

**Updated 9/6/2024**

# **FEDERAL PROJECT**

## BIDDING INSTRUCTIONS

### FOR ALL PROJECTS:

1. Use pen and ink to complete all paper Bids.
2. As a minimum, the following must be received prior to the time of Bid opening:

#### For a Paper Bid:

- a) a copy of the Notice to Contractors, b) the completed Acknowledgement of Bid Amendments form, c) the completed Schedule of Items, d) two copies of the completed and signed Contract Offer, Agreement & Award form, e) a Bid Guaranty, (if required), and f) any other certifications or Bid requirements listed in the Bid Documents as due by Bid opening.

#### For an Electronic Bid:

**NOTE: Not all projects accept Electronic Bids. Please review the Notice to Contractors and see if it specifically states that Electronic Bids will be accepted.**

- a) a completed Bid using Expedite® software and submitted via the Bid Express™ web-based service, b) an electronic Bid Guaranty (if required) or a faxed copy of a Bid Bond (with original to be delivered within 72 hours), and c) any other Certifications or Bid requirements listed in the Bid Documents as due by Bid opening.
3. Include prices for all items in the Schedule of Items (excluding non-selected alternates).
  4. Bid Guaranty acceptable forms are:
    - a) a properly completed and signed Bid Bond on the Department's prescribed form (or on a form that does not contain any significant variations from the Department's form as determined by the Department) for 5% of the Bid Amount or
    - b) an Official Bank Check, Cashier's Check, Certified Check, U.S. Postal Money Order or Negotiable Certificate of Deposit in the amount stated in the Notice to Contractors or
    - c) an electronic bid bond submitted with an electronic bid.
  5. If a paper Bid is to be sent, "FedEx First Overnight" delivery is suggested as the package is delivered directly to the DOT Headquarters Building located at 16 Child Street in Augusta. Other means, such as U.S. Postal Service's Express Mail has proven not to be reliable.

### IN ADDITION, FOR FEDERAL AID PROJECTS:

6. Complete the DBE Proposed Utilization form, and submit with your bid. If you are submitting your bid electronically, you must FAX the form to (207) 624-3431. This is a curable defect.

*If you need further information regarding Bid preparation, call the DOT Contracts Section at (207) 624-3410.*

*For complete bidding requirements, refer to Section 102 of the Maine Department of Transportation, Standard Specifications, March 2020 Edition.*

# NOTICE

The Maine Department of Transportation is attempting to improve the way Bid Amendments/Addendums are handled and allow for an electronic downloading of bid packages from our website, while continuing to maintain an optional plan holders list.

Prospective bidders, subcontractors or suppliers who wish to download a copy of the bid package and receive a courtesy notification of project specific bid amendments must fill out the on-line plan holder registration form and provide an email address to the MDOT Contracts mailbox at: [MDOT.contracts@maine.gov](mailto:MDOT.contracts@maine.gov). Each bid package will require a separate request.

Additionally, interested parties will be responsible for reviewing and retrieving the Bid Amendments from our web site, and acknowledging receipt and incorporating those Bid Amendments in their bids using the Acknowledgement of Bid Amendment Form.

The downloading of bid packages from the MDOT website is not the same as providing an electronic bid to the Department. Electronic bids must be submitted via <http://www.BIDX.com>. For information on electronic bidding contact David Oakes at [david.oakes@maine.gov](mailto:david.oakes@maine.gov) or Guy Berthiaume at [guy.berthiaume@maine.gov](mailto:guy.berthiaume@maine.gov).

# NOTICE

For security and other reasons, all Bid Packages which are mailed, shall be provided in double (one envelope inside the other) envelopes. The *Inner Envelope* shall have the following information provided on it:

Bid Enclosed - Do Not Open

PIN:

Town:

Date of Bid Opening:

Name of Contractor with mailing address and telephone number:

In Addition to the usual address information, the *Outer Envelope* should have written or typed on it:

Double Envelope: Bid Enclosed

PIN:

Town:

Date of Bid Opening:

Name of Contractor:

*This should not be much of a change for those of you who use Federal Express or similar services.*

Hand-carried Bids may be in one envelope as before, and should be marked with the following information:

Bid Enclosed: Do Not Open

PIN:

Town:

Name of Contractor:

October 16, 2001



**STATE OF MAINE DEPARTMENT OF TRANSPORTATION**  
Bid Guaranty-Bid Bond Form

**KNOW ALL MEN BY THESE PRESENTS THAT** \_\_\_\_\_

\_\_\_\_\_, of the City/Town of \_\_\_\_\_ and State of \_\_\_\_\_

as Principal, and \_\_\_\_\_ as Surety, a

Corporation duly organized under the laws of the State of \_\_\_\_\_ and having a usual place of

Business in \_\_\_\_\_ and hereby held and firmly bound unto the Treasurer of

the State of Maine in the sum of \_\_\_\_\_, for payment which Principal and Surety bind

themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is that the Principal has submitted to the Maine Department of

Transportation, hereafter Department, a certain bid, attached hereto and incorporated as a

part herein, to enter into a written contract for the construction of \_\_\_\_\_

\_\_\_\_\_ and if the Department shall accept said bid

and the Principal shall execute and deliver a contract in the form attached hereto (properly

completed in accordance with said bid) and shall furnish bonds for this faithful performance of

said contract, and for the payment of all persons performing labor or furnishing material in

connection therewith, and shall in all other respects perform the agreement created by the

acceptance of said bid, then this obligation shall be null and void; otherwise it shall remain in full

force, and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

WITNESS:

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

WITNESS

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

PRINCIPAL:

By \_\_\_\_\_

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

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

SURETY:

By \_\_\_\_\_

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

Name of Local Agency: \_\_\_\_\_

# NOTICE

Bidders:

Please use the attached “Request for Information” form when submitting questions concerning specific Contracts that have been advertised for Bid, include additional numbered pages as required. RFI’s may be faxed to 207-624-3431, submitted electronically through the Departments web page of advertised projects by selecting the RFI tab on the project details page or via e-mail to [RFI-Contracts.MDOT@maine.gov](mailto:RFI-Contracts.MDOT@maine.gov).

