



Real People. Real Solutions.

**PUBLIC CLIENT AND BOLTON & MENK, INC.**

**TASK ORDER TO AGREEMENT FOR PROFESSIONAL SERVICES**

**TASK ORDER NO: #11** \_\_\_\_\_

**CLIENT: City of Independence, Iowa** \_\_\_\_\_

**CONSULTANT: Bolton & Menk, Inc.** \_\_\_\_\_

**DATE OF THIS TASK ORDER: February 9, 2026** \_\_\_\_\_

**DATE OF MASTER AGREEMENT FOR PROFESSIONAL SERVICES: January 9, 2023** \_\_\_\_\_

Whereas, CLIENT and CONSULTANT entered into a Master Agreement for Professional Services ("Master Agreement") as dated above; and CONSULTANT agrees to perform and complete the following Services for CLIENT in accordance with this Task Order and the terms and conditions of the Master Agreement. CLIENT and CONSULTANT agree as follows:

**1.0 Scope of Services:**

CONSULTANT shall perform the Services listed in Exhibit I – Scope of Services. All terms and conditions of the Master Agreement are incorporated by reference in this Task Order, except as explicitly modified in writing herein.

**2.0 Fees:**

CLIENT shall pay CONSULTANT in accordance with Section III of the Master Agreement and as follows:

TASK 1A – DESIGN AND BID ADMINISTRATION SERVICES	\$ 33,400.00 (lump sum)
TASK 1B – SAE ARP SPECIFICATIONS	\$ 4,000.00 (Cost plus not to exceed)
<u>TASK 2 – CONSTRUCTION ADMINISTRATION</u>	<u>\$ 9,600.00 (lump sum)</u>
<b>TOTAL AUTHORIZED FEE</b>	<b>\$ 47,000.00</b>

**Funding Layout:**

Estimated Federal Share (up to 95%)	\$ 44,650.00
Estimated Local Share (as low as 5%)	\$ 2,350.00

**3.0 Schedule:**

Schedule for performance of Services authorized under Exhibit I – Scope of Services, Section I.A. BASIC SERVICES, will be as follows or as set forth in Exhibit I:

<b>TASK</b>	<b>SERVICE DESCRIPTION</b>	<b>DATE</b>
1	DESIGN AND BIDDING	January 2026 – May 2026
	90% Submittal	March 2026
	Bid Opening	April 2026
	Grant Application	On or before May 1, 2026
2	CONSTRUCTION	July 2026 – May 2027

\*Dates shown in schedule subject to change based on staffing availability, review time needed by FAA and/or completion of project by prime contractor.

**4.0 Term**

In the event that the Schedule for this Task Order extends beyond the term of the Master Agreement, either intentionally or unintentionally by Task Order Scope or by Task Order extension, then this Task Order shall operate to extend the Master Agreement through the completion of CONSULTANT'S obligations under this Task Order or until a new Master Agreement is executed incorporating this Task Order.

**5.0 Other Matters**

None

**6.0 Project Managers**

Project managers and contact information for the CLIENT and CONSULTANT for this Task Order, if different than the Master Agreement, are as follows:

Client	CITY OF INDEPENDENCE, IOWA	Consultant	BOLTON & MENK, INC.
Name	Brett Soukup	Name	Joseph Roenfeldt
Address	331 1 <sup>st</sup> Street East, Independence, Iowa 50644	Address	401 1st St SE Ste 201, Cedar Rapids, IA 52401
Office Phone:	(319) 332-0118	Office Phone:	(515) 240 4329
Email:	<a href="mailto:bsoukup@independenceia.gov">bsoukup@independenceia.gov</a>	Email:	<a href="mailto:Joe.roenfeldt@bolton-menk.com">Joe.roenfeldt@bolton-menk.com</a>

**7.0 Authorization**


**City of Independence, Iowa**

**Bolton & Menk, Inc.**

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

Matthew R. Schmitz                      Date  
City Manager

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

 01/27/2026  
Joseph P. Roenfeldt, P.E.                      Date  
Aviation Project Manager

