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|  |  MISSOURI DEPARTMENT OF TRANSPORTATION (MoDOT)AIP REGIONAL GUIDANCE*for*PLANS & SPECIFICATIONS(Revision 03/15/10, Minor 05/09/2012, Revision 12/8/2015, Revision 2/18/2016, Revision 4/11/2018, Revision 5/6/2020) |  |

**Plans and Specifications**

The development requirements of a Sponsor are typically conveyed to prospective bidders through the preparation of plans and specifications. Project plans (drawings) serve to graphically depict the extent of the development requirements in an accurate and concise manner. The project specification in contrast serves to convey technical information for quality acceptance, performance characteristics, and permissible construction methods.

In addition to the plans and specifications, bid documents and contract documents are prepared to convey to prospective contractors all bidding requirements and contractual obligations expected of the successful bidder. The bid documents and contract documents are commonly bound with the project specifications to form a project manual.

It is important to note that the Sponsor is responsible for all matters concerning contract procurement for a project. The Sponsor is also the contractual authority for all matters related to establishing and administering the contract agreement. MoDOT is not a party to such contract agreements.

The Sponsor and their engineering consultant are also responsible for the accuracy, completeness, legal sufficiency and technical content of the contract plans and specifications. Reviews conducted by MoDOT are limited to the purpose of determining State Block Grant Program (SBGP) eligibility and adherence with Federal Aviation Administration (FAA) Standards.

While MoDOT is not a party to the construction contract, the Sponsor is obligated by the receipt of SBGP funds to incorporate all applicable FAA standards and Federal provisions required by the SBGP. FAA standards, policies and guidelines are published in various Advisory Circulars and Engineering Briefs. Sponsors are obligated to assure that applicable standards are applied in the design of an SBGP project. Modifications to FAA standards are permitted only if express written approval is granted by MoDOT.

**Submittal Requirements**

The sponsor shall submit one set of 100% plans and specifications to the MoDOT Aviation Section for review and concurrence. When the Sponsor receives written authorization to advertise for bids from MoDOT, one complete set of the bidding documents (sealed, signed, and dated by the engineer) shall be submitted electronically to MoDOT.

MoDOT Review and Approval

The approval of plans and specifications by MoDOT is essentially based on the combination of a MoDOT cursory review and the submittal of a satisfactory executed Sponsor Certification for Project Plans and Specifications. The review by MoDOT is generally limited to critical project elements such as the safety plan, pavement details, airfield marking details, and airfield lighting details. MoDOT will not typically review detailed engineering and quantity calculations; however, such documentation shall be made available if so requested by MoDOT. The primary purpose of MoDOT's review is to verify that applicable FAA standards are being applied as well as to make a determination regarding the limits of SBGP eligibility.

The Sponsor and their consultant shall allow sufficient time for MoDOT to conduct an appropriate review. This may vary per size and type of project. Generally, a review time frame of 45 calendar days is requested. Upon receipt of MoDOT review comments, the Sponsor or their consultant shall provide a written response to each comment made by MoDOT that addresses how the comment was resolved. Authorization to advertise for bids will generally not be granted until the plans and specifications are deemed acceptable by MoDOT for SBGP participation. Sponsors shall note that MoDOT approval in the plans and specifications does not relieve the Sponsor of the responsibility to correct items of work later found to be non-compliant with regards to FAA Standards.

**Project Drawings**

The project-drawing package serves to graphically depict the extent of the contract requirements in an accurate and concise manner. The project drawings, along with the technical specifications, form a critical part of the Contractor’s contractual obligations. As a legal document, the contract drawings must convey the requirements of the Sponsor in a clear and unambiguous manner.

**SBGP Requirements**

Projects funded under the SBGP shall be developed in accordance with applicable FAA standards. FAA standards are contained within various Advisory Circulars and Engineering Briefs and are also supplemented by regional guidance.

**Responsibility of Sponsor and Engineer**

The Sponsor and their consultant assume responsibility for the accuracy, completeness, and technical content of the contract drawings. The engineer shall apply sound engineering judgment and widely accepted engineering principals when preparing project drawings.

**FAA Airway Facilities**

If the SBGP project involves relocation or installation of FAA owned facilities such as navigational aides and approach lighting systems, the design shall incorporate the FAA Air Traffic Organization’s drawing standards and details.

**Typical Project Plans**

A typical drawing package will generally consist of the following sheets. A suggested outline of items to be addressed on each sheet can be found on the Construction Plans Checklist which is available on the MoDOT Aviation website under **MoDOT Construction Specifications.** This outline should not be construed as being inclusive of all such necessary drawings and associated details and elements. The engineering consultant shall apply "best practice" judgment in determining the extent of the drawing package for each specific project.

* Cover Sheet
* Project Layout Plan
* Safety and Phasing Plan (see Safety Plan requirements below)
* Typical sections
* Runway Plan and Profile
* Taxiway Plan and Profile
* Grading and Drainage Plan
* Pavement Joint Plan
* Pavement Marking and Signing Plan
* Lighting Plan
* Cross Sections
* Miscellaneous

**Safety Plan**

Construction activities within the operations areas of an airport have the potential to significantly compromise normal operational safety for aircraft. Careful planning and implementation of mitigating measures will greatly minimize the impact construction activities may have on normal airport operations.

Advisory Circular 150/5370-2 establishes FAA guidelines to assure operational safety on airports during construction activities. Adherence to these guidelines is mandatory for all construction projects funded in whole or in part by the SBGP.

**Airport Operator's Responsibility**

The airport operator is ultimately accountable for assuring operational safety at their airport during construction activities. The airport operator fulfills its obligation by several measures such as: preparing a comprehensive safety plan for each project, conducting routine meetings that address airport safety concerns, monitoring the implementation of safety plan measures and informing tenants of construction activities.

**Safety Plan**

As each project will vary per size and complexity, the required safety plan for each project should be customized for the unique conditions associated with the specific project and airport. It is important to note that while AC 150/5370-2 establishes the FAA standards for operational safety during construction, this Advisory Circular is not intended to serve as the safety plan. Simply incorporating this Advisory Circular into the contract documents does not fulfill the airport operator's responsibility to prepare a safety plan for the specific project.

**Minimum Requirements**

The Sponsor of the SBGP project, through their consultant engineer, shall identify minimum requirements for operational safety during construction activities at their airport. This includes but is not limited to acceptable construction sequencing, pavement closures, hazard identification, AOA security concerns, and airfield communication. These requirements are best conveyed to the Contractor by graphical representation on a drawing sheet labeled "Safety Plan". Considering that construction sequencing is an integral element of the safety plan, the project phasing requirements are often combined with the safety plan requirements on a drawing labeled "Safety and Phasing Plan".

Chapter 2 of AC 150/5370-2 provides a recommended checklist that addresses suggested elements of a safety plan. Chapter 3 addresses guidelines for various situations and conditions that would compromise normal operational safety. Appendix 3 provides a sample safety plan template for the benefit of the sponsor. FAA Standard Operating Procedure 1.00 also includes guidance on construction safety and phasing plans.

**MoDOT Review**

MoDOT will conduct a cursory review of all safety plans pursuant to FAA Standard Operating Procedure 1.00, as revised, to determine if appropriate requirements and measures are incorporated. Sponsors may not proceed with commencing work activities unless approval of the safety plan has been granted and the Sponsor has received a letter from MoDOT regarding such approval. Any changes to the approved safety plan shall be submitted to MoDOT for review and concurrence. The safety plan review process can take 45 calendar days or more, so the Sponsor should submit the safety plan as soon as possible.

**The Safety Plan and the Contractor**

The Contractor is obligated to implement the requirements of the "approved" safety plan. By identifying the minimum requirements of the safety plan in the bid package, prospective contractors have a sound basis for estimating the cost of implementing measures associated with the safety. The successful Contractor would then be required to identify how they intend to comply with the requirements of the safety plan.

We strongly discourage the practice of assigning the responsibility of preparing a safety plan to the successful contractor. Such a practice can introduce contract legal issues and create vague and ambiguous safety plan measures. By not identifying minimum safety plan requirements within the bid package, it may be possible for the Contractor to seek additional compensation for required operational safety restrictions that were not clearly identified within the bid package. Sponsor should take into consideration that the project incentive for most contractors is based on profit. Furthermore, the Sponsor remains accountable for all construction activities on their airport. It is not prudent for the Sponsor to assign the responsibility of preparing a safety plan to the Contractor while retaining the associated risk.

We strongly recommend identifying minimum safety plan requirements within the bid package. If the Contractor proposes construction sequencing that differs from that developed by the Sponsor, the Contractor would then be responsible for identifying acceptable revisions to the approved safety plan at no additional cost to the Sponsor. Such revisions would require approval by the Sponsor and MoDOT.

**Project Manual**

Typically, engineering consultants combine the bid documents, contract documents and technical specifications of a project into one bound document commonly referred to as the Project Manual. This document serves to convey to the Contractor the contractual and technical requirements of a construction project. The Project Manual also serves a critical role as part of the bid documents.

The Project Manual will generally consist of the following elements:

* Notice to Bidders
* Instructions to Bidders
* General Provisions
* Supplementary Provisions
* Technical Specifications
* Advisory Circulars
* Proposal Form
* Performance Bond
* Payment Bond
* Contract Agreement

**SBGP Requirements**

MoDOT does not prescribe the exact format or the specific content of each individual element of the Project Manual. The Sponsor's participation in the State Block Grant Program (SBGP), however, requires that the project incorporate all required FAA standards, Federal Provisions, and Certifications. This is best handled by including all such requirements within the Project Manual.

**Suggested Forms for Construction Contracting**

For the benefit of the Sponsor, we have prepared a suggested sample project manual boilerplate that the Sponsor may use as a guide in preparing his or her own specific bid package. The samples that are provided incorporate the Federal provisions that are required for a project greater than $150,000. Projects of lesser amounts may not require all of the provisions included in the sample documents.

**Sponsors and Consultants are cautioned that this suggested sample is not to be considered as being complete and whole and that the provision of such suggested sample contract documents by MoDOT shall not be construed as a guarantee of legal sufficiency. Sponsors are solely responsible for verifying the legal sufficiency of all matters concerning procurement and contracting.**

**Technical Specifications**

Projects funded under the State Block Grant Program (SBGP) must be developed in accordance with FAA established standards. SBGP recipients are obligated to comply with all identified FAA standards by the acceptance of a grant agreement.

**MoDOT and FAA Standards**

FAA Advisory Circular 150/5370-10 contains the FAA standards for construction of airports and airport related development. These standards may be supplemented by various Engineering Briefs issued by Airport Engineering Division of the Office of Airport Safety and Standards.

The FAA Regional Office may also supplement or amend the FAA standards for purposes of accommodating regional and local conditions that may not be adequately covered by the broader national standard. These modifications to AC 150/5370-10 are available under AIP Sponsor Guide No. 940 (FAA Central Region website).

Sponsors and their consultants must utilize AC 150/5370-10 as a guide specification when preparing a project specification. Sponsors may not modify or deviate from the accepted FAA standard unless express written approval is obtained from MoDOT. Upon approval from MoDOT, Modification of Standards (MOS) must be entered into the FAA Airports Geographic Information System (Airports GIS) website and approved by the FAA prior to use. Sponsors desiring to make such modifications must refer to AIP Sponsor Guide No. 950 (FAA Central Region website) for the required procedure to properly request a sponsor-initiated modification to FAA standards.

The FAA standard specifications include several "notes to engineers" that elaborate on permissible options and modifications an engineer may choose when preparing a project specification. The engineer shall use their sound engineering judgment to make appropriate and permissible decisions that account for project specific materials, site conditions, methods, and other requirements.

**SBGP Procurement Requirements**

Per the requirements of 2 Code of Federal Regulations (CFR) Part 200, technical specifications shall be prepared and issued in a manner that promotes fair and open competition. The technical specification shall convey a clear and accurate description of the desired product, material or item. The technical description shall not contain unnecessary or proprietary requirements that would unduly restrict competition.

The use of "brand name or equal" is permitted when it is impractical to make a clear and accurate description of the technical requirement. However, Sponsor must contact MoDOT for additional guidance prior to using "brand name or equal" in project plans.

**Industry Standards**

In the case of development items for which no FAA standard exists, the Sponsor shall rely on accepted industry practice to develop the technical requirements. Such requirements shall promote fair and open competition and shall not unduly restrict competition. MoDOT reserves the right to review and approve such standards for justification and reasonableness.

**Request for Bids (Advertisement)**

2 CFR Part 200 requires that the request for bids be publicly advertised for purposes of soliciting adequate competition. This is generally accomplished by preparing and publishing the Request for Bids (RFB), also sometimes referred to as the "Invitation for Bids".

**Purpose**

The RFB represents an announcement from the Sponsor of their intent to seek bids for a particular development project. The RFB should be brief and concise and suitable for publication as a legal notice in print media.

The RFB is not intended to convey all requirements for bid submittal. The RFB should identify basic information about the project and identify where prospective bidders may obtain additional specific project information. The Notice to Bidders and Instructions to Bidders are intended to convey to prospective bidders greater detailed information about submitting a responsive proposal.

**Extent of Public Announcement**

The extent of publishing depends on the magnitude of the project. For very large scale projects, the advertisement should cover a wide geographic area to solicit an adequate number of firms capable of accomplishing such a project. For smaller scale projects, advertisement within the local region may be sufficient to solicit an adequate numbers of capable firms. In all cases, the intent is to solicit sufficient competition to assure a fair and reasonable cost.

**Suggested Form of the Request for Bids**

For the Sponsor's benefit, we have made available a suggested sample Request for Bids on the next page. This suggested sample is based on formats commonly found in similar bid advertisements issued by various local, county and state entities throughout the United States.

**Sponsors and Consultants are cautioned that this suggested sample should not be considered as being complete and whole and that the provision of this sample notice by MoDOT shall not be construed as a guarantee of legal sufficiency. Sponsors are solely responsible for verifying the legal sufficiency of all matters concerning procurement and contracts.**

**REQUESTS FOR BIDS/INVITATION FOR BIDS**

{OWNER’S NAME)

**{AIRPORT NAME}**

State Block Grant Project No. **{MoDOT PROJECT NUMBER}**

Sealed bids will be received until **{TIME}**, **{DATE}**, and then publicly opened and read at **{LOCATION WHERE BIDS ARE TO BE OPENED}** for furnishing all labor, materials and equipment and performing all work necessary to: **{BRIEF AND CONCISE DESCRIPTION OF PROJECT}.**

Copies of the bid documents including project drawings and technical specifications are on file and may be inspected at:

 **{OFFICE LOCATIONS FOR VIEWING PLANS AND SPECIFICATIONS}**

A complete set of bid documents may be obtained from the **{OFFICE LOCATION FOR OBTAINING BID DOCUMENTS}** for a fee of $ **{REASONABLE VALUE APPROPRIATE FOR THE SIZE OF THE PROJECT AND STATE WHETHER DEPOSIT/FEE IS REFUNDABLE}**.

A prebid conference for this project will be held at **{TIME, DATE AND LOCATION OF THE PREBID CONFERENCE}**.

Each proposal must be accompanied by a bid guaranty in the amount of five (5) percent of the total amount of the bid. The bid guaranty may be by certified check or bid bond made payable to **{NAME OF SPONSOR}**.

Bids may be held by the **{NAME OF SPONSOR}** for a period not to exceed **{DAYS}** from the date of the bid opening for the purpose of evaluating bids prior to award of contract.

The right is reserved, as the **{NAME OF SPONSOR}** may require, to reject any bid and also the right to reject all bids.

In accordance with the Davis-Bacon Act, and the Missouri Prevailing Wage Law, the Contractor will be required to comply with the wage and labor requirements and to pay minimum wages in accordance with the schedule of wage rates established by the United States Department of Labor and the Missouri Division of Labor Standards, respectively. The highest rate between the two (Federal and State) for each job classification shall be considered the prevailing wage.

The **{NAME OF SPONSOR}**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders 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 will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

This project is subject to the requirements of 49 CFR Part 26 Disadvantaged Business Enterprise Participation. The owner has established a contract goal of **{DBE GOAL}** percent participation for small business concerns owned and controlled by qualified disadvantaged business enterprises (DBE). The bidder shall make and document good faith efforts, as defined in Appendix A of 49 CFR Part 26, to meet the established goal.

Award of contract is also subject to the following Federal provisions:

* Executive Order 11246 and DOL Regulation 41 CFR PART 60 - Affirmative Action to Ensure Equal Employment Opportunity.
* DOL Regulation 29 CFR Part 5 – Davis Bacon Act.
* DOT Regulation 49 CFR PART 29 - Government wide Debarment and Suspension and Government wide Requirements for Drug-free Workplace.
* DOT Regulation 49 CFR PART 30 - Denial of Public Works Contracts to Suppliers of Goods and Services of Countries that Deny Contracts to Suppliers of Goods and Services of Countries that Deny Procurement Market Access to U.S. Contractors (Foreign Trade Restriction).
* TITLE 49 United States Code, CHAPTER 501 – Buy American Preferences.

BID DOCUMENTS & TECHNICAL SPECIFICATIONS

**{Appropriate changes and additions required by the notes must be made. Where numbers, words, phrases, or sentences are enclosed in brackets { }, a choice or modification must be made. Where blank spaces { } occur in sentences, the appropriate data must be inserted. Where entire paragraphs are not applicable, they should be deleted. Additional sentences may be added if necessary. The final project specifications shall not include notes to the Engineer.}**

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**SECTION 1**

**NOTICE TO BIDDERS**

**{OWNER’S NAME}**

**{AIRPORT NAME}**

State Block Grant Project No. **{MoDOT PROJECT NUMBER}**

Sealed bids subject to the conditions and provisions presented herein will be received until **{TIME}**, **{DATE},** and then publicly opened and read at **{LOCATION WHERE BIDS ARE TO BE OPENED}**, for furnishing all labor, materials, equipment and performing all work necessary to **{BRIEF AND CONCISE DESCRIPTION OF PROJECT}**.

Copies of the bid documents including project drawings and technical specifications are on file and may be inspected at:

 **{OFFICE LOCATIONS FOR VIEWING PLANS AND SPECIFICATIONS}**

A complete set of bid documents may be obtained from the **{OFFICE LOCATION FOR OBTAINING BID DOCUMENTS}** for a fee of $ **{REASONABLE VALUE APPROPRIATE FOR THE SIZE OF THE PROJECT AND STATE WHETHER DEPOSIT/FEE IS REFUNDABLE}**.

A prebid conference for this project will be held at **{TIME, DATE AND LOCATION OF THE PREBID CONFERENCE}**.

**Contract Work Items.** This project will involve the following work items and estimated quantities. Prospective bidders are hereby advised that the quantities indicated herein are approximate and are subject to change.

|  |  |
| --- | --- |
| 1. Mobilization | Lump Sum |
| 2. Class A Excavation | 42,500 C.Y. |
| 3. Crushed Aggregate Base Course | 5,200 Tons |
| 4. Mineral Aggregate (BP-1 Mix) | 1,625 Tons |
| 5. Asphalt Cement (BP-1 Mix) | 85 tons |
| 6. Bituminous Prime Coat. | 6,000 Gals. |
| 7. Runway Pavement Marking (White) | 5,000 S.F. |
| 8. Seeding | 18 Acres |
| 9. Runway End Identification Light (REIL) System | Lump Sum |

**Contract Time.** The owner has established a contract performance time of **{NUMBER OF DAYS}** calendar days from the date of the Notice-to-Proceed. All project work shall be substantially completed within the stated timeframe. This project is subject to liquidated damages as prescribed in the project manual.

**Bid Security.** No bid will be considered unless accompanied by a certified check or cashier’s check on any bank or trust company insured by the Federal Deposit Insurance Corporation, payable to **{NAME OF SPONSOR}**, for not less than five (5) percent of the total amount of the bid, or by a bid bond secured by an approved surety or sureties, payable to the owner, for not less than five (5) percent of the total amount of the bid.

**Bonding Requirements**. The successful bidder will be required to furnish separate performance and payment bonds each in an amount equal to 100% of the contract price at the time of contract execution.

**Award of Contract.** All proposals submitted in accordance with the instructions presented herein will be subject to evaluation. Bids may be held by the **{NAME OF SPONSOR}** for a period not to exceed **{NUMBER OF DAYS}**from the date of the bid opening for the purpose of conducting the bid evaluation.

Award of contract will be based on the lowest aggregate sum proposal submitted from those bidders that are confirmed as being responsive and responsible. If more than one base bid is listed in the Proposal Form, the bidder may bid on Base Bid No. 1 and/or Base Bid No. 2. The owner reserves the right to select any one of the combinations of the base bid(s) and alternate bid(s), which in the judgment of the owner, best serves the owner’s interest. The right is reserved, as the **{NAME OF SPONSOR}** may require, to reject any bid and all bids.

Award of contract is contingent upon the owner receiving Federal-funding assistance under the State Block Grant Program.

**Federal Provisions.** This project is subject to the following Federal provisions, statutes and regulations:

**Equal Employment Opportunity - Executive Order 11246 and 41 CFR Part 60:** The Bidder’s attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth within the supplementary provisions. The successful Bidder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin.

**Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity:**

1. The Bidder’s attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth within the supplementary provisions.

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: **{INSERT GOAL, THEN DELETE TABLE 1 BELOW}** %.