These are the only allowable mechanisms for answering Project specific questions. Maine DOT will not be bound to any answers to Project specific questions received during the Bidding phase through other processes.

When submitting RFIs by Email please follow the same guidelines as stated on the “Request for Information” form and include the word “RFI” along with the Project name and Identification number in the subject line.

## RFI No: \_\_\_\_\_

**Date** \_\_\_\_\_ **Time** \_\_\_\_\_

**WIN(S):** \_\_\_\_\_ **Town(s):** \_\_\_\_\_ **Bid Date:** \_\_\_\_\_

**Question(s):**\_\_\_\_\_

**Company Name:** \_\_\_\_\_ **Phone: ( )** \_\_\_\_\_

**Email:** \_\_\_\_\_ **Fax:** (\_\_\_\_) \_\_\_\_\_

7

# NOTICE

## Disadvantaged Business Enterprise Commitment Confirmation

**All** Bidders must submit the Commitment Confirmation form with their bid.

The Commitment Confirmation form contains information required by USDOT.

The Commitment Confirmation form must be completed by each Prime Contractor.

A copy of the new Commitment Confirmation form and instructions for completing it are attached.

The DBE Directory can be found on the MaineDOT Website at: <https://www.maine.gov/mdot/civilrights/dbe/>

Questions about the Directory or this form should be sent to the Civil Rights Office at [mary.bryant@maine.gov](mailto:mary.bryant@maine.gov) or by calling 207-624-3056.

## INSTRUCTIONS FOR PREPARING THE MAINEDOT COMMITMENTCONFIRMATION FORM

The Contractor shall extend equal opportunity to MaineDOT certified DBE firms (as listed in MaineDOT's DBE Directory of Certified Businesses) in the selection and utilization of subcontractors and suppliers.

Each prime contractor submitting a bid on a federally funded project must complete each section of the Commitment Confirmation form in its entirety for itself and each subcontractor on that project.

### SPECIFIC INSTRUCTIONS FOR COMPLETING THE FORM:

#### Section A:

1. Insert Contractor Name
2. Insert WIN for the Federal Project bidding on
3. Insert Bid Date
4. Insert Project Location
5. Insert Email address of Contact Person

#### Section B:

- A. Enter each Contractor's and Sub-Contractor's name and address (including zip code) – Prime Contractor's name should be listed in first box of this section; then each additional line would be proposed subcontractors – DBE or NonDBE
- B. Enter each Contractor's and Sub-Contractor's annual gross receipts bracket (see the legend on the form)
- C. Enter DBE status (DBE or non-DBE) for each contractor/sub-contractor
- D. Enter each Contractor's and Sub-Contractor's NAICS (North Amer. Industry Classification System) code (may be more than one) and Scope of Work
- E. For each Contractor and Sub-Contractor enter the Race and Gender of the firm's majority owner
- F. Enter the Age of each Contractor/Sub-Contractor
- G. Enter the Proposed amount of payment (Bid amount) for each Contractor/Sub-Contractor.

Maine Department of Transportation  
COMMITMENT CONFIRMATION

Section A. Bidder/Prime Contractor Information.

This section must be completed by the Bidder/Prime Contractor.

1. Prime Contractor Name:		2. Federal Project WIN:		3. Bid Date:	
4. Project Location:		5. Email Address:			

Section B. Commitment Details - Prime Contractor and all Proposed Subcontractor Information is Required in This Section

A. Firm's Name & Address, Including Zip Code Prime must be listed first	B. Annual Gross Receipt Bracket Select 1 to 7*	C. Status DBE or Non-DBE	D. NAICS Code(s) and Scope of Work	E. Race & Gender of each Firm's Majority Owner	F. Age of Each Firm	G. Proposed Amount

\*1) Less Than \$1M, 2) \$1 - \$3M, 3) \$3 - \$6M, 4) \$6 - \$10M, 5) \$10 - \$20M, 6) \$20 - \$50M, 7) Greater Than \$50M - More than 5 Subs use a new form

MaineDOT Use Only:

Form Received: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Verified by: \_\_\_\_ FHW A ☐ FTA ☐ FAA ☐

For a complete list of certified DBE firms please visit: <http://www.maine.gov/mdot/civilrights/>

Note: This information is required pursuant to 49 CFR §26.11 and is used to track data in all federally funded MaineDOT contracts.

**DBE GOAL NOTICE**  
**Maine Department of Transportation**  
**Disadvantaged Business Enterprise Program**

Notice is hereby given that in accordance with US DOT regulation 49 CFR Part 26, the Maine Department of Transportation (MaineDOT) has established a Disadvantaged Business Enterprise Program (DBE) for disadvantaged business participation in the federal-aid highway and bridge construction programs; MaineDOT contracts covered by the program include consulting, construction, supplies, manufacturing, and service contracts.

Beginning September 1, 2024, MaineDOT has established an annual DBE participation goal of **1.43%** to be achieved through race/gender neutral means. This goal has been approved by the Federal Highway Administration through August 31, 2027. MaineDOT must meet this goal each federal fiscal year. If the goal is not met, MaineDOT must provide a justification for not meeting the goal and provide a plan to ensure the goal is met, which may include contract goals on certain projects that contractors will be required to meet.

MaineDOT asks all contractors, consultants and subcontractors to seek certified DBE firms for projects and to work to meet the determined 1.43% goal without the need to impose contract goals. DBE firms are listed on the MaineDOT website at:

<http://www.maine.gov/mdot/disadvantaged-business-enterprises/pdf/directory.pdf>

Interested parties may view MaineDOT's DBE goal setting methodology, also posted on this website. If you have questions regarding this goal or the DBE program you may contact Sherry Tompkins at the Maine Department of Transportation, Civil Rights Office by telephone at (207) 624-3066 or by e-mail at: [sherry.tompkins@maine.gov](mailto:sherry.tompkins@maine.gov)

**Maine Department of Transportation Civil Rights Office**

**Directory of Certified Disadvantaged Business Enterprises**

**Listing can be found at:**

<https://www.maine.gov/mdot/civilrights/dbe/>

**For additional information and guidance contact:**

**Civil Rights Office at (207) 624-3066**

***It is the responsibility of the Contractor to access the DBE Directory at this site in order to have the most current listing.***