Attest: \_\_\_\_\_

Susi Lampe                      Date  
City Clerk

**ATTACHMENTS TO THIS TASK ORDER:**

- Exhibit I – Scope of Services
- Exhibit II – Project Fee Estimate
- Exhibit III – Site Layout Exhibit (not utilized for this project)
- Exhibit IV – Survey Limits (not utilized for this project)
- Exhibit V – Approximate Locations of Soil Borings and Pavement Cores (not utilized for this project)
- Exhibit VI – Federal Contract Provisions for A/E Agreements, Updated December 29, 2025

**EXHIBIT I – SCOPE OF SERVICES****DESCRIPTION**

The CONSULTANT agrees to provide certain design, bidding and construction related engineering services for the Snow Removal Acquisition project at the Independence Municipal Airport (herein referred to as the **Project**) that consist of following scope of work:

**PROJECT UNDERSTANDING**

This project will provide certain engineering services to acquire a new carrier vehicle with attachments such as snow blower, loader and box blade (snow pusher). The airport has an existing broom that can be used on another carrier vehicle, however, if accommodation can be made to also attach this to the new carrier vehicle that would be preferred. This accommodation will be provided as part of a bid alternate. Acquiring new snow removal equipment will allow the city to properly clear the airfield pavement following snow events.

This work will follow the requirements of the following FAA Advisory Circulars (A.C.'s) current as of the date of this agreement:

- AC 150/5220-20A, Airport Snow and Ice Control Equipment
- AC 150/5370-10H, Standards for Specifications for Construction of Airports

Additionally, the work will be specified using the following supplemental specifications (appropriate to the equipment to be specified):

- ARP5539A - Rotary Plow with Carrier Vehicle
- APR5564, Airport Runway Brooms
- ARP 5943A, Snowplows and Hitches
- ARP 6059, Solid De-Icing/Anti-Icing Material Spreader for Airport Applications

**I.A. BASIC SERVICES**

For purposes of this Task Order, the Basic Services to be provided by the CONSULTANT are as follows:

**1. DESIGN & BIDDING SERVICES****1.1. Project Scoping**

CONSULTANT shall confer with the CLIENT on, and ascertain, project requirements, finances, schedules, and other pertinent matters and shall meet with FAA if needed and other concerned agencies and parties on matters affecting the project and shall arrive at a mutual understanding of such matters with the CLIENT.

**1.2. Project Meetings and Coordination with CLIENT, FAA, etc.** CONSULTANT shall coordinate with the subconsultants, CLIENT, FAA, and other applicable agencies to complete the work.

1.2.1. The task includes one meeting at the Airport, attended by the Project Manager. The CONSULTANT will prepare for and conduct up to one (1) meeting at the Airport to present the findings of the design phase and any alternatives and recommendations for the project. The result of the meeting(s) will be an agreed upon project design parameters to proceed forward with final construction documents.

1.2.2. Coordination with FAA, Local agencies, subconsultants, etc. The CONSULTANT shall coordinate the project parameters and criteria with the project stakeholders including the FAA, CLIENT, and Project Manager.

**1.3. Topographical Surveying (Not Required for this Project)**

**1.4. Geotechnical Investigation (Not Required for this Project)**

**1.5. FAA Pavement Design Report and Form 5100 (Not Required for this Project)**

**1.6. Construction Safety and Phasing Plan (CSPP) (Not Required for this Project)**

**1.7. Modification of Airport Design Standards**

As needed, the CONSULTANT will prepare a Request for Modification of Federal Construction Standards if found to be necessary for the project. The Mod to Standards will discuss modifications required under the Bid Packages. The Mod to Standards will be submitted to the CLIENT for acceptance. This document will be forwarded to the FAA for approval along with final plans, contract documents, specifications, and the Pavement Design Report (if required).