Goals for female participation in each trade: 6.9%.

|  |
| --- |
| TABLE 1 |
| **MISSOURI ECONOMIC AREA (by counties)** | **GOAL %** |
|  |
| Cass, Clay, Jackson, Platte, Ray | 12.7 |
| Andrew, Buchannan | 3.2 |
| Atchison, Bates, Benton, Caldwell, Carroll, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Holt, Johnson, Lafayette, Livingston, Mercer, Nodaway, Pettis, Saline, Worth | 10.0 |
| Boone | 6.3 |
| Adair, Audrain, Callaway, Camden, Chariton, Cole, Cooper, Howard, Knox, Linn, Macon, Miller, Moniteau, Monroe, Morgan, Osage, Putnam, Randolph, Schuyler, Scotland, Shelby, Sullivan | 4.0 |
| Franklin, Jefferson, St. Charles, St. Louis | 14.7 |
| Bollinger, Butler, Cape Girardeau, Carter, Crawford, Dent, Gasconade, Iron, Lincoln, Madison, Maries, Mississippi, Montgomery, Perry, Phelps, Reynolds, Ripley, St. Francois, Ste. Genevieve, Scott, Stoddard, Warren, Washington, Wayne | 11.4 |
| Christian, Greene | 2.0 |
| Barry, Barton, Cedar, Dade, Dallas, Douglas, Hickory, Howell, Jasper, Laclede, Lawrence, McDonald, Newton, Oregon, Ozark, Polk, Pulaski, St. Clair, Shannon, Stone, Taney, Texas, Vernon, Webster, Wright | 2.3 |
| Lewis, Marion, Pike, Ralls | 3.1 |
| Clark | 3.4 |
| Dunklin, New Madrid, Pemiscot | 26.5 |

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 is also subject to the goals for both its federally involved and non-federally involved construction.

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

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

1. As used in this notice and in the contract resulting from this solicitation, the "covered area" is **{INSERT NAME OF CITY, COUNTY, AND STATE OF MISSOURI}**.

**Certification of Nonsegregated Facilities – 41 CFR Part 60:** A certification of Nonsegregated Facilities must be submitted prior to the award of a federally-assisted construction contract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

Contractors receiving federally assisted construction contract awards exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed $10,000 and are not exempt from the provisions of the Equal Opportunity Clause. The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

**Disadvantaged Business Enterprise – 49 CFR Part 26:** The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of MoDOT and the **(City or County)** to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals regardless of their business size or ownership. Awards of this contract will be conditioned upon satisfying the requirements of this section. These requirements apply to all bidders, including those who qualify as a DBE. The owner’s award of this contract is condition upon the bidder satisfying the good faith effort requirements of 49 CFR §26.53. A DBE contract goal of **(DBE GOAL)** percent has been established for this contract. The *non-DBE* bidder shall subcontract **(DBE GOAL)** percent of the dollar value of the base bid(s), excluding any additive alternates, to disadvantaged business enterprises (DBE) or make good faith efforts to meet the DBE contract goal. *The bidder and any subcontractor who qualifies as a DBE who subcontracts work to another non-DBE firm must subtract the amount of the non-DBE contract from the total DBE work counted toward the goal, as defined in 49 CFR Part 26.55*.

The apparent successful competitor will be required to submit the following information as a condition of bid responsiveness: (1) the names and addresses of 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 participating; (4) written statement from bidder that attests their commitment to use the DBE firm(s) listed under (1) above to meet the owner’s project goal; and (5) if the contract goal is not met, evidence of good faith efforts undertaken by the bidder, as described in Appendix A to 49 CFR Part 26.

The apparent successful competitor must provide written confirmation of participation from each of the DBE firms listed in their commitment with the proposal documents as a condition of bid responsiveness.

**Davis-Bacon Act, as amended – 29 CFR Part 5:** The Contractor is required to comply with wage and labor provisions and to pay minimum wages in accordance with the current schedule of wage rates established by the United States Department of Labor included in the supplementary provisions.

In addition, the contractor will also be required to comply with the wage and labor requirements and pay minimum wages in accordance with the schedule of wage rates established by the Missouri Division of Labor Standards included in the Supplementary Provisions.

The highest rate between the two (Federal and State) for each job classification shall be considered the prevailing wage.

**Debarment, Suspension, Ineligibility and Voluntary Exclusion – 49 CFR Part 29:** The bidder certifies, by submission of a proposal or acceptance of a contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

**Foreign Trade Restriction – 49 CFR Part 30:** The Bidder and Bidder’s subcontractors, by submission of an offer and/or execution of a contract, is required to certify 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; or

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.

**Buy American Certificate – Aviation Safety and Capacity Act of 1990:** This contract is subject to the “Buy American Preferences” of the Aviation Safety and Capacity Act of 1990. Prospective Bidders are required to certify that steel and manufactured products have been produced in the United States and to clearly identify those items produced or manufactured outside of the United States.

**Additional Provisions:**

Modification to the project documents may only be made by written addendum by the Owner or Owner’s authorized Representative.

The proposal must be made on the forms provided within the bound project manual. Bidders must supply all required information prior to the time of bid opening.

**SECTION 2**

INSTRUCTIONS TO BIDDERS

 This section contains excerpts of the bidding requirements from Section 20 of the General Provisions. The bidder’s attention is directed to Section 20 for complete details.

1. **THE EXECUTED PROPOSAL FORM MUST BE SUBMITTED IN THE ORIGINAL BOUND PROECT MANUAL. NO INDIVIDUAL ELEMENTS OF THE PROJECT MANUAL MAY BE REMOVED OR DETACHED.**

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**Paragraph 1. may be modified to reflect engineer’s preferences.**

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2. The apparent low bidder shall submit "evidence of competency" and "evidence of financial responsibility" to the owner no later than 3 business days after the specified date for opening bids.

3. Each bidder shall certify in the Proposal Form at the time of bid submittal that they acknowledge receipt of all issued addenda.

4. No bid will be considered unless accompanied by a certified check or cashier’s check on any bank or trust company insured by the Federal Deposit Insurance Corporation, payable to the owner, for not less than five (5) percent of the amount of the bid, or by a bid bond secured by an approved surety or sureties (licensed to conduct surety business in the state of Missouri), payable to the owner, for not less than five (5) percent of the amount of the bid.

5. Proposals shall be sent to arrive at the time and date specified in Section 1, Notice to Bidders. Proposals received after the specified time and date will not receive consideration and will be returned unopened. Prior to submittal, the proposal shall be placed in a sealed opaque envelope and addressed to:

 **{OFFICE LOCATION IDENTIFIED IN THE NOTICE TO BIDDERS}**

The upper left hand corner of the envelope should be marked as follows:

Sealed Bid Proposal

Bid of NAME OF BIDDER

For construction improvements at **{AIRPORT NAME}**

State Block Grant Project No.: **{MoDOT PROJECT NUMBER}**

To be opened at: **{TIME AND DATE FOR RECEIPT OF BIDS}**

For a modification to a previously submitted proposal, insert “Modification to Proposal” in place of “Sealed Bid Proposal”.

6. The Owner reserves the right to reject any or all bids, as determined to be in the best interest of the Owner. Causes for rejection of proposals include but are not limited to:

* Submittal of more than one proposal from the same partnership, firm or corporation;
* Failure by Bidder to submit the bid prior to the stated time and date for receipt of bids;
* Failure by Bidder to furnish satisfactory bid guarantee;
* Failure by Bidder to provide all information required of the bid forms;
* Failure by Bidder to comply with the requirements of bid instructions;
* Failure by Bidder to complete the applicable Buy American Certification;
* Failure by the Bidder to demonstrate good faith efforts in obtaining participation by certified DBE firms;
* Determination by the Owner that Bidder is not qualified to accomplish the project work;
* Determination by the Owner that the Bidder has placed conditions on or qualified their proposal;
* Discovery of any alteration, interlineations or erasure of any project requirement by the Bidder;
* Inclusion of the Bidder as an Excluded Party in the System for Award Management;
* Evidence of collusion among bidders.

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SECTION 10

DEFINITION OF TERMS

Whenever 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 interpreted as follows:

**10-01 AASHTO.**  The American Association of State Highway and Transportation Officials, the successor association to AASHO.

**10-02 ACCESS ROAD.**  The right-of-way, the roadway and all improvements constructed thereon connecting the airport to a public highway.

**10-03 ADVERTISEMENT.**  A public announcement, as required by local law, inviting bids for work to be performed and materials to be furnished.

**10-04 AIP.**  The Airport Improvement Program, a grant-in-aid program, administered by the Federal Aviation Administration.

**10-05 AIR OPERATIONS AREA.**  For the purpose of these specifications, the term air operations area shall mean any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft.  An air operations 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.

**10-06 AIRPORT.**  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; and airport buildings and facilities located in any of these areas, and includes a heliport.

**10-07 ASTM.**  The American Society for Testing and Materials.

**10-08 AWARD.**  The acceptance, by the Owner, of the successful bidder's proposal.

**10-09 BIDDER.**  Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a proposal for the work contemplated.

**10-10 BUILDING AREA.**  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.

**10-11 CALENDAR DAY.**  Every day shown on the calendar.

**10-12 CHANGE ORDER.**  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 the work affected by such changes.  The work, covered by a change order, shall be within the scope of the contract.

**10-13 CONTRACT.**  The written agreement covering the work to be performed.  The awarded contract shall include, but is not limited to:  The Advertisement; The Contract Form; The Proposal; The Performance Bond; The Payment Bond; any required insurance certificates; The Specifications; The Plans; and any addenda issued to bidders.

**10-14 CONTRACT ITEM (PAY ITEM).**  A specific unit of work for which a price is provided in the contract.

**10-15 CONTRACT TIME.**  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.

**10-16 CONTRACTOR.**  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.

**10-17 DRAINAGE SYSTEM.**  The system of pipes, ditches, and structures by which surface or subsurface waters are collected and conducted from the airport area.

**10-18 ENGINEER.**  The individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for engineering inspection of the contract work and acting directly or through an authorized representative.

**10-19 EQUIPMENT.**  All machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the work.

**10-20 EXTRA WORK.**  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 Engineer to be necessary to complete the work within the intended scope of the contract as previously modified.

**10-21 FAA.**  The Federal Aviation Administration of the U.S. Department of Transportation.  When used to designate a person, FAA shall mean the Administrator or his/her duly authorized representative.

**10-22 FEDERAL SPECIFICATIONS.**  The Federal Specifications and Standards, Commercial Item Descriptions, and supplements, amendments, and indices thereto are prepared and issued by the General Services Administration of the Federal Government.

10-23 FORCE ACCOUNT. Not used.

**10-24 INSPECTOR.**  An authorized representative of the Engineer assigned to make all necessary inspections and/or tests of the work performed or being performed, or of the materials furnished or being furnished by the Contractor.

**10-25 INTENTION OF TERMS.**  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 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, subject in each case to the final determination of the Owner.

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.

**10-26 LABORATORY.**  The official testing laboratories of the Owner or such other laboratories as may be designated by the Engineer.

**10-27 LIGHTING.**  A system of fixtures providing or controlling the light sources used on or near the airport or within the airport buildings.  The 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.

**10-28 MAJOR AND MINOR CONTRACT ITEMS.**  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 percent of the total amount of the award contract.  All other items shall be considered minor contract items.

**10-29 MATERIALS.**  Any substance specified for use in the construction of the contract work.

**10-30 NOTICE TO PROCEED.**  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.

**10-31 OWNER.**  The term "Owner" shall mean the party of the first part or the contracting agency signatory to the contract.  For AIP contracts, the term "sponsor" shall have the same meaning as the term "Owner." Where the term "Owner" is capitalized in this document, it shall mean airport owner or sponsor only.

**10-32 PAVEMENT.**  The combined surface course, base course, and subbase course, if any, considered as a single unit.

**10-33 PAYMENT BOND.**  The approved form of security furnished by the Contractor and his/her 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.

**10-34 PERFORMANCE BOND.**  The approved form of security furnished by the Contractor and his/her surety as a guaranty that the Contractor will complete the work in accordance with the terms of the contract.

**10-35 PLANS.**  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.

**10-36 PROJECT.**  The agreed scope of work for accomplishing specific airport development with respect to a particular airport.

**10-37 PROPOSAL.**  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.

**10-38 PROPOSAL GUARANTY.**  The security furnished with a proposal to guarantee that the bidder will enter into a contract if his/her proposal is accepted by the Owner.

**10-39 RUNWAY.**  The area on the airport prepared for the landing and takeoff of aircraft.

**10-40 SPECIFICATIONS.**  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.

**10-41 SPONSOR.** See definition above of "Owner."

**10-42 STRUCTURES.**  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; flexible and rigid pavements; navigational aids; buildings; vaults; and other manmade features of the airport that may be encountered in the work and not otherwise classified herein.

**10-43 SUBGRADE.**  The soil that forms the pavement foundation.

**10-44 SUPERINTENDENT.**  The Contractor's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the Engineer, and who shall supervise and direct the construction.

**10-45 SUPPLEMENTAL AGREEMENT.**  A written agreement between the Contractor and the Owner covering  (1) work that would increase or decrease the total amount of the awarded contract, or any major contract item, by more than 25 percent, such increased or decreased work being within the scope of the originally awarded contract; or (2) work that is not within the scope of the originally awarded contract.

**10-46 SURETY.**  The corporation, partnership, or individual, other than the Contractor, executing payment or performance bonds that are furnished to the Owner by the Contractor.

**10-47 TAXIWAY.**  For the purpose of this document, the term taxiway means 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 or aircraft parking areas.

**10-48 WORK.**  The furnishing of all labor, materials, tools, equipment, and incidentals necessary or convenient to the Contractor's performance of all duties and obligations imposed by the contract, plans, and specifications.

**10-49 WORKING DAY.**  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 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 a working day.

**END OF SECTION 10**

SECTION 20

**PROPOSAL REQUIREMENTS AND CONDITIONS**

**20-01 BIDDER QUALIFICATIONS.** The apparent low bidder shall furnish the Owner satisfactory evidence of his/her competency and financial capability to perform the proposed work. The Bidder shall demonstrate that they are a responsible firm that possesses the skills, abilities, and integrity to faithfully perform the project work. Evidence of competency shall consist of statements covering the Bidder’s past experience on similar work, a listing of plant and equipment immediately available for use on the project, and a listing of key personnel that are available for the project. The listing for plant and equipment shall identify the type, the capacity and the present condition of the item.

Evidence of financial responsibility shall consist of a confidential statement or report of the Bidder’s financial resources and liabilities as of the last calendar year. A public accountant must certify such statements and reports. If the Bidder is presently pre-qualified with the Missouri Department of Transportation (MoDOT), evidence of this pre-qualification may serve as evidence of financial responsibility in lieu of the certified financial statements and reports.

The apparent low bidder shall submit "evidence of competency" and "evidence of financial responsibility" to the owner no later than 3 business days after the specified date for opening bids.

**20-02 BID DOCUMENTS/PROJECT MANUAL.** The bid documents are comprised of the following: Notice to Bidders; Instructions to Bidders; General Provisions; Supplementary Provisions; Technical Specifications; Project Drawings; Proposal Form; Performance and Payment Bonds; Form of Contract Agreement; any authorized addenda issued by the Owner; and any document incorporated in whole or in part by reference therein.

All documents comprising the Bid Documents are complementary to one another and together establish the complete terms, conditions and obligations of the successful bidder.

Those individual elements of the Contract Documents that are bound together shall also be referred to as the Project Manual. **THE EXECUTED PROPOSAL FORM MUST BE SUBMITTED IN THE ORIGINAL BOUND PROECT MANUAL. NO INDIVIDUAL ELEMENTS OF THE PROJECT MANUAL MAY BE REMOVED OR DETACHED.**

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**The above paragraph may be modified to reflect engineer’s preferences.**

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Prospective bidders may obtain a copy of the project manual and project drawings from the designated office identified within this Notice to Bidders.

**20-03 MODIFICATIONS TO PROJECT DOCUMENTS.** Modifications to the project documents may only be made by written addendum issued by the Owner or the Engineer. Verbal explanations, interpretations or comments made by the Owner or Owner’s representative shall not be binding. Addenda will be transmitted to all known official plan holders. Each bidder shall certify in the Proposal Form at the time of bid submittal, that they acknowledge receipt of all issued addenda.

**20-04 ERRORS AND DISCREPANCIES IN PROJECT DOCUMENTS.** Should Bidder find an error, discrepancy, ambiguity or omission in the project documents prior to submittal of a proposal, the Bidder is obligated to contact the Owner or Engineer with written notice of the error, discrepancy, ambiguity or omission. The written notice shall identify the nature and location of the error, discrepancy, ambiguity or omission. Corrections or modifications to the project documents will only be made by written addendum as prescribed herein. By submittal of a Bid Proposal, Bidder represents that they have thoroughly reviewed the project documents and that they have not identified any error, discrepancy, ambiguity or omission that would affect cost, progress or performance of the project work.

**20-05 CLARIFICATIONS AND INTERPRETATIONS.** A Bidder requiring a clarification or interpretation of the project documents shall make a written request to the Owner or Engineer. The Owner or Engineer must receive the written request a minimum of seven (7) calendar days prior to the date of the bid opening.

**20-06 ISSUANCE OF PROPOSAL FORMS.** The Owner reserves the right to refuse to issue a proposal form to a prospective bidder should such bidder be 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.** Contractor default under previous contracts with the Owner.

**d.** Unsatisfactory work on previous contracts with the Owner.

**20-07 INTERPRETATION OF ESTIMATED PROPOSAL QUANTITIES.** An estimate of quantities of work to be done and materials to be furnished under these specifications is stated within the project manual. This estimate is a result of careful calculations and is believed to be correct. The estimated quantities are given only as a basis for comparison of proposals and the award of the contract. The Owner does not expressly or impliedly agree that the actual quantities involved will correspond exactly with the estimated quantities. The Bidder shall not 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 hereinafter provided in the subsection titled “Alteration of Work and Quantities” of the general provisions without in any way invalidating the unit bid prices.

**20-08 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE CONDITIONS.** The Bidder is expected to carefully examine the site of the proposed work, the proposal, drawings, specifications, terms and conditions of the proposed agreement and the form of agreement. The Bidder shall satisfy themselves as to the character, quality, and quantities of work to be performed, materials to be furnished, and as 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 as to the conditions to be encountered in performing the work and as to the requirements of the proposed contract, plans, and specifications.

Boring logs and other records of subsurface investigations and tests, as appropriate, may be available for inspection by the Bidder. It is understood and agreed that such subsurface information, whether included in the project drawings, specifications, or otherwise made available to the Bidder, was obtained and is intended for the Owner's design and estimating purposes only. Such information has been made available for the convenience of all bidders. It is further understood and agreed that the Bidder is solely responsible for all assumptions, deductions, or conclusions which he or she may make or obtain from his or her examination of the boring logs and other records of subsurface investigations and tests that are furnished by the Owner.

**20-09 PREPARATION OF THE BID PROPOSAL.** All bid proposals shall be made on the forms provided by the Owner within the bound Project Manual. No bidder may submit more than one proposal. Each bidder shall specify in the bid, in figures, a unit price for each of the separate items listed in the bid proposal, except a unit price entry will not be necessary for those items having a quantity of one, and only the amount for that item need be entered. Zero will be considered a valid bid. The Bidder shall not enter zero in any "Unit Price" field unless zero is the intended bid for that item. A unit price left blank, with or without an extension, other than items having a quantity of one, will be considered as zero by the owner. The Bidder shall show the products of the respective unit prices and quantities in the amount column provided for that purpose. These extensions shall be totaled and in case of errors or discrepancies in extensions, the unit prices shall govern. All entries in the bid shall be in ink. If, in the sole discretion of the Owner, an obvious and apparent clerical error exists in the unit bid price for an item due to a misplaced decimal, but the extension appears to be correct and as intended in all respects, the Owner may correct the unit price bid in accordance with the extension listed. All errors in extensions or totals will be corrected by the Owner and such corrected extensions and totals will be used in comparing bids.

Bids shall not contain interlineations, alterations or erasures, except a bidder may alter or correct a unit price, lump sum price or extension entered on the Proposal Form by crossing out the figure with ink and entering a new unit price, lump sum bid or extension above or below in ink with his/her initials.

The proposal shall be signed and dated by an authorized representative of the Bidder. All signatures shall be made with an ink pen. The Bidder’s representative shall have the legal authority to obligate and bind the Bidder to the terms and conditions of the contract. The Bidder shall legibly state the name of the Bidder’s representative, the legal name of the Bidder, and the address of the Bidder including City, State and Zip Code.

* For bids by corporations, an officer of the corporation shall sign the bid, the State of incorporation shall be identified and the corporate seal affixed.
* For bids submitted by an agent, evidence of the power of attorney shall be attached to the bid.
* For bids submitted by a partnership or joint venture, the proposal shall identify the name of all firms and the authorized parties of all firms. A copy of the partnership/joint agreement shall be provided to the owner as an attachment to the proposal.

**20-10 BID GUARANTY.** No bid will be considered unless accompanied by a certified check or cashier’s check on any bank or trust company insured by the Federal Deposit Insurance Corporation, payable to the Owner, for not less than five (5) percent of the amount of the bid, or by a bid bond secured by an approved surety or sureties (licensed to conduct surety business in the state of Missouri), payable to the Owner, for not less than five (5) percent of the amount of the bid.

**20-11 SUBMISSION OF BID PROPOSAL**. Proposals shall be sent to arrive at the time and date specified in Section 1, Notice to Bidders. Proposals received after the specified time and date will not receive consideration and will be returned unopened. Prior to submittal, the proposal shall be placed in a sealed opaque envelope and addressed as specified in Section 2, Instructions to Bidders, paragraph 5.

**20-12 MODIFICATION OR WITHDRAWAL OF BID PROPOSAL.** Bidder may modify or withdraw his/her proposal at any point up to the specified time and date identified for receipt of proposals. Any request for bid withdrawal or modification by the Bidder that is received after the specified time and date for receipt of proposals will be returned unopened to the sender.

Any modification to a Bidder’s proposal, subject to the time constraint noted herein, must be made on the proposal forms contained in the project manual. The Bidder’s authorized representative must sign the modification. The modification shall be placed in a sealed envelope, and the statement “Modification to Proposal” shall be legibly marked in the upper left hand corner. Withdrawal of a proposal may be made, subject to the time constraint noted herein, only with written confirmation under signature of the Bidder.

