accordance with the Contractor Quality Control Program (CQCP).
10-21	<b>Contractor Quality Control Program (CQCP)</b>	Details the methods and procedures that will be taken to assure that all materials and completed construction required by the contract conform to contract plans, technical specifications and other requirements, whether manufactured by the Contractor, or procured from subcontractors or vendors.
10-22	<b>Control Strip</b>	A demonstration by the Contractor that the materials, equipment, and construction processes results in a product meeting the requirements of the specification.
10-23	<b>Construction Safety and Phasing Plan (CSPP)</b>	The overall plan for safety and phasing of a construction project developed by the airport operator, or developed by the airport operator's consultant and approved by the airport operator. It is

Paragraph Number	Term	Definition
		included in the invitation for bids and becomes part of the project specifications.
10-24	<b>Drainage System</b>	The system of pipes, ditches, and structures by which surface or subsurface waters are collected and conducted from the airport area.
10-25	<b>Engineer</b>	The individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for engineering, observation of the contract work and acting directly or through an authorized representative.
10-26	<b>Equipment</b>	All machinery, together with the necessary supplies for upkeep and maintenance; and all tools and apparatus necessary for the proper construction and acceptable completion of the work.
10-27	<b>Extra Work</b>	An item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, but which is found by the Owner's Engineer or Resident Project Representative (RPR) to be necessary to complete the work within the intended scope of the contract as previously modified.
10-28	<b>FAA</b>	The Federal Aviation Administration. When used to designate a person, FAA shall mean the Administrator or their duly authorized representative.
10-29	<b>Federal Specifications</b>	The federal specifications and standards, commercial item descriptions, and supplements, amendments, and indices prepared and issued by the General Services Administration.
10-30	<b>Force Account</b>	<p><b>a.</b> Contract Force Account - A method of payment that addresses extra work performed by the Contractor on a time and material basis.</p> <p><b>b.</b> Owner Force Account - Work performed for the project by the Owner's employees.</p>
10-31	<b>Intention of Terms</b>	<p>Whenever, in these specifications or on the plans, the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the Engineer and/or Resident Project Representative (RPR) is intended; and similarly, the words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Engineer and/or RPR, subject in each case to the final determination of the Owner.</p> <p>Any reference to a specific requirement of a numbered paragraph of the contract specifications or a cited standard shall be interpreted to include all general requirements of the entire section, specification item, or cited standard that may be pertinent to such specific reference.</p>
10-32	<b>Lighting</b>	A system of fixtures providing or controlling the light sources used on or near the airport or within the airport buildings. The

Paragraph Number	Term	Definition
		field lighting includes all luminous signals, markers, floodlights, and illuminating devices used on or near the airport or to aid in the operation of aircraft landing at, taking off from, or taxiing on the airport surface.
10-33	<b>Major and Minor Contract Items</b>	A major contract item shall be any item that is listed in the proposal, the total cost of which is equal to or greater than 20% of the total amount of the award contract. All other items shall be considered minor contract items.
10-34	<b>Materials</b>	Any substance specified for use in the construction of the contract work.
10-35	<b>Modification of Standards (MOS)</b>	Any deviation from standard specifications applicable to material and construction methods in accordance with FAA Order 5300.1.
10-36	<b>Notice to Proceed (NTP)</b>	A written notice to the Contractor to begin the actual contract work on a previously agreed to date. If applicable, the Notice to Proceed shall state the date on which the contract time begins.
10-37	<b>Owner</b>	The term "Owner" shall mean the party of the first part or the contracting agency signatory to the contract. Where the term "Owner" is capitalized in this document, it shall mean airport Sponsor only. The Owner for this project is <b>CITY OF ALBANY, OREGON.</b>
10-38	<b>Passenger Facility Charge (PFC)</b>	Per 14 Code of Federal Regulations (CFR) Part 158 and 49 United States Code (USC) § 40117, a PFC is a charge imposed by a public agency on passengers enplaned at a commercial service airport it controls.
10-39	<b>Pavement Structure</b>	The combined surface course, base course(s), and subbase course(s), if any, considered as a single unit.
10-40	<b>Payment bond</b>	The approved form of security furnished by the Contractor and their own surety as a guaranty that the Contractor will pay in full all bills and accounts for materials and labor used in the construction of the work.
10-41	<b>Performance bond</b>	The approved form of security furnished by the Contractor and their own surety as a guaranty that the Contractor will complete the work in accordance with the terms of the contract.
10-42	<b>Plans</b>	The official drawings or exact reproductions which show the location, character, dimensions and details of the airport and the work to be done and which are to be considered as a part of the contract, supplementary to the specifications. Plans may also be referred to as 'contract drawings.'
10-43	<b>Project</b>	The agreed scope of work for accomplishing specific airport development with respect to a particular airport.
10-44	<b>Proposal</b>	The written offer of the bidder (when submitted on the approved proposal form) to perform the contemplated work and furnish the necessary materials in accordance with the provisions of the plans and specifications.

Paragraph Number	Term	Definition
10-45	<b>Proposal guaranty</b>	The security furnished with a proposal to guarantee that the bidder will enter into a contract if their own proposal is accepted by the Owner.
10-46	<b>Quality Assurance (QA)</b>	Owner's responsibility to assure that construction work completed complies with specifications for payment.
10-47	<b>Quality Control (QC)</b>	Contractor's responsibility to control material(s) and construction processes to complete construction in accordance with project specifications.
10-48	<b>Quality Assurance (QA) Inspector</b>	An authorized representative of the Engineer and/or Resident Project Representative (RPR) assigned to make all necessary observations, tests, and/or observation of tests of the work performed or being performed, or of the materials furnished or being furnished by the Contractor.
10-49	<b>Quality Assurance (QA) Laboratory</b>	The official quality assurance testing laboratories of the Owner or such other laboratories as may be designated by the Engineer or RPR. May also be referred to as Engineer's, Owner's, or QA Laboratory.
10-50	<b>Resident Project Representative (RPR)</b>	The individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for all necessary observations, tests, and/or observations of tests of the contract work performed or being performed, or of the materials furnished or being furnished by the Contractor, and acting directly or through an authorized representative.
10-51	<b>Runway</b>	The area on the airport prepared for the landing and takeoff of aircraft.
10-52	<b>Runway Safety Area (RSA)</b>	A defined surface surrounding the runway prepared or suitable for reducing the risk of damage to aircraft. See the construction safety and phasing plan (CSPP) for limits of the RSA.
10-53	<b>Safety Plan Compliance Document (SPCD)</b>	Details how the Contractor will comply with the CSPP.
10-54	<b>Specifications</b>	A part of the contract containing the written directions and requirements for completing the contract work. Standards for specifying materials or testing which are cited in the contract specifications by reference shall have the same force and effect as if included in the contract physically.
10-55	<b>Sponsor</b>	A Sponsor is defined in 49 USC § 47102(24) as a public agency that submits to the FAA for an AIP grant; or a private Owner of a public-use airport that submits to the FAA an application for an AIP grant for the airport.
10-56	<b>Structures</b>	Airport facilities such as bridges; culverts; catch basins, inlets, retaining walls, cribbing; storm and sanitary sewer lines; water lines; underdrains; electrical ducts, manholes, handholes, lighting fixtures and bases; transformers; navigational aids; buildings;

Paragraph Number	Term	Definition
		vaults; and, other manmade features of the airport that may be encountered in the work and not otherwise classified herein.
10-57	<b>Subgrade</b>	The soil that forms the pavement foundation.
10-58	<b>Substantial Completion</b>	"Substantial completion" shall be that degree of completion of the project or a defined portion of the project, as evidenced by the Engineer's written notice of Substantial Completion, sufficient to provide the Owner, at his discretion, the full-time use of the project or defined portion of the project for the purposes for which it was intended. "Substantial Completion" of an operating facility shall be that degree of completion that has provided a minimum of 7 continuous days of successful, trouble-free, unrestricted operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Engineer. All equipment contained in the work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the substantial completion date.
10-59	<b>Superintendent</b>	The Contractor's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the RPR, and who shall supervise and direct the construction.
10-60	<b>Supplemental Agreement</b>	A written agreement between the Contractor and the Owner that establishes the basis of payment and contract time adjustment, if any, for the work affected by the supplemental agreement. A supplemental agreement is required if: (1) in scope work would increase or decrease the total amount of the awarded contract by more than 25%; (2) in scope work would increase or decrease the total of any major contract item by more than 25%; (3) work that is not within the scope of the originally awarded contract; or (4) adding or deleting of a major contract item.
10-61	<b>Surety</b>	The corporation, partnership, or individual, other than the Contractor, executing payment or performance bonds that are furnished to the Owner by the Contractor.
10-62	<b>Taxilane</b>	A taxiway designed for low speed movement of aircraft between aircraft parking areas and terminal areas.
10-63	<b>Taxiway</b>	The portion of the air operations area of an airport that has been designated by competent airport authority for movement of aircraft to and from the airport's runways, aircraft parking areas, and terminal areas.
10-64	<b>Taxiway/Taxilane Safety Area (TSA)</b>	A defined surface alongside the taxiway prepared or suitable for reducing the risk of damage to an aircraft. See the construction safety and phasing plan (CSPP) for limits of the TSA.
10-65	<b>Work</b>	The furnishing of all labor, materials, tools, equipment, and incidentals necessary or convenient to the Contractor's



Paragraph Number	Term	Definition
		performance of all duties and obligations imposed by the contract, plans, and specifications.
10-66	<b>Working day</b>	A working day shall be any day other than a legal holiday, Saturday, or Sunday on which the normal working forces of the Contractor may proceed with regular work for at least six (6) hours toward completion of the contract. When work is suspended for causes beyond the Contractor's control, it will not be counted as a working day. Saturdays, Sundays and holidays on which the Contractor's forces engage in regular work will be considered as working days.
10-67	<b>Owner Defined terms</b>	None

END OF SECTION 10

## Section 20 Proposal Requirements and Conditions

**20-01 Advertisement (Notice to Bidders).** The Owner shall publish the advertisement at such places and at such times as are required by local law or ordinances. The published advertisement shall state the time and place for submitting sealed proposals; a description of the proposed work; instructions to bidders as to obtaining proposal forms, plans, and specifications; proposal guaranty required; and the Owner's right to reject any and all bids.

**20-02 Qualification of bidders.** Each bidder shall submit evidence of competency and evidence of financial responsibility to perform the work to the Owner at the time of bid opening.

Evidence of competency, unless otherwise specified, shall consist of statements covering the bidder's past experience on similar work, and a list of equipment and a list of key personnel that would be available for the work.

Each bidder shall furnish the Owner satisfactory evidence of their financial responsibility. Evidence of financial responsibility, unless otherwise specified, shall consist of a confidential statement or report of the bidder's financial resources and liabilities as of the last calendar year or the bidder's last fiscal year. Such statements or reports shall be certified by a public accountant. At the time of submitting such financial statements or reports, the bidder shall further certify whether their financial responsibility is approximately the same as stated or reported by the public accountant. If the bidder's financial responsibility has changed, the bidder shall qualify the public accountant's statement or report to reflect the bidder's true financial condition at the time such qualified statement or report is submitted to the Owner.

Unless otherwise specified, a bidder may submit evidence that they are prequalified with the State Highway Division and are on the current "bidder's list" of the state in which the proposed work is located. Evidence of State Highway Division prequalification may be submitted as evidence of financial responsibility in lieu of the certified statements or reports specified above.

**20-03 Contents of proposal forms.** The Owner's proposal forms state the location and description of the proposed construction; the place, date, and time of opening of the proposals; and the estimated quantities of the various items of work to be performed and materials to be furnished for which unit bid prices are asked. The proposal form states the time in which the work must be completed, and the amount of the proposal guaranty that must accompany the proposal. The Owner will accept only those Proposals properly executed on physical forms or electronic forms provided by the Owner. Bidder actions that may cause the Owner to deem a proposal irregular are given in paragraph 20-09 *Irregular proposals*.

See Item C-105 for Mobilization Limit.

**20-04 Issuance of proposal forms.** The Owner reserves the right to refuse to issue a proposal form to a prospective bidder if the bidder is in default for any of the following reasons:

- a. Failure to comply with any prequalification regulations of the Owner, if such regulations are cited, or otherwise included, in the proposal as a requirement for bidding.
- b. Failure to pay, or satisfactorily settle, all bills due for labor and materials on former contracts in force with the Owner at the time the Owner issues the proposal to a prospective bidder.
- c. Documented record of Contractor default under previous contracts with the Owner.
- d. Documented record of unsatisfactory work on previous contracts with the Owner.

**20-05 Interpretation of estimated proposal quantities.** An estimate of quantities of work to be done and materials to be furnished under these specifications is given in the proposal. It is the result of careful calculations and is believed to be correct. It is given only as a basis for comparison of proposals and the award of the contract. The Owner does not expressly, or by implication, agree that the actual quantities involved will correspond exactly therewith; nor shall the bidder plead misunderstanding or deception because of such estimates of quantities, or of the character, location, or other conditions pertaining to the work. Payment to the Contractor will be made only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications. It is

understood that the quantities may be increased or decreased as provided in the Section 40, paragraph 40-02, Alteration of Work and Quantities, without in any way invalidating the unit bid prices.

**20-06 Examination of plans, specifications, and site.** The bidder is expected to carefully examine the site of the proposed work, the proposal, plans, specifications, and contract forms. Bidders shall satisfy themselves to the character, quality, and quantities of work to be performed, materials to be furnished, and to the requirements of the proposed contract. The submission of a proposal shall be prima facie evidence that the bidder has made such examination and is satisfied to the conditions to be encountered in performing the work and the requirements of the proposed contract, plans, and specifications.

All information obtained by the Engineer regarding site conditions, subsurface information, groundwater elevations, existing construction of site facilities as applicable, and similar data will be available for inspection at the office of the Engineer upon request. Such information is offered as supplementary information only. Neither the Engineer nor the Owner assumes any responsibility for the completeness or interpretation of such supplementary information.

Topographic maps were used in the design of the project. Bidders may inspect such maps at the office of the Engineer.

**20-07 Preparation of proposal.** The bidder shall submit their proposal on the forms furnished by the Owner. All blank spaces in the proposal forms, unless explicitly stated otherwise, must be correctly filled in where indicated for each and every item for which a quantity is given. The bidder shall state the price (written in ink or typed) in numerals which they propose for each pay item furnished in the proposal.

The bidder shall correctly sign the proposal in ink. If the proposal is made by an individual, their name and post office address must be shown. If made by a partnership, the name and post office address of each member of the partnership must be shown. If made by a corporation, the person signing the proposal shall give the name of the state where the corporation was chartered and the name, titles, and business address of the president, secretary, and the treasurer. Anyone signing a proposal as an agent shall file evidence of their authority to do so and that the signature is binding upon the firm or corporation.

**20-08 Responsive and responsible bidder.** A responsive bid conforms to all significant terms and conditions contained in the Owner's invitation for bid. It is the Owner's responsibility to decide if the exceptions taken by a bidder to the solicitation are material or not and the extent of deviation it is willing to accept.