### **Vendor Registration**

Prospective Bidders must register as a vendor with the Department of Administrative & Financial Services if the vendor is awarded a contract. Vendors will not be able to receive payment without first being registered. Vendors/Contractors will find information and register through the following link –

<http://www.maine.gov/purchases/venbid/index.shtml>

## STATE OF MAINE DEPARTMENT OF TRANSPORTATION NOTICE TO CONTRACTORS

Sealed Bids addressed to the Maine Department of Transportation, Augusta, Maine 04333 and endorsed on the wrapper "Bids for construction of Automated Weather Observing System Level III at Bethel Regional Airport in the town of **BETHEL** and Princeton Municipal Airport in the town of **PRINCETON**" will be received from contractors at the Reception Desk, MaineDOT Building, Capitol Street, Augusta, Maine, until 11:00 o'clock A.M. (prevailing time) on April 9, 2025 and at that time and place, publicly opened and read. Bids will be accepted from all bidders. The lowest responsive bidder must demonstrate previous successful completion of projects of a similar size and scope to be considered for the award of this contract. **We now accept electronic bids for bid packages posted on the [bidx.com](http://bidx.com) website. Electronic bids do not have to be accompanied by paper bids. Please note: The Department will accept a facsimile of the bid bond; however, the original bid bond must then be received at the MDOT Contract Section within 72 hours of the bid opening.** Until further notice, dual bids (one paper, one electronic) will be accepted, with the paper copy taking precedence.

Description: Maine Federal Aid Project No. WIN 018717.08

Location: In Oxford County, The Bethel Regional Airport is at 113 North Road. In Washington County, Princeton Municipal Airport is at 184 Airport Road.

Scope of Work: Automated Weather Observing System Level III construction plus other incidental work.

For general information regarding Bidding and Contracting procedures, contact George Macdougall at (207) 624-3410. Our webpage at <http://www.maine.gov/mdot/contractors/> contains a copy of the Schedule of Items, Plan Holders List, written portions of bid amendments, drawings, bid results and an electronic form for RFI submittal. For Project-specific information fax all questions to **Project Manager Alan D. Lambert** at (207) 624-3431, use electronic RFI form or email questions to [RFI-Contracts.MDOT@maine.gov](mailto:RFI-Contracts.MDOT@maine.gov), project name and identification number should be in the subject line. Questions received after 12:00 noon of Monday (or if that Monday is a state holiday, Friday) prior to bid date will not be answered. Bidders shall not contact any other Departmental staff for clarification of Contract provisions, and the Department will not be responsible for any interpretations so obtained. TTY users call Maine Relay 711.

Bid Documents, specifications and bid forms can be viewed and obtained digitally at no cost at <http://www.maine.gov/mdot/contractors/>. They may be purchased from the Department between the hours of 7:00 a.m. to 3:30 p.m. by cash, credit card (Visa/Mastercard) or check payable to Treasurer, State of Maine sent to Maine Department of Transportation, Attn.: Mailroom, 24 Child Street, Augusta, Maine 04333-0016. They also may be purchased by telephone at (207) 624-3536 between the hours of 7:00 a.m. to 3:30 p.m. Full size plans **\$18.00 (\$21.50 by mail)**. Half size plans **\$9.00 (\$11.25 by mail)**, Bid Book \$10 (\$13 by mail), Single Sheets \$2, payment in advance, all non-refundable.

Each Bid must be made upon blank forms provided by the Department and must be accompanied by a bid bond at 5% of the bid amount or an official bank check, cashier's check, certified check, certificate of deposit, or United States postal money order in the amount of 5% of the bid amount, payable to Treasurer, State of Maine as a Bid guarantee. A Contract Performance Surety Bond and a Contract Payment Surety Bond, each in the amount of 100 percent of the Contract price, will be required of the successful Bidder.

This Contract is subject to all applicable Federal Laws. This contract is subject to compliance with the Disadvantaged Business Enterprise program requirements as set forth by the Maine Department of Transportation.

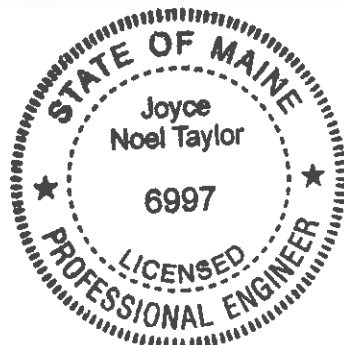
All work shall be governed by *State of Maine, Department of Transportation, Standard Specifications, March 2020 Edition*, price \$10 [\$15 by mail], and *Standard Details, March 2020 Edition*, price \$10 [\$15 by mail]. They also may be purchased by telephone at (207) 624-3536 between the hours of 7:00 a.m. to 3:30 p.m. *Standard Detail* updates can be found at <http://www.maine.gov/mdot/contractors/publications/>.

The right is hereby reserved to the MaineDOT to reject any or all bids.

Augusta, Maine  
March 19, 2025



JOYCE NOEL TAYLOR P. E.  
CHIEF ENGINEER



**SPECIAL PROVISION 102.7.3**  
**ACKNOWLEDGMENT OF BID AMENDMENTS**

With this form, the Bidder acknowledges its responsibility to check for all Amendments to the Bid Package. For each Project under Advertisement, Amendments are located at <http://www.maine.gov/mdot/contractors/> . It is the responsibility of the Bidder to determine if there are Amendments to the Project, to download them, to incorporate them into their Bid Package, and to reference the Amendment number and the date on the form below. The Maine DOT will not post Bid Amendments any later than noon the day before Bid opening without individually notifying all the planholders.

Amendment Number	Date

The Contractor, for itself, its successors and assigns, hereby acknowledges that it has received all of the above referenced Amendments to the Bid Package.