**20-13 BID OPENING.** All proposals submitted prior to the stated time and date for receipt of bids will be publicly opened and read aloud by the Owner or the Owner’s representative. Bidders, their authorized agents, and other interested parties are invited to attend. Proposals submitted after the stated time and date for receipt of bids will be automatically rejected without consideration and will be returned unopened.

**20-14 DISQUALIFICATION OF BID PROPOSALS.** The Owner reserves the right to reject any or all bids, as determined to be in the best interest of the Owner. Causes for rejection of proposals include but are not limited to:

* Submittal of more than one proposal from the same partnership, firm or corporation;
* Failure by Bidder to submit the bid prior to the stated time and date for receipt of bids;
* Failure by Bidder to furnish satisfactory bid guarantee;
* Failure by Bidder to provide all information required of the bid forms;
* Failure by Bidder to comply with the requirements of bid instructions;
* Failure by Bidder to complete the applicable Buy American Certification;
* Failure by the Bidder to demonstrate good faith efforts in obtaining participation by certified DBE firms;
* Determination by the Owner that Bidder is not qualified to accomplish the project work;
* Determination by the Owner that the Bidder has placed conditions on or qualified their proposal;
* Discovery of any alteration, interlineations or erasure of any project requirement by the Bidder;
* Inclusion of the Bidder as an Excluded Party in the System for Award Management;
* Evidence of collusion among bidders.

**END OF SECTION 20**

SECTION 30

**AWARD AND EXECUTION OF CONTRACT**

**30-01 EVALUATION OF PROPOSALS.** Proposals may be held by the Owner for purposes of review and evaluation by the Owner for a period not to exceed **{NUMBER OF DAYS}** calendar days from the stated date for receipt of bids. The Owner will tabulate all bids and verify proper extension of unit costs. The Bidder shall honor their proposal for the duration of this period of review and evaluation. The bid guaranty will be held by the Owner until this period of review has expired or a contract has been formally executed.

**30-02 CANCELLATION OF AWARD.** At any time prior to execution of a contract agreement, the Owner reserves the right to cancel the award for any reason without liability to the Bidder, with the exception of the return of the bid guaranty, at any time prior to execution of the contract.

**30-03 NOTICE OF AWARD OF CONTRACT.** It is the intent of the Owner, after a period of review and evaluation, to award a contract to the responsible bidder that submits the lowest responsive proposal. The successful bidder will be informed their bid has been accepted through the Owner’s issuance of a Notice of Award. The Notice of Award shall not be construed as a binding agreement. The proper execution of a contract agreement shall serve as the binding agreement.

Award of this contract is conditioned upon MoDOT concurring in award of contract. The issuance of the Notice of Award will not be made until MoDOT has concurred in award.

Unless specifically stated, the owner reserves the right to accept alternates in any order or combination, which in the judgment of the Owner, best serves the Owner’s interest.

**30-04 RETURN OF BID GUARANTY.** The bid guaranty of the successful Bidder will be returned upon successful execution of the contract documents as specified herein. Failure by the successful Bidder to execute the contract documents within the specified time shall result in forfeiture of the bid guaranty. The bid guaranty of the second and third lowest responsible bidders will be retained for a period of **{NUMBER OF DAYS}** days pending the execution of the contract documents by the successful bidder. Except as noted above, the bid guaranty of unsuccessful bidders will be returned at the point their proposal is rejected.

**30-05 CONTRACT AGREEMENT.** The successful Bidder shall execute the contract agreement in accordance with the accepted bid proposal within thirty (30) days of the date of the Notice of Award. Failure to execute the contract agreement within the specified time frame may result in the bid being awarded to the next low bidder and shall result in the forfeiture of the Bidder’s bid guarantee as a liquidated damage.

**30-06 PERFORMANCE AND PAYMENT BONDS**. The successful Bidder shall furnish separate performance and payment bonds each in the amount of 100% of the contract price. The bonds shall be made payable to the Owner as security for faithful performance of the contract and for the payment of all persons, firms or corporations to whom the Bidder may become legally indebted for labor, materials, tools, equipment or services in the performance of the project work. The form of the bond shall be that provided within the project manual. The current power of attorney for the person signing the bond as a representative of the surety shall be attached to the bonds.

The executed bonds shall be delivered to the Owner within fifteen (15) calendar days from the date of contract execution. Bonds should not be executed prior to execution of the contract agreement. The bonds shall be issued by a solvent Surety, which is certified to operate within the State the project work is located and which is listed in the current issue of the U.S. Treasury Circular 570. If specifically requested by the Owner, the successful Bidder shall obtain and submit information on the surety’s financial strength rating.

**30-07 CERTIFICATES OF INSURANCE**. The successful Bidder shall furnish to the Owner all required certificates of insurance as specified within the project manual.

**30-08 APPROVAL OF CONTRACT.** Upon receipt of the Contract Agreement, Contract Bonds and Certificate of Insurance as executed by the successful Bidder, the Owner will complete execution of the contract conditioned upon the Owner’s judgment that it remains in their best interest to enter into the Agreement.

Delivery of the fully executed Contract Agreement to the successful Bidder shall constitute the Owner’s approval to be bound by the successful Bidder’s proposal and all terms and conditions of the Contract Agreement.

Upon satisfactory execution of the contract by the successful Bidder and the Owner, all references to “Bidder” in the bid documents become equivalent to the term “Contractor”.

**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 and shall have the right to make such alterations in the work as may be necessary or desirable to complete the work originally intended in an acceptable manner.  Unless otherwise specified herein, the Engineer shall be and is hereby authorized to make such alterations in the work as may increase or decrease the originally awarded contract quantities, provided that the aggregate of such alterations does not change the total contract cost or the total cost of any major contract item by more than 25 percent (total cost being based on the unit prices and estimated quantities in the awarded contract).  Alterations that do not exceed the 25 percent limitation shall not invalidate the contract nor release the surety, and the Contractor agrees to accept payment for such alterations as if the altered work had been a part of the original contract.  These alterations that are for work within the general scope of the contract shall be covered by "Change Orders" issued by the Engineer.  Change orders for altered work shall include extensions of contract time where, in the Engineer's opinion, such extensions are commensurate with the amount and difficulty of added work.

Should the aggregate amount of altered work exceed the 25 percent limitation hereinbefore specified, such excess altered work shall be covered by supplemental agreement.  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.

All supplemental agreements shall be approved by the Missouri Department of Transportation’s Aviation Section and shall include valid wage determinations of the U.S. Department of Labor and Missouri Division of Labor Standards when the amount of the supplemental agreement exceeds $2,000. However, if the Contractor elects to waive the limitations on work that increases or decreases the originally awarded contract or any major contract item by more than 25 percent, the supplemental agreement shall be subject to the same U.S. Department of Labor and Missouri Division of Labor Standards wage determination as was included in the originally awarded contract.

All supplemental agreements shall require consent of the Contractor's surety and separate performance and payment bonds.

**40-03 OMITTED ITEMS.**  The Engineer may, in the Owner's best interest, omit from the work any contract item, except major contract items.  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 nonperformed, 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 the subsection titled PAYMENT FOR OMITTED ITEMS of Section 90.

**40-04 EXTRA WORK.**  Should acceptable completion of the contract require the Contractor to perform an item of work for which no basis of payment has been provided in the original contract or previously issued change orders or supplemental agreements, the same shall be called “Extra Work.”  Extra Work that is within the general scope of the contract shall be covered by written change order.  Change orders for such 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 Engineer's opinion, is necessary for completion of such Extra Work.

When determined by the Engineer to be in the Owner's best interest, the Engineer may order the Contractor to proceed with Extra Work by force account as provided in the subsection titled PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK of Section 90.

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 hereinbefore defined in the subsection titled SUPPLEMENTAL AGREEMENT of Section 10.

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 personnel and equipment, is the most important consideration.  It is understood and agreed that the Contractor shall provide for the free and unobstructed movement of aircraft in the air operations areas of the airport with respect to his/her own operations and the operations of all his/her subcontractors as specified in the subsection titled LIMITATION OF OPERATIONS of Section 80.  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 the subsection titled CONTRACTOR'S RESPONSIBILITY FOR UTILITY SERVICE AND FACILITIES OF OTHERS in Section 70.

With respect to his/her own operations and the operations of all his/her 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.

When the contract requires the maintenance of vehicular traffic on 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 such road, street, or highway open to all traffic and shall provide such maintenance as may be required to accommodate traffic.  The Contractor shall furnish, erect, and maintain barricades, warning signs, flagpersons, and other traffic control devices in reasonable conformity with the manual of Uniform Traffic Control Devices for Streets and Highways (published by the United States Government Printing Office), unless otherwise specified herein.  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.

The Contractor shall make his/her own estimate of all labor, materials, equipment, and incidentals necessary for providing the maintenance of aircraft and vehicular traffic as specified in this subsection.

The cost of maintaining the aircraft and vehicular traffic specified in this subsection shall not be measured or paid for directly, but shall be included in the various contract items.

**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 Engineer shall be notified prior to disturbing such structure.  The disposition of existing structures so encountered shall be immediately determined by the Engineer in accordance with the provisions of the contract.

Except as provided in the subsection titled RIGHTS IN AND USE OF MATERIALS FOUND IN THE WORK of this section, 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 utilized in the work as otherwise provided for in the contract and shall remain the property of the Owner when so utilized in the work.

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**The removal of large or complicated existing structures such as box-culverts, underground storage tanks, large underground electrical vaults, large reinforced concrete structures or foundations, or similar existing airport facilities should be provided for in separate technical specifications. Contract pay items should also be provided in the contract proposal to cover payment for such work.**

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**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 either embankment or waste, he may at his/her option either:

 **a.**  Use such material in another contract item, providing such use is approved by the Engineer 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 Engineer; or

 **c.**  Use such material for his/her 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., he shall request the Engineer's approval in advance of such use.

Should the Engineer 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 his/her own 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 his/her use of such material so used in the work or removed from the site.

Should the Engineer 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 his/her 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 CLEANING UP.**  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.  He 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 such property owner.

**END OF SECTION 40**

SECTION 50

**CONTROL OF WORK**

**50-01 AUTHORITY OF THE ENGINEER.**  The Engineer shall decide any and all questions which may arise as to the quality and acceptability of materials furnished, work performed, and as to the manner of performance and rate of progress of the work. The Engineer shall decide all questions that may arise as to the interpretation of the specifications or plans relating to the work.  The Engineer shall determine the amount and quality of the several kinds of work performed and materials furnished which are to be paid for under the contract.

The Engineer does not have the authority to accept pavements that do not conform to FAA 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 Engineer 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 his/her opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to the Owner, he/she will advise the Owner of his/her determination that the affected work be accepted and remain in place.  In this event, the Engineer will document his/her 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.  The Engineer's determination and recommended contract price adjustments will be based on good engineering judgment and such tests or retests of the affected work as are, in his/her opinion, needed.  Changes in the contract price shall be covered by contract modifications (change order or supplemental agreement) as applicable.

If the Engineer 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 Engineer's written orders.

For the purpose of this subsection, 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 Engineer's responsibility to insist on strict compliance with the requirements of the contract, plans, and specifications during the Contractor's prosecution of the work, when, in the Engineer's opinion, such compliance is essential to provide an acceptable finished portion of the work.

For the purpose of this subsection, the term "reasonably close conformity" is also intended to provide the Engineer with the authority, after consultation with MoDOT and/or the FAA, to use good engineering judgment in his/her determinations as to acceptance of work that is not in strict conformity, but will provide a finished product equal to or better than that intended by the requirements of the contract, plans and specifications.

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For AIP contracts, the Owner should keep MoDOT advised of the Engineer's determinations as to acceptance of work that is not in reasonably close conformity to the contract, plans, and specifications.  Change orders or supplemental agreements must bear the written approval of MoDOT. The Engineer may consult with MoDOT for the determination to accept materials that are not in strict conformance with the specification requirements.

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The Engineer 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.  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; contract technical specifications shall govern over contract general provisions, plans, cited standards for materials or testing, and cited FAA advisory circulars; contract general provisions shall govern over plans, cited standards for materials or testing, and cited FAA Advisory Circulars; plans shall govern over cited standards for materials or testing and cited FAA Advisory Circulars. If any paragraphs contained in the Special Provisions conflict with General Provisions or Technical Specifications, the Special Provisions shall govern.

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, he shall immediately call upon the Engineer for his/her interpretation and decision, and such decision shall be final.

**50-04 COOPERATION OF CONTRACTOR.**  The Contractor will be supplied with five copies each of the plans and specifications.  He shall have available on the work at all times one copy each of the plans and specifications.  Additional 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 he shall cooperate with the Engineer and his/her 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 his/her 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 Engineer or his/her authorized representative.

**50-05 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 his/her work so as 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 his/her contract and shall protect and save harmless the Owner from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by him because of the presence and operations of other Contractors working within the limits of the same project.

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

**50-06 CONSTRUCTION LAYOUT AND STAKES.**  This work shall consist of providing the necessary surveying and staking for the successful prosecution of the work.

The Engineer shall establish horizontal and vertical control only.  Such stakes and markings as the Engineer may set for either his/her own or the Contractor's guidance shall be preserved by the Contractor.  In case of negligence on the part of the Contractor, or his/her employees, resulting in the destruction of such stakes or markings, an amount equal to the cost of replacing the same may be deducted from subsequent estimates due the Contractor at the discretion of the Engineer.

The Contractor must establish all layout required for the construction of the work. The Contractor will be required to furnish all lines, grades and measurements from the control points necessary for the proper prosecution and control of the work contracted for under these specifications. All surveying work performed by the Contractor shall be sufficient and accurate to construct the work in accordance with the contract documents. Any delays or additional costs to the project which result from insufficient or inaccurate staking or time lost to corrective action will be considered as a non-excusable and non-compensable delay.

The Contractor must give copies of survey notes to the Engineer for each area of construction and for each placement of material as specified to allow the Engineer to make periodic checks for conformance with plan grades, alignments and grade tolerances required by the applicable material specifications. All surveys must be provided to the Engineer prior to commencing work items that will cover or disturb the survey staking as set by the Contractor’s surveyor. All documents shall be labeled with the project, Contractor name, survey party supervisor and the date work was performed. Survey(s) and notes shall be provided in the following format(s): [ ]. 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.

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 **The Engineer should specify the desired format for electronic delivery of survey(s)**

 **In addition to hard copy(s). This should be applicable to all survey(s)**

 **throughout these specifications.**

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All surveying and measurements necessary for computing pay quantities will be performed by the Engineer. The Contractor shall notify the Engineer at least two working days prior to disturbing any areas used to calculate pay quantities.

Adjustments necessary to provide accurate staking or match improvements to existing features shall be immediately brought to the attention of the Engineer. The Engineer shall determine the nature of the discrepancy and will make revisions as necessary. The Contractor shall perform any re-staking required by such revision. Any reimbursement due the Contractor for additional staking due to errors in the plans will be in accordance with Section 40-04.

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

Unless otherwise approved by the Engineer, Construction Staking and Layout includes but is not limited to:

 a. Clearing and Grubbing perimeter staking

 b. Rough Grade slope stakes at 100-foot (30-m) stations

 c. Drainage Swales slope stakes and flow line blue tops at 50-foot (15-m) stations

Subgrade blue tops at 25-foot (7.5-m) stations and 25-foot (7.5-m) offset distance (maximum) for the following section locations:

 a. Runway – minimum five (5) per station

 b. Taxiways – minimum three (3) per station

 c. Holding apron areas – minimum three (3) per station

 d. Roadways – minimum three (3) per station

Base Course blue tops at 25-foot (7.5-m) stations and 25-foot (7.5-m) offset distance (maximum) for the following section locations:

 a. Runway – minimum five (5) per station

 b. Taxiways – minimum three (3) per station

 c. Holding apron areas – minimum three (3) per station

Pavement areas:

 a. Edge of Pavement hubs and tacks (for stringline by Contractor) at 100-foot (30-m) stations.

 b. Between Lifts at 25-foot (7.5-m) stations for the following section locations:

 (1) Runways – each paving lane width

 (2) Taxiways – each paving lane width

 (3) Holding areas – each paving lane width

 c. After finish paving operations at 50-foot (15-m) stations:

 (1) All paved areas – Edge of each paving lane prior to next paving lot

 d. Shoulder and safety area blue tops at 50-foot (15-m) stations and at all break points with maximum of 50-foot (15-m) offsets.

 e. Fence lines at 100-foot (30-m) stations minimum.

 f. Electrical and Communications System locations, lines and grades including but not limited to duct runs, connections, fixtures, signs, lights, Visual Approach Slope Indicators (VASIs), Precision Approach Path Indicators (PAPIs), Runway End Identifier Lighting (REIL), Wind Cones, Distance Markers (signs), pull boxes and manholes.

 g. Drain lines, cut stakes and alignment on 25-foot (7.5-m) stations, inlet and manholes.

 h. Painting and Striping layout (pinned with 1.5 inch PK nails) marked for paint Contractor. (All nails shall be removed after painting).

 i. Laser, or other automatic control devices, shall be checked with temporary control point or grade hub at a minimum of once per 400 feet (120 m) per pass (that is, paving lane).

The establishment of Survey Control and/or reestablishment of survey control shall be by a State Licensed Land Surveyor.

Controls and stakes disturbed or suspect of having been disturbed shall be checked and/or reset as directed by the Engineer without additional cost to the Owner.

**50-07 AUTOMATICALLY CONTROLLED EQUIPMENT.**  Whenever batching or mixing plant equipment is required to be operated automatically under the contract and a breakdown or malfunction of the automatic controls occurs, the equipment may be operated manually or by other methods for a period of 48 hours following the breakdown or malfunction, provided this method of operations will produce results which conform to all other requirements of the contract.

**50-08 AUTHORITY AND DUTIES OF INSPECTORS.**  Inspectors employed by the Owner shall be authorized to inspect all work done and all material furnished.  Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used.  Inspectors are not authorized to revoke, alter, or waive any provision of the contract.  Inspectors are not authorized to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor.

Inspectors employed by the Owner are authorized to notify the Contractor or his/her 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 Engineer for his/her decision.

**50-09 INSPECTION OF THE WORK.**  All materials and each part or detail of the work shall be subject to inspection by the Engineer.  The Engineer 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 Engineer 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.

Any work done or materials used without supervision or inspection by an authorized representative of the Owner may be ordered removed and replaced at the Contractor's expense, unless the Owner's representative failed to inspect after having been given reasonable notice in writing that the work was to be performed.

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 Engineer as provided in the subsection titled CONFORMITY WITH PLANS AND SPECIFICATIONS of this section.

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 the subsection titled CONTRACTOR'S RESPONSIBILITY FOR WORK of Section 70.

No removal work made under provision of this subsection shall be done without lines and grades having been given by the Engineer. Work done contrary to the instructions of the Engineer, work done beyond the lines shown on the plans or as given, 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 forthwith with any order of the Engineer made under the provisions of this subsection, the Engineer will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs (incurred by the Owner) from any monies due or to become due 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 shall be responsible for all damage done by his/her hauling equipment and shall correct such damage at his/her own expense.

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The Engineer should check to see if the on-site project access roads and haul routes will support the construction equipment. Particular attention should be paid when sections of existing airfield pavements will be used as haul routes to assure that existing pavements are not overloaded. If questionable, the Engineer should add appropriate provisions to preserve or rehabilitate any access roads or haul routes to the bid documents. Various measures such as videotape or photographs may be required to document existing conditions prior to start of construction.

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**50-12 MAINTENANCE DURING CONSTRUCTION.**  The Contractor shall maintain the work during construction and until the work is accepted.  This 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.

**50-13 FAILURE TO MAINTAIN THE WORK.**  Should the Contractor at any time fail to maintain the work as provided in the subsection titled MAINTENANCE DURING CONSTRUCTION of this section, the Engineer 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 Engineer'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 deducted from monies due or to become due the Contractor.

**50-14 PARTIAL ACCEPTANCE.**  If at any time during the prosecution of the project the Contractor substantially completes a usable unit or portion of the work, the occupancy of which will benefit the Owner, he may request the Engineer to make final inspection of that unit.  If the Engineer finds upon inspection that the unit has been satisfactorily completed in compliance with the contract, he may accept it as being completed, 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 Engineer and Owner will make an inspection.  If all construction provided for and contemplated by the contract is found to be completed in accordance with the contract, plans, and specifications, such inspection shall constitute the final inspection.  The Engineer 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 Engineer will give the Contractor the necessary instructions for correction of same and the Contractor shall immediately comply with and execute such instructions.  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 Engineer 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 him/her for work or materials not clearly provided for in the contract, plans, or specifications or previously authorized as extra work, he/she shall notify the Engineer in writing of his/her intention to claim such additional compensation before he/she begins the work on which he/she bases the claim.  If such notification is not given or the Engineer 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 Engineer 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 l0 calendar days, submit his/her written claim to the Engineer 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.

**50‑17  COST REDUCTION INCENTIVE.**  The provisions of this subsection will apply only to contracts awarded to the lowest bidder pursuant to competitive bidding.

On projects with original contract amounts in excess of $100,000, the Contractor may submit to the Engineer, in writing, proposals for modifying the plans, specifications or other requirements of the contract for the sole purpose of reducing the cost of construction.  The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, design and safety standards.  This provision shall not apply unless the proposal submitted is specifically identified by the Contractor as being presented for consideration as a value-engineering proposal.

Not eligible for cost reduction proposals are changes in the basic design of a pavement type, runway and taxiway lighting, visual aids, hydraulic capacity of drainage facilities, or changes in grade or alignment that reduce the geometric standards of the project.