A responsible bidder has the ability to perform successfully under the terms and conditions of a proposed procurement, as defined in 2 CFR § 200.318(h). This includes such matters as Contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

**20-09 Irregular proposals.** Proposals shall be considered irregular for the following reasons:

- a. If the proposal is on a form other than that furnished by the Owner, or if the Owner's form is altered, or if any part of the proposal form is detached.
- b. If there are unauthorized additions, conditional or alternate pay items, or irregularities of any kind that make the proposal incomplete, indefinite, or otherwise ambiguous.
- c. If the proposal does not contain a unit price for each pay item listed in the proposal, except in the case of authorized alternate pay items, for which the bidder is not required to furnish a unit price.
- d. If the proposal contains unit prices that are obviously unbalanced.
- e. If the proposal is not accompanied by the proposal guaranty specified by the Owner.
- f. If the applicable Disadvantaged Business Enterprise information is incomplete.

The Owner reserves the right to reject any irregular proposal and the right to waive technicalities if such waiver is in the best interest of the Owner and conforms to local laws and ordinances pertaining to the letting of construction contracts.

**20-10 Bid guarantee.** Each separate proposal shall be accompanied by a bid bond, certified check, or other specified acceptable collateral, in the amount specified in the proposal form. Such bond, check, or collateral, shall be made payable to the Owner.

**20-11 Delivery of proposal.** Each proposal must be submitted to [procurement@albanyoregon.gov](mailto:procurement@albanyoregon.gov). Bids will be considered time-stamped and received by the City when received in the procurement email inbox. The email subject line must include the project number and name as follows: **AR-24-21, FBO BUILDING AND HISTORIC HANGAR REHABILITATION, AIP Project No. 3-41-0001-021-2024.** The body of the email must plainly identify (1) the project name, (2) the bid opening time and date, (3) the bidder's name, and (4) the contractor's license number (per ORS 701).

**20-12 Withdrawal or revision of proposals.** A bidder may withdraw or revise (by withdrawal of one proposal and submission of another) a proposal provided that the bidder's request for withdrawal is received by the Owner in writing or by email before the time specified for opening bids. Revised proposals must be received at the place specified in the advertisement before the time specified for opening all bids.

**20-13 Public opening of proposals.** Proposals shall be opened, and read, publicly at the time and place specified in the advertisement. Bidders, their authorized agents, and other interested persons are invited to attend. Proposals that have been withdrawn (by written or telegraphic request) or received after the time specified for opening bids shall be returned to the bidder unopened.

**20-14 Disqualification of bidders.** A bidder shall be considered disqualified for any of the following reasons:

a. Submitting more than one proposal from the same partnership, firm, or corporation under the same or different name.

b. Evidence of collusion among bidders. Bidders participating in such collusion shall be disqualified as bidders for any future work of the Owner until any such participating bidder has been reinstated by the Owner as a qualified bidder.

c. If the bidder is considered to be in "default" for any reason specified in paragraph 20-04, *Issuance of Proposal Forms*, of this section.

**20-15 Discrepancies and Omissions.** A Bidder who discovers discrepancies or omissions with the project bid documents shall immediately notify the Owner's Engineer of the matter. A bidder that has doubt as to the true meaning of a project requirement may submit to the Owner's Engineer a written request for interpretation no later than 5 days prior to bid opening.

Any interpretation of the project bid documents by the Owner's Engineer will be by written addendum issued by the Owner. The Owner will not consider any instructions, clarifications or interpretations of the bidding documents in any manner other than written addendum.

END OF SECTION 20

### Section 30 Award and Execution of Contract

**30-01 Consideration of proposals.** After the proposals are publicly opened and read, they will be compared on the basis of the summation of the products obtained by multiplying the estimated quantities shown in the proposal by the unit bid prices.

Until the award of a contract is made, the Owner reserves the right to reject a bidder's proposal for any of the following reasons:

a. If the proposal is irregular as specified in Section 20, paragraph 20-09, *Irregular Proposals*.

b. If the bidder is disqualified for any of the reasons specified Section 20, paragraph 20-14, *Disqualification of Bidders*.

In addition, until the award of a contract is made, the Owner reserves the right to reject any or all proposals, waive technicalities, if such waiver is in the best interest of the Owner and is in conformance with applicable state and local laws or regulations pertaining to the letting of construction contracts; advertise for new proposals; or proceed with the work otherwise. All such actions shall promote the Owner's best interests.

**30-02 Award of contract.** The award of a contract, if it is to be awarded, shall be made within 120 calendar days of the date specified for publicly opening proposals, unless otherwise specified herein.

If the Owner elects to proceed with an award of contract, the Owner will make award to the responsible bidder whose bid, conforming with all the material terms and conditions of the bid documents, is the lowest in price.

**30-03 Cancellation of award.** The Owner reserves the right to cancel the award without liability to the bidder, except return of proposal guaranty, at any time before a contract has been fully executed by all parties and is approved by the Owner in accordance with paragraph 30-07 *Approval of Contract*.

**30-04 Return of proposal guaranty.** All proposal guaranties, except those of the two lowest bidders, will be returned immediately after the Owner has made a comparison of bids as specified in the paragraph 30-01, *Consideration of Proposals*. Proposal guaranties of the two lowest bidders will be retained by the Owner until such time as an award is made, at which time, the unsuccessful bidder's proposal guaranty will be returned. The successful bidder's proposal guaranty will be returned as soon as the Owner receives the contract bonds as specified in paragraph 30-05, *Requirements of Contract Bonds*.

**30-05 Requirements of contract bonds.** At the time of the execution of the contract, the successful bidder shall furnish the Owner a surety bond or bonds that have been fully executed by the bidder and the surety guaranteeing the performance of the work and the payment of all legal debts that may be incurred by reason of the Contractor's performance of the work. The surety and the form of the bond or bonds shall be acceptable to the Owner. Unless otherwise specified in this subsection, the surety bond or bonds shall be in a sum equal to the full amount of the contract. Contractor shall also provide separate performance and payment bonds in the full amount of the awarded contract. Payment and Performance Bond forms are contained within the contract document.

**30-06 Execution of contract.** The successful bidder shall sign (execute) the necessary agreements for entering into the contract and return the signed contract to the Owner, along with the fully executed surety bond or bonds specified in paragraph 30-05, *Requirements of Contract Bonds*, of this section, within 10 calendar days from the date mailed or otherwise delivered to the successful bidder.

**30-07 Approval of contract.** Upon receipt of the contract and contract bond or bonds that have been executed by the successful bidder, the Owner shall complete the execution of the contract in accordance with local laws or ordinances, and return the fully executed contract to the Contractor. Delivery of the fully executed contract to the Contractor shall constitute the Owner's approval to be bound by the successful bidder's proposal and the terms of the contract.

**30-08 Failure to execute contract.** Failure of the successful bidder to execute the contract and furnish an acceptable surety bond or bonds within the period specified in paragraph 30-06, *Execution of Contract*, of this section shall be just cause for cancellation of the award and forfeiture of the proposal guaranty, not as a penalty, but as liquidated damages to the Owner.

END OF SECTION 30

## Section 40 Scope of Work

**40-01 Intent of contract.** The intent of the contract is to provide for construction and completion, in every detail, of the work described. It is further intended that the Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract.

**40-02 Alteration of work and quantities.** The Owner reserves the right to make such changes in quantities and work as may be necessary or desirable to complete, in a satisfactory manner, the original intended work. Unless otherwise specified in the Contract, the Owner's Engineer or RPR shall be and is hereby authorized to make, in writing, such in-scope alterations in the work and variation of quantities as may be necessary to complete the work, provided such action does not represent a significant change in the character of the work.

For purpose of this section, a significant change in character of work means: any change that is outside the current contract scope of work; any change (increase or decrease) in the total contract cost by more than 25%; or any change in the total cost of a major contract item by more than 25%.

Work alterations and quantity variances that do not meet the definition of significant change in character of work shall not invalidate the contract nor release the surety. Contractor agrees to accept payment for such work alterations and quantity variances in accordance with Section 90, paragraph 90-03, *Compensation for Altered Quantities*.

Should the value of altered work or quantity variance meet the criteria for significant change in character of work, such altered work and quantity variance shall be covered by a supplemental agreement. Supplemental agreements shall also require consent of the Contractor's surety and separate performance and payment bonds. If the Owner and the Contractor are unable to agree on a unit adjustment for any contract item that requires a supplemental agreement, the Owner reserves the right to terminate the contract with respect to the item and make other arrangements for its completion.

**40-03 Omitted items.** The Owner, the Owner's Engineer or the RPR may provide written notice to the Contractor to omit from the work any contract item that does not meet the definition of major contract item. Major contract items may be omitted by a supplemental agreement. Such omission of contract items shall not invalidate any other contract provision or requirement.

Should a contract item be omitted or otherwise ordered to be non-performed, the Contractor shall be paid for all work performed toward completion of such item prior to the date of the order to omit such item. Payment for work performed shall be in accordance with Section 90, paragraph 90-04, *Payment for Omitted Items*.

**40-04 Extra work.** Should acceptable completion of the contract require the Contractor to perform an item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, Owner may issue a Change Order to cover the necessary extra work. Change orders for extra work shall contain agreed unit prices for performing the change order work in accordance with the requirements specified in the order, and shall contain any adjustment to the contract time that, in the RPR's opinion, is necessary for completion of the extra work.

When determined by the RPR to be in the Owner's best interest, the RPR may order the Contractor to proceed with extra work as provided in Section 90, paragraph 90-05, *Payment for Extra Work*. Extra work that is necessary for acceptable completion of the project, but is not within the general scope of the work covered by the original contract shall be covered by a supplemental agreement as defined in Section 10, paragraph 10-59, *Supplemental Agreement*.

If extra work is essential to maintaining the project critical path, RPR may order the Contractor to commence the extra work under a Time and Material contract method. Once sufficient detail is available to establish the level of effort necessary for the extra work, the Owner shall initiate a change order or supplemental agreement to cover the extra work.

Any claim for payment of extra work that is not covered by written agreement (change order or supplemental agreement) shall be rejected by the Owner.

**40-05 Maintenance of traffic.** It is the explicit intention of the contract that the safety of aircraft, as well as the Contractor's equipment and personnel, is the most important consideration. The Contractor shall maintain traffic in the manner detailed in the Construction Safety and Phasing Plan (CSPP).

a. It is understood and agreed that the Contractor shall provide for the free and unobstructed movement of aircraft in the air operations areas (AOAs) of the airport with respect to their own operations and the operations of all subcontractors as specified in Section 80, paragraph 80-04, *Limitation of Operations*. It is further understood and agreed that the Contractor shall provide for the uninterrupted operation of visual and electronic signals (including power supplies thereto) used in the guidance of aircraft while operating to, from, and upon the airport as specified in Section 70, paragraph 70-15, *Contractor's Responsibility for Utility Service and Facilities of Others*.

b. With respect to their own operations and the operations of all subcontractors, the Contractor shall provide marking, lighting, and other acceptable means of identifying personnel, equipment, vehicles, storage areas, and any work area or condition that may be hazardous to the operation of aircraft, fire-rescue equipment, or maintenance vehicles at the airport in accordance with the construction safety and phasing plan (CSPP) and the safety plan compliance document (SPCD).

c. When the contract requires the maintenance of an existing road, street, or highway during the Contractor's performance of work that is otherwise provided for in the contract, plans, and specifications, the Contractor shall keep the road, street, or highway open to all traffic and shall provide maintenance as may be required to accommodate traffic. Streets shall be kept in a clean and serviceable condition at all times. In the event materials are inadvertently deposited on roadways the material shall be promptly removed. The Contractor, at their expense, shall be responsible for the repair to equal or better than preconstruction conditions of any damage caused by the Contractor's equipment and personnel. The Contractor shall furnish, erect, and maintain barricades, warning signs, flag person, and other traffic control devices in reasonable conformity with the Manual on Uniform Traffic Control Devices (MUTCD) (<http://mutcd.fhwa.dot.gov/>), unless otherwise specified. The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets or highways. Unless otherwise specified herein, the Contractor will not be required to furnish snow removal for such existing road, street, or highway.

**40-06 Removal of existing structures.** All existing structures encountered within the established lines, grades, or grading sections shall be removed by the Contractor, unless such existing structures are otherwise specified to be relocated, adjusted up or down, salvaged, abandoned in place, reused in the work or to remain in place. The cost of removing such existing structures shall not be measured or paid for directly, but shall be included in the various contract items.

Should the Contractor encounter an existing structure (above or below ground) in the work for which the disposition is not indicated on the plans, the Resident Project Representative (RPR) shall be notified prior to disturbing such structure. The disposition of existing structures so encountered shall be immediately determined by the RPR in accordance with the provisions of the contract.

Except as provided in Section 40, paragraph 40-07, *Rights in and Use of Materials Found in the Work*, it is intended that all existing materials or structures that may be encountered (within the lines, grades, or grading sections established for completion of the work) shall be used in the work as otherwise provided for in the contract and shall remain the property of the Owner when so used in the work.

**40-07 Rights in and use of materials found in the work.** Should the Contractor encounter any material such as (but not restricted to) sand, stone, gravel, slag, or concrete slabs within the established lines, grades, or grading sections, the use of which is intended by the terms of the contract to be embankment, the Contractor may at their own option either:

- a. Use such material in another contract item, providing such use is approved by the RPR and is in conformance with the contract specifications applicable to such use; or,
- b. Remove such material from the site, upon written approval of the RPR; or
- c. Use such material for the Contractor's own temporary construction on site; or,



**d.** Use such material as intended by the terms of the contract.

Should the Contractor wish to exercise option a., b., or c., the Contractor shall request the RPR's approval in advance of such use.

Should the RPR approve the Contractor's request to exercise option a., b., or c., the Contractor shall be paid for the excavation or removal of such material at the applicable contract price. The Contractor shall replace, at their expense, such removed or excavated material with an agreed equal volume of material that is acceptable for use in constructing embankment, backfills, or otherwise to the extent that such replacement material is needed to complete the contract work. The Contractor shall not be charged for use of such material used in the work or removed from the site.

Should the RPR approve the Contractor's exercise of option a., the Contractor shall be paid, at the applicable contract price, for furnishing and installing such material in accordance with requirements of the contract item in which the material is used.

It is understood and agreed that the Contractor shall make no claim for delays by reason of their own exercise of option a., b., or c.

The Contractor shall not excavate, remove, or otherwise disturb any material, structure, or part of a structure which is located outside the lines, grades, or grading sections established for the work, except where such excavation or removal is provided for in the contract, plans, or specifications.

**40-08 Final cleanup.** Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. The Contractor shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily, unless the Contractor has obtained the written permission of the property Owner. Project site and storage areas shall be properly graded to drain and blend in with the abutting property. Any waste area obtained by the Contractor for deposit of waste materials shall be finished to properly drain and blend with the surrounding terrain.

END OF SECTION 40

## Section 50 Control of Work

**50-01 Authority of the Resident Project Representative (RPR).** The RPR has final authority regarding the interpretation of project specification requirements. The RPR shall determine acceptability of the quality of materials furnished, method of performance of work performed, and the manner and rate of performance of the work. The RPR does not have the authority to accept work that does not conform to specification requirements.

**50-02 Conformity with plans and specifications.** All work and all materials furnished shall be in reasonably close conformity with the lines, grades, grading sections, cross-sections, dimensions, material requirements, and testing requirements that are specified (including specified tolerances) in the contract, plans, or specifications.