**1.8. 10% Review Submittal to FAA (Not Required for this Project)**

**1.9. 30% Review Submittal to FAA (Not Required for this Project)**

**1.10. 90% Review Submittal to FAA**

The Engineer will submit a set of 90% specifications to the Sponsor for their review. The project will be reviewed with the FAA to obtain their concurrence with the 90% preliminary design. The 90% review submittal to FAA will include:

- Prepare 90% Plans **(Not Required for this Project)**
- Prepare 90% Specifications
  - The Consultant will assemble the technical specifications necessary for the intended work. SAE ARP specifications will be utilized as the standard specification for the project. Additional specifications will be prepared to address work items or materials that are not covered by the FAA specifications.
- Prepare Technical Specifications
  - This work includes preparation of SAE ARP specifications and supplemental specifications, necessary to establish the requirements of the project and to modify, where appropriate, SAE ARP specifications.

- Prepare 90% Contract Documents
  - The Consultant will prepare the preliminary contract documents including invitation for bids, instruction to bidders, proposal, equal employment opportunity clauses, construction contract agreement, performance bond, payment bond, Federal Requirements, Preliminary Bid Schedule, and general provisions. Preparation will include establishing the location for the bid opening, dates for advertisement, and description of the work schedule. Preliminary contract documents will be prepared as early as possible during the design phase and submitted to the Owner for review by the Owner. Also review and incorporate the Sponsor's general provisions and contract clauses, as required.
- Prepare 90% Special Provisions
  - The CONSULTANT will prepare Special Provisions to address, or expand on, conditions that require additional clarification.
- Prepare 90% Engineers Report **(Not Required for this Project)**
- Prepare Cost Estimate for 90% Report
  - Calculate estimated preliminary quantities for the various work items. Quantities will be consistent with the specifications and acceptable quantity calculation practices. The CONSULTANT will then use recent bid prices and industry standards to prepare a preliminary cost estimate.
- Prepare Construction Safety and Phasing Plan (CSPP) **(Not Required for this Project)**

#### **1.11. Prepare Final Plans, Specifications, Cost Estimate, and Project Budget**

- 1.11.1. A final set of plans, specifications and contract documents will be prepared which incorporates revisions, modifications and corrections determined during the CLIENT's review of the 90% submittal.
- 1.11.2. Prepare Final Cost Estimate

Using the final quantities calculated following the completion of the plans and specifications, the CONSULTANT will prepare the construction cost estimate. The estimate will be based on information obtained from previous projects, contractors, material suppliers, and other databases available.

#### **1.12. Prepare Disadvantaged Business Plan (DBE) (Not Required for this Project)**

**1.13. Prepare Advertisement for Bids and Bid Documents**

CONSULTANT shall prepare, reproduce, and distribute up to a total of two sets of bidding documents for the project. CONSULTANT will submit a copy to the CLIENT for distribution to the local and selected publications of the pending project. The CLIENT shall pay for the associated cost of advertising. In addition, electronic copies of the bid documents will be made available for download through the Quest Construction Document Network website (QuestCDN). The CONSULTANT will also keep a current list of plan holders and distribute this to interested parties upon request. This task includes coordination required to facilitate these requests.

**1.14. Respond to Bidders Questions**

During the bidding process, the CONSULTANT will be available to clarify bidding issues with contractors and suppliers, and for consultation with the various entities associated with the project. This item also includes contacting bidders to generate interest in the project.

**1.15. Prepare and Distribute Addendums**

CONSULTANT shall issue addenda as appropriate to interpret, clarify, or change the bidding documents as required by the CLIENT or the FAA. Addenda will be made available to the plan holders either through mail, electronic mail, hand delivery or via facsimile transmission. Any addenda that are generated as a sole result of the CLIENT's error or omission will be considered as extra services and the CONSULTANT shall be reimbursed for this effort as an amendment to this contract.

**1.16. Bid Opening**

The CONSULTANT will attend the bid opening.