As a minimum, the following information shall be submitted by the Contractor with each proposal:

**a.**  A description of both existing contract requirements for performing the work and the proposed changes, with a discussion of the comparative advantages and disadvantages of each;

**b.**  An itemization of the contract requirements that must be changed if the proposal is adopted;

**c.**  A detailed estimate of the cost of performing the work under the existing contract and under the proposed changes;

**d.**  A statement of the time by which a change order adopting the proposal must be issued;

**e.**  A statement of the effect adoption of the proposal will have on the time for completion of the contract; and

**f.**  The contract items of work affected by the proposed changes, including any quantity variation attributable to them.

The Contractor may withdraw, in whole or in part, any cost reduction proposal not accepted by the Engineer, within the period specified in the proposal.  The provisions of this subsection shall not be construed to require the Engineer to consider any cost reduction proposal that may be submitted.

The Contractor shall continue to perform the work in accordance with the requirements of the contract until a change order incorporating the cost reduction proposal has been issued.  If a change order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision should be made, or such other date as the Contractor may subsequently have requested in writing, such cost reduction proposal shall be deemed rejected.

The Engineer shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings from the adoption of all or any part of such proposal.  In determining the estimated net savings, the Engineer may disregard the contract bid prices if, in the Engineer's judgment, such prices do not represent a fair measure of the value of the work to be performed or deleted.

The Owner may require the Contractor to share in the Owner's costs of investigating a cost reduction proposal submitted by the Contractor as a condition of considering such proposal.  Where such a condition is imposed, the Contractor shall acknowledge acceptance of it in writing.  Such acceptance shall constitute full authority for the Owner to deduct the cost of investigating a cost reduction proposal from amounts payable to the Contractor under the contract.

If the Contractor's cost reduction proposal is accepted in whole or in part, such acceptance will be by a contract change order that shall specifically state that it is executed pursuant to this subsection.  Such change order shall incorporate the changes in the plans and specifications which are necessary to permit the cost reduction proposal or such part of it as has been accepted and shall include any conditions upon which the Engineer's approval is based.  The change order shall also set forth the estimated net savings attributable to the cost reduction proposal.  The net savings shall be determined as the difference in costs between the original contract costs for the involved work items and the costs occurring as a result of the proposed change.  The change order shall also establish the net savings agreed upon and shall provide for adjustment in the contract price that will divide the net savings equally between the Contractor and the Owner.

The Contractor's 50 percent share of the net savings shall constitute full compensation to the Contractor for the cost reduction proposal and the performance of the work.

Acceptance of the cost‑reduction proposal and performance of the cost‑reduction work shall not extend the time of completion of the contract unless specifically provided for in the contract change order.

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Use of this subsection in project specifications is at the option of the Owner/Engineer.

This subsection should not be incorporated into project specifications if State or local laws prohibit its use or if the project does not lend itself to value engineering.

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**END OF SECTION 50**

SECTION 60

**CONTROL OF MATERIALS**

**60-01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS.**  The materials used on 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 complete statements to the Engineer as to the origin, composition, and manufacture of all materials to be used in the work.  Such statements shall be furnished promptly after execution of the contract but, in all cases, prior to delivery of such materials.

Note statement of origin should clearly address compliance with Buy American Provisions of Contract.

At the Engineer's option, materials may be approved at the source of supply before delivery is stated.  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 conforms to the requirements of cited materials specifications.  In addition, where an FAA specification for airport lighting equipment is cited in the plans or specifications, the Contractor shall furnish such equipment that is:

 **a.**  Listed in FAA Advisory Circular (AC) 150/5345-53, Airport Lighting Equipment Certification Program, that is in effect on the date of advertisement; and,

 **b.**  Produced by the manufacturer as listed in the Addendum to AC 150/5345-53.

The following airport lighting equipment is required for this contract and is to be furnished by the Contractor in accordance with the requirements of this subsection:

EQUIPMENT NAME

CITED FAA SPECIFICATIONS

EFFECTIVE FAA AC OR APPROVAL LETTER FOR EQUIPMENT AND

MANUFACTURER

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To avoid errors, the design Engineer should furnish the above listing after having conformed the list to those specifications cited on the plans or in the technical specifications.  Both the individual FAA material specifications and the AC 150/5345-53, Airport Lighting Equipment Certification Program, should be listed to indicate the edition that is effective on the date the contract is advertised. If there is no lighting work as part of the project, the above bracketed language should be deleted.

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**60-02 SAMPLES, TESTS, AND CITED SPECIFICATIONS.**  Unless otherwise designated, all materials used in the work shall be inspected, tested, and approved by the Engineer before incorporation in the work.  Any work in which untested materials are used without approval or written permission of the Engineer 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 Engineer, shall be removed at the Contractor's expense.  Unless otherwise designated, tests in accordance with the cited standard methods of ASTM, AASHTO, Federal Specifications, Commercial Item Descriptions, and all other cited methods, which are current on the date of advertisement for bids, will be made by and at the expense of the Engineer.  The testing organizations performing on site field tests shall have copies of all referenced standards on the construction site for use by all technicians and other personnel, including the Contractor's representative at his/her request. Unless otherwise designated, samples will be taken by a qualified representative of the Engineer.  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 his/her request.

The Contractor shall employ a testing organization to perform all Contractor required tests. The Contractor shall submit to the Engineer resumes on all testing organizations and individual persons who will be performing the tests. The Engineer will determine if such persons are qualified. All the test data shall be reported to the Engineer after the results are known. A legible, handwritten copy of all test data shall be given to the Engineer 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 Engineer showing all test data reports, plus an analysis of all results showing ranges, averages, and corrective action taken on all failing tests.

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**The Engineer may wish to include a requirement that all test data from the Contractor be furnished in electronic format. The Engineer shall provide detailed specifications to specify the acceptable format to be used.**

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**60-03 CERTIFICATION OF COMPLIANCE.**  The Engineer may permit the use, prior to sampling and testing, of certain materials or assemblies when accompanied by manufacturer's certificates of compliance 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.

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 Engineer.

When a material or assembly is specified by "brand name or equal" and the Contractor elects to furnish the specified "brand name," 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.

Should the Contractor propose to furnish an "or equal" material or assembly, he/she shall furnish the manufacturer's certificates of compliance as hereinbefore described for the specified brand name material or assembly.  However, the Engineer shall be the sole judge as to whether the proposed "or equal" is suitable for use in the work.

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

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When it is necessary to specify a material or assembly by "brand name or equal," the technical requirements (performance, testing, quality, or dimensions) must be accurately described in enough detail to ensure a suitable product while not restricting competition unduly.

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**60-04 PLANT INSPECTION.**  The Engineer or his/her 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 the Engineer’s acceptance of the material or assembly.

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

 **a.**  The Engineer shall have the cooperation and assistance of the Contractor and the producer with whom he/she has contracted for materials.

 **b.**  The Engineer 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 Engineer, the Contractor shall arrange for adequate office or working space that may be reasonably needed for conducting plant inspections. Office or working space should be conveniently located 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 Engineer 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'S FIELD OFFICE.** The Contractor shall furnish for the duration of the project one building for the use of the field engineers and inspectors as a field office. This facility shall be an approved weatherproof building meeting the current State Highway Specifications (for example, Class I Field Office or Type C Structure). This building shall be located conveniently near to the construction and shall be separate from any building used by the Contractor. A landline telephone and answering machine shall be provided. The Contractor shall be responsible for payment of the basic monthly charge and local calls only. Any Long Distance Tolls shall be the responsibility of the caller. The Contractor shall furnish **{FAX machine, photocopy machine, water, sanitary facilities, heat, air conditioning, and electricity}**. No direct payment will be made for this building or labor, materials, ground rental, or other expense in connection therewith. The cost hereof shall be included in the price bid for the various items of the contract. The Contractor and his/her superintendent shall provide all reasonable facilities to enable the Engineer to inspect the workmanship and materials entering into the work.

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Requirements for specifying the Engineer's field office should be coordinated with the Owner and the Engineer, since such facilities are not needed for all airport construction projects. The above paragraph can be modified as needed upon agreement of the Owner and the Engineer. If a field office is required for the project, a separate line item for payment must be established.

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**60-06 STORAGE OF MATERIALS.**  Materials shall be so stored as 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.  Stored materials shall be located so as to facilitate their prompt inspection.  The Contractor shall coordinate the storage of all materials with the Engineer.  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, the storage of materials and the location of the Contractor's plant and parked equipment or vehicles shall be as directed by the Engineer.  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 Engineer 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 his/her entire 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 Engineer.

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 Engineer has approved its used in the work.

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

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.  He/she 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 his/her 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 himself or his/her employees.

**70-02 PERMITS, LICENSES, AND TAXES.**  The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution 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, he shall provide for such use by suitable legal agreement with the patentee or owner.  The Contractor and the surety shall indemnify and save 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 prosecution 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) is indicated as follows:

 Owner (Utility or Other Facility)

 Location (See Plan Sheet No.)

 Person to Contact (Name, Title, Address and Phone)

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 Engineer.

Should the owner of the 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 so as 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 Engineer, 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.

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It is the intention of this subsection to provide for both foreseen and unforeseen work by owners of utility services and other facilities on the airport.  Such owners have legal rights and obligations under some form of easement with the airport Owner.  Every effort should be made, during the initial design phase, to coordinate the proposed contract work with such owners so that their rights and obligations are provided for the in the contract, plans, and specifications.  Where there is conflict between an existing utility service (or facility) and the proposed work or where the owner of the utility or facility must perform work to construct, reconstruct, or maintain his/her utility or facility, such work should be listed in this subsection and provided for in the contract, plans and specifications.  In addition, all known utility services or facilities that are within the limits of the proposed work should be shown on the plans (regardless of whether or not there is a conflict of work to be performed by the owner) with enough detailed information to indicate the lack of conflicts.

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**70-05 FEDERAL AID PARTICIPATION.**  For AIP contracts, the United States Government, by and through the Missouri Department of Transportation (MoDOT) as a Block Grant State, has agreed to reimburse the Owner for some portion of the contract costs.  Such reimbursement is made from time to time upon the Owner's request to the MoDOT.  In consideration of the United States Government's (FAA's) agreement with the Owner, the Owner has included provisions in this contract pursuant to the requirements of Title 49 of the United States Code (USC) and the Rules and Regulations of the FAA that pertain to the work.

As required by the USC, the contract work is subject to the inspection and approval of duly authorized representatives of the Administrator, FAA, and is further subject to those provisions of the rules and regulations that are cited in the contract, plans, or specifications.

No requirement of the USC, the rules and regulations implementing the USC, or this contract shall be construed as making the Federal Government 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 shall provide and maintain in a neat, sanitary condition such accommodations for the use of his/her employees as may be necessary to comply with the requirements of the state and local Board of Health, or of other bodies or tribunals having jurisdiction.

Attention is directed to Federal, state, and local laws, rules and regulations concerning construction safety and health standards.  The Contractor shall not require any worker to work in surroundings or under conditions that are unsanitary, hazardous, or dangerous to his/her health or safety.

The contractor shall be aware of all COVID-19 guidance from the Center for Disease Control (CDC) and other government health mandates and conduct all operations in conformance with these safety directives.  The guidance may change during the project construction and the contractor shall change and adapt their operation and safety protocols accordingly.

The contractor shall include these procedures in the project safety plan as called for in the contract documents and revise the safety plan as needed.

The contractor shall be aware of the Missouri Standard Specifications for Highway Construction Section 107.1 “Laws to be Observed”.

**70-07 PUBLIC CONVENIENCE AND SAFETY.**  The Contractor shall control his/her operations and those of his/her 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 his/her own operations and those of his/her subcontractors and all suppliers in accordance with the subsection titled MAINTENANCE OF TRAFFIC of Section 40 hereinbefore specified and shall limit such operations for the convenience and safety of the traveling public, as specified in the subsection titled LIMITATION OF OPERATIONS of Section 80 hereinafter.

**70-08 BARRICADES, WARNING SIGNS, AND HAZARD MARKINGS.**  The Contractor shall furnish, erect, and maintain all barricades, warning signs, and markings for hazards necessary to protect the public and the work.  When used during periods of darkness, such barricades, warning signs, and hazard markings shall be suitably illuminated. Unless otherwise specified, barricades, warning signs, and markings for hazards that are in the air operations area shall be a maximum of 18 inches high. Unless otherwise specified, barricades shall be spaced not more than 25 feet apart. Barricades, warning signs, and markings shall be paid for under Section 40-05.

For vehicular and pedestrian traffic, the Contractor shall furnish, erect, and maintain barricades, warning signs, lights and other traffic control devices in reasonable conformity with the Manual of Uniform Traffic Control Devices for Streets and Highways (published by the United States Government Printing Office).

When the work requires closing an air operations area of the airport or portion of such area, the Contractor shall furnish, erect, and maintain temporary markings and associated lighting conforming to the requirements of  AC 150/5340-1 (current edition), Standards for Airport Markings.

The Contractor shall furnish, erect, and maintain markings and associated lighting of open trenches, excavations, temporary stockpiles, and his/her parked construction equipment that may be hazardous to the operation of emergency fire-rescue or maintenance vehicles on the airport in reasonable conformance to AC 150/5370-2 (current edition), Operational Safety on Airports During Construction.

The Contractor shall identify each motorized vehicle or piece of construction equipment in reasonable conformance to AC 150/5370-2 (current edition).

The Contractor shall furnish and erect all barricades, warning signs, and markings for hazards prior to commencing work that requires such erection and shall maintain the barricades, warning signs, and markings for hazards until their dismantling is directed by the Engineer.

Open-flame type lights shall not be permitted within the air operations areas of the airport.

**70-09 USE OF EXPLOSIVES.**  When the use of explosives is necessary for the prosecution of the work, the Contractor shall exercise the utmost care not to endanger life or property, including new work.  The Contractor shall be responsible for all damage resulting from the use of explosives.

All explosives shall be stored in a secure manner in compliance with all laws and ordinances, and all such storage places shall be clearly marked.  Where no local laws or ordinances apply, storage shall be provided satisfactory to the Engineer and, in general, not closer than 1,000 feet (300 m) from the work or from any building, road, or other place of human occupancy.

The Contractor shall notify each property owner and public utility company having structures or facilities in proximity to the site of the work of his/her intention to use explosives.  Such notice shall be given sufficiently in advance to enable them to take such steps as they may deem necessary to protect their property from injury.

The use of electrical blasting caps shall not be permitted on or within 1,000 feet (300 m) of the airport property.

**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 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 prosecution of the work resulting from any act, omission, neglect, or misconduct in his/her manner or method of executing the work or at any time due to defective work or materials, and said responsibility will not be released until the project shall have 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 nonexecution thereof by the Contractor, he/she shall restore, at his/her own 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 he/she shall make good such damage or injury in an acceptable manner.

**70-11 RESPONSIBILITY FOR DAMAGE CLAIMS.**  The Contractor shall indemnify and save harmless the Engineer and the Owner and their officers 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 "Worker's Compensation Act," or any other law, ordinance, order, or decree.  Money due the Contractor under and by virtue of his/her contract as may be considered necessary by the Owner for such purpose may be retained for the use of the Owner or, in case no money is due, his/her surety may be held until such suit(s), action(s), or claim(s) for injuries or damages as aforesaid 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/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 in 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.**  Should it be 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 shall be specified herein and indicated on the plans.  When so specified, the Contractor shall complete such portions of the work on or before the date specified or as otherwise specified.  The Contractor shall make his/her own estimate of the difficulties involved in arranging his/her work to permit such beneficial occupancy by the Owner as described below:

Phase or Description

Required Date or Sequence of Owner's Beneficial Occupancy

Work Shown on Plan Sheet

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The Owner's requirements for "phasing'' the work should be coordinated with certain agencies having an interest in operational capability of the airport.  Such coordination must be accomplished at the earliest possible time.  See AC 150/5300-9, Predesign, Prebid, and Preconstruction Conferences for Airport Grant Projects, for more information.

**The Engineer should include a section on airport safety in the bid documents that has, as a minimum, the information contained in the appendix of AC 150/5370-2, Operational Safety on Airports During Construction.**

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Upon completion of any portion of the work listed above, such portion shall be accepted by the Owner in accordance with the subsection titled PARTIAL ACCEPTANCE of Section 50.

No portion of the work may be opened by the Contractor for public use until ordered by the Engineer in writing.  Should it become necessary to open a portion of the work to public traffic on a temporary or intermittent basis, such openings shall be made when, in the opinion of the Engineer, 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 his/her expense.

The Contractor shall make his/her 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.

Contractor shall be required to conform to safety standards contained AC 150/5370-2, Operational Safety on Airports During Construction (See Special Provisions.)

Contractor shall refer to the approved safety plan to identify barricade requirements and other safety requirements prior to opening up sections of work to traffic.

**70-14 CONTRACTOR'S RESPONSIBILITY FOR WORK.**  Until the Engineer's final written acceptance of the entire completed work, excepting only those portions of the work accepted in accordance with the subsection titled PARTIAL ACCEPTANCE of Section 50, 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 for 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 whatsoever, 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 his/her 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, seedings, and soddings furnished under his/her 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 the subsection titled RESTORATION OF SURFACES DISTURBED BY OTHERS of this section, the Contractor shall cooperate with the owner of any public or private utility service, FAA or NOAA, or a utility service of another governmental 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 his/her 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 the owners are indicated as follows:

Utility Service or Facility

Person to Contract (Name, Title, Address, & Phone)

Owner's Emergency Contact (Phone)

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It is intended that the plans will show the approximate location of the utilities or facilities known to exist within the limits of the contract work.  It is also intended that the proposed contract plans and specifications be coordinated with the various owners at the earliest possible time to avoid overlooking utility conflicts in the design and to obtain the best possible information needed to protect such utility services or facilities from damage resulting from the Contractor's operations.  Where conflicts are indicated during the coordination, they should be resolved by the airport Owner and the utility owner, in accordance with existing legal agreements, by providing for work in the proposed contract or by the utility owner.  In such cases of conflict, regardless of how the conflict is resolved, the airport Owner and utility owner should also be advised of the need to furnish the best information possible as to location of the utility service or facility to ensure protection during the proposed contract work.

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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 his/her 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 his/her plan of operations.  Such notification shall be in writing addressed to THE PERSON TO CONTACT as provided hereinbefore in this subsection and the subsection titled RESTORATION OF SURFACES DISTURBED BY OTHERS of this section.  A copy of each notification shall be given to the Engineer.

In addition to the general written notification hereinbefore provided, it shall be the responsibility of the Contractor to keep such individual owners advised of changes in his/her plan of operations that would affect such owners.

Prior to commencing the work in the general vicinity of an existing utility service or facility, the Contractor shall again notify each such owner of his/her 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 Engineer.

The Contractor's failure to give the two days’ notice hereinabove provided 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 excavation methods acceptable to the Engineer within 3 feet (90 cm) of such outside limits at such points as may be required to ensure protection from damage due to the Contractor's operations.

Should the Contractor damage or interrupt the operation of a utility service or facility by accident or otherwise, he/she shall immediately notify the proper authority and the Engineer 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 Engineer continuously until such damage has been repaired and service restored to the satisfaction of the utility or facility owner.

The Contractor shall bear all costs of damage and restoration of service to any utility service or facility due to his/her operations whether or not 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 his/her surety.

**70-15.1 FAA FACILITIES AND CABLE RUNS.** The Contractor is hereby advised that the construction limits of the project include existing facilities and buried cable runs that are owned, operated and maintained by the FAA. The Contractor, during the prosecution of the project work, shall comply with the following:

1. The Contractor shall permit FAA maintenance personnel the right of access to the project work site for purposes of inspecting and maintaining all existing FAA owned facilities.
2. The Contractor shall notify the above named FAA Airway Facilities Point-of-Contact seven (7) calendar days prior to commencement of construction activities in order to permit sufficient time to locate and mark existing buried cables and to schedule any required facility outages.
3. If prosecution of the project work requires a facility outage, the Contractor shall contact the above named FAA Point-of-Contact a minimum of 48 hours prior to the time of the required outage.
4. If prosecution of the project work results in damages to existing FAA equipment or cables, the Contractor shall repair the damaged item in conformance with FAA Air Traffic Organization’s standards to the satisfaction of the above named FAA Point-of-Contact.
5. If the project work requires the cutting or splicing of FAA owned cables, the above named FAA Point-of-Contact shall be contacted a minimum of 48 hours prior to the time the cable work commences. The FAA reserves the right to have a FAA Air Traffic Organization representative on site to observe the splicing of the cables as a condition of acceptance. All cable splices are to be accomplished in accordance with FAA Air Traffic Organization’s specifications and require approval by the above named FAA Point-of-Contact as a condition of acceptance by the Owner. The Contractor is hereby advised that FAA’s Air Traffic Organization restricts the location of where splices may be installed. If a cable splice is required in a location that is not permitted by FAA’s Air Traffic Organization, the Contractor shall furnish and install a sufficient length of new cable that eliminates the need for any splice.

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The Engineer should include subsection 70-15.1 when existing FAA owned facilities and/or cable runs are located within the construction limits.

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**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 to him by this contract, there shall be no liability upon the Engineer, his/her 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 his/her surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill his/her 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.  He shall take necessary precautions to prevent pollution of streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

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For AIP contracts, the contract provisions required to mitigate the environmental consequences of the contract work should be specified in the contract specifications as required generally and specifically by the Environmental Impact Statement or Assessment Report for the particular AIP project.

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**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 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 his/her operations, any building, part of a building, structure, or object that is incongruous with its surroundings, he shall immediately cease operations in that location and notify the Engineer.  The Engineer will immediately investigate the Contractor's finding, and the Owner will direct the Contractor to either resume his/her 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 modification (change order or supplemental agreement) as provided in the subsection titled EXTRA WORK of Section 40 and the subsection titled PAYMENT FOR EXTRA WORK AND FORCE ACCOUNT WORK of Section 90.  If appropriate, the contract modification shall include an extension of contract time in accordance with the subsection titled  DETERMINATION AND EXTENSION OF CONTRACT TIME of Section 80.