If the RPR finds the materials furnished, work performed, or the finished product not within reasonably close conformity with the plans and specifications, but that the portion of the work affected will, in their opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to the Owner, the RPR will advise the Owner of their determination that the affected work be accepted and remain in place. The RPR will document the determination and recommend to the Owner a basis of acceptance that will provide for an adjustment in the contract price for the affected portion of the work. Changes in the contract price must be covered by contract change order or supplemental agreement as applicable.

If the RPR finds the materials furnished, work performed, or the finished product are not in reasonably close conformity with the plans and specifications and have resulted in an unacceptable finished product, the affected work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the RPR's written orders.

The term "reasonably close conformity" shall not be construed as waiving the Contractor's responsibility to complete the work in accordance with the contract, plans, and specifications. The term shall not be construed as waiving the RPR's responsibility to insist on strict compliance with the requirements of the contract, plans, and specifications during the Contractor's execution of the work, when, in the RPR's opinion, such compliance is essential to provide an acceptable finished portion of the work.

The term "reasonably close conformity" is also intended to provide the RPR with the authority, after consultation with the Sponsor and FAA, to use sound engineering judgment in their determinations to accept work that is not in strict conformity, but will provide a finished product equal to or better than that required by the requirements of the contract, plans and specifications.

The RPR will not be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions incident thereto.

**50-03 Coordination of contract, plans, and specifications.** The contract, plans, specifications, and all referenced standards cited are essential parts of the contract requirements. If electronic files are provided and used on the project and there is a conflict between the electronic files and hard copy plans, the hard copy plans shall govern. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, calculated dimensions will govern over scaled dimensions, other document conflicts shall govern in descending order as follows below:

1. Addenda (if any)
2. Contract
3. Proposal
4. FAA Special Provisions
5. Special Provisions
6. Invitation to Bid
7. Contract Technical Specifications
8. General Construction Items
9. General Contract Provisions
10. General Requirements

11. Drawings (Plans)
12. Cited standards for materials or testing
13. Cited Advisory Circulars (ACs)

From time to time, discrepancies within cited testing standards occur due to the timing of the change, edits, and/or replacement of the standards. If the Contractor discovers any apparent discrepancy within standard test methods, the Contractor shall immediately ask the RPR for an interpretation and decision, and such decision shall be final.

The Contractor shall not take advantage of any apparent error or omission on the plans or specifications. In the event the Contractor discovers any apparent error or discrepancy, Contractor shall immediately notify the Owner or the designated representative in writing requesting their written interpretation and decision.

**50-04 List of Special Provisions.**

- FAA Special Provisions
- Special Provisions
- City of Albany Special Provisions

**50-05 Cooperation of Contractor.** The Contractor shall be supplied with three hard copies or an electronic PDF of the plans and specifications. The Contractor shall have available on the construction site at all times one hardcopy each of the plans and specifications. Additional hard copies of plans and specifications may be obtained by the Contractor for the cost of reproduction.

The Contractor shall give constant attention to the work to facilitate the progress thereof, and shall cooperate with the RPR and their inspectors and with other Contractors in every way possible. The Contractor shall have a competent superintendent on the work at all times who is fully authorized as their agent on the work. The superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instructions from the RPR or their authorized representative.

**50-06 Cooperation between Contractors.** The Owner reserves the right to contract for and perform other or additional work on or near the work covered by this contract.

When separate contracts are let within the limits of any one project, each Contractor shall conduct the work not to interfere with or hinder the progress of completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with their own contract and shall protect and hold harmless the Owner from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced because of the presence and operations of other Contractors working within the limits of the same project.

The Contractor shall arrange their work and shall place and dispose of the materials being used to not interfere with the operations of the other Contractors within the limits of the same project. The Contractor shall join their work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

**50-07 Construction layout and stakes.** The Engineer/RPR shall establish necessary horizontal and vertical control. The establishment of Survey Control and/or reestablishment of survey control shall be by a State Licensed Land Surveyor. Contractor is responsible for preserving integrity of horizontal and vertical controls established by Engineer/RPR. In case of negligence on the part of the Contractor or their employees, resulting in the destruction of any horizontal and vertical control, the resulting costs will be deducted as a liquidated damage against the Contractor.

Prior to the start of construction, the Contractor will check all control points for horizontal and vertical accuracy and certify in writing to the RPR that the Contractor concurs with survey control established for the project. All lines, grades and measurements from control points necessary for the proper execution and control of the work on this project will be provided to the RPR. The Contractor is responsible to establish all layout required for the construction of the project

Copies of survey notes will be provided to the RPR for each area of construction and for each placement of material as specified to allow the RPR to make periodic checks for conformance with plan grades, alignments and grade tolerances required by the applicable material specifications. Surveys will be provided to the RPR prior to commencing work items that cover or disturb the survey staking.

Laser, GPS, String line, or other automatic control shall be checked with temporary control as necessary. In the case of error, on the part of the Contractor, their surveyor, employees or subcontractors, resulting in established grades, alignment or grade tolerances that do not concur with those specified or shown on the plans, the Contractor is solely responsible for correction, removal, replacement and all associated costs at no additional cost to the Owner.

No direct payment will be made, unless otherwise specified in contract documents, for this labor, materials, or other expenses. The cost shall be included in the price of the bid for the various items of the Contract.

**50-08 Authority and duties of Quality Assurance (QA) inspectors.** QA inspectors shall be authorized to inspect all work done and all material furnished. Such QA inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. QA inspectors are not authorized to revoke, alter, or waive any provision of the contract. QA inspectors are not authorized to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor.

QA Inspectors are authorized to notify the Contractor or their representatives of any failure of the work or materials to conform to the requirements of the contract, plans, or specifications and to reject such nonconforming materials in question until such issues can be referred to the RPR for a decision.

**50-09 Inspection of the work.** All materials and each part or detail of the work shall be subject to inspection. The RPR shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the RPR requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work; but should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the Contractor's expense.

Provide advance written notice to the RPR of work the Contractor plans to perform each week and each day. Any work done or materials used without written notice and allowing opportunity for inspection by the RPR may be ordered removed and replaced at the Contractor's expense.

Should the contract work include relocation, adjustment, or any other modification to existing facilities, not the property of the (contract) Owner, authorized representatives of the Owners of such facilities shall have the right to inspect such work. Such inspection shall in no sense make any facility owner a party to the contract, and shall in no way interfere with the rights of the parties to this contract.

**50-10 Removal of unacceptable and unauthorized work.** All work that does not conform to the requirements of the contract, plans, and specifications will be considered unacceptable, unless otherwise determined acceptable by the RPR as provided in paragraph 50-02, *Conformity with Plans and Specifications*.

Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to the final acceptance of the work, shall be removed immediately and replaced in an acceptable manner in accordance with the provisions of Section 70, paragraph 70-14, *Contractor's Responsibility for Work*.

No removal work made under provision of this paragraph shall be done without lines and grades having been established by the RPR. Work done contrary to the instructions of the RPR, work done beyond the lines shown on the plans or as established by the RPR, except as herein specified, or any extra work done without authority, will be considered as unauthorized and will not be paid for under the provisions of the contract. Work so done may be ordered removed or replaced at the Contractor's expense.

Upon failure on the part of the Contractor to comply with any order of the RPR made under the provisions of this subsection, the RPR will have authority to cause unacceptable work to be remedied or removed and replaced; and unauthorized work to be removed and recover the resulting costs as a liquidated damage against the Contractor.

**50-11 Load restrictions.** The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the work. A special permit will not relieve the Contractor of liability for damage that may result from the moving of material or equipment.

The operation of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period. The Contractor, at their own expense, shall be responsible for the repair to equal or better than preconstruction conditions of any damage caused by the Contractor's equipment and personnel.

**50-12 Maintenance during construction.** The Contractor shall maintain the work during construction and until the work is accepted. Maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces so that the work is maintained in satisfactory condition at all times.

In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations.

All costs of maintenance work during construction and before the project is accepted shall be included in the unit prices bid on the various contract items, and the Contractor will not be paid an additional amount for such work.

The Contractor shall at all times during the work keep the premises clean and orderly. He shall promptly remove all waste materials and rubbish. All directions from authorized public officials having jurisdiction over health and safety shall be obeyed. Areas to be opened up to aircraft operations shall be swept thoroughly clean with power broom equipment. Any debris resisting sweeping shall be removed by hand labor or other suitable means.

Upon completion of the work, all materials, equipment, and appurtenances not required as a part of, or appurtenant to, the completed structure or facility shall be completely removed from the Owner's property. All slop-over from paving operations and scatterings of unused materials shall be removed.

**50-13 Failure to maintain the work.** Should the Contractor at any time fail to maintain the work as provided in paragraph 50-12, *Maintenance during Construction*, the RPR shall immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. The time specified will give due consideration to the exigency that exists.

Should the Contractor fail to respond to the RPR's notification, the Owner may suspend any work necessary for the Owner to correct such unsatisfactory maintenance condition, depending on the exigency that exists. Any maintenance cost incurred by the Owner, shall be recovered as a liquidated damage against the Contractor.

**50-14 Partial acceptance.** If at any time during the execution of the project the Contractor substantially completes a usable unit or portion of the work, the occupancy of which will benefit the Owner, the Contractor may request the RPR to make final inspection of that unit. If the RPR finds upon inspection that the unit has been satisfactorily completed in compliance with the contract, the RPR may accept it as being complete, and the Contractor may be relieved of further responsibility for that unit. Such partial acceptance and beneficial occupancy by the Owner shall not void or alter any provision of the contract.

**50-15 Final acceptance.** Upon due notice from the Contractor of presumptive completion of the entire project, the RPR and Owner will make an inspection. If all construction provided for and contemplated by the contract is found to be complete in accordance with the contract, plans, and specifications, such inspection shall constitute the final inspection. The RPR shall notify the Contractor in writing of final acceptance as of the date of the final inspection.

If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the RPR will notify the Contractor and the Contractor shall correct the unsatisfactory work. Upon correction of the work, another inspection will be made which shall constitute the final inspection, provided the work has been satisfactorily completed. In such

event, the RPR will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.

**50-16 Claims for adjustment and disputes.** If for any reason the Contractor deems that additional compensation is due for work or materials not clearly provided for in the contract, plans, or specifications or previously authorized as extra work, the Contractor shall notify the RPR in writing of their intention to claim such additional compensation before the Contractor begins the work on which the Contractor bases the claim. If such notification is not given or the RPR is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the RPR has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within 10 calendar days, submit a written claim to the RPR who will present it to the Owner for consideration in accordance with local laws or ordinances.

Nothing in this subsection shall be construed as a waiver of the Contractor's right to dispute final payment based on differences in measurements or computations.

END OF SECTION 50

## Section 60 Control of Materials

**60-01 Source of supply and quality requirements.** The materials used in the work shall conform to the requirements of the contract, plans, and specifications. Unless otherwise specified, such materials that are manufactured or processed shall be new (as compared to used or reprocessed).

In order to expedite the inspection and testing of materials, the Contractor shall furnish documentation to the RPR as to the origin, composition, and manufacture of all materials to be used in the work. Documentation shall be furnished promptly after execution of the contract but, in all cases, prior to delivery of such materials.

At the RPR's option, materials may be approved at the source of supply before delivery. If it is found after trial that sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources.

The Contractor shall furnish airport lighting equipment that meets the requirements of the specifications; and is listed in AC 150/5345-53, *Airport Lighting Equipment Certification Program and Addendum*, that is in effect on the date of advertisement.

**60-02 Samples, tests, and cited specifications.** All materials used in the work shall be inspected, tested, and approved by the RPR before incorporation in the work unless otherwise designated. Any work in which untested materials are used without approval or written permission of the RPR shall be performed at the Contractor's risk. Materials found to be unacceptable and unauthorized will not be paid for and, if directed by the RPR, shall be removed at the Contractor's expense.

Unless otherwise designated, quality assurance tests will be made by and at the expense of the Owner in accordance with the cited standard methods of ASTM, American Association of State Highway and Transportation Officials (AASHTO), federal specifications, Commercial Item Descriptions, and all other cited methods, which are current on the date of advertisement for bids.

The term quality assurance shall be used interchangeably and shall have the same meaning as quality acceptance for the purposes of this section.

The testing organizations performing on-site quality assurance field tests shall have copies of all referenced standards on the construction site for use by all technicians and other personnel. Unless otherwise designated, samples for quality assurance will be taken by a qualified representative of the RPR. All materials being used are subject to inspection, test, or rejection at any time prior to or during incorporation into the work. Copies of all tests will be furnished to the Contractor's representative at their request after review and approval of the RPR.

A copy of all Contractor QC test data shall be provided to the RPR daily, along with printed reports, in an approved format, on a weekly basis. After completion of the project, and prior to final payment, the Contractor shall submit a final report to the RPR showing all test data reports, plus an analysis of all results showing ranges, averages, and corrective action taken on all failing tests. The Contractor shall provide copies of all test data sheets electronically in a pdf format within the time periods indicated above, to include in the final report summary.

Wherever in these Contract Documents reference is made to the "Standard Specifications," said reference shall be understood as referring to the latest edition, plus Addendums thereto, of the Oregon Standard Specifications for Construction of the Oregon State Department of Transportation.

**60-03 Certification of compliance/analysis (COC/COA).** The RPR may permit the use, prior to sampling and testing, of certain materials or assemblies when accompanied by manufacturer's COC stating that such materials or assemblies fully comply with the requirements of the contract. The certificate shall be signed by the manufacturer. Each lot of such materials or assemblies delivered to the work must be accompanied by a certificate of compliance in which the lot is clearly identified. The COA is the manufacturer's COC and includes all applicable test results.

Materials or assemblies used on the basis of certificates of compliance may be sampled and tested at any time and if found not to be in conformity with contract requirements will be subject to rejection whether in place or not.

The form and distribution of certificates of compliance shall be as approved by the RPR.

When a material or assembly is specified by "brand name or equal" and the Contractor elects to furnish the specified "or equal," the Contractor shall be required to furnish the manufacturer's certificate of compliance for each lot of such material or assembly delivered to the work. Such certificate of compliance shall clearly identify each lot delivered and shall certify as to:

- a. Conformance to the specified performance, testing, quality or dimensional requirements; and,
- b. Suitability of the material or assembly for the use intended in the contract work.

The RPR shall be the sole judge as to whether the proposed "or equal" is suitable for use in the work.

The RPR reserves the right to refuse permission for use of materials or assemblies on the basis of certificates of compliance.

**60-04 Plant inspection.** The RPR or their authorized representative may inspect, at its source, any specified material or assembly to be used in the work. Manufacturing plants may be inspected from time to time for the purpose of determining compliance with specified manufacturing methods or materials to be used in the work and to obtain samples required for acceptance of the material or assembly.

Should the RPR conduct plant inspections, the following conditions shall exist:

- a. The RPR shall have the cooperation and assistance of the Contractor and the producer with whom the Contractor has contracted for materials.
- b. The RPR shall have full entry at all reasonable times to such parts of the plant that concern the manufacture or production of the materials being furnished.
- c. If required by the RPR, the Contractor shall arrange for adequate office or working space that may be reasonably needed for conducting plant inspections. Place office or working space in a convenient location with respect to the plant.