**1.17. Bid Review and Bid Tabulation**

CONSULTANT shall advise CLIENT as to the acceptability of any subcontractors, suppliers, and other persons and organizations proposed by the bidders and as to the acceptability of substitute materials and equipment proposed by bidders. The CONSULTANT shall prepare a spreadsheet that includes all bid items for the purpose of evaluating the lowest bidder. The CONSULTANT shall input the as-bid unit prices into the spreadsheet and verify mathematical computations of the bids. The CONSULTANT will then provide recommendations to the CLIENT as to the name of the lowest responsible and responsive bidder.

**1.18. Prepare Recommendation for Award**

The CONSULTANT will prepare a recommendation of award for the CLIENT to accept or reject the bids as submitted. If rejection is recommended, the CONSULTANT will supply an explanation for their recommendation and possible alternative actions the CLIENT can pursue to complete the project. Once the Contract Award is made the CONSULTANT will distribute the bid tabulations on request of the CLIENT.

**1.19. Prepare Grant Application**

The Application may be prepared after the project design has been completed and the bids accepted or the FAA may require the Application to be completed early during the design phase. Preparation of the Application will include the following:

- SF-424
- Prepare FAA Form 5100-100 including Program Narrative, discussing the Purpose and Need of the Work and the Method of Accomplishment
- Sponsor Certification (total of six)

The CONSULTANT will submit the Application to the CLIENT for approval and signatures. After obtaining the necessary signatures, the CLIENT will forward the signed Application to the FAA for further processing.

**1.20. Environmental Review, CATEX (Not Required for this Project)**

An environmental review is required and was conducted for this project. From the FAA's Go Letter: "The FAA determined the proposed project is environmentally Categorical Excluded (CATEX) per paragraph(s) B-2.3h of FAA Order 1050.1G as it relates to the National Environmental Policy Act (NEPA). No further environmental documentation for this project is needed."



## **2. CONSTRUCTION ADMINISTRATION**

### **2.1. Pre-Construction Meeting (Not Required for this Project)**

### **2.2. Initial Construction Survey Control Layout (Not Required for this Project)**

### **2.3. Prepare Construction Management Plan (CMP) (Not Required for this Project)**

### **2.4. Prepare Contract Manuals**

The CONSULTANT is required to check that the construction contracts are in order, Contractor has provided proof of insurance, the bonds have been completed, and the CLIENT, Contractor and applicable Agencies has been provided with adequate copies of the executed Contract Manual to include the Agreement and all addenda.

The Contract Documents will be updated to include all addenda items issued during bidding as necessary and adequate copies provided to the Contractor.

### **2.5. Construction Management Services**

The CONSULTANT will provide Construction Administration Services the scope of which is based on the following:

- The Consultant and Client agree that construction engineering services furnished shall be to the extent necessary to determine compliance with plans and specifications.
- The CONSULTANT and CLIENT agree that the Construction Engineering Services provided by the CONSULTANT may be required to continue and exceed beyond the construction time element stated in the CLIENT's agreement with the construction Contractor. When the extent of these construction services beyond the control of the CONSULTANT occurs, the CLIENT agrees that CONSULTANT will be reimbursed for additional Construction Engineering Services in excess of the specified construction time period at a mutually acceptable fee negotiated at the time all the pertinent circumstances are known.
- Nothing herein shall be construed as imposing upon the CONSULTANT's responsibility for the construction means, methods, techniques, sequences, safety programs, and procedures used by contractors.

The CONSULTANT agrees to provide Construction Administration Services that include the following:

- 2.5.1. Provide interpretation of plans and specifications as requested.
- 2.5.2. Review shop drawings and certificates submitted by contractors for compliance with design concepts, as required by the applicable sections of the technical specifications. In addition, submittals will be checked for Buy American compliance.
- 2.5.3. Review all periodic and final pay requests and explanation of variation between Contract and final quantities prepared by Resident Project Representative. Coordinate Contractor approval and signature and submit to CLIENT for approval.