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The contract language suggested in subsection 70-20 is intended to remind Owners of airports that proper planning will prevent construction delays that may be caused when objects of archaeological or historical significance are encountered in the work.  Airport Owners should include in their planning the coordination with state and local planning bodies as may be required by state and local laws pertaining to the National Historic Preservation Act of 1966.

**As a general rule, disposition of known archaeological or historic objects that are situated on the site of the work should be covered by a separate contract when such disposition is required as a part of FAA project approval.**

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**END OF SECTION 70**

SECTION 80

**PROSECUTION 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 another designated, qualified representative who is duly authorized to receive and execute orders of the Engineer.

Should the Contractor elect to assign his/her 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.  In case of approval, the Contractor shall file copies of all subcontracts with the Engineer.

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

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The engineer should determine the percentage of work to be performed by the prime contractor on a project basis (typically at least 25 percent).

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**80-02 NOTICE TO PROCEED.**  The notice to proceed shall state the date on which it is expected the Contractor will begin the construction and from which date contract time will be charged.  The Contractor shall begin the work to be performed under the contract within 10 days of the date set by the Engineer in the written notice to proceed, but in any event, the Contractor shall notify the Engineer at least 24 hours in advance of the time actual construction operations will begin.

**80-03 PROSECUTION AND PROGRESS.**  Unless otherwise specified, the Contractor shall submit his/her progress schedule for the Engineer's approval within 10 days after the effective date of the notice to proceed.  The Contractor's progress schedule, when approved by the Engineer, may be used to establish major construction operations and to check on the progress of the work.  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.

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

For AIP contracts, the Contractor shall not commence any actual construction prior to the date on which the notice to proceed is issued by the Owner.

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**It is important that the Owner issue the notice to proceed for AIP contracts because any actual construction work, performed prior to the execution of a grant agreement, (between the owner and the FAA) would be ineligible for FAA participation in its cost.**

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**80-04 LIMITATION OF OPERATIONS.**  The Contractor shall control his/her operations and the operations of his/her subcontractors and all suppliers so as to provide for the free and unobstructed movement of aircraft in the AIR OPERATION AREAS (AOA) of the airport.

When the work requires the Contractor to conduct his/her operations within an AIR OPERATIONS AREA of the airport, the work shall be coordinated with airport operations (through the Engineer) at least 48 hours prior to commencement of such work.  The Contractor shall not close an AIR OPERATIONS AREA until so authorized by the Engineer and until the necessary temporary marking and associated lighting is in place as provided in the subsection titled BARRICADES, WARNING SIGNS, AND HAZARD MARKINGS of Section 70.

When the contract work requires the Contractor to work within an AIR OPERATIONS AREA of the airport on an intermittent basis (intermittent opening and closing of the AIR OPERATIONS AREA), the Contractor shall maintain constant communications as hereinafter specified; immediately obey all instructions to vacate the AIR OPERATIONS AREA; and immediately obey all instructions to resume work in such AIR OPERATIONS AREA.  Failure to maintain the specified communications or to obey instructions shall be cause for suspension of the Contractor's operations in the AIR OPERATIONS AREA until the satisfactory conditions are provided.  The following AIR OPERATIONS AREA 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:

AOA

TIME PERIODS AOA CAN BE CLOSED

TYPE OF COMMUNICATIONS REQUIRED WHEN WORKING IN AN AOA

CONTROL AUTHORITY

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**It is intended that the contract provisions which limit the Contractor's operations be specified for all AIR OPERATIONS AREAS of the airport that are not intended to be closed to permit continuous construction operations.  These contract provisions vary widely from airport to airport and require careful coordination (during the early stages of designing the work) with the Owner, FAA, and the users of the airport.  AC 150/5300-9, Predesign, Prebid, and Preconstruction Conferences for Airport Grant Projects, contains additional information on this subject.**

**The Engineer should include a section on airport safety in the bid documents that has , as a minimum, the information contained in the appendix of AC150/5370-2, Operational Safety on Airports During Construction.**

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Contractor shall be required to conform to safety standards contained in AC 150/5370-2, Operational Safety on Airports During Construction (See Special Provisions).

**80-04.1 OPERATIONAL SAFETY ON AIRPORT DURING CONSTRUCTION.** All Contractors’ operations shall be conducted in accordance with the project safety plan and the provisions set forth within the current version of Advisory Circular 150/5370-2. The safety plan included within the contract documents conveys minimum requirements for operational safety on the airport during construction activities. The Contractor shall prepare and submit a plan that details how it proposes to comply with the requirements presented within the safety plan.

The Contractor shall implement all necessary safety plan measures prior to commencement of any work activity. The Contractor shall conduct routine checks of the safety plan measures 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 safety plan and that they implement and maintain all necessary measures.

No deviation or modifications may be made to the approved safety plan unless approved in writing by the Owner or Engineer.

**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 and, in the opinion of the Engineer, does not perform his/her work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the work without approval of the Engineer.

Should the Contractor fail to remove such person or persons, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer 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 be such that no injury to previously completed work, adjacent property, or existing airport facilities will result from 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 others are authorized by the Engineer.  If the Contractor desires to use a method or type of equipment other than specified in the contract, he/she may request authority from the Engineer 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 Engineer 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 Engineer 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 subsection.

**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 as he/she may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for the prosecution of the work, or for such time as is 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 Engineer's order to suspend work to the effective date of the Engineer's order to resume the work.  Claims for such compensation shall be filed with the Engineer within the time period stated in the Engineer's order to resume work.  The Contractor shall submit with his/her claim information substantiating the amount shown on the claim.  The Engineer 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, for suspensions made at the request of the Owner, or for any other delay provided for in the contract, plans, or specifications.

If it should become 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.  He 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 or working days allowed for completion of the work shall be stated in the proposal and contract and shall be known as the CONTRACT TIME.

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

**a.** CONTRACT TIME based on WORKING DAYS shall be calculated weekly by the Engineer.  The Engineer will furnish the Contractor a copy of his/her weekly statement of the number of working days charged against the contract time during the week and the number of working days currently specified for completion of the contract (the original contract time plus the number of working days, if any, that have been included in approved CHANGE ORDERS or SUPPLEMENTAL AGREEMENTS covering EXTRA WORK).

The Engineer shall base his/her weekly statement of contract time charged on the following considerations:

 **(1)**  No time shall be charged for days on which the Contractor is unable to proceed with the principal item of work under construction at the time for at least 6 hours with the normal work force employed on such principal item.  Should the normal work force be on a double-shift, 12 hours shall be used.  Should the normal work force be on a triple-shift, 18 hours shall apply.  Conditions beyond the Contractor's control such as strikes, lockouts, unusual delays in transportation, temporary suspension of the principal item of work under construction or temporary suspension of the entire work which have been ordered by the Owner for reasons not the fault of the Contractor, shall not be charged against the contract time.

 **(2)**  The Engineer will not make charges against the contract time prior to the effective date of the notice to proceed.

 **(3)**  The Engineer will begin charges against the contract time on the first working day after the effective date of the notice to proceed.

 **(4)**  The Engineer will not make charges against the contract time after the date of final acceptance as defined in the subsection titled FINAL ACCEPTANCE of Section 50.

 **(5)**  The Contractor will be allowed 1 week in which to file a written protest setting forth his/her objections to the Engineer's weekly statement.  If no objection is filed within such specified time, the weekly statement shall be considered as acceptable to the Contractor.

The contract time (stated in the proposal) is based on the originally estimated quantities as described in the subsection titled INTERPRETATION OF ESTIMATED PROPOSAL QUANTITIES of Section 20.  Should the satisfactory completion of the contract require performance of work in greater quantities than those estimated in the proposal, 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 contract time shall not consider either the cost of work or the extension of contract time that has been covered by change order or supplemental agreement and shall be made at the time of final payment.

**b.**  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 nonwork 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.

**c.**  When the contract time is a specified completion date, it shall be the date on which all contract work shall be substantially completed.

If the Contractor finds it impossible for reasons beyond his/her control to complete the work within the contract time as specified, or as extended in accordance with the provisions of this subsection, he/she may, at any time prior to the expiration of the contract time as extended, make a written request to the Engineer for an extension of time setting forth the reasons which he/she believes will justify the granting of his/her request.  Requests for extension of time on calendar day projects, caused by inclement weather, shall be supported with National Weather Bureau data showing the actual amount of inclement weather exceeded which 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 Engineer finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, he/she may extend the time for completion in such amount as the conditions justify.  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 the subsection titled DETERMINATION AND EXTENSION OF CONTRACT TIME of this Section), the sum specified in the contract and proposal as liquidated damages will be deducted from any money due or to become due the Contractor or his/her 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 his/her contract.

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| **ALTERNATE #** | **LIQUIDATED DAMAGES COST** | **ALLOWED CONSTRUCTION TIME** |
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**The Engineer should list the liquidated damages cost per alternate and allowed construction time per alternate to clarify when more than one alternate of work is bid, or in the event all alternate bids cannot be awarded.**

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The maximum construction time allowed for alternates **{ }** will be the sum of the time allowed for individual alternates but not more than **{ }** days. (Note: this paragraph will be modified for each project.)

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.

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**The contract time is an essential part of each contract for construction on airports and should be considered carefully in the preparation of plans and specifications.**

**In selecting the method of specifying the contract time (working days, calendar days, or a specified completion date), the primary consideration should be the impact on the operations of the airport should the Contractor be unable to complete the work within the time specified.  These considerations should be coordinated with the airport users as indicated in AC 150/5300-9, Predesign, Prebid, and Preconstruction Conferences for Airport Grant Projects.**

**The amount of liquidated damages to be specified should be tailored to each contract and should be based on the cost per day incurred by the Owner should the Contractor overrun the contract time.  For large airports (where the impact on airport operations may be great), it is not practical for the Owner to attempt to recover all loss of revenue through liquidated damages.  Consequently, the amount of liquidated damages specified must be balanced somewhere between the cost per day incurred for a time overrun and the cost that bidders would have to add to their bids to cover the contingency of a time overrun.**

**Generally speaking, contract time is based on working days when completion is not critical to operation of the airport.  As the impact on airport operations increases, the use of calendar days will give more control.  Use of a specified completion date should be used only in cases where the construction operations require long-range rescheduling of airport operations.  Also, generally speaking, the amount of liquidated damages would be greater for a calendar day contract than for a working day contract and would be greatest for a specified completion date contract.**

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**80-09 DEFAULT AND TERMINATION OF CONTRACT.**  The Contractor shall be considered in default of his/her 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 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 prosecution 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 him/her unsatisfied for a period of 10 days, or

 **h.**  Makes an assignment for the benefit of creditors, or

 **i.**  For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Should the Engineer consider the Contractor in default of the contract for any reason hereinbefore, he/she 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 Engineer of the facts of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority without violating the contract to take the prosecution 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 Engineer 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 prosecution 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 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 Engineer.

Termination of the contract or a portion thereof shall neither relieve the Contractor of his/her responsibilities for the completed work nor shall it relieve his/her 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 Engineer 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. The Contractor shall plan and coordinate his/her work in such a manner as to insure safety and a minimum of hindrance to flight operations. All Contractor equipment and material stockpiles shall be stored a minimum of **{ }** feet from the centerline of an active runway. No equipment will be allowed to park within the approach area of an active runway at any time. No equipment shall be within **{ }** feet of an active runway at any time.

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**The Engineer shall insert the appropriate distances per AC 150/5370-2 Operational Safety on Airports During Construction.**

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**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 Engineer, or his/her authorized representatives, using United States Customary Units of Measurement or the International System of Units.

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 Engineer.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.

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.

In computing volumes of excavation, the average end area method or other acceptable methods will be used.

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 inches.

The term "ton" will mean the short ton consisting of 2,000 pounds (907 kilograms) avoirdupois.  All materials that are measured or proportioned by weights shall be weighed on accurate, approved scales by competent, qualified personnel at locations designed by the Engineer.  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 Engineer directs, and each truck shall bear a plainly legible identification mark.

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 to the Engineer, 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.

When requested by the Contractor and approved by the Engineer 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 Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

Bituminous materials will be measured by the gallon (liter) or ton (kilogram).  When measured by volume, such volumes will be measured at 60 F (15 C) or will be corrected to the volume at 60 F (15 C) using ASTM D 1250 for asphalts or ASTM D 633 for tars.

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 bituminous material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work.

When bituminous materials are shipped by truck or transport, net certified weights by volume, subject to correction for loss or foaming, may be used for computing quantities.

Cement will be measured by the ton (kilogram) or hundredweight (kilogram).

Timber will be measured by the thousand feet board measure (M.F.B.M.) actually incorporated in the structure.  Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

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.

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 by the Engineer in connection with force account work will be measured as agreed in the change order or supplemental agreement authorizing such force account work as provided in the subsection titled PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK of this section.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gage, 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.

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.

Scales shall be accurate within one-half of 1 percent of the correct weight throughout the range of use.  The Contractor shall have the scales checked under the observation of the inspector 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 one-tenth of 1 percent of the nominal rated capacity of the scale, but not less than 1 pound (454 grams).  The use of spring balances will not be permitted.

Beams, dials, platforms, and other scale equipment shall be so arranged that the operator and the inspector can safely and conveniently view them.

Scale installations shall have available ten standard 50-pound (2.3 kilogram) weights for testing the weighing equipment or suitable weights and devices for other approved equipment.

Scales must be tested for accuracy and serviced before use at a new site.  Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.

Scales "overweighing" (indicating more than correct weight) will not be permitted to operate, and all materials received subsequent to the last previous correct weighting-accuracy test will be reduced by the percentage of error in excess of one-half of 1 percent.

In the event inspection reveals the scales have been "underweighing" (indicating less than correct weight), they shall be adjusted, and no additional payment to the Contractor will be allowed for materials previously weighed and recorded.

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.

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 Engineer.  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.

**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 prosecution thereof, subject to the provisions of the subsection titled NO WAIVER OF LEGAL RIGHTS of Section 70.

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 the subsection titled ALTERATION OF WORK AND QUANTITIES of Section 40 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 his/her unbalanced allocation of overhead and profit among the contract items, or from any other cause.

**90-04 PAYMENT FOR OMITTED ITEMS.**  As specified in the subsection titled OMITTED ITEMS of Section 40, the Engineer 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 Engineer 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 Engineer's order to omit or nonperform such contract item.

Acceptable materials ordered by the Contractor or delivered on the work prior to the date of the Engineer'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 Engineer'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 AND FORCE ACCOUNT WORK**.  Extra work, performed in accordance with the subsection titled EXTRA WORK of Section 40, will be paid for at the contract prices or agreed prices specified in the change order or supplemental agreement authorizing the extra work.  When the change order or supplemental agreement authorizing the extra work requires that it be done by force account, such force account shall be measured and paid for based on expended labor, equipment, and materials plus a negotiated and agreed upon allowance for overhead and profit.

**a.** Miscellaneous.  No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

**b.** Comparison of Record.  The Contractor and the Engineer shall compare records of the cost of force account work at the end of each day.  Agreement shall be indicated by signature of the Contractor and the Engineer or their duly authorized representatives.

**c.** Statement.  No payment will be made for work performed on a force account basis until the Contractor has furnished the Engineer with duplicate itemized statements of the cost of such force account work detailed as follows:

 **(1)**  Name, classification, date, daily hours, total hours, rate and extension for each laborer and foreman.

 **(2)**  Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

 **(3)**  Quantities of materials, prices, and extensions.

 **(4)**  Transportation of materials.

 **(5)**  Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security tax.

Statements shall be accompanied and supported by a receipted invoice for all materials used and transportation charges.  However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were taken from his/her stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

**90-06 PARTIAL PAYMENTS.**  Partial payments will be made at least once each month as the work progresses.  Said payments will be based upon estimates prepared by the Engineer of the value of the work performed and materials complete 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 the subsection titled PAYMENT FOR MATERIALS ON HAND of this section.

No partial payment will be made when the amount due the Contractor since the last estimate amounts to less than five hundred dollars.

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 until the final payment is made, except as may be provided (at the Contractor's option) in the subsection titled PAYMENT OF WITHHELD FUNDS of this section. The balance (95 percent) of the amount payable, less all previous payments, shall be certified for payment.  Should the Contractor exercise his/her option, as provided in the subsection titled PAYMENT OF WITHHELD FUNDS of this section, no such 5 percent retainage shall be deducted.

When not less than 95 percent of the work has been completed, the Engineer may, at the Owner's discretion and with the consent of the surety, prepare an estimate from which will be retained 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 Engineer 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 the subsection titled ACCEPTANCE AND FINAL PAYMENT of this section.

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 retained percentage or 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.

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**In some areas, release of liens prior to paying the full amount to the prime contractor may void the contract. In those areas, revise the previous paragraph as required to meet all state and local regulations.**

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**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 Engineer at or on an approved site.

**b.**  The Contractor has furnished the Engineer with acceptable evidence of the quantity and quality of such stored or stockpiled materials.

**c.**  The Contractor has furnished the Engineer 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 so stored or stockpiled.

**e.**  The Contractor has furnished the Owner evidence that the material so 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 his/her 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 subsection.

**90-08 PAYMENT OF WITHHELD FUNDS.**  At the Contractor's option, he/she may request that the Owner accept (in lieu of the 5 percent retainage on partial payments described in the subsection titled PARTIAL PAYMENTS of this section) the Contractor's deposits in escrow under 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 5 percent 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 the subsection titled FINAL ACCEPTANCE of Section 50, the Engineer will prepare the final estimate of the items of work actually performed.  The Contractor shall approve the Engineer's final estimate or advise the Engineer of his/her 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 Engineer 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 Engineer's final estimate.  If, after such 30 day period, a dispute still exists, the Contractor may approve the Engineer'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 the subsection titled CLAIMS FOR ADJUSTMENT AND DISPUTES of Section 50.

After the Contractor has approved, or approved under protest, the Engineer's final estimate, 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 the subsection titled CLAIMS FOR ADJUSTMENTS AND DISPUTES of Section 50 or under the provisions of this subsection, 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.** 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, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. **This warranty shall continue for a period of 1 year from the date of final acceptance of the work.** If the Owner takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Owner takes possession.

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 the Owner's real or personal property, when that damage is the result of:

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished by the Contractor.

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 1 year from the date of repair or replacement.

The Owner will notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time 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.

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.

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

**90-11 PROJECT CLOSEOUT.** 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 Engineer approves the Contractor’s 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 clean up in accordance with Subsection 40-09.

(d) Complete all punch list items identified during the Final Inspection.

(e) Provide an executed Certification Regarding Settlement of Claims for release of all claims for labor and material arising out of the Contract. Form is available on the MoDOT Aviation Website.

(f) Provide a certification letter attesting to the actual work performed by the Disadvantaged Business Enterprise (DBE) firm and the amount paid the DBE firm, upon completion of the individual DBE firm's work. This certification letter shall be signed by both the prime contractor and the DBE firm. A sample certification letter is available on the MoDOT Aviation website.

**END OF SECTION 90**

SECTION 4

SUPPLEMENTARY PROVISIONS

PART A

FEDERAL AND STATE PROVISIONS

1. TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS (49 USC § 47123, FAA Order 1400.11)

2. GENERAL CIVIL RIGHTS PROVISIONS (49 USC § 47123)

3. ACCESS TO RECORDS AND REPORTS (2 CFR § 200.333; 2 CFR § 200.336; FAA Order 5100.38)

4. DISADVANTAGE BUSINESS ENTERPRISES (DBE) (49 CFR PART 26)

5. TERMINATION OF CONTRACT (2 CFR § 200 Appendix II(B), FAA Advisory Circular 150/5370-10, Section 80-09)

6. CLEAN AIR AND WATER POLLUTION CONTROL (2 CFR § 200 Appendix II(G))

7. DAVIS-BACON REQUIREMENTS (2 CFR § 200 Appendix II(D), 29 CFR PART 5)

8. EQUAL OPPORTUNITY CLAUSE (2 CFR § 200 Appendix II(C), 41 CFR § 60-1.4, 41 CFR § 60-4.3, Executive Order 11246)

9. ENERGY CONSERVATION REQUIREMENTS (2 CFR § 200 Appendix II(H))

10. PROHIBITION OF SEGREGATED FACILITIES (41 CFR § 60)

11. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (41 CFR 60-4.3)

12. VETERAN’S PREFERENCE (Title 49 U.S.C. 47112(c))

13. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION CONSTRUCTION SAFETY TRAINING

14. COPELAND “ANTI-KICKBACK” ACT (2 CFR § 200 Appendix II (D), 29 CFR Parts 3 and 5)

15. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE) (29 U.S.C. § 201, *et seq.*)

16. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (20 CFR Part 1910)

17. TEXTING WHEN DRIVING (Executive Order 13513, DOT Order 3902.10)

18. PROCUREMENT OF RECOVERED MATERIALS (2 CFR § 200.322, 40 CFR Part 247)

19. BREACH OF CONTRACT TERMS (2 CFR § 200 Appendix II(A))

20. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS (2 CFR § 200 Appendix II(E))

21. SEISMIC SAFETY (49 CFR Part 41)

22. RIGHT TO INVENTIONS (2 CFR § 200 Appendix II(F), 37 CFR § 401)

23. CERTIFICATION OF BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS (Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014, DOT Order 4200.6)

**1. TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS** (49 USC § 47123, FAA Order 1400.11)

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

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

2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports. The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) 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 FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the FAA 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 FAA 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.

7. 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 794 *et seq*.), as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
* The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq*.) (prohibits discrimination on the basis of age);
* Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
* The Civil Rights Restoration Act of 1987 (PL 100-209) (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
* Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
* The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
* Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures 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. at 74087 to 74100); and
* Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq*.).