It is understood and agreed that the Owner shall have the right to retest any material that has been tested and approved at the source of supply after it has been delivered to the site. The RPR shall have the right to reject only material which, when retested, does not meet the requirements of the contract, plans, or specifications.

**60-05 Engineer/ Resident Project Representative (RPR) field office.** An Engineer/RPR field office is not required.

**60-06 Storage of materials.** Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. When considered necessary, they shall be placed on wooden platforms or other hard, clean surfaces, and not on the ground, and/or they shall be placed under cover. Stored materials shall be located to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the RPR. Materials to be stored on airport property shall not create an obstruction to air navigation nor shall they interfere with the free and unobstructed movement of aircraft. Unless otherwise shown on the plans and/or CSPP, the storage of materials and the location of the Contractor's plant and parked equipment or vehicles shall be as directed by the RPR. Private property shall not be used for storage purposes without written permission of the Owner or lessee of such property. The Contractor shall make all arrangements and bear all expenses for the storage of materials on private property. Upon request, the Contractor shall furnish the RPR a copy of the property Owner's permission.

All storage sites on private or airport property shall be restored to their original condition by the Contractor at their expense, except as otherwise agreed to (in writing) by the Owner or lessee of the property.

**60-07 Unacceptable materials.** Any material or assembly that does not conform to the requirements of the contract, plans, or specifications shall be considered unacceptable and shall be rejected. The Contractor shall remove any rejected material or assembly from the site of the work, unless otherwise instructed by the RPR.

Rejected material or assembly, the defects of which have been corrected by the Contractor, shall not be returned to the site of the work until such time as the RPR has approved its use in the work.



**60-08 Owner furnished materials.** The Contractor shall furnish all materials required to complete the work, except those specified, if any, to be furnished by the Owner. Owner-furnished materials shall be made available to the Contractor at the location specified.

All costs of handling, transportation from the specified location to the site of work, storage, and installing Owner-furnished materials shall be included in the unit price bid for the contract item in which such Owner-furnished material is used.

After any Owner-furnished material has been delivered to the location specified, the Contractor shall be responsible for any demurrage, damage, loss, or other deficiencies that may occur during the Contractor's handling, storage, or use of such Owner-furnished material. The Owner will deduct from any monies due or to become due the Contractor any cost incurred by the Owner in making good such loss due to the Contractor's handling, storage, or use of Owner-furnished materials.

END OF SECTION 60

## Section 70 Legal Regulations and Responsibility to Public

**70-01 Laws to be observed.** The Contractor shall keep fully informed of all federal and state laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the Owner and all their officers, agents, or servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or the Contractor's employees.

**70-02 Permits, licenses, and taxes.** The Contractor shall procure all permits and licenses, pay all charges, fees (except for permit costs, which will be paid by the Owner), prior to delivery of such materials, and taxes, and give all notices necessary and incidental to the due and lawful execution of the work.

**70-03 Patented devices, materials, and processes.** If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the Patentee or Owner. The Contractor and the surety shall indemnify and hold harmless the Owner, any third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the execution or after the completion of the work.

**70-04 Restoration of surfaces disturbed by others.** The Owner reserves the right to authorize the construction, reconstruction, or maintenance of any public or private utility service, FAA or National Oceanic and Atmospheric Administration (NOAA) facility, or a utility service of another government agency at any time during the progress of the work. To the extent that such construction, reconstruction, or maintenance has been coordinated with the Owner, such authorized work (by others) must be shown on the plans and is indicated as follows: See project Construction Safety and Phasing Plan.

Except as listed above, the Contractor shall not permit any individual, firm, or corporation to excavate or otherwise disturb such utility services or facilities located within the limits of the work without the written permission of the RPR.

Should the Owner of public or private utility service, FAA, or NOAA facility, or a utility service of another government agency be authorized to construct, reconstruct, or maintain such utility service or facility during the progress of the work, the Contractor shall cooperate with such Owners by arranging and performing the work in this contract to facilitate such construction, reconstruction or maintenance by others whether or not such work by others is listed above. When ordered as extra work by the RPR, the Contractor shall make all necessary repairs to the work which are due to such authorized work by others, unless otherwise provided for in the contract, plans, or specifications. It is understood and agreed that the Contractor shall not be entitled to make any claim for damages due to such authorized work by others or for any delay to the work resulting from such authorized work.

**70-05 Federal Participation.** The United States Government has agreed to reimburse the Owner for some portion of the contract costs. The contract work is subject to the inspection and approval of duly authorized representatives of the FAA Administrator. No requirement of this contract shall be construed as making the United States a party to the contract nor will any such requirement interfere, in any way, with the rights of either party to the contract.

**70-06 Sanitary, health, and safety provisions.** The Contractor's worksite and facilities shall comply with applicable federal, state, and local requirements for health, safety and sanitary provisions. At a minimum the Contractor shall furnish and maintain sanitary facilities for his employees and his subcontractor's employees.

**70-07 Public convenience and safety.** The Contractor shall control their operations and those of their subcontractors and all suppliers, to assure the least inconvenience to the traveling public. Under all circumstances, safety shall be the most important consideration.

The Contractor shall maintain the free and unobstructed movement of aircraft and vehicular traffic with respect to their own operations and those of their own subcontractors and all suppliers in accordance with Section 40, paragraph 40-05, *Maintenance of Traffic*, and shall limit such operations for the convenience and safety of the traveling public as specified in Section 80, paragraph 80-04, *Limitation of Operations*.

The Contractor shall remove or control debris and rubbish resulting from its work operations at frequent intervals, and upon the order of the RPR. If the RPR determines the existence of Contractor debris in the work site represents a hazard to airport operations and the Contractor is unable to respond in a prompt and reasonable manner, the RPR reserves the right to assign the task of debris removal to a third party and recover the resulting costs as a liquidated damage against the Contractor.

**70-08 Construction Safety and Phasing Plan (CSPP).** The Contractor shall complete the work in accordance with the approved Construction Safety and Phasing Plan (CSPP) developed in accordance with AC 150/5370-2, Operational Safety on Airports During Construction. The CSPP is located in the general construction items, Section E-025.

**70-09 Use of explosives.** The use of explosives is not permitted on this project.

**70-10 Protection and restoration of property and landscape.** The Contractor shall be responsible for the preservation of all public and private property, and shall protect carefully from disturbance or damage all land monuments and property markers until the Engineer/RPR has witnessed or otherwise referenced their location and shall not move them until directed.

The Contractor shall be responsible for all damage or injury to property of any character, during the execution of the work, resulting from any act, omission, neglect, or misconduct in manner or method of executing the work, or at any time due to defective work or materials, and said responsibility shall not be released until the project has been completed and accepted.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the non-execution thereof by the Contractor, the Contractor shall restore, at their expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, or otherwise restoring as may be directed, or the Contractor shall make good such damage or injury in an acceptable manner.

**70-11 Responsibility for damage claims.** The Contractor shall indemnify and hold harmless the Engineer/RPR and the Owner and their officers, agents, and employees from all suits, actions, or claims, of any character, brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of said Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the "Workmen's Compensation Act," or any other law, ordinance, order, or decree. Money due the Contractor under and by virtue of their own contract considered necessary by the Owner for such purpose may be retained for the use of the Owner or, in case no money is due, their own surety may be held until such suits, actions, or claims for injuries or damages shall have been settled and suitable evidence to that effect furnished to the Owner, except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that he or she is adequately protected by public liability and property damage insurance.

**70-12 Third party beneficiary clause.** It is specifically agreed between the parties executing the contract that it is not intended by any of the provisions of any part of the contract to create for the public or any member thereof, a third-party beneficiary or to authorize anyone not a party to the contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the contract.

**70-13 Opening sections of the work to traffic.** If it is necessary for the Contractor to complete portions of the contract work for the beneficial occupancy of the Owner prior to completion of the entire contract, such "phasing" of the work must be specified below and indicated on the approved Construction Safety and Phasing Plan (CSPP)

and the project plans. When so specified, the Contractor shall complete such portions of the work on or before the date specified or as otherwise specified.

As shown on the drawings and described in the Construction Safety and Phasing.

Upon completion of any portion of work listed above, such portion shall be accepted by the Owner in accordance with Section 50, paragraph 50-14, *Partial Acceptance*.

No portion of the work may be opened by the Contractor until directed by the Owner in writing. Should it become necessary to open a portion of the work to traffic on a temporary or intermittent basis, such openings shall be made when, in the opinion of the RPR, such portion of the work is in an acceptable condition to support the intended traffic. Temporary or intermittent openings are considered to be inherent in the work and shall not constitute either acceptance of the portion of the work so opened or a waiver of any provision of the contract. Any damage to the portion of the work so opened that is not attributable to traffic which is permitted by the Owner shall be repaired by the Contractor at their expense.

The Contractor shall make their own estimate of the inherent difficulties involved in completing the work under the conditions herein described and shall not claim any added compensation by reason of delay or increased cost due to opening a portion of the contract work.

The Contractor must conform to safety standards contained AC 150/5370-2 and the approved CSPP.

Contractor shall refer to the plans, specifications, and the approved CSPP to identify barricade requirements, temporary and/or permanent markings, airfield lighting, guidance signs and other safety requirements prior to opening up sections of work to traffic.

**70-14 Contractor's responsibility for work.** Until the RPR's final written acceptance of the entire completed work, excepting only those portions of the work accepted in accordance with Section 50, paragraph 50-14, *Partial Acceptance*, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part due to the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God such as earthquake, tidal wave, tornado, hurricane or other cataclysmic phenomenon of nature, or acts of the public enemy or of government authorities.

If the work is suspended for any cause whatever, the Contractor shall be responsible for the work and shall take such precautions necessary to prevent damage to the work. The Contractor shall provide for normal drainage and shall erect necessary temporary structures, signs, or other facilities at their own expense. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established planting, seeding, and sodding furnished under the contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.

**70-15 Contractor's responsibility for utility service and facilities of others.** As provided in paragraph 70-04, *Restoration of Surfaces Disturbed by Others*, the Contractor shall cooperate with the owner of any public or private utility service, FAA or NOAA, or a utility service of another government agency that may be authorized by the Owner to construct, reconstruct or maintain such utility services or facilities during the progress of the work. In addition, the Contractor shall control their operations to prevent the unscheduled interruption of such utility services and facilities.

To the extent that such public or private utility services, FAA, or NOAA facilities, or utility services of another governmental agency are known to exist within the limits of the contract work, the approximate locations have been indicated on the plans and/or in the contract documents.

See the Project Construction Safety and Phasing Plan for additional requirements.

It is understood and agreed that the Owner does not guarantee the accuracy or the completeness of the location information relating to existing utility services, facilities, or structures that may be shown on the plans or encountered in the work. Any inaccuracy or omission in such information shall not relieve the Contractor of the responsibility to protect such existing features from damage or unscheduled interruption of service.

It is further understood and agreed that the Contractor shall, upon execution of the contract, notify the Owners of all utility services or other facilities of their plan of operations. Such notification shall be in writing addressed to "The Person to Contact" as provided in this paragraph and paragraph 70-04, *Restoration of Surfaces Disturbed By Others*. A copy of each notification shall be given to the RPR.

In addition to the general written notification provided, it shall be the responsibility of the Contractor to keep such individual Owners advised of changes in their plan of operations that would affect such Owners.

Prior to beginning the work in the general vicinity of an existing utility service or facility, the Contractor shall again notify each such Owner of their plan of operation. If, in the Contractor's opinion, the Owner's assistance is needed to locate the utility service or facility or the presence of a representative of the Owner is desirable to observe the work, such advice should be included in the notification. Such notification shall be given by the most expeditious means to reach the utility owner's "Person to Contact" no later than two normal business days prior to the Contractor's commencement of operations in such general vicinity. The Contractor shall furnish a written summary of the notification to the RPR.

The Contractor's failure to give the two days' notice shall be cause for the Owner to suspend the Contractor's operations in the general vicinity of a utility service or facility.

Where the outside limits of an underground utility service have been located and staked on the ground, the Contractor shall be required to use hand excavation methods within 3 feet (1 m) of such outside limits at such points as may be required to ensure protection from damage due to the Contractor's operations.

The continuity of all existing electrical circuits shall be maintained during the course of the work. Any necessary interruption of circuits shall be scheduled through the Engineer and shall not proceed until approval has been given. The Contractor shall perform an operational check of each airport system each day a system is worked on or excavation operations occur.

Should the Contractor damage or interrupt the operation of a utility service or facility by accident or otherwise, the Contractor shall immediately notify the proper authority and the RPR and shall take all reasonable measures to prevent further damage or interruption of service. The Contractor, in such events, shall cooperate with the utility service or facility owner and the RPR continuously until such damage has been repaired and service restored to the satisfaction of the utility or facility owner.

In the event of interruption to domestic water, sewer, storm drain, or to other utility services as a result of accidental breakage, or as a result of being exposed or unsupported, promptly notify the proper authority. Cooperate with said authority in restoration of service as promptly as possible and bear all costs of repair. In no case shall interruption of any water or utility service be allowed to exist outside working hours unless prior approval is received.

Neither the Owner nor its officers or agents shall be responsible to the Contractor for damages as a result of the location of the underground utilities being other than that shown on the Drawings or for the existence of underground utilities not shown on the Drawings.

The Contractor shall bear all costs of damage and restoration of service to any utility service or facility due to their operations whether due to negligence or accident. The Owner reserves the right to deduct such costs from any monies due or which may become due the Contractor, or their own surety.

**70-16 Furnishing rights-of-way.** The Owner will be responsible for furnishing all rights-of-way upon which the work is to be constructed in advance of the Contractor's operations.

**70-17 Personal liability of public officials.** In carrying out any of the contract provisions or in exercising any power or authority granted by this contract, there shall be no liability upon the Engineer, RPR, their authorized

representatives, or any officials of the Owner either personally or as an official of the Owner. It is understood that in such matters they act solely as agents and representatives of the Owner.

**70-18 No waiver of legal rights.** Upon completion of the work, the Owner will expeditiously make final inspection and notify the Contractor of final acceptance. Such final acceptance, however, shall not preclude or stop the Owner from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the Owner be precluded or stopped from recovering from the Contractor or their surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill their obligations under the contract. A waiver on the part of the Owner of any breach of any part of the contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor, without prejudice to the terms of the contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty or guaranty.

**70-19 Environmental protection.** The Contractor shall comply with all federal, state, and local laws and regulations controlling pollution of the environment. The Contractor shall take necessary precautions to prevent pollution of streams, lakes, ponds, and reservoirs with fuels, oils, asphalts, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

**70-20 Archaeological and historical findings.** Unless otherwise specified in this subsection, the Contractor is advised that the site of the work is not within any known property, district, or site, and does not contain any building, structure, or object listed in the current National Register of Historic Places published by the United States Department of Interior.

Should the Contractor encounter, during their operations, any building, part of a building, structure, or object that is incongruous with its surroundings, the Contractor shall immediately cease operations in that location and notify the RPR. The RPR will immediately investigate the Contractor's finding and the Owner will direct the Contractor to either resume operations or to suspend operations as directed.