- 2.5.4. Prepare, review and process Field Orders, Change Orders to include a cost estimate, cost/price analysis, record of negotiations, review, and evaluation of "Contractor's Request for Extension of Contract Time" and make recommendations regarding approval to the CLIENT. Notify the Contractor that no work can start until approved by the CLIENT.

## **2.6. Resident Project Representative (RPR) (Not Required for this Project)**

## **2.7. Final Inspection and Documentation**

### **2.7.1. Final Inspection**

The CONSULTANT will schedule and conduct a final inspection with the CLIENT, Contractor, FAA representatives to determine whether the project has reached substantial completion and the work is in accordance with the plans and specifications. The CONSULTANT will document items found to be deficient.

### **2.7.2. Final Punch List**

The CONSULTANT will prepare a punch list correspondence including the deficient items and will forward this correspondence to the Contractor requiring correction of the items and request a schedule for completion. The CONSULTANT will send a copy to the CLIENT and include a copy in the Grant Closeout Report.

### **2.7.3. Final Construction Certifications**

Once all the punch list items have been completed to the satisfaction of the CLIENT and FAA, the CONSULTANT will prepare a Certification of Construction Acceptance for the project. This certification will also be included in the Grant Closeout Report. Assemble documentation for the project closeout report once the project is complete. This will include gathering all construction documentation, supplemental agreements (if applicable), weekly reports, pay requests, testing result summaries, final certification documentation, and change orders in preparation for closeout.

## **2.8. As-Built Plans (Not Required for this Project)**

## **2.9. Prepare As-Built Airport Layout Plan (Not Required for this Project)**

## **2.10. Project Closeout**

Prepare the closeout documentation in accordance with the AIP Sponsor Guide Section 1600. The CONSULTANT may prepare the closeout document within 90 days of final payment to the contractor. Closeout documentation shall include, but may not be limited to, the following:

- a. Sponsor Cover Letter
- b. Closeout Narrative
  - o Work Accomplished
  - o Project Cost and Funding Sources
  - o Project Team
  - o Project Milestones
  - o Equipment Photos
  - o Final Inspection and Punch List
  - o Contract time and Liquidated Damages

- Project Costs
- c. Final SF-271 Form, Outlay Report and Request for Reimbursement for Construction Projects
- d. Final SF-425 Form, Federal Financial Report
- e. Final Invoice Summary

This work includes preparation of the documentation, coordination with the CLIENT and FAA for review, and preparation of final documents for CLIENT approval. The CLIENT will furnish copies of all administrative costs, as well as paperwork related to previous grant reimbursement (drawdown) requests.

#### **I.B. ADDITIONAL SERVICES**

Consulting services performed other than those authorized under Section I.A. shall not be considered part of the Basic Services and may be authorized by the CLIENT as Additional Services. Additional Services consist of those services, which are not generally considered to be Basic Services; or exceed the requirements of the Basic Services; or are not definable prior to the commencement of the project; or vary depending on the technique, procedures, or schedule of the project contractor. Additional services may consist of the following:

1. Additions to the project outside of this scope.
2. Hosting a pre-bid meeting.
3. Periodic completion of grant reimbursement requests (i.e. Credit Applications).
4. Attendance of additional meetings beyond those identified in the above scope.
5. All other services not specifically identified in Section I.A.

15% Profit

# **EXHIBIT VI**

## **FEDERAL CONTRACT PROVISIONS FOR A/E AGREEMENTS**

ALL REFERENCES MADE HEREIN TO “CONTRACTOR”, “PRIME CONTRACTOR”,  
“BIDDER”, “OFFEROR”, AND “APPLICANT” SHALL PERTAIN TO THE  
ARCHITECT/ENGINEER (A/E).

ALL REFERENCES MADE HEREIN TO “SUBCONTRACTOR”, “SUB-TIER CONTRACTOR”  
OR “LOWER TIER CONTRACTOR” SHALL PERTAIN TO ANY SUBCONSULTANT UNDER  
CONTRACT WITH THE A/E.