CONTRACTOR

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of authorized representative

\_\_\_\_\_  
(Name and Title Printed)

3/5/2025

## Maine Department of Transportation

## Proposal Schedule of Items

Page 1 of 2

Proposal ID: 018717.08

Project(s): 018717.08

SECTION: 1 INITIAL GROUP

Alt Set ID: Alt Mbr ID:

Contractor: \_\_\_\_\_

Proposal Line Number	Item ID Description	Approximate Quantity and Units	Unit Price		Bid Amount	
			Dollars	Cents	Dollars	Cents
0010	C-105 MOBILIZATION (Limited to 5%) OB1 (BETHEL)	LUMP SUM	LUMP	SUM	_____	_____
0020	C-105 MOBILIZATION (Limited to 5%) PNN (PRINCETON)	LUMP SUM	LUMP	SUM	_____	_____
0030	L-126-5.1 PREPARE AUTOMATED WEATHER OBSERVING SYSTEM SITE OB1 (BETHEL)	LUMP SUM	LUMP	SUM	_____	_____
0040	L-126-5.1 PREPARE AUTOMATED WEATHER OBSERVING SYSTEM SITE PNN (PRINCETON)	LUMP SUM	LUMP	SUM	_____	_____
0050	L-126-5.2 INSTALL AUTOMATED WEATHER OBSERVING SYSTEM OB1 (BETHEL)	LUMP SUM	LUMP	SUM	_____	_____
0060	L-126-5.2 INSTALL AUTOMATED WEATHER OBSERVING SYSTEM PNN (PRINCETON)	LUMP SUM	LUMP	SUM	_____	_____
0070	L-126-5.3 AUTOMATED WEATHER OBSERVING SYSTEM POWER & CONTROL OB1 (BETHEL)	LUMP SUM	LUMP	SUM	_____	_____
0080	L-126-5.3 AUTOMATED WEATHER OBSERVING SYSTEM POWER & CONTROL PNN (PRINCETON)	LUMP SUM	LUMP	SUM	_____	_____
0090	L-126-5.4 BUILDING MODIFICATIONS OB1 (BETHEL)	LUMP SUM	LUMP	SUM	_____	_____

3/5/2025

## Maine Department of Transportation

## Proposal Schedule of Items

Page 2 of 2

Proposal ID: 018717.08

Project(s): 018717.08

SECTION: 1 INITIAL GROUP

Alt Set ID: Alt Mbr ID:

Contractor: \_\_\_\_\_

Proposal Line Number	Item ID Description	Approximate Quantity and Units	Unit Price		Bid Amount	
			Dollars	Cents	Dollars	Cents
0100	L-126-5.4 BUILDING MODIFICATIONS PNN (PRINCETON)	LUMP SUM	LUMP	SUM	_____	_____
0110	L-126-5.5 SUPPLEMENTAL ANTENNA TOWER PNN (PRINCETON)	LUMP SUM	LUMP	SUM	_____	_____
0120	L-126-5.6 TRIANNUAL INSPECTION OB1 (BETHEL)	1.000 EA	_____	_____	_____	_____
0130	L-126-5.6 TRIANNUAL INSPECTION PNN (PRINCETON)	1.000 EA	_____	_____	_____	_____
Section: 1			Total:		_____	_____
			Total Bid:		_____	_____

## **CONTRACT AGREEMENT, OFFER & AWARD**

AGREEMENT made on the date last signed below, by and between the State of Maine, acting through and by its Department of Transportation (Department), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, with a mailing address at 16 State House Station, Augusta, Maine 04333-0016, and

\_\_\_\_\_ a corporation or other legal entity organized under the laws of the State of \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_

The Department and the Contractor, in consideration of the mutual promises set forth in this Agreement (the "Contract"), hereby agree as follows:

### **A. The Work.**

The Contractor agrees to complete all Work as specified or indicated in the Contract including Extra Work in conformity with the Contract, WIN **018717.08** for **Automated Weather Observing Systems Level III** in the town of **Bethel**, County of **Oxford**, and in the town of **Princeton**, County of **Washington**, Maine. The Work includes construction, maintenance during construction, warranty as provided in the Contract, and other incidental work.

The Contractor shall be responsible for furnishing all supervision, labor, equipment, tools supplies, permanent materials and temporary materials required to perform the Work; performing construction quality control including inspection, testing and documentation; providing all required documentation at the conclusion of the project; warranting its work; and performing all other work indicated in the Contract.

The Department shall have the right to alter the nature and extent of the Work as provided in the Contract. Payment shall be made as provided in the same.

### **B. Time.**

The Contractor agrees to complete all Work, except warranty work, on or before **September 30, 2026**. Further, the Department may deduct from moneys otherwise due the Contractor, not as a penalty, but as Liquidated Damages in accordance with Sections 107.7 and 107.8 of the *State of Maine Department of Transportation Standard Specifications, March 2020 Edition* and related Special Provisions.

**C. Price.**

The quantities given in the Schedule of Items of the Bid Package will be used as the basis for determining the original Contract amount and for determining the amounts of the required Performance Surety Bond and Payment Surety Bond, and that the amount of this offer is \_\_\_\_\_

\$\_\_\_\_\_ Performance Bond and Payment Bond each being 100% of the amount of this Contract.

**D. Contract.**

This Contract, which may be amended, modified, or supplemented in writing only, consists of the Contract documents as defined in the Plans, *Standard Specifications, March 2020 Edition, Standard Details March 2020 Edition* as updated through advertisement, Supplemental Specifications, Special Provisions, Contract Agreement; and Contract Bonds. It is agreed and understood that this Contract will be governed by the documents listed above.

**E. Certifications.**

By signing below, the Contractor hereby certifies that to the best of the Contractor's knowledge and belief:

1. All of the statements, representations, covenants, and/or certifications required or set forth in the Bid and the Bid Documents, including those in the Federal Contract Provisions Supplement, and the Contract are still complete and accurate as of the date of this Agreement.
2. The Contractor knows of no legal, contractual, or financial impediment to entering into this Contract.
3. The person signing below is legally authorized by the Contractor to sign this Contract on behalf of the Contractor and to legally bind the Contractor to the terms of the Contract.

**F. Offer.**

The undersigned, having carefully examined the site of work, the Plans, *Standard Specifications March 2020 Edition*, *Standard Details March 2020 Edition* as updated through advertisement, Supplemental Specifications, Special Provisions, Contract Agreement; and Contract Bonds contained herein for construction of: **WIN 018717.08, Automated Weather Observing Systems Level III construction plus other incidental work.** State of Maine, on which bids will be received until the time specified in the “Notice to Contractors” do(es) hereby bid and offer to enter into this contract to supply all the materials, tools, equipment and labor to construct the whole of the Work in strict accordance with the terms and conditions of this Contract at the unit prices in the attached “Schedule of Items.”