Should the Owner order suspension of the Contractor's operations in order to protect an archaeological or historical finding, or order the Contractor to perform extra work, such shall be covered by an appropriate contract change order or supplemental agreement as provided in Section 40, paragraph 40-04, *Extra Work*, and Section 90, paragraph 90-05, *Payment for Extra Work*. If appropriate, the contract change order or supplemental agreement shall include an extension of contract time in accordance with Section 80, paragraph 80-07, *Determination and Extension of Contract Time*.

**70-21 Insurance Requirements.** See project special provisions.

END OF SECTION 70

### Section 80 Execution and Progress

**80-01 Subletting of contract.** The Owner will not recognize any subcontractor on the work. The Contractor shall at all times when work is in progress be represented either in person, by a qualified superintendent, or by other designated, qualified representative who is duly authorized to receive and execute orders of the Resident Project Representative (RPR).

The Contractor shall perform, with his organization, an amount of work equal to at least 25 percent of the total contract cost.

Should the Contractor elect to assign their contract, said assignment shall be concurred in by the surety, shall be presented for the consideration and approval of the Owner, and shall be consummated only on the written approval of the Owner.

**The Contractor shall provide copies of all subcontracts to the RPR 14 days prior to being utilized on the project. As a minimum, the information shall include the following:**

- Subcontractor's legal company name.
- Subcontractor's legal company address, including County name.
- Principal contact person's name, telephone and fax number.
- Complete narrative description, and dollar value of the work to be performed by the subcontractor.
- Copies of required insurance certificates in accordance with the specifications.
- Minority/ non-minority status.

**80-02 Notice to proceed (NTP).** The Owners notice to proceed will state the date on which contract time commences. The Contractor is expected to commence project operations within 10 days of the NTP date. The Contractor shall notify the RPR at least 24 hours in advance of the time contract operations begins. The Contractor shall not commence any actual operations prior to the date on which the notice to proceed is issued by the Owner.

**80-03 Execution and progress.** Unless otherwise specified, the Contractor shall submit their coordinated construction schedule showing all work activities for the RPR's review and acceptance at least 10 days prior to the start of work. The Contractor's progress schedule, once accepted by the RPR, will represent the Contractor's baseline plan to accomplish the project in accordance with the terms and conditions of the Contract. The RPR will compare actual Contractor progress against the baseline schedule to determine that status of the Contractor's performance. The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the project in accordance with the plans and specifications within the time set forth in the proposal.

At the end of each month, the Contractor shall submit a summary report of the progress of the various schedule work items stating, for each item, the existing time status, estimated time of completion, and cause of delays, if any. If the work is behind the previously submitted schedule, the Contractor shall submit an updated bar graph schedule and a written plan acceptable to the RPR for bringing the work up to schedule.

- a. Updated schedules will be used by the RPR in compiling partial payments and no such computations will be made until the reports have been received and reviewed by the RPR.
- b. The RPR may request reports to be made on a more frequent schedule if he considers the substantial completion date to be in jeopardy because of activities behind schedule or for other valid reasons.

If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the RPR's request, submit a revised schedule for completion of the work within the contract time and modify their operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the execution of the work be discontinued for any reason, the Contractor shall notify the RPR at least 24 hours in advance of resuming operations.

The Contractor shall not commence any actual construction prior to the date on which the NTP is issued by the Owner.

The project schedule shall be prepared as a network diagram in Critical Path Method (CPM), Program Evaluation and Review Technique (PERT), or other format, or as otherwise specified. It shall include information on the sequence of work activities, milestone dates, and activity duration. The schedule shall show all work items identified in the project proposal for each work area and shall include the project start date and end date.

The Contractor shall maintain the work schedule and provide an update and analysis of the progress schedule on a twice monthly basis, or as otherwise specified in the contract. Submission of the work schedule shall not relieve the Contractor of overall responsibility for scheduling, sequencing, and coordinating all work to comply with the requirements of the contract.

**80-04 Limitation of operations.** The Contractor shall control their operations and the operations of their subcontractors and all suppliers to provide for the free and unobstructed movement of aircraft in the air operations areas (AOA) of the airport.

When the work requires the Contractor to conduct their operations within an AOA of the airport, the work shall be coordinated with airport operations (through the RPR) at least 48 hours prior to commencement of such work. The Contractor shall not close an AOA until so authorized by the RPR and until the necessary temporary marking, signage and associated lighting is in place as provided in Section 70, paragraph 70-08, *Construction Safety and Phasing Plan (CSPP)*.

When the contract work requires the Contractor to work within an AOA of the airport on an intermittent basis (intermittent opening and closing of the AOA), the Contractor shall maintain constant communications as specified; immediately obey all instructions to vacate the AOA; and immediately obey all instructions to resume work in such AOA. Failure to maintain the specified communications or to obey instructions shall be cause for suspension of the Contractor's operations in the AOA until satisfactory conditions are provided. The areas of the AOA identified in the Construction Safety Phasing Plan (CSPP) and as listed below, cannot be closed to operating aircraft to permit the Contractor's operations on a continuous basis and will therefore be closed to aircraft operations intermittently as follows:

As specified in the Construction Safety and Phasing Plan

The Contractor shall be required to conform to safety standards contained in AC 150/5370-2, Operational Safety on Airports During Construction and the approved CSPP.

**80-04.1 Operational safety on airport during construction.** All Contractors' operations shall be conducted in accordance with the approved project Construction Safety and Phasing Plan (CSPP) and the Safety Plan Compliance Document (SPCD) and the provisions set forth within the current version of AC 150/5370-2, Operational Safety on Airports During Construction. The CSPP included within the contract documents conveys minimum requirements for operational safety on the airport during construction activities. The Contractor shall prepare and submit a SPCD that details how it proposes to comply with the requirements presented within the CSPP.

The Contractor shall implement all necessary safety plan measures prior to commencement of any work activity. The Contractor shall conduct routine checks to assure compliance with the safety plan measures.

The Contractor is responsible to the Owner for the conduct of all subcontractors it employs on the project. The Contractor shall assure that all subcontractors are made aware of the requirements of the CSPP and SPCD and that they implement and maintain all necessary measures.

No deviation or modifications may be made to the approved CSPP and SPCD unless approved in writing by the Owner. The necessary coordination actions to review Contractor proposed modifications to an approved CSPP or approved SPCD can require a significant amount of time.

**80-05 Character of workers, methods, and equipment.** The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the contract, plans, and specifications.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.



Any person employed by the Contractor or by any subcontractor who violates any operational regulations or operational safety requirements and, in the opinion of the RPR, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the RPR, be removed immediately by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the work without approval of the RPR.

Should the Contractor fail to remove such person or persons, or fail to furnish suitable and sufficient personnel for the proper execution of the work, the RPR may suspend the work by written notice until compliance with such orders.

All equipment that is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the work shall not cause injury to previously completed work, adjacent property, or existing airport facilities due to its use.

When the methods and equipment to be used by the Contractor in accomplishing the work are not prescribed in the contract, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the contract, plans, and specifications.

When the contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless otherwise authorized by the RPR. If the Contractor desires to use a method or type of equipment other than specified in the contract, the Contractor may request authority from the RPR to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with contract requirements. If, after trial use of the substituted methods or equipment, the RPR determines that the work produced does not meet contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality, or take such other corrective action as the RPR may direct. No change will be made in basis of payment for the contract items involved nor in contract time as a result of authorizing a change in methods or equipment under this paragraph.

**80-06 Temporary suspension of the work.** The Owner shall have the authority to suspend the work wholly, or in part, for such period or periods the Owner may deem necessary, due to unsuitable weather, or other conditions considered unfavorable for the execution of the work, or for such time necessary due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the contract.

In the event that the Contractor is ordered by the Owner, in writing, to suspend work for some unforeseen cause not otherwise provided for in the contract and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the written order to suspend work to the effective date of the written order to resume the work. Claims for such compensation shall be filed with the RPR within the time period stated in the RPR's order to resume work. The Contractor shall submit with their own claim information substantiating the amount shown on the claim. The RPR will forward the Contractor's claim to the Owner for consideration in accordance with local laws or ordinances. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather or for any other delay provided for in the contract, plans, or specifications.

If it becomes necessary to suspend work for an indefinite period, the Contractor shall store all materials in such manner that they will not become an obstruction nor become damaged in any way. The Contractor shall take every precaution to prevent damage or deterioration of the work performed and provide for normal drainage of the work. The Contractor shall erect temporary structures where necessary to provide for traffic on, to, or from the airport.

**80-07 Determination and extension of contract time.** The number of calendar days shall be stated in the proposal and contract and shall be known as the Contract Time.

If the contract time requires extension for reasons beyond the Contractor's control, it shall be adjusted as follows:

**80-07.1 Contract time based on calendar days.** Contract Time based on calendar days shall consist of the number of calendar days stated in the contract counting from the effective date of the Notice to Proceed and including all Saturdays, Sundays, holidays, and non-work days. All calendar days elapsing between the effective dates of the Owner's orders to suspend and resume all work, due to causes not the fault of the Contractor, shall be excluded.

At the time of final payment, the contract time shall be increased in the same proportion as the cost of the actually completed quantities bears to the cost of the originally estimated quantities in the proposal. Such increase in the contract time shall not consider either cost of work or the extension of contract time that has been covered by a change order or supplemental agreement. Charges against the contract time will cease as of the date of final acceptance.

If the Contractor finds it impossible for reasons beyond their own control to complete the work within the contract time as specified, or as extended in accordance with the provisions of this paragraph, the Contractor may, at any time prior to the expiration of the contract time as extended, make a written request to the Owner for an extension of time setting forth the reasons which the Contractor believes will justify the granting of their own request. Requests for extension of time, caused by inclement weather, shall be supported with National Weather Bureau data showing the actual amount of inclement weather exceeded what could normally be expected during the contract period. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the supporting documentation justify the work was delayed because of conditions beyond the control and without the fault of the Contractor, the Owner may extend the time for completion by a change order that adjusts the contract time or completion date. The extended time for completion shall then be in full force and effect, the same as though it were the original time for completion.

**80-08 Failure to complete on time.** For each calendar day or working day, as specified in the contract, that any work remains uncompleted after the contract time (including all extensions and adjustments as provided in paragraph 80-07, *Determination and Extension of Contract Time*) the sum specified in the contract and proposal as liquidated damages (LD) will be deducted from any money due or to become due the Contractor or their own surety. Such deducted sums shall not be deducted as a penalty but shall be considered as liquidation of a reasonable portion of damages including but not limited to additional engineering services that will be incurred by the Owner should the Contractor fail to complete the work in the time provided in their contract.

Phase	Liquidated Damages Cost	Allowed Construction Time
1	\$500 / day	30 Calendar Days

The maximum construction time allowed for the project will be the sum of the time allowed for individual phases but not more than 30 days. Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the Owner of any of its rights under the contract.

**80-09 Default and termination of contract.** The Contractor shall be considered in default of their contract and such default will be considered as cause for the Owner to terminate the contract for any of the following reasons, if the Contractor:

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

- h. Makes an assignment for the benefit of creditors, or
- i. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

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

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

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

**80-10 Termination for national emergencies.** The Owner shall terminate the contract or portion thereof by written notice when the Contractor is prevented from proceeding with the construction contract as a direct result of an Executive Order of the President with respect to the execution of war or in the interest of national defense.

When the contract, or any portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the actual number of units or items of work completed at the contract price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits shall be considered.

Reimbursement for organization of the work, and other overhead expenses, (when not otherwise included in the contract) and moving equipment and materials to and from the job will be considered, the intent being that an equitable settlement will be made with the Contractor.

Acceptable materials, obtained or ordered by the Contractor for the work and that are not incorporated in the work shall, at the option of the Contractor, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the RPR.

Termination of the contract or a portion thereof shall neither relieve the Contractor of their responsibilities for the completed work nor shall it relieve their surety of its obligation for and concerning any just claim arising out of the work performed.

**80-11 Work area, storage area and sequence of operations.** The Contractor shall obtain approval from the RPR prior to beginning any work in all areas of the airport. No operating runway, taxiway, or air operations area (AOA) shall be crossed, entered, or obstructed while it is operational unless shown on the CSPP. The Contractor shall plan and coordinate work in accordance with the approved CSPP and SPCD.

Plan the construction work and carry out with a minimum of interference with the operation of the existing facilities or other construction work. Prior to starting the construction, confer with the Engineer, Owner's representative, and other contractors to develop a construction schedule which will permit the facilities to function as normally as practical during the construction period. It may be necessary to do certain parts of the construction work outside normal working hours in order to avoid undesirable conditions, and it shall be the obligation of the Contractor to do this work at such times as necessary.

END OF SECTION 80

## Section 90 Measurement and Payment

**90-01 Measurement of quantities.** All work completed under the contract will be measured by the RPR, or their authorized representatives, using United States Customary Units of Measurement. Contractor shall provide to the RPR supporting computations and calculations made to determine Contractor's quantity of work performed with each partial pay request and final payment request.

The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures (or leave-outs) having an area of 9 square feet (0.8 square meters) or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the RPR.

Unless otherwise specified, all contract items which are measured by the linear foot such as electrical ducts, conduits, pipe culverts, underdrains, and similar items shall be measured parallel to the base or foundation upon which such items are placed.

The term "lump sum" when used as an item of payment will mean complete payment for the work described in the contract. When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

When requested by the Contractor and approved by the RPR in writing, material specified to be measured by the cubic yard (cubic meter) may be weighed, and such weights will be converted to cubic yards (cubic meters) for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the RPR and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

### Measurement and Payment Terms

Term	Description
<b>Excavation and Embankment Volume</b>	In computing volumes of excavation, the average end area method will be used unless otherwise specified.
<b>Measurement and Proportion by Weight</b>	The term "ton" will mean the short ton consisting of 2,000 pounds (907 kg) avoirdupois. All materials that are measured or proportioned by weights shall be weighed on accurate, independently certified scales by competent, qualified personnel at locations designated by the RPR. If material is shipped by rail, the car weight may be accepted provided that only the actual weight of material is paid for. However, car weights will not be acceptable for material to be passed through mixing plants. Trucks used to haul material being paid for by weight shall be weighed empty daily at such times as the RPR directs, and each truck shall bear a plainly legible identification mark.
<b>Measurement by Volume</b>	Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable for the materials hauled, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.