**2. GENERAL CIVIL RIGHTS PROVISIONS** (49 USC § 47123)

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

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

**3. ACCESS TO RECORDS AND REPORTS** (2 CFR § 200.333; 2 CFR § 200.336; FAA Order 5100.38)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, MoDOT, 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.

**4. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**(49 CFR PART 26)

Where used in this provision, "Department of Transportation" or "DOT" refers to the United States Department of Transportation. "MoDOT" refers to the Missouri Department of Transportation and the Missouri Highways and Transportation Commission.

**Policy.** It is the policy of the Department of Transportation that disadvantaged business enterprises 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. Consequently, the DBE requirements of 49 CFR Part 26 applies to this agreement.

**Contract Assurance.** MoDOT and the Sponsor will ensure that the following clause is placed in every USDOT assisted contract and subcontract:

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

(This assurance shall be included in each subcontract the prime contractor signs with a subcontractor.)

**Federal Financial Assistance Agreement Assurance**. MoDOT and the Sponsor agree to and incorporate the following assurance into the day to day operations and the administration of all USDOT assisted contracts; where "recipient" means MoDOT and any MoDOT grantee receiving USDOT assistance:

“MoDOT or the Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. The recipient’s DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and for failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).”

MoDOT and the Sponsor ensure that all recipients of USDOT assisted contracts, funds, or grants incorporate, agree to and comply with the assurance statement.

Prompt Payment. MoDOT and the Sponsor require all contractors to pay all subcontractors and suppliers under this prime contract for satisfactory performance of its contract in compliance with the prompt payment statute, Mo. Revised Statutes, Chapter 34, Section 34.057 (included below). MoDOT and the Sponsor also require the prompt, as defined in Section 34.057, return of all retainage held on all subcontractors after the subcontractor’s work is satisfactorily completed, as MoDOT and Sponsor personnel may ultimately determine (if necessary). These prompt payment requirements apply to both DBE and non-DBE subcontractors.

 All contractors and subcontractors must retain records of all payments, made or received, for 3 years from the date of final payment and must be available for inspection, upon request, by any authorized representative of MoDOT, the Sponsor or USDOT. MoDOT and the Sponsor will maintain records of actual payments to DBE firms for work committed to at the time of contract award.

MoDOT and the Sponsor will perform audits of contract payments to firms. The audits will review payments to subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation and that payment was made in compliance with Missouri Revised Statutes, Chapter 34, Section 34.057.

# Missouri Revised Statutes

## Chapter 34

## State Purchasing and Printing

## Section 34.057

## August 28, 2014

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Public works contracts--prompt payment by public owner to contractor, engineer, architect, or surveyor--prompt payment by contractor to subcontractor-- progress payments--retainage--late payment charges-- withholding of payments.

34.057. 1. Unless contrary to any federal funding requirements or unless funds from a state grant are not timely received by the contracting public municipality but notwithstanding any other law to the contrary, all public works contracts made and awarded by the appropriate officer, board or agency of the state or of a political subdivision of the state or of any district therein, including any municipality, county and any board referred to as the public owner, for construction, reconstruction or alteration of any public works project, shall provide for prompt payment by the public owner to the contractor, and any professional engineer, architect, landscape architect, or land surveyor, as well as prompt payment by the contractor to the subcontractor and material supplier in accordance with the following:

(1) A public owner shall make progress payments to the contractor and any professional engineer, architect, landscape architect or land surveyor on at least a monthly basis as the work progresses, or, on a lump sum basis according to the terms of the lump sum contract. Except in the case of lump sum contracts, payments shall be based upon estimates prepared at least monthly of work performed and material delivered, as determined by the project architect or engineer. Retainage withheld on any construction contract or subcontract for public works projects shall not exceed five percent of the value of the contract or subcontract. If the contractor is not required to obtain a bond under section 107.170 because the cost of the public works contract is not estimated to exceed fifty thousand dollars, the public owner may withhold retainage on the public works project in an amount not to exceed ten percent of the value of the contract or subcontract. The public owner shall pay the contractor the amount due, less a retainage, within thirty days following the latter of the following:

(a) The date of delivery of materials or construction services purchased;

(b) The date, as designated by the public owner, upon which the invoice is duly delivered to the person or place designated by the public owner; or

(c) In those instances in which the contractor approves the public owner's estimate, the date upon which such notice of approval is duly delivered to the person or place designated by the public owner;

(2) Payments shall be considered received within the context of this section when they are duly posted with the United States Postal Service or other agreed upon delivery service or when they are hand-delivered to an authorized person or place as agreed to by the contracting parties;

(3) If, in the discretion of the owner and the project architect or engineer and the contractor, it is determined that a subcontractor's performance has been completed and the subcontractor can be released prior to substantial completion of the public works contract without risk to the public owner, the contractor shall request such adjustment in retainage, if any, from the public owner as necessary to enable the contractor to pay the subcontractor in full. The public owner may reduce or eliminate retainage on any contract payment if, in the public owner's opinion, the work is proceeding satisfactorily. If retainage is released and there are any remaining minor items to be completed, an amount equal to one hundred fifty percent of the value of each item as determined by the public owner's duly authorized representatives shall be withheld until such item or items are completed;

(4) The public owner shall pay at least ninety-eight percent of the retainage, less any offsets or deductions authorized in the contract or otherwise authorized by law, to the contractor. The contractor shall pay the subcontractor or supplier after substantial completion of the contract work and acceptance by the public owner’s authorized contract representative, or as may otherwise be provided by the contract specifications for state highway, road or bridge projects administered by the state highways and transportation commission. Such payment shall be made within thirty days after acceptance, and the invoice and all other appropriate documentation and certifications in complete and acceptable form are provided, as may be required by the contract documents. If the public owner or the owner’s representative determines the work is not substantially completed and accepted, then the owner or the owner’s representative shall provide a written explanation of why the work is not considered substantially completed and accepted within fourteen calendar days to the contractor, who shall then provide such notice to the subcontractor or suppliers responsible for such work. If such written explanation is not given by the public body, the public body shall pay at least ninety-eight percent of the retainage within thirty calendar days. If at that time there are any remaining minor items to be completed, an amount equal to one hundred fifty percent of the value of each item as determined by the public owner’s representative shall be withheld until such items are completed;

(5) All estimates or invoices for supplies and services purchased, approved and processed, or final payments, shall be paid promptly and shall be subject to late payment charges provided in this section. Except as provided in subsection 4 of this section, if the contractor has not been paid within thirty days as set forth in subdivision (1) of subsection 1 of this section, the contracting agency shall pay the contractor, in addition to the payment due him, interest at the rate of one and one-half percent per month calculated from the expiration of the thirty-day period until fully paid;

(6) When a contractor receives any payment, the contractor shall pay each subcontractor and material supplier in proportion to the work completed by each subcontractor and material supplier his application less any retention not to exceed five percent. If the contractor receives less than the full payment due under the public construction contract, the contractor shall be obligated to disburse on a pro rata basis those funds received, with the contractor, subcontractors and material suppliers each receiving a prorated portion based on the amount of payment. When, however, the public owner does not release the full payment due under the contract because there are specific areas of work or materials he is rejecting or because he has otherwise determined such areas are not suitable for payment then those specific subcontractors or suppliers involved shall not be paid for that portion of the work rejected or deemed not suitable for payment; provided the public owner or the owner’s representative gives a written explanation to the contractor, subcontractor, or supplier involved as to why the work or supplies were rejected or deemed not suitable for payment, and all other subcontractors and suppliers shall be paid in full;

(7) If the contractor, without reasonable cause, fails to make any payment to his subcontractors and material suppliers within fifteen days after receipt of payment under the public construction contract, the contractor shall pay to his subcontractors and material suppliers, in addition to the payment due them, interest in the amount of one and one-half percent per month, calculated from the expiration of the fifteen-day period until fully paid. This subdivision shall also apply to any payments made by subcontractors and material suppliers to their subcontractors and material suppliers and to all payments made to lower tier subcontractors and material suppliers throughout the contracting chain;

(8) The public owner shall make final payment of all moneys owed to the contractor, including any retainage withheld under subdivision (4) of this subsection, less any offsets or deductions authorized in the contract or otherwise authorized by law, within thirty days of the due date. Final payment shall be considered due upon the earliest of the following events:

(a) Completion of the project and filing with the owner of all required documentation and certifications, in complete and acceptable form, in accordance with the terms and conditions of the contract;

(b) The project is certified by the architect or engineer authorized to make such certification on behalf of the owner as having been completed, including the filing of all documentation and certifications required by the contract, in complete and acceptable form; or

(c) The project is certified by the contracting authority as having been completed, including the filing of all documentation and certifications required by the contract, in complete and acceptable form.

2. Nothing in this section shall prevent the contractor or subcontractor, at the time of application or certification to the public owner or contractor, from withholding such applications or certifications to the owner or contractor for payment to the subcontractor or material supplier. Amounts intended to be withheld shall not be included in such applications or certifications to the public owner or contractor. Reasons for withholding such applications or certifications shall include, but not be limited to, the following: unsatisfactory job progress; defective construction work or material not remedied; disputed work; failure to comply with other material provisions of the contract; third-party claims filed or reasonable evidence that a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment and materials; damage to a contractor or another subcontractor or material supplier; reasonable evidence that the contract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention, not to exceed the initial percentage retained by the owner.

3. Should the contractor determine, after application or certification has been made and after payment has been received from the public owner, or after payment has been received by a contractor based upon the public owner's estimate of materials in place and work performed as provided by contract, that all or a portion of the moneys needs to be withheld from a specific subcontractor or material supplier for any of the reasons enumerated in this section, and such moneys are withheld from such subcontractor or material supplier, then such undistributed amounts shall be specifically identified in writing and deducted from the next application or certification made to the public owner or from the next estimate by the public owner of payment due the contractor, until a resolution of the matter has been achieved. Disputes shall be resolved in accordance with the terms of the contract documents. Upon such resolution the amounts withheld by the contractor from the subcontractor or material supplier shall be included in the next application or certification made to the public owner or the next estimate by the public owner and shall be paid promptly in accordance with the provisions of this section. This subsection shall also apply to applications or certifications made by subcontractors or material suppliers to the contractor and throughout the various tiers of the contracting chain.

4. The contracts which provide for payments to the contractor based upon the public owner's estimate of materials in place and work performed rather than applications or certifications submitted by the contractor, the public owner shall pay the contractor within thirty days following the date upon which the estimate is required by contract to be completed by the public owner, the amount due less a retainage not to exceed five percent. All such estimates by the public owner shall be paid promptly and shall be subject to late payment charges as provided in this subsection. After the thirtieth day following the date upon which the estimate is required by contract to be completed by the public owner, the contracting agency shall pay the contractor, in addition to the payment due him, interest at a rate of one and one-half percent per month calculated from the expiration of the thirty-day period until fully paid.

5. The public owner shall pay or cause to be paid to any professional engineer, architect, landscape architect, or land surveyor the amount due within thirty days following the receipt of an invoice prepared and submitted in accordance with the contract terms. In addition to the payment due, the contracting agency shall pay interest at the rate of one and one-half percent per month calculated from the expiration of the thirty-day period until fully paid.

6. Nothing in this section shall prevent the owner from withholding payment or final payment from the contractor, or a subcontractor or material supplier. Reasons for withholding payment or final payment shall include, but not be limited to, the following: liquidated damages; unsatisfactory job progress; defective construction work or material not remedied; disputed work; failure to comply with any material provision of the contract; third party claims filed or reasonable evidence that a claim will be filed; failure to make timely payments for labor, equipment or materials; damage to a contractor, subcontractor or material supplier; reasonable evidence that a subcontractor or material supplier cannot be fully compensated under its contract with the contractor for the unpaid balance of the contract sum; or citation by the enforcing authority for acts of the contractor or subcontractor which do not comply with any material provision of the contract and which result in a violation of any federal, state or local law, regulation or ordinance applicable to that project causing additional costs or damages to the owner.

7. Nothing in this section shall be construed to require direct payment by a public owner to a subcontractor or supplier, except in the case of the default, as determined by a court, of the contractor on the contract with the public owner where no performance or payment bond is required or where the surety fails to execute its duties, as determined by a court.

8. Notwithstanding any other provisions in this section to the contrary, no late payment interest shall be due and owing for payments which are withheld in good faith for reasonable cause pursuant to subsections 2, 5 and 6 of this section. If it is determined by a court of competent jurisdiction that a payment which was withheld pursuant to subsections 2, 5 and 6 of this section was not withheld in good faith for reasonable cause, the court may impose interest at the rate of one and one-half percent per month calculated from the date of the invoice and may, in its discretion, award reasonable attorney fees to the prevailing party. In any civil action or part of a civil action brought pursuant to this section, if a court determines after a hearing for such purpose that the cause was initiated, or a defense was asserted, or a motion was filed, or any proceeding therein was done frivolously and in bad faith, the court shall require the party who initiated such cause, asserted such defense, filed such motion, or caused such proceeding to be had to pay the other party named in such action the amount of the costs attributable thereto and reasonable expenses incurred by such party, including reasonable attorney fees.

(L. 1990 S.B. 808 & 672 § 1, A.L. 2014 S.B. 529)

(2004) Act contemplates a contract between the parties to such a cause of action and provides for such action against a public owner only by the contractor, not a subcontractor or supplier. Mays-Maune & Associates v. Werner Brothers, 139 S.W.3d 201 (Mo.App. E.D.).

**MoDOT DBE Program Regulations.** The Sponsor, contractor and each subcontractor are bound by the MoDOT DBE Program regulations at Title 7 CSR, Division 10, Chapter 8.

**5. TERMINATION OF CONTRACT** (2 CFR § 200 Appendix II(B), FAA Advisory Circular 150/5370-10, Section 80-09)

1. Termination for Convenience:

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 of which 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.

**[DRAFTER’S NOTE: Subparagraph (b) below is required for all contracts for construction, while subparagraph (c) is required for all contracts for equipment. Select the applicable provision and delete the other subparagraph, along with this Drafter’s Note.]**

1. Termination for Default (Construction):

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights and remedies associated with Owner termination of this contract due to default of the Contractor.

1. Termination for Default (Equipment):

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract if the Contractor:

1. Fails to commence 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;
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 ten 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 of 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.

**6. CLEAN AIR AND WATER POLLUTION CONTROL** (2 CFR § 200 Appendix II(G))

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) 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 and the Federal Aviation Administration.

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

**7. DAVIS-BACON REQUIREMENTS** (2 CFR § 200 Appendix II(D), 29 CFR PART 5)

1 Minimum Wages.

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

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

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 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 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 that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the 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 website at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, 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) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5(a)(3)(i) and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

5. Compliance With Copeland Act Requirements.

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

6. Subcontracts.

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

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 10.1 through 10.10 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 U.S.C. 1001.

**8. EQUAL OPPORTUNITY CLAUSE** (2 CFR § 200 Appendix II(C), 41 CFR § 60-1.4, 41 CFR § 60-4.3, Executive Order 11246)

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

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

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

(3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provision, including sanctions for noncompliance: *Provided, however,* that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**9. ENERGY CONSERVATION REQUIREMENTS** (2 CFR § 200 Appendix II(H))

The Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq*.).

**10. PROHIBITION OF SEGREGATED FACILITIES** (41 CFR § 60)

1. 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 Opportunity clause in this contract.

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

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

**11. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS** (41 CFR 60-4.3)

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 shall 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 11.7a through 11.7p 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 area 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 non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period and the contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall 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 therefore 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 female 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 11.7b 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 workforce.

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 non-segregated, 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 supervisors' 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 (11.7a through 11.7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 11.7a through 11.7p 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, if the 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, 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 11.7 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 number, 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).

**12. VETERAN’S PREFERENCE** (Title 49 U.S.C. 47112(c))

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

**13. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION CONSTRUCTION SAFETY TRAINING**

The Contractor and its subcontractors (if any subcontractors are retained) shall comply with all applicable provisions of section 292.675, Revised Statutes of Missouri, which statute is incorporated herein by reference and is made a part of this contract. Section 292.675 states that any person signing a contract to work on the construction of public works for any public body shall provide a ten hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees, which includes a course in construction safety and health approved by OSHA or a similar program approved by the Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program, unless such employees have previously completed the required program and hold documentation of such prior completion. All employees who have not previously completed the program are required to complete the program within sixty (60) days of beginning work on such construction project. Any employee found on a worksite subject to section 292.675's requirements without documentation of the successful completion of this course shall have twenty (20) days to produce such documentation before being subject to removal from the project.

The Contractor shall forfeit as penalty to the public body on whose behalf the contract is made or awarded two thousand five hundred dollars ($2,500) plus one hundred dollars ($100) for each employee employed by the contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed by the contractor or subcontractor without the required training. These penalties shall not begin to accrue until the sixty (60) day and twenty (20) day time periods described above have elapsed. The public body awarding the contract shall withhold and retain therefrom all sums and amounts due and owing as a result of any violation of section 292.675 when making payments to the Contractor under the contract. The Contractor may withhold from any subcontractor sufficient sums to cover any penalties the public body has withheld from the Contractor resulting from the subcontractor's failure to comply with the terms of section 292.675.

**14. COPELAND “ANTI-KICKBACK” ACT (2 CFR § 200 Appendix II(D), 29 CFR Parts 3 and 5)**

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 U.S.C. § 874 and 40 U.S.C. § 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.

**15. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE) (29 U.S.C. § 201, *et seq*.)**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

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

**16. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (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 Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The Contractor 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.

**17. TEXTING WHEN DRIVING (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 its 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 $3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

**18. PROCUREMENT OF RECOVERED MATERIALS (2 CFR § 200.322, 40 CFR Part 247)**

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

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

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

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

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

**19. BREACH OF CONTRACT TERMS** (2 CFR § 200 Appendix II(A))

**[DRAFTER’S NOTE: This subparagraph (19) is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II(A). This threshold is now equal to $150,000. If this provision is not required, please delete subparagraph (19) here and in the preceding Table of Contents, along with this Drafter’s Note, and renumber all remaining subparagraphs.]**

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

The Owner will provide the Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. The Owner reserves the right to withhold payments to the 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. The 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.

**20. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS** (2 CFR § 200, Appendix II(E))

**[DRAFTER’S NOTE: This subparagraph (20) is required for all construction contracts that exceed $100,000 and employ laborers, mechanics, watchmen and guards and for all equipment contracts that exceed $100,000 and involve installation of equipment onsite. If this provision is not required, please delete subparagraph (20) here and in the preceding Table of Contents, along with this Drafter’s Note, and renumber all remaining subparagraphs.]**

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

2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph 1 of this clause, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this clause, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages. The Federal Aviation Administration 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 monies 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.

**21. SEISMIC SAFETY (49 CFR Part 41)**

**[DRAFTER’S NOTE: This subparagraph (21) is required for all contracts for the construction of new buildings and additions to existing buildings financed in whole or in part through the Airport Improvement Program. If this provision is not required, please delete subparagraph (21) here and in the preceding Table of Contents, along with this Drafter’s Note, and renumber all remaining subparagraphs.]**

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

**22. RIGHT TO INVENTIONS** (2 CFR § 200 Appendix II(F), 37 CFR § 401)

**[DRAFTER’S NOTE: This subparagraph (22) is only required for contracts with small business firms or nonprofit organizations that includes performance of experimental, developmental, or research work. If this provision is not required, please delete subparagraph (22) here and in the preceding Table of Contents, along with this Drafter’s Note, and renumber all remaining subparagraphs.]**

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.

23. **CERTIFICATION OF BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS** (Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014, DOT Order 4200.6)

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

Certifications

1. The bidder 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 bidder 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 a bidder responds in the affirmative to either of the above representations, the bidder 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 bidder therefore must provide information to the Sponsor about its tax liability or conviction to the Sponsor, who will then notify MoDOT and/or the FAA, which will then notify the agency’s SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions:

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

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

PART B

DBE ADMINISTRATION

1. **Eligibility of DBE's:** Only those firms currently certified as DBEs by the Missouri Department of Transportation (MoDOT), City of St. Louis, Metro, City of Kansas City, and Kansas City Area Transportation Authority are eligible to participate as DBEs on this contract. A list of these firms are available on MoDOT’s Office of External Civil Rights webpage at the following address:

http://www.modot.mo.gov/business/contractor\_resources/External\_Civil\_Rights/DBE\_program.htm.

2. **Counting DBE Participation Towards DBE Goals:** DBE participation toward attainment of the goal will be computed on the basis of the subcontract prices agreed to between the contractor and subcontractors for the contract items or portions of items being sublet, as documented in the Proposal Form. Credit will only be given for use of DBEs that are certified or accepted according to this specification. DBE participation shall be counted toward meeting the DBE goal in accordance with the following:

a. **Commercially Useful Function:** The Sponsor shall count toward the DBE goal only those expenditures to DBEs that perform a commercially useful function in the work of the contract. A DBE performs a commercially useful function when it is responsible for execution of a distinct element of work by actually performing, managing, and supervising that work. To determine if a DBE is performing a commercially useful function, the amount of work subcontracted, industry practices, and other relevant factors will be evaluated. If consistent with industry practices, a DBE shall enter into a subcontract or other contractual written agreement. A DBE Contractor may subcontract a portion of the work up to the amount allowed under standard subcontracting contract provisions of normal industry practices. A DBE is presumed not to be performing a commercially useful function if the DBE is performing outside these guidelines.

b. **Materials and Supplies:** The Sponsor shall count toward the DBE goal the expenditures for materials and supplies obtained from DBE suppliers and manufacturers as described below. The DBEs must assume the actual and contractual responsibility for the provision of the materials and supplies:

(1) The entire expenditure to a DBE manufacturer will be counted toward the DBE goal. A manufacturer must operate or maintain a factory or establishment that produces on the premises the materials or supplies that are obtained by the contractor.