ALL REFERENCES MADE HEREIN TO “SPONSOR” AND “OWNER” SHALL PERTAIN TO  
THE STATE, CITY, AIRPORT AUTHORITY OR OTHER PUBLIC ENTITY EXECUTING  
CONTRACTS WITH THE A/E.

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## **PROVISIONS APPLICABLE TO ALL CONTRACTS**

### **ACCESS TO RECORDS AND REPORTS**

Reference: 2 CFR § 200.334  
2 CFR § 200.337  
FAA Order 5100.38

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.

### **CIVIL RIGHTS – GENERAL**

Reference: 49 USC § 47123

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, creed, sex, 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.

### **CIVIL RIGHTS – TITLE VI ASSURANCE**

Reference: 49 USC § 47123  
FAA Order 1400.11

#### **Title VI Solicitation Notice**

As a condition of a grant award, the Sponsor shall demonstrate that it complies with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq) and implementing regulations (49 CFR part 21) including amendments thereto, the Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), U.S. Department of Transportation and Federal Aviation Administration (FAA) Assurances, and other relevant civil rights statutes, regulations, or authorities, including any amendments or updates thereto. This may include, as applicable, providing a current Title VI Program Plan to the FAA for approval, in the format and according to the timeline required by the FAA, and other information about the communities that will be benefited and impacted by the project. A completed FAA Title VI Pre-Grant Award Checklist is required for every grant application, unless excused by the FAA. The Sponsor shall affirmatively ensure that when carrying out any project supported by this grant that it complies with all federal nondiscrimination and civil rights laws based on race, color, national origin, sex, creed, age, disability, genetic information, in consideration for federal financial assistance. The Department's and FAA's Office of Civil Rights may provide resources and technical assistance to recipients to ensure full and sustainable compliance with Federal civil rights requirements. Failure to comply with civil rights requirements will be

considered a violation of the agreement or contract and be subject to any enforcement action as authorized by law.

#### 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) including amendments thereto;
- 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;
- 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

##### **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:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.



2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, creed, sex, 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 including amendments thereto.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the 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.
5. **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.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the 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.

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

Reference: 2 CFR § 200, Appendix II(K)  
2 CFR § 200.216

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)].

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

Reference: 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.

## **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

Reference: 20 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.

## **RIGHT TO INVENTIONS**

Reference: 2 CFR Part 200, Appendix II(F)  
37 CFR Part 401

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the 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.

## **SEISMIC SAFETY**

Reference: 49 CFR Part 41

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

## **TAX DELINQUENCY AND FELONY CONVICTIONS**

Reference: Section 8113 of the Consolidated Appropriations Act, 2022 (P.L. 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

The Contractor certifies:

- 1) It 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. 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.
- 2) It is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months. A felony conviction is 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.

The Contractor agrees to incorporate the above certification in all lower tier subcontracts.

## **TRADE RESTRICTION CERTIFICATION**

Reference: 49 USC § 50104  
49 CFR Part 30

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.

#### **VETERAN'S PREFERENCE**

Reference: 49 USC § 47112(c)

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within 49 U.S.C. § 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. § 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.

## **PROHIBITION OF COVERED UNMANNED AIRCRAFT SYSTEMS (UAS)**

Reference: FAA Reauthorization Act of 204 (Public Law 118-63), Section 936  
49 USC § 44801 note

The Bidder or Offeror certifies that they are aware of and comply with relevant Federal statutes and regulations, including those from the Federal Aviation Administration (FAA), for operating unmanned aircraft systems (UAS) in accordance, and in compliance with all related requirements in the FAA Reauthorization Act of 2024 (Public Law 118-63), section 936 (49 U.S.C. § 44801 note).

Contractor warrants that all UAS operations will be conducted in full compliance with all applicable Federal Aviation Administration (FAA) regulations, including but not limited to 14 CFR Part 107, and any other applicable local, state, or Federal laws and regulations.