Term	Description
<b>Asphalt Material</b>	Asphalt materials will be measured by the gallon (liter) or ton (kg). When measured by volume, such volumes will be measured at 60°F (16°C) or will be corrected to the volume at 60°F (16°C) using ASTM D1250 for asphalts. Net certified scale weights or weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when asphalt material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work. When asphalt materials are shipped by truck or transport, net certified weights by volume, subject to correction for loss or foaming, will be used for computing quantities.
<b>Cement</b>	Cement will be measured by the ton (kg) or hundredweight (km).
<b>Structure</b>	Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.
<b>Timber</b>	Timber will be measured by the thousand feet board measure (MFBM) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.
<b>Plates and Sheets</b>	The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fraction of inch.
<b>Miscellaneous Items</b>	When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gauge, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.
<b>Scales</b>	<p>Scales must be tested for accuracy and serviced before use. Scales for weighing materials which are required to be proportioned or measured and paid for by weight shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales. Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.</p> <p>Scales shall be accurate within 0.5% of the correct weight throughout the range of use. The Contractor shall have the scales checked under the observation of the RPR before beginning work and at such other times as requested. The intervals shall be uniform in spacing throughout the graduated or marked length of the beam or dial and shall not exceed 0.1% of the nominal rated capacity of the scale, but not less than one pound (454 grams). The use of spring balances will not be permitted.</p> <p>In the event inspection reveals the scales have been “overweighing” (indicating more than correct weight) they will be immediately adjusted. All materials received subsequent to the last previous correct weighting-accuracy test will be reduced by the percentage of error in excess of 0.5%.</p> <p>In the event inspection reveals the scales have been under-weighing (indicating less than correct weight), they shall be immediately adjusted. No additional payment to the Contractor will be allowed for materials previously weighed and recorded.</p>

Term	Description
	<p>Beams, dials, platforms, and other scale equipment shall be so arranged that the operator and the RPR can safely and conveniently view them.</p> <p>Scale installations shall have available ten standard 50-pound (2.3 km) weights for testing the weighing equipment or suitable weights and devices for other approved equipment.</p> <p>All costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house; and for all other items specified in this subsection, for the weighing of materials for proportioning or payment, shall be included in the unit contract prices for the various items of the project.</p>
<b>Rental Equipment</b>	<p>Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the work. Special equipment ordered in connection with extra work will be measured as agreed in the change order or supplemental agreement authorizing such work as provided in paragraph 90-05 <i>Payment for Extra Work</i>.</p>
<b>Pay Quantities</b>	<p>When the estimated quantities for a specific portion of the work are designated as the pay quantities in the contract, they shall be the final quantities for which payment for such specific portion of the work will be made, unless the dimensions of said portions of the work shown on the plans are revised by the RPR. If revised dimensions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the authorized changes in the dimensions.</p>

**90-02 Scope of payment.** The Contractor shall receive and accept compensation provided for in the contract as full payment for furnishing all materials, for performing all work under the contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the execution thereof, subject to the provisions of Section 70, paragraph 70-18, *No Waiver of Legal Rights*.

When the “basis of payment” subsection of a technical specification requires that the contract price (price bid) include compensation for certain work or material essential to the item, this same work or material will not also be measured for payment under any other contract item which may appear elsewhere in the contract, plans, or specifications.

**90-03 Compensation for altered quantities.** When the accepted quantities of work vary from the quantities in the proposal, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract price for the accepted quantities of work actually completed and accepted. No allowance, except as provided for in Section 40, paragraph 40-02, *Alteration of Work and Quantities*, will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly from such alterations or indirectly from their own unbalanced allocation of overhead and profit among the contract items, or from any other cause.

**90-04 Payment for omitted items.** As specified in Section 40, paragraph 40-03, *Omitted Items*, the RPR shall have the right to omit from the work (order nonperformance) any contract item, except major contract items, in the best interest of the Owner.

Should the RPR omit or order nonperformance of a contract item or portion of such item from the work, the Contractor shall accept payment in full at the contract prices for any work actually completed and acceptable prior to the RPR’s order to omit or non-perform such contract item.

Acceptable materials ordered by the Contractor or delivered on the work prior to the date of the RPR’s order will be paid for at the actual cost to the Contractor and shall thereupon become the property of the Owner.

In addition to the reimbursement hereinbefore provided, the Contractor shall be reimbursed for all actual costs incurred for the purpose of performing the omitted contract item prior to the date of the RPR's order. Such additional costs incurred by the Contractor must be directly related to the deleted contract item and shall be supported by certified statements by the Contractor as to the nature the amount of such costs.

**90-05 Payment for extra work.** Extra work, performed in accordance with Section 40, paragraph 40-04, *Extra Work*, will be paid for at the contract prices or agreed prices specified in the change order or supplemental agreement authorizing the extra work.

**90-06 Partial payments.** Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the RPR, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with paragraph 90-07, *Payment for Materials on Hand*. No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars.

a. From the total of the amount determined to be payable on a partial payment, 5% percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

(1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.

(2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 10 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

c. When at least 95% of the project work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the RPR to be a part of the final quantity for the item of work in question.

No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in paragraph 90-09, *Acceptance and Final Payment*.

The Contractor shall deliver to the Owner a complete release of all claims for labor and material arising out of this contract before the final payment is made. If any subcontractor or supplier fails to furnish such a release in full, the Contractor may furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against any potential lien or other such claim. The bond or collateral shall include all costs, expenses, and attorney fees the Owner may be compelled to pay in discharging any such lien or claim.

**90-07 Payment for materials on hand.** Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the contract, plans, and specifications and are delivered to acceptable sites on the airport property or at other sites in the vicinity that are acceptable to the Owner. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- a. The material has been stored or stockpiled in a manner acceptable to the RPR at or on an approved site.
- b. The Contractor has furnished the RPR with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- c. The Contractor has furnished the RPR with satisfactory evidence that the material and transportation costs have been paid.
- d. The Contractor has furnished the Owner legal title (free of liens or encumbrances of any kind) to the material stored or stockpiled.
- e. The Contractor has furnished the Owner evidence that the material stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.

It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of their responsibility for furnishing and placing such materials in accordance with the requirements of the contract, plans, and specifications.

In no case will the amount of partial payments for materials on hand exceed the contract price for such materials or the contract price for the contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this paragraph.

**90-08 Payment of withheld funds.** At the Contractor's option, if an Owner withholds retainage in accordance with the methods described in paragraph 90-06 *Partial Payments*, the Contractor may request that the Owner deposit the retainage into an escrow account. The Owner's deposit of retainage into an escrow account is subject to the following conditions:

- a. The Contractor shall bear all expenses of establishing and maintaining an escrow account and escrow agreement acceptable to the Owner.
- b. The Contractor shall deposit to and maintain in such escrow only those securities or bank certificates of deposit as are acceptable to the Owner and having a value not less than the retainage that would otherwise be withheld from partial payment.
- c. The Contractor shall enter into an escrow agreement satisfactory to the Owner.
- d. The Contractor shall obtain the written consent of the surety to such agreement.

**90-09 Acceptance and final payment.** When the contract work has been accepted in accordance with the requirements of Section 50, paragraph 50-15, *Final Acceptance*, the RPR will prepare the final estimate of the items of work actually performed. The Contractor shall approve the RPR's final estimate or advise the RPR of the Contractor's objections to the final estimate which are based on disputes in measurements or computations of the final quantities to be paid under the contract as amended by change order or supplemental agreement. The Contractor and the RPR shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Contractor's receipt of the RPR's final estimate. If, after such 30-day period, a dispute still exists, the Contractor may approve the RPR's estimate under protest of the quantities in dispute, and such disputed quantities shall be considered by the Owner as a claim in accordance with Section 50, paragraph 50-16, *Claims for Adjustment and Disputes*.



After the Contractor has approved, or approved under protest, the RPR's final estimate, and after the RPR's receipt of the project closeout documentation required in paragraph 90-11, *Contractor Final Project Documentation*, final payment will be processed based on the entire sum, or the undisputed sum in case of approval under protest, determined to be due the Contractor less all previous payments and all amounts to be deducted under the provisions of the contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

If the Contractor has filed a claim for additional compensation under the provisions of Section 50, paragraph 50-16, *Claims for Adjustments and Disputes*, or under the provisions of this paragraph, such claims will be considered by the Owner in accordance with local laws or ordinances. Upon final adjudication of such claims, any additional payment determined to be due the Contractor will be paid pursuant to a supplemental final estimate.

**90-10 Construction warranty.**

a. In addition to any other warranties in this contract, the Contractor warrants that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, workmanship, or design furnished, or performed by the Contractor or any subcontractor or supplier at any tier.

b. This warranty shall continue for a period of one year from the date of final acceptance of the work, except as noted. If the Owner takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date the Owner takes possession.

c. The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Owner real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements; or any defect of equipment, material, workmanship, or design furnished by the Contractor.

d. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.

e. The Owner will notify the Contractor, in writing, within ten (10) calendar days after the discovery of any failure, defect, or damage.

f. If the Contractor fails to remedy any failure, defect, or damage within 14 calendar days after receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

g. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall: (1) Obtain all warranties that would be given in normal commercial practice; (2) Require all warranties to be executed, in writing, for the benefit of the Owner, as directed by the Owner, and (3) Enforce all warranties for the benefit of the Owner.

h. This warranty shall not limit the Owner's rights with respect to latent defects, gross mistakes, or fraud.

**90-11 Contractor Final Project Documentation.** Approval of final payment to the Contractor is contingent upon completion and submittal of the items listed below. The final payment will not be approved until the RPR approves the Contractor's final submittal. The Contractor shall:

- a. Provide two (2) copies of all manufacturers warranties specified for materials, equipment, and installations.
- b. Provide weekly payroll records (not previously received) from the general Contractor and all subcontractors.
- c. Complete final cleanup in accordance with Section 40, paragraph 40-08, *Final Cleanup*.
- d. Complete all punch list items identified during the Final Inspection.
- e. Provide complete release of all claims for labor and material arising out of the Contract.

- f.** Provide a certified statement signed by the subcontractors, indicating actual amounts paid to the Disadvantaged Business Enterprise (DBE) subcontractors and/or suppliers associated with the project.
- g.** When applicable per state requirements, return copies of sales tax completion forms.
- h.** Manufacturer's certifications for all items incorporated in the work.
- i.** All required record drawings, as-built drawings or as-constructed drawings.
- j.** Project Operation and Maintenance (O&M) Manual(s).
- k.** Security for Construction Warranty.
- l.** Equipment commissioning documentation submitted, if required.
- m.** all material tests in required final format.

END OF SECTION 90

## **SPECIAL PROVISIONS**

### **1. INSURANCE AND LIABILITY**

See Division 1 – General Requirements of the City of Albany Standard Construction Specifications at: <https://albanyoregon.gov/standard-construction-specifications> for Insurance and Liability Requirements.

### **2. OTHER CONTRACTS**

The Owner reserves the right to let other Contracts in connection with the work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the work under this Contract depends for proper execution or results upon the work of any other Contractor, utility service company or Owner, the Contractor shall inspect and promptly report to the Engineer in writing any patent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. The Contractor's failure to so report shall constitute an acceptance of the work by others as being fit and proper for integration with work under this Contract, except for latent or non-apparent defects and deficiencies in the work.

### **3. REQUIREMENTS OF STATE LAW FOR PUBLIC WORKS PROJECTS**

When the Contract Documents concern public works of the state or any county, municipality, or political subdivision created by its laws, the applicable statutes shall apply. All parties to this Contract shall determine the contents of all applicable statutes and comply with their provisions throughout the performance of the Contract.

### **4. DISADVANTAGED BUSINESS ENTERPRISE REPORTING REQUIREMENTS**

The following clause will be included in the Contract. The Contractor shall ensure that the following clause is included in each subcontract the prime contractor signs with a subcontractor:

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

The CITY has established, as part of our DBE program, the following mechanisms that are part of this Contract to ensure prompt payment:

- (1) A contract clause that requires prime contractors to include in their subcontract's language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes;
- (2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed; and
- (3) Other mechanisms, consistent with this Part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

**Demonstration of Good Faith Efforts (26.53(A) & (C)) (Pre-Award):**

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so.

The DBE Liaison Officer (DBELO) is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsive.

The DBELO will review the information submitted for completeness and accuracy and that it adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

**Information to be Submitted (26.53(B))**

In our solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, we will require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
  - (i) The names and addresses of DBE firms that will participate in the contract;
  - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - (iii) The dollar amount of the participation of each DBE firm participating;
  - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
  - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
  - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

The CITY will require that the bidder/offeror present the information required by paragraph (b)(2) of this section under sealed bid procedures.

**Contract Provisions**

The CITY will include a provision in each prime contract stating:

- The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains our written consent as provided in this paragraph §26.53(f); and
- That, unless our consent is provided under this paragraph §26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The CITY will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts.

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's (bid/solicitation) response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of CITY OF ALBANY as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

### **Reporting Requirements**

This project is subject to the Sponsors Disadvantaged Business Enterprise Program (DBE) to include reporting requirements. As part of the Sponsors requirements for compliance with FAA Civil Rights, the Contractor shall provide the following information in conjunction with each request made for payment:

- Total number of subcontracts and dollar value of each subcontract awarded or committed for the reporting period. Contractor shall also provide copies of the subcontracts;
- Identify all subcontracts with federally certified DBEs including firm name and contract dollar value. Contractor shall also provide proof of the DBEs certification;
- Payments received by Prime Contractor during the reporting period;
- Payments made to DBE subcontractors per firm during the reporting period;
- Total number of subcontracts and payments made on subcontracts completed during the reporting period.



**FAA**  
**Airports**

# **Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects**

(Issued on May 24, 2023)

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**APPENDIX A – CONTRACT PROVISIONS**

**ACCESS TO RECORDS AND REPORTS**

2 CFR § 200.334; 2 CFR § 200.337; FAA Order 5100.38

**ACCESS TO RECORDS AND REPORTS**

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

\* \* \* \* \*

**AFFIRMATIVE ACTION REQUIREMENT**

41 CFR Part 60-4; Executive Order 11246

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

1. The Offeror’s or Bidder’s attention is called to the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Opportunity Construction Contract 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: 2.9%
- Goals for female participation in each trade: 6.9%

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

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

\* \* \* \* \*

**BREACH OF CONTRACT TERMS**  
2 CFR Part 200, Appendix II(A)

**BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the 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.

Owner 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. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner’s notice will identify a specific date by which the Contractor must correct the breach. Owner may proceed with termination of the contract if the Contractor fails to correct the breach by the deadline indicated in the Owner’s notice.

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

\* \* \* \* \*



## **BUY AMERICAN PREFERENCE**

*Title 49 USC § 50101; Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers Bipartisan Infrastructure Law (Pub. L. No. 117-58), Build America, Buy America (BABA)*

### **FAA BUY AMERICAN PREFERENCE**

The Contractor certifies that its bid/offer is in compliance with 49 USC § 50101, BABA and other related Made in America Laws,<sup>1</sup> U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

The bidder or offeror must complete and submit the certification of compliance with FAA's Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA's Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

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<sup>1</sup> Per Executive Order 14005 "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

## CERTIFICATION OF COMPLIANCE WITH FAA BUY AMERICAN PREFERENCE – CONSTRUCTION PROJECTS

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e., not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- e) Only installing iron, steel and manufactured products produced in the United States;
  - f) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
  - g) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - h) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- e) To provide to the Airport Sponsor or the FAA evidence that documents the source and origin of the iron, steel, and/or manufactured product.
  - f) To faithfully comply with providing U.S. domestic products.
  - g) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
  - h) Certify that all construction materials used in the project are manufactured in the U.S.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- f) To the submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
  - g) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - h) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  - i) To furnish U.S. domestic product for any waiver request that the FAA rejects.