(2) Sixty percent of expenditures to a DBE regular dealer will be counted toward the DBE goal. A regular dealer must perform a commercially useful function in the supply process, including buying the materials or supplies, maintaining an inventory, and regularly selling materials to the public. Bulk items such as steel, cement, gravel, stone, and petroleum products need not be kept in stock, but the dealer must own or operate distribution equipment.

(3) No credit will be given toward the DBE goal if the prime contractor makes a direct payment to a non-DBE material supplier. However, it will be permissible for a material supplier to invoice the prime contractor and the DBE jointly and be paid by the prime contractor making remittance to the DBE firm and material supplier jointly.

(4) No credit toward the DBE goal will be given for the cost of materials or equipment used in a DBE firm's work when those costs are paid by a deduction from the prime contractor's payment(s) to the DBE firm.

c. **Work Classifications:** DBE credit will count toward the contractual goal only for work actually performed by the DBE firm and within the Standard Industry Classification (SIC) code approved for that firm. The credit will be counted in the following manner:

#### (1) Manufacturer: Credit is given for 100 percent of the value paid for materials furnished which become a permanent part of the project. A manufacturer is a firm that owns and operates the facilities to produce a product required by the project and purchased by the contractor.

#### (2) Supplier: Credit is given for 60 percent of the value paid for materials furnished which becomes a permanent part of the project. A supplier sells goods to the general public and maintains an inventory at an owned or leased warehouse or store. Bulk items such as steel, petroleum projects, or rock do not have to be maintained in an on-site inventory. Credit will not be given for the cost of the materials and separate credit for the hauling of those same materials. Transportation of the materials is deemed part of the total cost.

(3) Broker: Credit is given for 100 percent of the **fees** or **commission** received by the DBE firm for materials purchased, services provided, or equipment secured and resold to the contractor. Fees or commissions are defined as the difference between what the DBE firm paid for the materials purchased, services provided, or equipment secured and the price paid by the contractor to the DBE firm for those items. A broker does not manufacture or supply on a regular basis.

(4) Trucker: Credit is given for 100 percent of the amount paid to the DBE trucker if that trucking is performed by the DBE, with employees of the DBE, using equipment owned or long-term leased by the DBE. However, if the DBE firm uses leased trucks, at least one truck owned by the firm **must** be used on the project.

Full credit will not be given for leased trucks unless they are leased on a long-term basis from another DBE firm, DBE owner operators, or a recognized commercial leasing operation. Firms licensed by the Missouri Public Service Commission as leasing agents qualify as a recognized leasing operation. Lease of trucks from the prime contractor will not be credited toward the DBE goal, other than possibly the portion constituting broker fees and commissions. This type of relationship will be subject to strict scrutiny.

All trucks used must be labeled clearly and visibly with a sign indicating the firm owning or leasing the vehicle. MoDOT will require submittal of a truck roster report, including ownership and vehicle identification information, on a regular basis. MoDOT project office or other designated personnel will review the rosters for verification and will monitor the trucks operating on the project. MoDOT will conduct random verification and report any irregularities to the External Civil Rights Unit for review.

In order for the use of a DBE trucker to be credited for the delivered price of materials supplies, the trucker must be certified as a supplier or manufacturer of the material, responsible for the quality standards of the material, negotiating the material price, payment, and select the source.

(a) Owner-Operator Trucking**:** The Sponsor shall count toward the DBE goal, the entire delivery fee paid to DBE owner-operators performing trucking for the contractor, if they appear on the contractor's payroll and separate records are furnished to the Sponsor documenting the expenditures. The records shall include for each owner-operator: their social security number; driver's license number; vehicle registration number; current vehicle license number; truck number; and a complete record of the contract fees paid to them.

 If the DBE firm uses owner-operators to supplement their owned trucks, the DBE must be responsible for management and supervision of the entire trucking operation. The trucking arrangement or contract ***cannot*** be a contrived arrangement to meet the DBE goal. The DBE will be considered a broker, and only fees or commissions received will count toward the goal, if the DBE is not in full control, or does not have employees or trucks on the project.

d. **Joint Venture:** When a joint venture contract is involved, the Sponsor shall count towards the DBE goal that portion of the contract total dollar value equal to the percentage of ownership and control of each DBE firm within the joint venture. Such crediting is subject to the sponsor's acceptance of the joint venture agreement. The Bidder must furnish the joint venture agreement with the DBE Participation Form. The joint venture agreement must include a detailed breakdown of the following:

(1) Contract responsibility of the DBE for specific contract items of work,

(2) Capital participation by the DBE,

(3) Specific equipment to be provided by the DBE,

(4) Specific responsibilities of the DBE regarding control of the joint venture,

(5) Specific workers and skills to be provided by the DBE, and

(6) Percentage distribution to the DBE of the projected profit or loss incurred by the joint venture.

The joint venture must be certified in writing by MoDOT.

3. **Award Documentation and Procedure:** All Bidders shall certify in the Proposal Form their intent to meet or exceed the established goal or to demonstrate good faith efforts to meet the goal. Failure to make such certification or failure to demonstrate good faith efforts will render a bid non-responsive and will not be considered.

a. **DBE Participation Information:** All Bidders must complete the required DBE participation information in the Proposal Form, when a DBE goal has been established for the project. The information shall demonstrate the contractor's intended participation by certified DBE's. The information furnished shall consist of:

(1) The names and addresses of DBE firms that will participate in the contract;

1. A description of the work that each DBE will perform;
2. The dollar amount of the participation of each DBE firm participating;
3. Written documentation (signed contract proposal) of the bidder/offeror’s commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
4. If the contract goal is not met, evidence of good faith efforts (see paragraph c below).

(Note: After award of the contract, the MoDOT External Civil Rights Office will contact by mail each DBE firm participating in the contract, requesting written confirmation from the DBE that it is participating in the contract as provided in the Proposal Form.)

b. **Sponsor Evaluation:** In selecting the lowest responsible bidder, the Sponsor and MoDOT will evaluate the DBE information provided with the bid. The Sponsor and MoDOT may request additional DBE information. Prior to awarding the contract, the Sponsor will verify verbally and/or in writing that the information submitted by the apparent successful bidder is accurate and complete.

c. **Good Faith Efforts:** If the bidder is unable to meet the DBE goal, the bidder must submit in and as part of its bid, written documentation and evidence of good faith efforts taken to meet the goal. Good faith efforts conducted after the bid opening will not be considered adequate to fulfill these bid requirements. Good faith efforts may include but are not limited to:

(1) Efforts to select portions of the work for performance by DBEs, in order to increase the likelihood of achieving the DBE goal. This can include, but is not limited to, breaking down contracts into economically feasible units to facilitate DBE participation. Selection of portions of work shall be at least equal to the DBE goal.

(2) Written notification to individual DBEs likely to participate in the contract sent at least 7 calendar days prior to the bid opening. The notification shall list specific items or types of work and shall be sent to a reasonable number of DBEs qualified to partici­pate in the contract.

(3) Efforts to negotiate with DBEs for specific items of work including:

(a) Names, addresses, and telephone numbers of DBEs who were contacted, the dates of initial contact and information on further contacts made to determine with certainty if the DBEs were interested. Personal or phone contacts are expected;

(b) Description of the information provided to the DBEs regarding the plans, specifications and estimated quantities for portions of the work to be performed;

(c) Individual statements as to why agreements with DBEs were not reached; and

(d) Information on each DBE contacted but rejected and the reasons for the rejection.

(4) Efforts to assist the DBE's that need assistance in obtaining bonding, insurance, or lines of credit required by the contractor.

(5) Documentation that qualified DBEs are not available or not interested.

(6) Advertisements in general circulation media, trade association publications and disadvantaged-focused media concerning subcontracting opportunities.

(7) Efforts to use the services of available disadvantaged community organizations; disadvantaged contractor's groups; local, state and federal disadvantaged business assistance offices; and other organizations that provide assistance in recruitment and placement of DBEs.

The demonstration of good faith efforts by the contractor must prove the contractor actively and aggressively sought out DBEs to participate in the project. The following actions would not be considered acceptable reasons for failure to meet the DBE goal and would not constitute a good faith effort:

(1) The DBE was unable to provide adequate performance and/or payment bonds.

(2) A reasonable DBE bid was rejected based on price.

(3) The DBE would not agree to perform the subcontract work at the prime contractor's unit bid price.

(4) Union versus non-union status of the DBE firm.

(5) The prime contractor would normally perform all or most of the work included in this contract.

1. The prime contractor solicited DBE participation by mail only.

Should MoDOT and the city determine that the bidder’s submitted documentation on good faith efforts are inadequate, the bidder must make a written request for administrative reconsideration within 2 working days of the notification on lack of good faith efforts. That notice may be faxed or emailed to:

**Missy Stuedle**

**External Civil Rights Director**

**P. O. Box 270**

**Jefferson City, Missouri 65102**

**Telephone: (573) 526-2978**

**Fax: (573) 526-0558**

**E-Mail:** **missy.stuedle@modot.mo.gov**

The Administrative Reconsideration Committee will include 3 individuals MoDOT deems appropriate and the members will be familiar with the DBE program, bidding, construction, and/or contracting matters. The External Civil Rights Unit will process the request, including providing documentation of the determination, and notify the Administrative Reconsideration Committee of the request for review; however, neither the administrator, nor any member of MoDOT that had a part in the initial determination will be a part of the reconsideration determination.

As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so to the committee. The bidder may choose to meet in person with the Administrative Reconsideration Committee to discuss the finding. MoDOT and the city will notify the bidder, in writing of the decision on reconsideration, explaining the basis for finding that the bidder did or did not make adequate good faith efforts to meet the goal. The result of the reconsideration process is not administratively appealable to the USDOT.

4. **Post Award Compliance**: If the contract is awarded on less than full DBE goal participation, the contractor is not relieved of the responsibility to make a determined effort to meet the full goal amount during the life of the contract. In such a case, the contractor shall continue good faith efforts throughout the life of the contract to increase the DBE participation to meet the contract goal.

 If a DBE is unwilling or unable to perform the work specified, the contractor shall request from the Sponsor and MoDOT, relief from the obligation to use that DBE. Efforts will be made by the contractor to acquire from the DBE a letter which states the reason the DBE is unwilling or unable to complete its obligations under the project. If this results in a DBE contract shortfall, the contractor shall immediately take steps to obtain another certified DBE to perform an equal dollar value of allowable credit. If a new DBE cannot be found, the contractor shall submit evidence of good faith efforts within 15 calendar days of the request for relief. The contractor shall submit the new DBE's name, address, work items and the dollar amount of each item. The sponsor and MoDOT shall approve the new DBE before the DBE starts work.

If the contractor fails to conform to the approved DBE participation or if it becomes evident that the remaining work will not meet the approved participa­tion, then the contractor shall submit evidence showing either how the contractor intends to meet the DBE participation, or what circumstances have changed affecting the DBE participation. If the sponsor is not satisfied with the evidence, then liquidated damages may be assessed for the difference between the approved and actual DBE participation.

5. **Records and Reports**: The contractor and all of its subcontractors shall keep records as necessary to determine compliance with the DBE obligations. The records shall include but are not limited to:

a. Record of DBE Participation: The names of disadvantaged and non-disadvantaged subcontractors, regular dealers, manufacturers, consultant and service agencies; the type of work or materials or services performed on or incorporated in the project; and the actual value of such work.

b. Efforts to Utilize DBE Firms: Documentation of all efforts made to seek out disadvantaged contractor organizations and individual disadvantaged contractors for work on this project. All correspondence, personal contacts, telephone calls, etc., to obtain the services of DBEs should be documented.

1. Final DBE Certification: Upon completion of the individual DBE firm's work, the prime contractor shall submit a certification letter attesting to the actual work performed by the DBE firm and the amount paid the DBE firm. This certification letter shall be signed by both the prime contractor and the DBE firm. A sample certification letter is available on the MoDOT Aviation website.

PART C

LOCAL PROVISIONS

{Insert appropriate local requirements as needed (liability insurance, etc.)}

PART D

FEDERAL AND STATE WAGE RATES

{Insert the current federal and state wage rates}

{The sponsor is responsible for obtaining the appropriate State Wage Rates for the county in which the work is to be performed from the Missouri Division of Labor Standards. Information regarding these state wage rates is available on their website at the following link:

http://labor.mo.gov/DLS/PrevailingWage

The Federal Wage Rates issued by the U.S. Department of Labor are available on their website at http://www.wdol.gov/dba.aspx. The General Decision shall be selected from either heavy or highway for the state of Missouri. The wage determinations are the same for all counties.

**The federal and state wage rates need to be current within 10 days of the bid opening.}**

SECTION 5

TECHNICAL SPECIFICATIONS

**{FAA Advisory Circular 150/5370-10 contains the FAA standards for specifying construction of airports and airport related development. These standards may be supplemented by various engineering briefs issued by Airport Engineering Division of the Office of Airport Safety and Standards.**

**The FAA Regional Office may also supplement or amend the FAA standards for purposes of accommodating regional and local conditions that may not be adequately covered by the broader national standard. These modifications to AC 150/5370-10 are available under AIP Sponsor Guide No. 940 (FAA Central Region website).**

**Sponsors and their consultants must utilize AC 150/5370-10 as a guide specification when preparing a project specification. Sponsors may not modify or deviate from the accepted FAA standard unless express written approval is obtained from MoDOT. Upon approval from MoDOT, Modification of Standards (MOS) must be entered into the FAA Airports Geographic Information System (Airports GIS) website and approved by the FAA prior to use. Sponsors desiring to make such modifications must refer to AIP Sponsor Guide No. 950 (FAA Central region website) for the required procedure to properly request a sponsor-initiated modification to FAA standards.**

**The FAA standard specifications include several "notes to engineers" that elaborate on permissible options and modifications an engineer may choose when preparing a project specification. The engineer shall use their sound engineering judgment to make appropriate and permissible decisions that account for project specific materials, site conditions, methods and other requirements.}**

APPENDIX

{Insert appropriate reference Advisory Circulars such as 150/5370-2E Operational Safety on Airports During Construction.}

PROPOSAL FORM

**{SPONSOR NAME)**

State Block Grant Project No. **{MoDOT PROJECT NUMBER}**

TO: City/County Manager

The undersigned, in compliance with the request for bids for construction of the following Project:

**{BRIEF AND CONCISE DESCRIPTION OF PROJECT}**:

hereby proposes to furnish all labor, permits, material, machinery, tools, supplies and equipment to faithfully perform all work required for construction of the Project in accordance with the project manual, project drawings and issued Addenda within the specified time of performance for the following prices:

|  |
| --- |
| BASE BID |
| BIDITEM | FAA orMoDOTSPEC. | ITEM DESCRIPTION | APPROX.QUANTITYAND UNITS | UNIT PRICE | EXTENSION |
|  |  |  |  | DOLLARS | CTS | DOLLARS | CTS |
| 1 | MO-100 | Mobilization | 1Lump Sum |  |  |  |  |
| 2 | MO-152 | Class A Excavation | 42,500C.Y. |  |  |  |  |
| 3 | MO-209 | Crushed AggregateBase Course | 14,250Tons |  |  |  |  |
| 4 | MO-401F | Mineral Aggregate(BP-1 Mix) | 3,250Tons |  |  |  |  |
| 5 | MO-401F | Asphalt Cement(BP-1 Mix) | 150Tons |  |  |  |  |
| 6 | MO-602 | Bituminous Prime Coat | 21,200Gals. |  |  |  |  |
| 7 | MO-620 | Airport Runway Pavement Marking (White) | 65,000S.F. |  |  |  |  |
| 8 | L-108 | Underground Cable(1/c, #8 AWG, 5kV) | 5,000L.F. |  |  |  |  |
| **TOTAL BID (Base Bid)** |  |

**ACKNOWLEDGEMENTS BY BIDDER**

**a.** By submittal of a proposal, the BIDDER acknowledges and accepts that the quantities established by the OWNER are an approximate estimate of the quantities required to fully complete the Project and that the estimated quantities are principally intended to serve as a basis for evaluation of bids. The BIDDER further acknowledges and accepts that payment under this contract will be made only for actual quantities and that quantities will vary in accordance with the General Provisions subsection entitled “Alteration of Work and Quantities”.

**b.** The BIDDER acknowledges and accepts that the Bid Documents are comprised of the documents identified within the General Provisions. The BIDDER further acknowledges that each the individual documents that comprise the Bid Documents are complementary to one another and together establishes the complete terms, conditions and obligations of the successful BIDDER.

**c.** As evidence of good faith in submitting this proposal, the undersigned encloses a bid guaranty in the form of a certified check, cashier’s check or bid bond in the amount of 5% of the bid price. The BIDDER acknowledges and accepts that refusal or failure to accept award and execute a contract within the terms and conditions established herein will result in forfeiture of the bid guaranty to the owner as a liquidated damage.

**d.** The BIDDER acknowledges and accepts the OWNER’S right to reject any or all bids.

**e.** The BIDDER acknowledges and accepts the OWNER’S right to hold all Proposals for purposes of review and evaluation and not issue a notice of award for a period not to exceed **{NUMBER OF DAYS}** calendar days from the stated date for receipt of bids.

**f.** The undersigned agrees that upon written notice of award of contract, he or she will execute the contract within thirty (30) days of the notice of award, and furthermore, and provide executed payment and performance bonds within fifteen (15) days from the date of contract execution. The undersigned accepts that failure to execute the contract and provide the required bonds within the stated timeframe shall result in forfeiture of the bid guaranty to the owner as a liquidated damage.

**g.** Time of Performance: By submittal of this proposal, the undersigned acknowledges and agrees to commence work within ten (10) calendar days of the date specified in the written “Notice to Proceed” as issued by the OWNER. The undersigned further agrees to complete the Project within **{NUMBER OF DAYS}** Calendar days from the commencement date specified in the Notice to Proceed.

**h.** The undersigned acknowledges and accepts that for each and every Calendar day the project remains incomplete beyond the contract time of performance, the Contractor shall pay the non-penal amount of $**{DOLLAR AMOUNT}** per Calendar day as a liquidated damage to the OWNER.

**i.** The undersigned prime contractor, if not a MoDOT certified DBE, hereby assures that they will subcontract **{DBE GOAL}** percent of the dollar value of the prime contract to DBE firms or make good faith efforts to meet the DBE contract goal. In addition, the prime contractor will include the DBE clauses (see Supplementary Provision No. 6 of the Federal and State Provisions) required by the DBE Program adopted by MoDOT and the Sponsor in all contracts and subcontracts relating to this project. The undersigned will complete the DBE Participation information included herein when a DBE goal has been established, including a demonstration of good faith efforts if the DBE goal is not met. If the undersigned prime contractor is a MoDOT certified DBE firm, then the prime contractor must perform at least thirty percent (30%) of the total contract value work with its own forces, and will receive DBE credit for all work which the prime contractor and any other MoDOT certified DBE firm performs directly.

**j.** The BIDDER, by submission of a proposal, acknowledges that award of this contract is subject to the provisions of the Davis-Bacon Act and the Missouri Prevailing Wage Law. The BIDDER accepts the requirement to pay prevailing wages for each classification and type of worker as established in the attached wage rate determinations as issued by the United States Department of Labor and the Missouri Division of Labor Standards. The BIDDER further acknowledges and accepts their requirement to incorporate the provision to pay the established prevailing wages in every subcontract agreement entered into by the Bidder under this project. The highest rate between the two (Federal and State) for each job classification shall be considered the prevailing wage.

**k.** Compliance Reports (41 CFR Part 60-1.7): Within 30 days after award of this contract, the Contractor/Subcontractor shall file a compliance report (Standard Form 100) if s/he has not submitted a complete compliance report within 12 months preceding the date of award. This report is required if the Contractor/Subcontractor meets all of the following conditions:

**1.** Contractors/Subcontractors are not exempt based on 41 CFR 60‑1,5.

**2.** Has 50 or more employees.

**3.** Is a prime contractor or first tier subcontractor.

**4.** There is a contract, subcontract, or purchase order amounting to $50,000 or more

**l.** The undersigned acknowledges receipt of the following addenda:

Addendum No. , dated Date Received

Addendum No. , dated Date Received

Addendum No. , dated Date Received

Addendum No. , dated Date Received

Addendum No. , dated Date Received

**REPRESENTATIONS BY BIDDER**

By submittal of a proposal (bid), the BIDDER represents the following:

**a.** The BIDDER has read and thoroughly examined the bid documents, including all authorized addenda.

**b.** The BIDDER has a complete understanding of the terms and conditions required for the satisfactory performance of project work.

**c.** The BIDDER has fully informed themselves of the project site, the project site conditions and the surrounding area.

**d.** The BIDDER has familiarized themselves with the requirements of working on an operating airport and understands the conditions that may in any manner affect cost, progress or performance of the work.

**e.** The BIDDER has correlated their observations with that of the project documents.

**f.** The BIDDER has found no errors, conflicts, ambiguities or omissions in the project documents, except as previously submitted in writing to the owner that would affect cost, progress or performance of the work.

**g.** The BIDDER is familiar with all applicable Federal, State and local laws, rules and regulations pertaining to execution of the contract and the project work.

**h.** The BIDDER has complied with all requirements of these instructions and the associated project documents.

**CERTIFICATIONS BY BIDDER**

**a.** The undersigned hereby declares and certifies that the only parties interested in this proposal are named herein and that this proposal is made without collusion with any other person, firm or corporation. The undersigned further certifies that no member, officer or agent of OWNER’S has direct or indirect financial interest in this proposal.

**b. Trade Restriction Certification (49 U.S.C. § 50104, 49 CFR Part 30)**

The 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 published by the Office of the United States Trade Representative (U.S.T.R.);

**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 U.S.T.R.; and

**3.** has not entered into any subcontract for any product to be used on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

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.