Sponsors and subgrant recipients cannot use AIP grant funds to enter into, extend, or renew a contract related to covered unmanned aircraft systems (UAS). This includes both procurement and operational contracts, as well as contracts with entities that operate such systems.

## **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$10,000**

### **TERMINATION OF CONTRACT**

Reference: 2 CFR Part 200, Appendix II(B)  
FAA Advisory Circular 150/5370-10, Section 80-09

#### **Termination for Convenience (Professional Services)**

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

#### **Termination for Cause (Professional Services)**

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party seven (7) days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights

and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

a) **Termination by Owner:** The Owner may terminate this Agreement for cause in whole or in part, for the failure of the Consultant to:

1. Perform the services within the time specified in this contract or by Owner approved extension;
2. Make adequate progress so as to endanger satisfactory performance of the Project; or
3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

b) **Termination by Consultant:** The Consultant may terminate this Agreement for cause in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
3. Suspends the project for more than one hundred eighty (180) days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Consultant is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

## **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$15,000**

### **DISTRACTED DRIVING**

Reference: Executive Order 13513  
DOT Order 3902.10

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 \$15,000 that involve driving a motor vehicle in performance of work activities associated with the project.

## **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$25,000**

### **DEBARMENT AND SUSPENSION**

Reference: 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.

## **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$100,000**

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

Reference: 2 CFR Part 200, Appendix II(E)  
29 CFR § 5.5(b)  
40 USC § 3702  
40 USC § 3704

#### **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.



## **LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

Reference: 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 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$150,000**

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

References: 2 CFR Part 200, Appendix II(G)  
42 USC § 7401, et seq  
33 USC § 1251, et seq

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 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.

The Contractor must include this requirement in all subcontracts that exceed \$150,000.

## **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$350,000**

### **BREACH OF CONTRACT TERMS**

Reference: 2 CFR Part 200, Appendix II(A)

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.

## **PROVISIONS APPLICABLE TO CONTRACTS CUMULATIVELY EXCEEDING \$250,000 IN ONE YEAR**

### **DISADVANTAGED BUSINESS ENTERPRISE**

Reference: 49 CFR Part 26  
49 USC § 47113

#### **Solicitation Language (Solicitations with a DBE Contract Goal)**

##### **Bid Information Submitted as a matter of *responsiveness*:**

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 responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the 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 including any amendments thereto. 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.

**Bid Information submitted as a matter of bidder 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 five 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 including any amendments thereto. 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.

**Bid Information requirements for negotiated procurement**

In a negotiated procurement, such as a procurement for professional services, the Sponsor may allow the bidder/offeror to make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required under the above *responsiveness* or *responsibility* procedures before the final selection for the contract is made by the recipient.

**Bid Information submitted for Design-Build projects**

In a design-build contracting situation, in which the Sponsor solicits proposals to design and build a project with minimal-project details at time of letting, the Sponsor may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in [paragraph \(b\)](#) of 49 CFR § 26.53 that applies to design-bid-build contracts. To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, the recipient must provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. The recipient and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, *e.g.*, replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

### *Solicitation Language (Solicitations with No DBE Contract Goal)*

The requirements of 49 CFR Part 26 including any amendments thereto apply to this contract. It is the policy of the Owner 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)*

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, including any amendments thereto, 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)*

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) calendar days from the receipt of each payment the prime contractor receives from Owner. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) calendar 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 Owner. This clause applies to both DBE and non-DBE subcontractors.

#### *Termination of DBE Subcontracts (49 CFR § 26.53(f))*

The prime contractor must not terminate a DBE subcontractor listed in response to the above *Solicitation Language (Solicitations that include a Contract Goal)* section (or an approved substitute DBE firm) without prior written consent of Owner. 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 from the Owner. Unless the Owner's 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 Owner may provide such written consent only if the Owner 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 Owner 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 the Owner, 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 the Owner and the contractor of the reasons, if any, why it objects to the proposed

termination of its subcontract and why the Owner should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Owner may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

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