- j) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 2 Waiver (Nonavailability)** - The iron, steel, manufactured goods or construction materials or manufactured goods are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is

- d) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- e) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- f) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

**Type 3 Waiver** – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “facility/project.” The required documentation for a Type 3 waiver is:

- e) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- f) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- g) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- h) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver (Unreasonable Costs)** - Applying this provision for iron, steel, manufactured goods or construction materials would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- e) A completed Content Percentage Worksheet and Final Assembly Questionnaire from
- f) At minimum two comparable equal bids and/or offers;
- g) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- h) Completed waiver applications for each comparable bid and/or offer.

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature
Company Name	Title

## **CERTIFICATION OF COMPLIANCE WITH FAA BUY AMERICAN PREFERENCE – EQUIPMENT/BUILDING PROJECTS**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101, and other Made in America Laws, U.S. statutes, guidance, and FAA policies by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing steel and manufactured products produced in the United States;
  - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
  - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.
  - b) To faithfully comply with providing U.S. domestic product.
  - c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
  - d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
  - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  - d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

## Required Documentation

**Type 2 Waiver (Nonavailability)** - The iron, steel, manufactured goods or construction materials are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

**Type 3 Waiver** – The cost of the item components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “item”. The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108 (products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- d) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver (Unreasonable Costs)** - Applying this provision for iron, steel, manufactured goods or construction materials, would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bidders and/or offerors;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

**CIVIL RIGHTS - GENERAL**

49 USC § 47123

**GENERAL CIVIL RIGHTS PROVISIONS**

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

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

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

If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor.

The above provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration.

\* \* \* \* \*

**CIVIL RIGHTS – TITLE VI ASSURANCE**

49 USC § 47123; FAA Order 1400.11

**Title VI Solicitation Notice**

The **City of Albany**, 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 for 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 no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

**Title VI List of Pertinent Nondiscrimination Acts and Authorities**

Insert this list in every contract or agreement, unless the Sponsor has determined and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities. This list can be omitted if the FAA has determined that the contractor or company is already subject to nondiscrimination requirements, which is a rare occurrence.

**Title VI List of Pertinent Nondiscrimination Acts and Authorities**

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

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

49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of 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 (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 100-259) (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 nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 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.*).

### **Nondiscrimination Requirements/Title VI Clauses for Compliance**

The Sponsor must include this contract clause in:

- 1) Every contract or agreement (unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities); and
- 2) Service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements.
- 3) Other types of contracts with utility companies involving property covered by A6.4.2, A6.4.3, or A6.4.4.

### **Compliance with Nondiscrimination Requirements:**

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

**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.

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

**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.

**Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- 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.

**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 Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

\* \* \* \* \*



**CLEAN AIR AND WATER POLLUTION CONTROL**  
2 CFR Part 200, Appendix II(G); 42 USC § 7401, et seq; 33 USC § 1251, et seq

**CLEAN AIR AND WATER POLLUTION CONTROL**

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

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

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**CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**  
2 CFR Part 200, Appendix II(E); 2 CFR § 5.5(b); 40 USC § 3702; 40 USC § 3704

**CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

1. Overtime Requirements.

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

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

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

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

4. Subcontractors.

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

\* \* \* \* \*

**COPELAND “ANTI-KICKBACK” ACT**  
2 CFR Part 200, Appendix II(D); 29 CFR Parts 3 and 5

**COPELAND “ANTI-KICKBACK” ACT**

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 Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

\* \* \* \* \*

**DAVIS-BACON REQUIREMENTS**  
2 CFR Part 200, Appendix II(D); 29 CFR Part 5; 49 USC § 47112(b); 40 USC §§ 3141-3144, 3146, and 3147

**DAVIS-BACON REQUIREMENTS**

1. Minimum Wages.

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

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

classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

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

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

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

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

### 3. Payrolls and Basic Records.

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

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is

not such a party, the Contractor will submit them to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

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

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

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of

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

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

5. Compliance with Copeland Act Requirements.

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

6. Subcontracts.

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

7. Contract Termination: Debarment.

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

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

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

9. Disputes Concerning Labor Standards.

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

10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

\* \* \* \* \*

**DEBARMENT AND SUSPENSION**

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

**CERTIFICATION OF OFFEROR/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.

**CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT**

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

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

If the Federal Aviation Administration later determines that 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.

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**DISADVANTAGED BUSINESS ENTERPRISE**

49 CFR Part 26

**Solicitation Language (Solicitations that include a Contract Goal)**

Bid Information submitted as a matter of responsibility:

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

As a condition of responsibility, every Bidder or Offeror must submit the following information on the forms provided herein within two days after bid opening.

- 7) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 8) A description of the work that each DBE firm will perform;
- 9) The dollar amount of the participation of each DBE firm listed under (1);
- 10) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner’s project goal;
- 11) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 12) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The



documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

### **Solicitation Language (Race/Gender Neutral Means)**

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

### **Prime Contracts (Contracts Covered by a DBE Program)**

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

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

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

#### **Prompt Payment (49 CFR § 26.29; acceptable/sample text provided) –**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from City of Albany. The prime contractor agrees further to return retainage payments to each subcontractor within 10 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 City of Albany. This clause applies to both DBE and non-DBE subcontractors.

#### **Termination of DBE Subcontracts (49 CFR § 26.53(f); acceptable/sample text provided) –**

The prime contractor must not terminate a DBE subcontractor listed in response to include Solicitation paragraph number where paragraph 12.3.1, Solicitation Language appears (or an approved substitute DBE firm) without prior written consent of City of Albany. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent City of Albany. Unless City of Albany consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The City of Albany may provide such written consent only if the City of Albany agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to the City of Albany its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to City of Albany, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise City of Albany and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why City of Albany should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), City of Albany may provide a response period shorter than five days.

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

\* \* \* \* \*

**DISTRACTED DRIVING**

Executive Order 13513; DOT Order 3902.10

**TEXTING WHEN DRIVING**

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

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that 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.

\* \* \* \* \*

**PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

2 CFR § 200, Appendix II(K); 2 CFR § 200.216

**PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

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

\* \* \* \* \*

**DRUG FREE WORKPLACE REQUIREMENTS**

49 CFR Part 32; Drug-Free Workplace Act of 1988 (41 USC § 8101-8106, as amended)

None.

\* \* \* \* \*

**EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

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

**EQUAL OPPORTUNITY CLAUSE**

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

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

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

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

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

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

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant

thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

(8) The Contractor will include the provisions of 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 may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

1. As used in these specifications:

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

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions

of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

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

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

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

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

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

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

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training

by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

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

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

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

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

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

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

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

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

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

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

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

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

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

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

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

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

29 USC § 201, et seq; 2 CFR § 200.430

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.



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**LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

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

**CERTIFICATION REGARDING LOBBYING**

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

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

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

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**PROHIBITION OF SEGREGATED FACILITIES**

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

**PROHIBITION OF SEGREGATED FACILITIES**

- (a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.
- (b) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing

facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-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.

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### **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970** 29 CFR Part 1910

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.

\* \* \* \* \*

### **PROCUREMENT OF RECOVERED MATERIALS** 2 CFR § 200.323; 2 CFR Part 200, Appendix II(J); 40 CFR Part 247; 42 USC § 6901, et seq (Resource Conservation and Recovery Act (RCRA))

#### **PROCUREMENT OF RECOVERED MATERIALS**

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

- 3) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year;  
or
- 1) 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.

\* \* \* \* \*

**RIGHT TO INVENTIONS**

2 CFR Part 200, Appendix II(F); 37 CFR Part 401

**RIGHTS TO INVENTIONS**

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

\* \* \* \* \*

**TAX DELINQUENCY AND FELONY CONVICTIONS**

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

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

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

**Certifications**

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

**Note**

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

**Term Definitions**

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

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

\* \* \* \* \*

## **TERMINATION OF CONTRACT**

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

### **TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)**

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

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

Owner agrees to pay Contractor for:

1. Completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
2. Documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
3. Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4. Reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

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

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

### TERMINATION FOR CAUSE (CONSTRUCTION)

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes standard language for conditions, rights, and remedies associated with Owner termination of this contract for cause due to default of the Contractor.

### TERMINATION FOR CAUSE (EQUIPMENT)

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract for cause if the Contractor:

1. Fails to begin the Work under the Contract within the time specified in the Notice- to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within 10 days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

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

\* \* \* \* \*

## TRADE RESTRICTION CERTIFICATION

49 USC § 50104; 49 CFR Part 30

### TRADE RESTRICTION CERTIFICATION

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

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

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

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

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

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

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

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that 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 Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

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**VETERAN'S PREFERENCE**  
49 USC § 47112(e)

**VETERAN'S PREFERENCE**

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

\*\*\*\*\*

**DOMESTIC PREFERENCES FOR PROCUREMENTS**  
2 CFR § 200.322; 2 CFR Part 200, Appendix II(L)

**CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS**

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

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## CITY OF ALBANY SPECIAL PROVISIONS

### SECTION I: GENERAL REQUIREMENTS AND TECHNICAL SPECIFICATIONS

#### I-1. DESCRIPTION OF WORK

The project contemplated consists of construction of the FBO Building and Historic Hangar Rehabilitation.

Construction shall be in conformance with the contract, specifications, and drawings contained herein, and current edition of the City of Albany Standard Construction Specifications and Special Provisions.

#### I-2. SITE CONDITIONS

Bidders are required to make an appointment with the project engineer for a prebid site visit.

#### I-3. AWARD OF CONTRACT

The Contract, if awarded, will be awarded to the lowest responsive, responsible bidder based upon the lowest total Base Schedule bid amount or total combination Base Schedule bid and any additive bid schedules, as determined by the City of Albany.

The City reserves the right to postpone the acceptance of the proposal and the award of the contract to a responsible bidder, to postpone the acceptance of the proposal and the award of the contract for a period not to exceed one-hundred-twenty (120) calendar days, or to reject any and all proposals received and further advertise the project for bids. The City may reject any bids not in compliance with all prescribed public contracting procedures and requirements, including the requirement to demonstrate the bidder's responsibility under ORS 279C.375(3)(b), and may reject for good cause any or all bids upon a finding of the City it is in the public interest to do so.

List of Subcontractors. Contractor is required to submit a list of subcontractors in accordance with ORS 279C.370 and shall submit within 2 hours after bid submittal to [procurement@albanyoregon.gov](mailto:procurement@albanyoregon.gov). The City will submit a copy of this disclosure of first-tier subcontractors to the Bureau of Labor and Industries (BOLI) along with the completed BOLI form WH-81.

Failure to submit the list of subcontractors form by the disclosure deadline will result in a non-responsive bid. A non-responsive bid will not be considered for award. If no subcontractors need to be disclosed; this form must still be submitted indicating such.

Electronic Signature. Any signature (including any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate, or accept such contract or record) hereto or to any other certificate, agreement, or document related to this transaction, and any contract formation or record-keeping through electronic means shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law.

Communicable Diseases. Contractor understands the risk to have contact with individuals, who have been exposed to and/or have been diagnosed with one or more communicable diseases, including but not limited to COVID-19 or other medical conditions, diseases, or maladies that exist, and it is impossible to eliminate the risk that Contractor could be exposed to and/or become infected through contact with or close proximity with an individual with a communicable disease. CONTRACTOR KNOWINGLY AND FREELY ASSUMES ALL SUCH RISKS, both known and unknown, EVEN IF ARISING FROM THE NEGLIGENCE OF THE RELEASEES OR OTHERS, and assumes all full responsibility for Contractor's participation.

#### I-4. STANDARD CONSTRUCTION SPECIFICATIONS

Each bidder must have access to a current set of City of Albany *Standard Construction Specifications*, which can be found on the City of Albany's website at <https://albanyoregon.gov/standard-construction-specifications> or a printed set may be purchased for \$100. This project is federally funded and, when conflict occurs between the FAA specifications included in this document and the City of Albany Standard Construction Specifications, the most restrictive standards apply.

#### I-5. CONTRACT COMPLETION TIME AND LIQUIDATED DAMAGES

At the Contractor's option, the City will issue the Notice to Proceed any time after both parties have executed the contract. The Contractor will be required to give the City seven days advance notice of intent to begin construction.



Once the Notice to Proceed is issued, the Contractor must complete the work in 30 calendar days, measured from the day work starts.

**Liquidated damages will be assessed against the Contractor for each day over the maximum number of calendar days allotted plus each day beyond the stated ultimate completion date until the work is satisfactorily completed and accepted by the City. The schedule of liquidated damages is listed in Section 80 of the *General Contract Provisions*.**

#### **I-6. PRECONSTRUCTION CONFERENCE**

A preconstruction meeting will be required. The meeting will be scheduled to take place a minimum of one week or as coordinated with the Owner, prior to beginning of construction. The Contractor shall submit the following submittals at the preconstruction conference:

- Project Schedule
- Traffic Control Plan
- Erosion and Sediment Control Plan

#### **I-7. PROJECT SCHEDULE**

A detailed construction schedule of all work relating to this project shall be submitted to the Engineer at the preconstruction conference. The schedule shall show how the contractor plans to complete the project on or before the ultimate completion date. The Contractor shall take appropriate measures to expedite work items that are behind schedule, including the use of outside forces to complete the work, without additional compensation.

#### **I-8. TEMPORARY TRAFFIC CONTROL**

All temporary traffic control shall be in accordance with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD); the ODOT *Short-Term Traffic Control Handbook*; City of Albany *Standard Construction Specifications*, Section 202; and as stated herein. The Contractor shall provide traffic control devices as may be required at locations where construction is of short-term duration (i.e., street intersections and access to private property), as well as traffic control devices that are expected to be in place for the duration of the project.

Construction operations shall be conducted in a manner that will provide for uninterrupted movement of traffic on all public and private roadways within the construction area. At a minimum, the Contractor shall maintain one lane of traffic in each direction, or provide flaggers to control alternating traffic through a single lane. Temporary ramps shall be installed and maintained at intersections and driveways for the duration of the project. At no time shall the flow of traffic be stopped completely without the approval of the Engineer. Approval for short-term, temporary closures or detours, if given, will be limited to a specific instance and will not be approved as standard practice.

The Contractor shall limit all construction traffic, including material delivery and spoil removal, to those streets where there are construction activities taking place. The City will immediately suspend work in the event that the Contractor does not limit construction traffic to approved streets. Work will be allowed to resume only after the Contractor has submitted a construction traffic routing plan limiting construction traffic to approved streets. This plan will be reviewed and approved by the City prior to its implementation. Damage to streets resulting from unapproved construction traffic shall be corrected by the Contractor at no expense to the City.

A Construction Safety and Phasing Plan (CSPP) is provided in the Construction Drawings. Any modifications to this plan must be approved by the City of Albany. For any proposed modifications to the plan, the Contractor shall submit a detailed traffic control plan in conformance with the Standard Construction Specifications and corresponding with the Contractor's construction schedule. Traffic control plans for specific instances not covered by those shown in the Construction Drawings will be required for all public and private traveled roadways within the project area. The Contractor shall submit traffic control plans to the Engineer for review one week prior to commencing construction. The traffic control plan shall include a description of the traffic control devices, signing, and flaggers that are to be provided. No work shall begin until the City approves the traffic control plans. Following approval, the plan shall be adhered to at all times.