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 U.S.T.R. or
2. whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
3. who incorporates in the public works project any product of a foreign country on such U.S.T.R. 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 U.S.T.R., 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.

1. **Certification of Offeror/Bidder Regarding Debarment (2 CFR Part 180 (Subpart C), 2 CFR Part 1200, DOT Order 4200.5)**

 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.

1. **Certification of Lower Tier Contractors Regarding Debarment (2 CFR Part 180 (Subpart C), 2 CFR Part 1200, DOT Order 4200.5)**

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

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

If the FAA and/or MoDOT 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 and/or MoDOT may pursue any available remedies, including suspension and debarment of the non-compliant participant.

**f. Certification Regarding Lobbying (31 U.S.C. § 1352, 2 CFR § 200 Appendix II(J), 49 CFR Part 20, Appendix A)**

**[DRAFTER’S NOTE: This Certification Regarding Lobbying is required for all contracts that exceed $100,000. If this provision is not required, please delete subparagraph (f) and renumber all remaining subparagraphs.]**

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

1. NoFederal 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 employer 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, sub-grants, 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, United States 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 such failure.

**g. Buy American Certification:** (Title 49 U.S.C. § 50101)

The bidder agrees to comply with 49 U.S.C. § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA 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.

A bidder or offeror must submit the appropriate Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

**Type of Certification is based on Type of Project:**

There are two types of Buy American certifications.

* For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
* For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

\*\*\*\*\*

**Certificate of Buy American Compliance for Total Facility**

(Buildings such as Terminal, SRE, ARFF, etc.)

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 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 by:

1. Only installing steel and manufactured products produced in the United States; or
2. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
3. 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:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing U.S. domestic products.
3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

[ ]  Bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either 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:

1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
2. 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.
3. To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
4. To furnish U.S. domestic product for any waiver request that the FAA rejects.
5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

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

1. Listing of all manufactured products that are not comprised of 100% 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).
2. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
3. 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** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a Type 4 waiver is:

1. Detailed cost information for total project using U.S. domestic product.
2. Detailed cost information for total project using non-domestic product.

**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

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 Company Name Title

**Certificate of Buy American Compliance for Manufactured Products**

(Non-building construction projects, equipment acquisition 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 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 by:

1. Only installing steel and manufactured products produced in the United States;
2. Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
3. 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:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing U.S. domestic product.
3. To furnish U.S. domestic product for any waiver request that the FAA rejects.
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

[ ]  Bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either 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:

1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination which may result in rejection of the proposal.
3. To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

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

1. Listing of all product components and subcomponents that are not comprised of 100% 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).
2. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
3. Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly and at place of manufacture.

**Type 4 Waiver** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a Type 4 waiver is:

1. Detailed cost information for total project using U.S. domestic product.
2. Detailed cost information for total project using non-domestic product.

**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

**h. Compliance with the Work Authorization Law (as required by Section 285.530, Revised Statues of Missouri)**

For all contracts where the total bid amount is in excess of $50,000 (local match in excess of $5,000), the Bidder, by submission of an offer and by signing the Worker Eligibility Verification Affidavit for All Contract Agreements in Excess of $50,000, certifies that it:

1. does not knowingly employ any person who is an unauthorized alien in connection with the contracted services;
2. has enrolled and actively participates in a federal work authorization program;

A general contractor or subcontractor of any tier shall not be liable under sections 285.525 to 285.550 when such general contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of this section, if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection 1 of this section and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor’s employees are lawfully present in the United States.

**WORKER ELIGIBILITY VERIFICATION AFFIDAVIT FOR ALL CONTRACT**

**AGREEMENTS IN EXCESS OF $50,000 (Local match in excess of $5,000)**

(for joint ventures, a separate affidavit is required for each business entity)

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

 ) ss

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

 On this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, before me appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be a person whose name is subscribed to this affidavit, who being by me duly sworn, deposed as follows:

 My name is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and I am of sound mind, capable of making this affidavit, and personally certify the facts herein stated, as required by Section 285.530, RSMo, to enter into any contract agreement with the state or any of its political subdivisions to perform any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities:

 I am the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and I am duly authorized, directed, and/or empowered to act officially and properly on behalf of this business entity.

(business name)

 (title)

 I hereby affirm and warrant that the aforementioned business entity is enrolled in a federal work authorization program operated by the United States Department of Homeland Security, and the aforementioned business entity shall participate in said program to verify information (employment eligibility) of newly hired employees working in connection to work under the within contract agreement. I have attached documentation to this affidavit to evidence enrollment/participation by the aforementioned business entity in a federal work authorization program, as required by Section 285.530, RSMo.

 In addition, I hereby affirm and warrant that the aforementioned business entity does not and shall not knowingly employ, in connection to work under the within contract agreement, any alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. § 1324a(h)(3).

 I am aware and recognize that, unless certain contract and affidavit conditions are satisfied pursuant to Section 285.530, RSMo, the aforementioned business entity may be held liable under Sections 285.525 through 285.550, RSMo, for subcontractors that knowingly employ or continue to employ any unauthorized alien to work within the state of Missouri.

 I acknowledge that I am signing this affidavit as a free act and deed of the aforementioned business entity and not under duress. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Affiant Signature)

Subscribed and sworn to before me this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.

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

 (Notary Public)

 My commission expires:

***[Documentation of enrollment/participation in a federal work authorization program is attached. Acceptable enrollment and participation documentation consists of the following two pages of the E-Verify Memorandum of Understanding: (1) A valid, completed copy of the first page identifying the business entity; and (2) A valid copy of the signature page completed and signed by the business entity, the Social Security Administration, and the Department of Homeland Security – Verification Division.]***

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION**

The information shown in this section must be completed when a DBE contract goal has been established. The percentage must equal or exceed the DBE contract goal. If the percentage is below the contract goal, then the bidder must submit complete written documentation of good faith efforts taken to meet the DBE contract goal.

**a.** The undersigned submits the following list of DBEs to be used in accomplishing the work of this contract. The work, supplies or services, applicable value and percent of total federal contract each DBE is to perform or furnish is as follows:

**b.** Joint venture with a DBE. The undersigned submits the following list of bid items the DBE prime is responsible for and any items that will be subcontracted out are noted with an asterisk or a similar notation. The work, applicable value and percentage of total federal contract the DBE prime is responsible for are as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| (A)DBE Name and Address | (B)Bid Item Number(s)Or Work Performed | (C)Dollar Value of DBE Work**\*\*** | (D)Percent Applicable to DBE Goal(100%, 60%) | (E)Dollar Amount Applicable to DBE Goal(C x D) | (F)Percent of Total Contract(C **/** Total Contract Amount) |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
| TOTAL DBE PARTICIPATION | $ | % |

**\*\***Cannot exceed contract amount for given item of work.

Trucking services credited at 100% if the DBE owns the trucks or is leasing from a DBE firm

Merchant wholesalers (supply) are credited at 60%.

Brokered services will only receive credit for fees.

(Please reproduce the above sheet if additional space is needed.)

|  |
| --- |
| THIS EXECUTED PROPOSAL FORM MUST BE SUBMITTED IN THE ORIGINAL BOUND PROJECT MANUAL. |

**\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \***

**The above text may be modified to reflect engineer’s preferences.**

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

**SIGNATURE OF BIDDER**

The undersigned states that the correct LEGAL NAME AND ADDRESS of (1) the individual bidder, (2) each partner or joint venturer (whether individuals or corporations, and whether doing business under a fictitious name), or (3) the corporation (with the state in which it is incorporated) are shown below; that (if not signing with the intention to bind themselves to become responsible and sole bidder) they are the agent of, and they are signing and executing this (as indicated in the proper spaces below) as the bid of a

 ( ) sole individual ( ) partnership ( ) joint venture

 ( ) corporation, incorporated under the laws of state of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 Executed by bidder this \_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_\_\_.

 Name of individual,

 all partners

 or joint venturers: Address of each:

 doing business under the name of: Address of principal place of business in

 Missouri:

 (If using a fictitious name, show this name

 above in addition to legal names)

 (If a corporation, show its name above)

 ATTEST: (SEAL)

 (Signature) Secretary (Signature) (Title)

 Please print name Please print name

NOTE: If bidder is doing business under a fictitious name, the bid shall be executed in the legal name of the individual partners, joint ventures, or corporation, with the legal address shown, and registration of fictitious name filed with the secretary of state, as required by sections 417.200 to 417.230 RSMo. If the bidder is a corporation not organized under the laws of Missouri, it shall procure a certificate of authority to do business in Missouri, as required by section 351.572 et seq RSMo.

|  |  |
| --- | --- |
| **PERFORMANCE BOND** | BOND NUMBER |
| PRINCIPAL *(Legal Name and Business Address)* |
| SURETY *(Legal Name and Business Address)* | STATE OF INCORPORATION |
| PENAL SUM OF BOND *(Expressed in words and numerals)* | CONTRACT DATE |

**OBLIGATION**

KNOW ALL PERSONS BY THESE PRESENTS, that the above named PRINCIPAL, hereinafter referred to and called CONTRACTOR, and the above named SURETY hereby bind themselves unto **{LEGAL NAME AND ADRRESS OF SPONSOR}**, as OBLIGEE, hereinafter referred to and called OWNER, in the penal sum stated above, in lawful money of the United States of America to be paid to OWNER. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,**

CONTRACTOR has entered into the written contract agreement identified hereinabove with the OWNER for the following project:

**{PROJECT NAME}**

**{PROJECT LOCATION}**

which said contract and associated contract documents, including any present or future amendment thereto, is incorporated herein by reference and is hereinafter referred to as the Contract.

**CONDITION**

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform all undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any extensions thereof that are granted by the OWNER, with or without notice to the SURETY, and during the period of any guarantee or warranties required under the Contract, and if CONTRACTOR shall perform and fulfill all undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of the Contract that hereafter are made, then this obligation shall be void; otherwise it shall remain in full force and effect subject to the following additional conditions:

**1.** SURETY, for value received, hereby stipulates and agrees that no change, extension of time, modification, omission, addition or change in or to the Contract, or the work performed thereunder or the specifications accompanying the same, shall in any way affect the SURETY’S obligation on this bond; and SURETY hereby agrees to waive notice of any and all such extensions, modifications, omissions, alterations, and additions to the terms of the Contract, work or specifications.

**2.** Whenever CONTRACTOR shall be and declared by the OWNER to be in default under the Contract, the Surety shall promptly and at the SURETY’S expense remedy the default by implementing one or more of the following actions:

**a.** Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or

**b.** Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

**c.** Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract; arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER’S concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract; and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the penal sum of the bond. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by OWNER to CONTRACTOR under the Contract and any amendments thereto, disbursed at the rate provided in the original contract, less the amount properly paid by OWNER to CONTRACTOR.

**d.** With written consent of the OWNER, SURETY may waive its right to perform and complete, arrange for completion or obtain a new contractor and with reasonable promptness, investigate and determine the amount the SURETY is liable to the OWNER and tender payment therefor to the OWNER.

**3.** CONTRACTOR and SURETY agree that if in connection with the enforcement of this Bond, the OWNER is required to engage the services of an attorney, that reasonable attorney fees incurred by the OWNER, with or without suit, are in addition to the balance of the contract price.

**4.** No right of action shall accrue on this bond to or for the use of any person or corporation other than the OWNER named herein or the successors or assigns of the OWNER.

**WITNESS**

In witness whereof, this instrument is executed this the day of , 20 .

**INDIVIDUAL PRINCIPAL:**

Company Name:

Signature:

Name and Title:

**CORPORATE PRINCIPAL:**

ATTEST: Corporate Name:

Signature: Signature:

Name and Title: Name and Title:

 (Affix Corporate Seal)

**SURETY:**

ATTEST: Surety Name:

Signature: Signature:

Name and Title: Name and Title:

 (Affix Seal) (Attach Power of Attorney)

**OWNER ACCEPTANCE:**

The OWNER approves the form of this Performance Bond.

ATTEST: Date:

Signature: Signature:

Name and Title: Name and Title:

 (Affix Seal)

|  |  |
| --- | --- |
| **PAYMENT BOND** | BOND NUMBER |
| PRINCIPAL *(Legal Name and Business Address)* |
| SURETY *(Legal Name and Business Address)* | STATE OF INCORPORATION |
| PENAL SUM OF BOND *(Expressed in words and numerals)* | CONTRACT DATE |

**OBLIGATION**

KNOW ALL PERSONS BY THESE PRESENTS, that the above named PRINCIPAL, hereinafter referred to and called CONTRACTOR, and the above named SURETY hereby bind themselves unto **{LEGAL NAME AND ADDRESS OF SPONSOR}**, as OBLIGEE, hereinafter referred to and called OWNER, in the penal sum stated above, in lawful money of the United States of America to be paid to OWNER. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,**

CONTRACTOR has entered into the written contract agreement identified hereinabove with the OWNER for the following project:

**{PROJECT NAME}**

**{PROJECT LOCATION}**

which said contract and associated contract documents, including any present or future amendment thereto, is incorporated herein by reference and is hereinafter referred to as the Contract.

**CONDITION**

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly make payment to all employees, persons, firms or corporations for all incurred indebtedness and just claims for labor, supplies, materials and services furnished for or used in connection with the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect subject to the following additional conditions:

**1.** CONTRACTOR and SURETY indemnify and hold harmless the OWNER for all claims, demands, liens or suits that arise from performance of the Contract

**2.** SURETY, for value received, hereby stipulates and agrees that no change, extension of time, modification, omission, addition or change in or to the Contract, or the work performed thereunder or the specifications accompanying the same, shall in any way affect the SURETY’S obligation on this bond; and SURETY hereby agrees to waive notice of any and all such extensions, modifications, omissions, alterations, and additions to the terms of the Contract, work or specifications.

**3.** No final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

**4.** The amount of this bond shall be reduced by and to the extent of any payments made in good faith hereunder.

**5.** Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the SURETY under this Bond, subject to the OWNER’S priority to use the funds for the completion of the project.

**WITNESS**

In witness whereof, this instrument is executed this the day of , 20 .

**INDIVIDUAL PRINCIPAL:**

Company Name:

Signature:

Name and Title:

**CORPORATE PRINCIPAL:**

ATTEST: Corporate Name:

Signature: Signature:

Name and Title: Name and Title:

 (Affix Corporate Seal)

**SURETY:**

ATTEST: Surety Name:

Signature: Signature:

Name and Title: Name and Title:

 (Affix Seal) (Attach Power of Attorney)

**OWNER ACCEPTANCE:**

The OWNER approves the form of this Payment Bond.

ATTEST: Date:

Signature: Signature:

Name and Title: Name and Title:

 (Affix Seal)

**FORM OF**

**CONTRACT AGREEMENT**

**{SPONSOR NAME)**

State Block Grant Project No. **{MoDOT PROJECT NUMBER}**

**THIS AGREEMENT**, made as of this \_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_, is

**BY AND BETWEEN**

the OWNER: Name: **{OWNER’S NAME}**

 Address: **{ADDRESS}**

 City/State/Zip Code: **{CITY/STATE/ZIP CODE}**

And the CONTRACTOR: Name:

 Address:

 City/State/Zip Code:

**WITNESSETH:**

WHEREAS it is the intent of the Owner to make improvements at **{NAME OF AIRPORT}** generally described as follows;

 **{BRIEF AND CONCISE DESCRIPTION OF PROJECT}**.

hereinafter referred to as the Project.

NOW THEREFORE in consideration of the mutual covenants hereinafter set forth, OWNER and CONTRACTOR agree as follows:

**Article 1 – Work**

It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the CONTRACTOR by the OWNER, CONTRACTOR shall faithfully furnish all necessary labor, equipment, and material and shall fully perform all necessary work to complete the Project in strict accordance with this Contract Agreement and the Contract Documents.

**Article 2 – Contract Documents**

CONTRACTOR agrees that the Contract Documents consist of the following: this Agreement, General Provisions, Supplementary Provisions, Specifications, Drawings, all issued addenda, Notice to Bidders, Instructions to Bidders, Proposal and associated attachments, Performance Bond, Payment Bond, Wage Rate Determinations, Insurance certificates, documents incorporated by reference, documents incorporated by attachment, and all OWNER authorized change orders issued subsequent to the date of this agreement. All documents comprising the Contract Documents are complementary to one another and together establish the complete terms, conditions and obligations of the CONTRACTOR. All said Contract Documents are incorporated by reference into the Contract Agreement as if fully rewritten herein or attached thereto.

**Article 3 – Contract Price**

In consideration of the faithful performance and completion of the Work by the CONTRACTOR in accordance with the Contract Documents, OWNER shall pay the CONTRACTOR an amount equal to:

$ ($ )

 (Amount in Written Words) (Amount in Numerals)

subject to the following;

**a.** Said amount is based on the schedule of prices and estimated quantities stated in CONTRACTOR’S Bid Proposal, which is attached to and made a part of this Agreement;

**b.** Said amount is the aggregate sum of the result of the CONTRACTOR’S stated unit prices multiplied by the associated estimated quantities;

**c.** CONTRACTOR and OWNER agree that said estimated quantities are not guaranteed and that the determination of actual quantities is to be made by the OWNER’S ENGINEER;

**d.** Said amount is subject to modification for additions and deductions as provided for within the Contract General Provisions.

**Article 4 – Payment**

Upon the completion of the work and its acceptance by the OWNER, all sums due the CONTRACTOR by reason of faithful performance of the work, taking into consideration additions to or deductions from the Contract price by reason of alterations or modifications of the original Contract or by reason of “Extra Work” authorized under this Contract, will be paid to the CONTRACTOR by the OWNER after said completion and acceptance.

The acceptance of final payment by the CONTRACTOR shall be considered as a release in full of all claims against the OWNER, arising out of, or by reason of, the work completed and materials furnished under this Contract.

OWNER shall make progress payments to the CONTRACTOR in accordance with the terms set forth in the General Provisions. Progress payments shall be based on estimates prepared by the ENGINEER for the value of work performed and materials completed in place in accordance with the Contract Drawings and Specifications.

Progress payments are subject to retainage requirements as set forth in the General Provisions.

**Article 5 – Contract Time**

The CONTRACTOR agrees to commence work within ten (10) calendar days of the date specified in the OWNER’S Notice to Proceed. CONTRACTOR further agrees to complete said work within **{NUMBER OF DAYS)** of the commencement date stated within the Notice to Proceed.

It is expressly understood and agreed that the stated Contract Time is reasonable for the completion of the Work, taking all factors into consideration. Furthermore, extensions of the Contract Time may only be permitted by execution of a formal modification to this Contract Agreement in accordance with the General Provisions and as approved by the OWNER.

**Article 6 – Liquidated Damages**

The CONTRACTOR and OWNER understand and agree that time is of the essence for completion of the Work and that the OWNER will suffer additional expense and financial loss if said Work is not completed within the authorized Contract Time. Furthermore, the CONTRACTOR and OWNER recognize and understand the difficulty, delay, and expense in establishing the exact amount of actual financial loss and additional expense. Accordingly, in place of requiring such proof, the CONTRACTOR expressly agrees to pay the OWNER as liquidated damages the non-penal sum of $**{DOLLAR AMOUNT}** per day for each calendar day required in excess of the authorized Contract Time.

Furthermore, the CONTRACTOR understands and agrees that;

**a.** the OWNER has the right to deduct from any moneys due the CONTRACTOR, the amount of said liquidated damages;

**b.** the OWNER has the right to recover the amount of said liquidated damages from the CONTRACTOR, SURETY or both.

**Article 7 – CONTRACTOR’S Representations**

The CONTRACTOR understands and agrees that all representations made by the CONTRACTOR within the Proposal Form shall apply under this Agreement as if fully rewritten herein.

**Article 8 – CONTRACTOR’S Certifications**

The CONTRACTOR understands and agrees that all certifications made by the CONTRACTOR within the Proposal shall apply under this Agreement as if fully rewritten herein. The CONTRACTOR further certifies the following;

**a.** **Certification of Eligibility (29 CFR Part 5.5)**

**i.** By Entering into this contract, the CONTRACTOR certifies that neither 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 U.S.C.

**b. Certification of Non-Segregated Facilities (41 CFR Part 60-1.8)**

The federally-assisted construction CONTRACTOR certifies 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 Bidder 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, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user restrooms or necessary dressing or sleeping areas provided to assure privacy between the sexes. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it 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 it will retain such certifications in its files.

**Article 9 – Miscellaneous**

**a.** CONTRACTOR understands that it shall be solely responsible for the means, methods, techniques, sequences and procedures of construction in connection with completion of the Work;

**b.** CONTRACTOR understands and agrees that it shall not accomplish any work or furnish any materials that are not covered or authorized by the Contract Documents unless authorized in writing by the OWNER or ENGINEER;

**c.** The rights of each party under this Agreement shall not be assigned or transferred to any other person, entity, firm or corporation without prior written consent of both parties;

**d.** OWNER and CONTRACTOR each bind itself, their partners, successors, assigns and legal representatives to the other party in respect to all covenants, agreements, and obligations contained in the Contract Documents.

**Article 10 – OWNER’S Representative**

The OWNER’S Representative, herein referred to as ENGINEER, is defined as follows:

**{NAME OF FIRM}**

**{ADDRESS}**

**{CITY/STATE/ZIP CODE}**

Said ENGINEER will act as the OWNER’S representative and shall assume all rights and authority assigned to the ENGINEER as stated within the Contract Documents in connection with the completion of the Project Work.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have executed five (5) copies of this Agreement on the day and year first noted herein.

**OWNER CONTRACTOR**

Name: Name:

Address: Address:

By: By:

 *Signature Signature*

 *Title of Representative Title of Representative*

ATTEST: ATTEST

By: By:

 *Signature Signature*

 *Title Title*