The Offeror agrees to perform the work required at the price specified above and in accordance with the bids provided in the attached “Schedule of Items” in strict accordance with the terms of this solicitation, and to provide the appropriate insurance and bonds if this offer is accepted by the Government in writing.

As Offeror also agrees:

First: To do any extra work, not covered by the attached “Schedule of Items,” which may be ordered by the Resident, and to accept as full compensation the amount determined upon a “Force Account” basis as provided in the *Standard Specifications, March 2020 Edition*, and as addressed in the contract documents.

Second: That the bid bond at 5% of the bid amount or the official bank check, cashier’s check, certificate of deposit or U. S. Postal Money Order in the amount given in the “Notice to Contractors”, payable to the Treasurer of the State of Maine and accompanying this bid, shall be forfeited, as liquidated damages, if in case this bid is accepted, and the undersigned shall fail to abide by the terms and conditions of the offer and fail to furnish satisfactory insurance and Contract bonds under the conditions stipulated in the Specifications within 15 days of notice of intent to award the contract.

Third: To begin the Work as stated in Section 107.2 of the *Standard Specifications March 2020 Edition* and complete the Work within the time limits given in the Special Provisions of this Contract.

Fourth: The Contractor will be bound to the Disadvantaged Business Enterprise (DBE) Requirements contained in the attached Notice (Additional Instructions to Bidders) and submit a completed Contractor’s Disadvantaged Business Enterprise Utilization Plan with their bid.

Fifth: That this offer shall remain open for 30 calendar days after the date of opening of bids.



Sixth: The Bidder hereby certifies, to the best of its knowledge and belief that: the Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competitive bidding in connection with its bid, and its subsequent contract with the Department.

IN WITNESS WHEREOF, the Contractor, for itself, its successors and assigns, hereby execute two duplicate originals of this Agreement and thereby binds itself to all covenants, terms, and obligations contained in the Contract Documents.

CONTRACTOR

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Signature of Legally Authorized Representative  
of the Contractor)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(Name and Title Printed)

**G. Award.**

Your offer is hereby accepted.  
documents referenced herein.

This award consummates the Contract, and the

MAINE DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Bruce A. Van Note, Commissioner

\_\_\_\_\_  
Witness

## **CONTRACT AGREEMENT, OFFER & AWARD**

AGREEMENT made on the date last signed below, by and between the State of Maine, acting through and by its Department of Transportation (Department), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, with a mailing address at 16 State House Station, Augusta, Maine 04333-0016, and

\_\_\_\_\_ a corporation or other legal entity organized under the laws of the State of \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_

The Department and the Contractor, in consideration of the mutual promises set forth in this Agreement (the "Contract"), hereby agree as follows:

### **A. The Work.**

The Contractor agrees to complete all Work as specified or indicated in the Contract including Extra Work in conformity with the Contract, WIN **018717.08** for **Automated Weather Observing Systems Level III** in the town of **Bethel**, County of **Oxford**, and in the town of **Princeton**, County of **Washington**, Maine. The Work includes construction, maintenance during construction, warranty as provided in the Contract, and other incidental work.

The Contractor shall be responsible for furnishing all supervision, labor, equipment, tools supplies, permanent materials and temporary materials required to perform the Work; performing construction quality control including inspection, testing and documentation; providing all required documentation at the conclusion of the project; warranting its work; and performing all other work indicated in the Contract.

The Department shall have the right to alter the nature and extent of the Work as provided in the Contract. Payment shall be made as provided in the same.

### **B. Time.**

The Contractor agrees to complete all Work, except warranty work, on or before **September 30, 2026**. Further, the Department may deduct from moneys otherwise due the Contractor, not as a penalty, but as Liquidated Damages in accordance with Sections 107.7 and 107.8 of the *State of Maine Department of Transportation Standard Specifications, March 2020 Edition* and related Special Provisions.

**C. Price.**

The quantities given in the Schedule of Items of the Bid Package will be used as the basis for determining the original Contract amount and for determining the amounts of the required Performance Surety Bond and Payment Surety Bond, and that the amount of this offer is \_\_\_\_\_

\$\_\_\_\_\_ Performance Bond and Payment Bond each being 100% of the amount of this Contract.

**D. Contract.**

This Contract, which may be amended, modified, or supplemented in writing only, consists of the Contract documents as defined in the Plans, *Standard Specifications, March 2020 Edition, Standard Details March 2020 Edition* as updated through advertisement, Supplemental Specifications, Special Provisions, Contract Agreement; and Contract Bonds. It is agreed and understood that this Contract will be governed by the documents listed above.

**E. Certifications.**

By signing below, the Contractor hereby certifies that to the best of the Contractor's knowledge and belief:

1. All of the statements, representations, covenants, and/or certifications required or set forth in the Bid and the Bid Documents, including those in the Federal Contract Provisions Supplement, and the Contract are still complete and accurate as of the date of this Agreement.
2. The Contractor knows of no legal, contractual, or financial impediment to entering into this Contract.
3. The person signing below is legally authorized by the Contractor to sign this Contract on behalf of the Contractor and to legally bind the Contractor to the terms of the Contract.

**F. Offer.**

The undersigned, having carefully examined the site of work, the Plans, *Standard Specifications March 2020 Edition*, *Standard Details March 2020 Edition* as updated through advertisement, Supplemental Specifications, Special Provisions, Contract Agreement; and Contract Bonds contained herein for construction of: **WIN 018717.08, Automated Weather Observing Systems Level III construction plus other incidental work.** State of Maine, on which bids will be received until the time specified in the “Notice to Contractors” do(es) hereby bid and offer to enter into this contract to supply all the materials, tools, equipment and labor to construct the whole of the Work in strict accordance with the terms and conditions of this Contract at the unit prices in the attached “Schedule of Items.”

The Offeror agrees to perform the work required at the price specified above and in accordance with the bids provided in the attached “Schedule of Items” in strict accordance with the terms of this solicitation, and to provide the appropriate insurance and bonds if this offer is accepted by the Government in writing.