On streets where parking is normally allowed, the Contractor shall furnish and place at least three "No Parking" signs on each side of each block of the street where parking is to be prohibited. The signs shall be highly visible to motorists from all approaches to the area where parking is to be restricted. The signs shall be posted at least two full working days in advance of any construction activity and shall state the date and times when parking will be prohibited. Construction

operations shall not commence until all construction signing is in place. Construction signing required for the project shall be furnished and maintained by the Contractor.

All public and private roadways and driveways within the project area shall be fully opened to local traffic at the end of each workday and at all times when no work is taking place. When the progress of the work requires temporary closures of residential driveways, the Contractor shall provide notice to the affected residential properties 48-hours in advance of the closure. Access to residential driveways shall be reestablished as soon as possible. The Contractor shall maintain continuous access to commercial and industrial properties except during paving operations. The Contractor shall meet on-site with the manager of each business a minimum of 72-hours in advance of any work affecting access to their property and inform them of the measures taken to maintain access. The Contractor shall place and maintain "DRIVEWAY OPEN" signs at commercial driveways to guide customers and deliveries to the appropriate entrances during the work. The signs shall be repositioned on a continuous basis as the progress of the work requires.

After working hours, construction equipment shall be parked outside traveled portions of the roadways and shall be isolated with construction fencing and lighted barricades.

In the event the Contractor fails to provide and maintain proper barricades, signs, and other traffic control devices within one hour after notification by the Engineer, the City may install the traffic control devices at the Contractor's expense. The City will deduct two times (200%) the City's actual cost, which will include all labor, equipment, and materials involved, from any payments due or coming due to the Contractor.

**I-9. NOTIFICATIONS**

The Contractor must provide written notice to the front office of the following agencies, three (3) working days in advance of beginning construction. The written notice must include the construction schedule and must explain the extent and duration of expected traffic disruptions. Agency contact information may be found in the table below.

<u>Agency</u>	<u>Address</u>	<u>Phone Number</u>
U.S. Postal Service	525 Second Avenue SW, Albany, OR 97321	541-926-8829
Albany Transit System	112 Tenth Avenue SW, Albany, OR 97321	541-917-7667
Republic Services	1214 Montgomery Street SE ,Albany, OR 97321	541-928-2551
Albany Fire Department Administrative Office	611 Lyon Street SE, Albany, OR 97321	541-917-7700
Greater Albany Public Schools District Office	718 Seventh Avenue SW, Albany, OR 97321	541-967-4501
Albany Police Department	2600 Pacific Boulevard SW, Albany, OR 97322	541-971-7680
Linn County Sheriff's Office	1115 Jackson Street SE, Albany, OR 97322	541-967-3950
Benton County Sheriff's Office	180 NW Fifth Street, Corvallis, OR 97330	541-766-6858

The Contractor must notify the above-named agencies and the public of any schedule changes that are made by the Contractor, required by the City, or are the result of weather or other unforeseen circumstance. The Contractor must submit a copy of each notification to the City for review and approval prior to delivering the notices.

The Contractor must provide written notification to all affected residents and businesses three working days in advance of scheduled work that will result in traffic disruptions and blocked access to driveways or parking areas. Written notifications must explain the extent and duration of the disruption of traffic and/or blocked access and must include alternate routes or parking areas as appropriate.

**I-10. ENTERING AND WORKING WITHIN CONFINED SPACES**

Contractors working on any public improvement project, while under contract with the City or a private entity, shall comply with the following regulations as they pertain to entering and working within confined spaces (as defined by OR-OSHA):

- a. Identify any confined space entry that is required to perform the work and submit a list of the locations to the City.
- b. Follow the City's confined space entry procedures or submit an alternate procedure that meets or exceeds OR-

- OSHA confined space entry regulations.
- c. Submit written notice to the City of any hazardous situation that is encountered during the entry of or while working within a confined space.

**I-11. WORK AROUND FIBER OPTIC LINES**

The Contractor shall give COMPANY 48-hours advance notice of each instance where construction will occur in the vicinity of the fiber optic lines. It shall be the Contractor's responsibility to comply with all COMPANY-imposed requirements and to protect the fiber optic lines during construction operations. COMPANY may require that their lines be excavated by hand to minimize the risk of damage. COMPANY may want their own inspector on-site during construction of the UTILITY line in these areas.

**I-12. LOCATION OF UNDERGROUND UTILITIES**

The Contractor shall determine the horizontal and vertical alignment of existing public and private utilities well enough in advance to make adjustments to the work. Special care shall be taken to avoid compromising concrete thrust restraint on the existing water system. Locating utilities ahead of construction and providing protective measures where required are incidental to other bid items.

**I-13. FRANCHISE UTILITY COORDINATION**

The City has notified affected franchise utility companies of this project and has directed them to relocate their facilities as needed to provide for the construction of this project. Franchise utilities include Pacific Power, Northwest Natural, CenturyLink, Comcast and LS Networks. The Contractor must coordinate with the franchise utility companies to allow them to perform their relocation work. No additional contract time will be allowed for delays resulting from a lack of coordination with franchise utilities.

Franchise Utility contacts for this project are provided below: (Project engineer verify utilities and contact information)

<u>Utility</u>	<u>Contact</u>	<u>Telephone</u>	<u>Email</u>
Pacific Power	Eddie Steiner	541-967-6161	<a href="mailto:eddie.steiner@pacificcorp.com">eddie.steiner@pacificcorp.com</a>
NW Natural	Darrell Hammond	503-610-7746	<a href="mailto:darrel.hammond@nwnatural.com">darrel.hammond@nwnatural.com</a>
CenturyLink	Travis Vaughn	503-365-5555	<a href="mailto:travis.vaughn@lumin.com">travis.vaughn@lumin.com</a>
Comcast	Chris Cranford	503-476-2477	<a href="mailto:chris_cranford@comcast.com">chris_cranford@comcast.com</a>
LS Networks	Dan McGraw	503-349-9134	<a href="mailto:osp@LSNetworks.net">osp@LSNetworks.net</a>
ZiPLY Fiber	Dianne Palmer	503-443-5907	<a href="mailto:dianne.palmer@ziPLY.com">dianne.palmer@ziPLY.com</a>
Eagle Point Fiber	Joshua Rudishauser	503-210-5550	<a href="mailto:eaglepointfiber@protonmail.com">eaglepointfiber@protonmail.com</a>

**I-14. REPAIR OF EXISTING UNDERGROUND UTILITIES**

City-owned, underground infrastructure damaged during construction shall be repaired as directed by the Engineer. All completed repair work will require approval of the Engineer prior to covering the work. General repair guidelines are:

- a. Existing sanitary sewer mains and service laterals that are damaged shall be replaced with like materials and solid-sleeve couplings. Where like materials are not available, the existing pipe shall be replaced with ASTM 3034 PVC pipe and solid-sleeve transition couplings.
- b. Existing storm drainage pipe that is damaged shall be replaced with like materials and mechanical-type couplings. Where like materials are not available, storm drainage pipe shall be replaced with Class III concrete pipe or ASTM 3034 PVC pipe with appropriate mechanical-type couplings.

**I-15. EXCAVATION AND BACKFILL REQUIREMENTS**

A fill permit will be required to deposit excavated materials, in excess of 50 cubic yards at any one tax lot, from this project regardless of whether the site is publicly or privately owned. For property located within the city limits, fill permits may be obtained from the Public Works Department at City Hall, Third and Broadalbin Streets, Albany, Oregon. For property

located outside the city limits, fill permits may be obtained from the Linn County Building Department at the Linn County Court House, Fourth Avenue and Ellsworth Street, Albany, Oregon.

## SECTION II: STATE AND FEDERAL CONTRACTING LAW

### II-1. PREVAILING WAGES

All the provisions required by ORS 279C.800 through ORS 279C.870 relating to the payment of prevailing wage rates for work performed under the Contract with the City of Albany shall be complied with.

Each worker in each trade or occupation employed in the performance of this contract either by the contractor, subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the work on this contract, must be paid not less than the applicable state prevailing rate of wage, or the applicable federal prevailing rate of wage, whichever is higher.

Oregon law requires that the higher of the state prevailing wage rates (PWR) or federal Davis-Bacon rates be paid to workers on projects subject to both the state PWR law and federal Davis-Bacon Act.

Federal Davis-Bacon rates will apply to this project and **are, therefore, attached** and may also be obtained at <https://www.sam.gov/>. ORS 279C.830(1)(c); OAR 839-025-0020(3).

**The FBO Building and Historic Hangar Rehabilitation project does use federal funds. Therefore,** all the provisions required by ORS 279C.800 through ORS 279C.870 and the Davis-Bacon and Related Acts relating to the payment of prevailing wage rates for work performed under the Contract with the City of Albany shall be complied with.

Each year the Oregon Bureau of Labor and Industries (BOLI) publishes rates and amendments that are available by calling 971-353-6822 or online at the BOLI website at:

<https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>

**The publication that applies to this contract is the January 5, 2024, Prevailing Wage Rates for Public Works Contracts in Oregon, along with the April 5, 2024, Prevailing Wage Rate Amendments.**

Daily/weekly/holiday/weekend overtime must be paid. If a contractor fails to pay for any labor or services, the City can pay for this labor or services and withhold these amounts from payments due the contractor. ORS 279C.520; OAR 839-025-0020(2)(b).

Contractors and subcontractors are required to prepare weekly certified payroll reports and statements and submit them to the City by the fifth business day of each month (ORS 279C.845; OAR 839-025-0010). Contractor payment will be withheld until the City is in receipt of these certified weekly payroll reports. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 through ORS 279C.870.

### II-2. PERFORMANCE, PAYMENT, AND PUBLIC WORKS BONDS

In addition to the required payment bond and performance bond, unless exempt under ORS 279C.836 (7), (8), or (9), the contractor is required to file a \$30,000 Public Works Bond with the Construction Contractor's Board to be used exclusively for unpaid wages determined to be due by BOLI. The general contractor is required to verify that subcontractors, unless exempt, have filed a public works bond before permitting a subcontractor to start work on a project.

The Statutory Public Works Bond form is available from BOLI upon request or may be downloaded from <https://www.oregon.gov/boli/employers/Documents/public-works-bond.doc>.

### II-3. AFFIRMATIVE ACTION/NONDISCRIMINATION

By submitting a bid/proposal, the Bidder/Proposer agrees to comply with the Fair Labor Standards Act (FLSA); Title VII of the Civil Rights Act of 1964; Executive Order 11246, (as amended); Fair Employment Practices; Equal Employment Opportunity Act; Section 503 of the Rehabilitation Act of 1973, as amended; Vietnam Era Veterans' Readjustment Assistance Act of 1974; Americans with Disabilities Act; Age Discrimination in Employment Act of 1967 (ADEA); and Oregon Revised Statutes (ORS). By submitting a bid/proposal, the Bidder/Proposer specifically certifies, under penalty of

perjury, that the Bidder/Proposer has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

#### **II-4. PAY EQUITY COMPLIANCE AND TRAINING CERTIFICATION**

Pay Equity Compliance. As required by ORS 279C.520, Contractor must comply with ORS 652.220 and ORS 659A, and must not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. Contractor's compliance with this section constitutes a material element of this Agreement and a failure to comply constitutes a breach that entitles the City to terminate this Agreement for cause. Contracts valued at \$500,000 with employers that have 50 or more employees are required to take Pay Equity Training and submit a certificate as proof before being awarded a contract. Contractor must certify they have taken the required Pay Equity Training and provide a certificate to the City.

Free training is available through the state of Oregon's Department of Administrative Services. Details are available at <https://www.oregon.gov/das/Procurement/Pages/PayEquity.aspx>.

#### **II-5. LICENSE REQUIRED FOR ASBESTOS ABATEMENT PROJECT**

This contract does not require the contractor or subcontractor to be licensed under ORS 468A.720, regarding asbestos abatement.

#### **II-6. CONSTRUCTION AND DEMOLITION DEBRIS / YARD WASTE MATERIALS**

As set forth in ORS 279C.510, the contractor is responsible for:

- a. Salvaging or recycling construction and demolition debris, if feasible and cost-effective.
- b. Composting or mulching yard waste material at an approved site, if feasible and cost-effective.

#### **II-7. PROVISIONS CONCERNING ENVIRONMENTAL AND NATURAL RESOURCES LAWS**

Contractor is responsible to abide by ORS 279C.525 regarding enacted ordinances, rules, or regulations as set forth by the Albany Municipal Code, Oregon Department of Environmental Quality, Department of State Lands, Environmental Protection Agency, and/or the US Army Corps of Engineers, or any other federal, state, and local agency, in regards to the prevention of environmental pollution and preservation of natural resources.

#### **II-8. PAYMENT, CONTRIBUTIONS, LIENS, WITHHOLDING**

In accordance with ORS 279C.505, the contractor shall:

- a. Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- c. Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished.
- d. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167

#### **II-9. PAYMENT OF CLAIMS BY PUBLIC OFFICERS, PAYMENT TO PERSONS FURNISHING LABOR OR MATERIALS AND COMPLAINTS**

In accordance with ORS 279C.515; OAR 839-025-0020(2)(a):

1. If the contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as the claim becomes due, the City may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract.
2. If the contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this public improvement contract within 30 days after receipt of payment from the City or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date

that is 30 days after the date when payment was received from the City or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

3. If the contractor or a subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

The payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

## **II-10. CONTRACTOR'S RELATIONS WITH SUBCONTRACTORS - ORS 279C.580(3)(4)**

Contractor is required to include in each subcontract for property or services the contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

1. A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the City pays to the contractor under this contract.
2. A clause that requires the contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the contractor.
3. A clause that requires the contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. A contractor may change the form or the regular administrative procedures the contractor uses for processing payments if the contractor:
  - a. Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and
  - b. Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
4. An interest penalty clause obligating the Contractor, if the contractor does not pay the first-tier subcontractor within 30 days after receiving payment from the City, to pay the first-tier subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (1.) above. A contractor or first-tier subcontractor is not obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid and is computed at the rate specified in ORS 279C.515(2).
5. A clause shall be included in each of the Contractor's subcontracts requiring the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of this sub-section, paragraphs 1-4 above, in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.
6. A mandate that all subcontractors, if they were awarded a subcontract on the basis of certification as a disadvantaged, minority-owned, women-owned, or emerging small business enterprise, to maintain certification through the term of the contract.

## **II-11. CONDITION CONCERNING HOURS OF LABOR**

According to ORS Chapter 279C.520, a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, the employee shall be paid at least time and a half pay as follows:

1. For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
2. For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

Contractor must give notice in writing to employees, who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. OAR 839-025-0020(2)(c)

Time limitation on claim for overtime (ORS 279C.545): Any worker employed by the Contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the contractor within 90 days from the completion of the contract, providing the contractor has: (1) Caused a circular clearly printed in boldfaced 12-point type and containing a copy ORS 279C.545 to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work; and (2) Maintained the circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

## **II-12. CONDITION CONCERNING PAYMENT OF MEDICAL CARE AND PROVIDING WORKERS' COMPENSATION**

According to ORS 279C.530; OAR 839-025-0020(2)(d), the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for such services and all moneys and sums that the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services. All employers, including Contractors, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

## APPENDIX A TO PART 26—GUIDANCE CONCERNING GOOD FAITH EFFORTS

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence



of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

**V.** In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in [§ 26.53\(b\)\(2\)\(vi\)](#), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

**VI.** A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.