As Offeror also agrees:

First: To do any extra work, not covered by the attached “Schedule of Items,” which may be ordered by the Resident, and to accept as full compensation the amount determined upon a “Force Account” basis as provided in the *Standard Specifications, March 2020 Edition*, and as addressed in the contract documents.

Second: That the bid bond at 5% of the bid amount or the official bank check, cashier’s check, certificate of deposit or U. S. Postal Money Order in the amount given in the “Notice to Contractors”, payable to the Treasurer of the State of Maine and accompanying this bid, shall be forfeited, as liquidated damages, if in case this bid is accepted, and the undersigned shall fail to abide by the terms and conditions of the offer and fail to furnish satisfactory insurance and Contract bonds under the conditions stipulated in the Specifications within 15 days of notice of intent to award the contract.

Third: To begin the Work as stated in Section 107.2 of the *Standard Specifications March 2020 Edition* and complete the Work within the time limits given in the Special Provisions of this Contract.

Fourth: The Contractor will be bound to the Disadvantaged Business Enterprise (DBE) Requirements contained in the attached Notice (Additional Instructions to Bidders) and submit a completed Contractor’s Disadvantaged Business Enterprise Utilization Plan with their bid.

Fifth: That this offer shall remain open for 30 calendar days after the date of opening of bids.

Sixth: The Bidder hereby certifies, to the best of its knowledge and belief that: the Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competitive bidding in connection with its bid, and its subsequent contract with the Department.

IN WITNESS WHEREOF, the Contractor, for itself, its successors and assigns, hereby execute two duplicate originals of this Agreement and thereby binds itself to all covenants, terms, and obligations contained in the Contract Documents.

CONTRACTOR

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Signature of Legally Authorized Representative  
of the Contractor)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(Name and Title Printed)

**G. Award.**

Your offer is hereby accepted.  
documents referenced herein.

This award consummates the Contract, and the

MAINE DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Bruce A. Van Note, Commissioner

\_\_\_\_\_  
Witness

## **CONTRACT AGREEMENT, OFFER & AWARD**

AGREEMENT made on the date last signed below, by and between the State of Maine, acting through and by its Department of Transportation (Department), an agency of state government with its principal administrative offices located at Child Street Augusta, Maine, with a mailing address at 16 State House Station, Augusta, Maine 04333-0016, and

**(Name of the firm bidding the job)**

a corporation or other legal entity organized under the laws of the State of Maine, with its principal place of business located at **(address of the firm bidding the job)**

The Department and the Contractor, in consideration of the mutual promises set forth in this Agreement (the "Contract"), hereby agree as follows:

### **A. The Work.**

The Contractor agrees to complete all Work as specified or indicated in the Contract including Extra Work in conformity with the Contract, PIN No.01 **12345.00**, for the **Hot Mix Asphalt Overlay** in the town/city of **South Nowhere**, County of **Washington**, Maine. The Work includes construction, maintenance during construction, warranty as provided in the Contract, and other incidental work.

The Contractor shall be responsible for furnishing all supervision, labor, equipment, tools supplies, permanent materials and temporary materials required to perform the Work including construction quality control including inspection, testing and documentation, all required documentation at the conclusion of the project, warranting its work and performing all other work indicated in the Contract.

The Department shall have the right to alter the nature and extent of the Work as provided in the Contract; payment to be made as provided in the same.

### **B. Time.**

The Contractor agrees to complete all Work, except warranty work, on or before **November 15, 2006**. Further, the Department may deduct from moneys otherwise due the Contractor, not as a penalty, but as Liquidated Damages in accordance with Sections 107.7 and 107.8 of the *State of Maine Department of Transportation Standard Specifications, March 2020 Edition* and related Special Provisions.

**C. Price.**

The quantities given in the Schedule of Items of the Bid Package will be used as the basis for determining the original Contract amount and for determining the amounts of the required Performance Surety Bond and Payment Surety Bond, and that the amount of this offer is (Place bid here in alphabetical form such as One Hundred and Two dollars and 10 cents)  
\$ (repeat bid here in numerical terms, such as \$102.10) Performance Bond and Payment Bond each being 100% of the amount of this Contract.

**D. Contract.**

This Contract, which may be amended, modified, or supplemented in writing only, consists of the Contract documents as defined in the Plans, *Standard Specifications, March 2020 Edition, Standard Details March 2020 Edition*, Supplemental Specifications, Special Provisions, Contract Agreement; and Contract Bonds. It is agreed and understood that this Contract will be governed by the documents listed above.

**E. Certifications.**

By signing below, the Contractor hereby certifies that to the best of the Contractor's knowledge and belief:

1. All of the statements, representations, covenants, and/or certifications required or set forth in the Bid and the Bid Documents, including those in Appendix A to Division 100 of the *Standard Specifications March 2020 Edition* (Federal Contract Provisions Supplement), and the Contract are still complete and accurate as of the date of this Agreement.
2. The Contractor knows of no legal, contractual, or financial impediment to entering into this Contract.
3. The person signing below is legally authorized by the Contractor to sign this Contract on behalf of the Contractor and to legally bind the Contractor to the terms of the Contract.

**F. Offer.**

The undersigned, having carefully examined the site of work, the Plans, *Standard Specifications, March 2020 Edition, Standard Details March 2020 Edition*, Supplemental Specifications, Special Provisions, Contract Agreement; and Contract Bonds contained herein for construction of:

**PIN 012345.00 South Nowhere, Hot Mix Asphalt Overlay**,

State of Maine, on which bids will be received until the time specified in the "Notice to Contractors" do(es) hereby bid and offer to enter into this contract to supply all the materials, tools, equipment and labor to construct the whole of the Work in strict accordance with the terms and conditions of this Contract at the unit prices in the attached "Schedule of Items."

The Offeror agrees to perform the work required at the price specified above and in accordance with the bids provided in the attached "Schedule of Items" in strict accordance with the terms of this solicitation, and to provide the appropriate insurance and bonds if this offer is accepted by the Government in writing.

As Offeror also agrees:

First: To do any extra work, not covered by the attached "Schedule of Items," which may be ordered by the Resident, and to accept as full compensation the amount determined upon a "Force Account" basis as provided in the *Standard Specifications, March 2020 Edition*, and as addressed in the contract documents.

Second: That the bid bond at 5% of the bid amount or the official bank check, cashier's check, certificate of deposit or U. S. Postal Money Order in the amount given in the "Notice to Contractors", payable to the Treasurer of the State of Maine and accompanying this bid, shall be forfeited, as liquidated damages, if in case this bid is accepted, and the undersigned shall fail to abide by the terms and conditions of the offer and fail to furnish satisfactory insurance and Contract bonds under the conditions stipulated in the Specifications within 15 days of notice of intent to award the contract.

Third: To begin the Work as stated in Section 107.2 of the *Standard Specifications March 2020 Edition* and complete the Work within the time limits given in the Special Provisions of this Contract.

Fourth: The Contractor will be bound to the Disadvantaged Business Enterprise (DBE) Requirements contained in the attached Notice (Additional Instructions to Bidders) and submit a completed Contractor's Disadvantaged Business Enterprise Utilization Plan with their bid.

Fifth: That this offer shall remain open for 30 calendar days after the date of opening of bids.



Sixth: The Bidder hereby certifies, to the best of its knowledge and belief that: the Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competitive bidding in connection with its bid, and its subsequent contract with the Department.

IN WITNESS WHEREOF, the Contractor, for itself, its successors and assigns, hereby execute two duplicate originals of this Agreement and thereby binds itself to all covenants, terms, and obligations contained in the Contract Documents.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Witness Sign Here)  
Witness

CONTRACTOR  
\_\_\_\_\_  
(Sign Here)  
(Signature of Legally Authorized Representative  
of the Contractor)

\_\_\_\_\_  
(Print Name Here)  
(Name and Title Printed)

**G. Award.**

Your offer is hereby accepted.  
documents referenced herein.

This award consummates the Contract, and the

MAINE DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Bruce A. Van Note, Commissioner

\_\_\_\_\_  
(Witness)

BOND # \_\_\_\_\_

CONTRACT PERFORMANCE BOND  
(Surety Company Form)

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_  
\_\_\_\_\_ in the State of \_\_\_\_\_, as principal,  
and \_\_\_\_\_,  
a corporation duly organized under the laws of the State of \_\_\_\_\_ and having a  
usual place of business \_\_\_\_\_,  
as Surety, are held and firmly bound unto the Treasurer of the State of Maine in the sum  
of \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_),  
to be paid said Treasurer of the State of Maine or his successors in office, for which  
payment well and truly to be made, Principal and Surety bind themselves, their heirs,  
executors and administrators, successors and assigns, jointly and severally by these  
presents.

The condition of this obligation is such that if the Principal designated as Contractor in  
the Contract to construct Project Number \_\_\_\_\_ in the Municipality of \_\_\_\_\_  
promptly and faithfully performs the Contract, then this  
obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the State  
of Maine.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20....

WITNESSES:

Signature.....  
Print Name Legibly .....

Signature .....

SURETY ADDRESS:

.....  
.....  
.....

TELEPHONE.....

SIGNATURES:

CONTRACTOR:

.....  
Print Name Legibly .....

SURETY:

.....  
Print Name Legibly .....

NAME OF LOCAL AGENCY:

ADDRESS .....

.....  
.....

.....

BOND # \_\_\_\_\_

CONTRACT PAYMENT BOND  
(Surety Company Form)

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_  
\_\_\_\_\_ **in the State of** \_\_\_\_\_, as principal,  
and.....  
a corporation duly organized under the laws of the State of ..... and having a  
usual place of business in .....  
as Surety, are held and firmly bound unto the Treasurer of the State of Maine for the use  
and benefit of claimants as herein below defined, in the sum of  
\_\_\_\_\_ **and 00/100 Dollars (\$** \_\_\_\_\_ **)**  
for the payment whereof Principal and Surety bind themselves, their heirs, executors and  
administrators, successors and assigns, jointly and severally by these presents.

The condition of this obligation is such that if the Principal designated as Contractor in  
the Contract to construct Project Number \_\_\_\_\_ in the Municipality of  
\_\_\_\_\_ promptly satisfies all claims and demands incurred for all  
labor and material, used or required by him in connection with the work contemplated by  
said Contract, and fully reimburses the obligee for all outlay and expense which the  
obligee may incur in making good any default of said Principal, then this obligation shall  
be null and void; otherwise it shall remain in full force and effect.

A claimant is defined as one having a direct contract with the Principal or with a  
Subcontractor of the Principal for labor, material or both, used or reasonably required for  
use in the performance of the contract.

Signed and sealed this ..... day of ....., 20 ... .

WITNESS:

SIGNATURES:

CONTRACTOR:

Signature.....

.....

Print Name Legibly .....

Print Name Legibly .....

SURETY:

Signature.....

.....

Print Name Legibly .....

Print Name Legibly .....

SURETY ADDRESS:

NAME OF LOCAL AGENCY:

.....

ADDRESS .....

.....

.....

TELEPHONE .....

.....

Superseded General Decision Number: ME20240040

State: Maine

Construction Type: Highway

County: Oxford County in Maine.

#### HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 14026 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.</li></ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 13658 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.</li></ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number      Publication Date  
0                              01/03/2025

ENGI0004-022 04/01/2024

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
Grader/Blade, Milling		
Machine.....	\$ 28.60	13.80
-----		
SUME2014-035 06/23/2017		

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 18.34	2.84
HIGHWAY/PARKING LOT STRIPING:		
Laborer.....	\$ 14.80 **	1.27
IRONWORKER, REINFORCING.....	\$ 16.27 **	0.00
LABORER: Asphalt, Includes		
Raker, Shoveler, Spreader and		
Distributor.....	\$ 15.40 **	2.69
LABORER: Common or General.....	\$ 15.83 **	1.99
LABORER: Landscape.....	\$ 18.69	2.70
LABORER: Wheelman.....	\$ 15.64 **	4.29
OPERATOR:		
Backhoe/Excavator/Trackhoe.....	\$ 18.80	4.16
OPERATOR: Bobcat/Skid		
Steer/Skid Loader.....	\$ 20.38	1.66
OPERATOR: Broom/Sweeper.....	\$ 19.09	5.20
OPERATOR: Bulldozer.....	\$ 17.30 **	3.50
OPERATOR: Loader.....	\$ 18.59	5.53
OPERATOR: Mechanic.....	\$ 22.07	8.73
OPERATOR: Paver (Asphalt,		
Aggregate, and Concrete).....	\$ 21.46	8.78
OPERATOR: Screed.....	\$ 19.02	4.82
OPERATOR: Roller (Earth).....	\$ 16.43 **	3.40
OPERATOR: Roller Asphalt.....	\$ 24.16	3.55
TRAFFIC CONTROL: Flagger.....	\$ 9.38 **	0.00
TRAFFIC CONTROL:		
Laborer-Cones/		
Barricades/Barrels -		
Setter/Mover/Sweeper.....	\$ 17.47 **	4.80
TRUCK DRIVER: Dump Truck.....	\$ 15.83 **	1.16
TRUCK DRIVER: TackTruck.....	\$ 20.18	7.75
-----		

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

\*\*\*\*\*  
\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

-----  
The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

#### Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates

in the collective bargaining agreement (CBA) governing the classification.

#### Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE:

UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

#### Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

#### State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

-----

#### WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination

- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to [davisbaconinfo@dol.gov](mailto:davisbaconinfo@dol.gov) or by mail to:

Branch of Wage Surveys  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to [BCWD-Office@dol.gov](mailto:BCWD-Office@dol.gov) or by mail to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to [dba.reconsideration@dol.gov](mailto:dba.reconsideration@dol.gov) or by mail to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210.

=====

END OF GENERAL DECISION"



Superseded General Decision Number: ME20240044

State: Maine

Construction Type: Highway

County: Washington County in Maine.

#### HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 14026 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.</li></ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 13658 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.</li></ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number      Publication Date  
0                              01/03/2025

ENGI0004-005 04/01/2024

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
Grader/Blade, Milling		
Machine, Paver (Asphalt,		
Aggregate, and Concrete),		
Roller Asphalt.....	\$ 28.60	13.80

-----  
SUME2014-039 06/23/2017

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 18.34	2.84
HIGHWAY/PARKING LOT STRIPING:		
Laborer.....	\$ 14.24 **	2.06
IRONWORKER, REINFORCING.....	\$ 16.27 **	0.00
LABORER: Asphalt, Includes		
Raker, Shoveler, Spreader and		
Distributor.....	\$ 14.32 **	3.17
LABORER: Common or General.....	\$ 13.24 **	1.93
LABORER: Wheelman.....	\$ 15.40 **	3.01
OPERATOR:		
Backhoe/Excavator/Trackhoe.....	\$ 17.58 **	2.92
OPERATOR: Bobcat/Skid		
Steer/Skid Loader.....	\$ 20.36	5.06
OPERATOR: Broom/Sweeper.....	\$ 16.52 **	6.38
OPERATOR: Bulldozer.....	\$ 16.58 **	2.89
OPERATOR: Loader.....	\$ 17.18 **	4.72
OPERATOR: Mechanic.....	\$ 22.30	8.71
OPERATOR: Screed.....	\$ 18.82	4.75
OPERATOR: Roller (Earth).....	\$ 15.81 **	1.72
TRAFFIC CONTROL: Flagger.....	\$ 9.00 **	0.00
TRAFFIC CONTROL:		
Laborer-Cones/		
Barricades/Barrels -		
Setter/Mover/Sweeper.....	\$ 17.48 **	5.37
TRUCK DRIVER: Dump Truck.....	\$ 14.35 **	6.33
TRUCK DRIVER: TackTruck.....	\$ 18.82	8.29

-----  
WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

=====

\*\* Workers in this classification may be entitled to a higher  
minimum wage under Executive Order 14026 (\$17.75) or 13658

(\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

-----

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

#### Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

#### Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE:

UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

#### Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

#### State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

#### ----- WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to [davisbaconinfo@dol.gov](mailto:davisbaconinfo@dol.gov) or by mail to:

Branch of Wage Surveys  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to [BCWD-Office@dol.gov](mailto:BCWD-Office@dol.gov) or by mail to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to [dba.reconsideration@dol.gov](mailto:dba.reconsideration@dol.gov) or by mail to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210.

=====  
END OF GENERAL DECISION"

SPECIAL PROVISION  
SECTION 105  
GENERAL SCOPE OF WORK  
(Build America, Buy America)

105.11 Other Federal Requirements Amend this section by adding the following:

This special provision was created for the Build America, Buy America Act (BABA) to expand the list of construction materials required to be manufactured in the United States beyond what is currently only required for steel/iron products. The Infrastructure Investment and Jobs Act (IIJA), Public Law No. 117-58 includes the Build America, Buy America Act. The Office of Management and Budget issued memorandum M-22-11 to provide guidance on the law which can be found here:

<https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>

All iron/steel, including the iron/steel in construction materials and manufactured products, must satisfy Buy America 23 CFR 635.410 requirements.

All construction materials, as defined in the following, that are permanently incorporated into federal-aid projects shall meet Build America, Buy America requirements.

For the purpose of this Specification, construction materials shall include an article, material, or supply that is or consists primarily of the following.

- Non-ferrous metals,
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables),
- Glass (including optic glass),
- Lumber, or
- Drywall.

All manufacturing processes for construction materials shall occur within the United States. The category of construction materials excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

Due to a nationwide waiver, BABA requirements do not apply to manufactured products for FHWA funded projects. Manufactured products are items that consist of two or more of the listed construction materials that have been combined through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed (including steel/iron) through a manufacturing process.

The Contractor shall certify in writing that all permanently incorporated Construction Materials for this contract meet the BABA requirements.

**AS-BID**  
MARCH 2025

CONTRACT DOCUMENTS  
AND  
TECHNICAL SPECIFICATIONS

***CONSTRUCT AWOS-III – BID PACKAGE 1***

***BETHEL REGIONAL AIRPORT***  
BETHEL, MAINE

***PRINCETON MUNICIPAL AIRPORT***  
PRINCETON, MAINE

MAINEDOT PROJECT WIN NO. 18717.08

PREPARED FOR THE  
MAINE DEPARTMENT OF TRANSPORTATION







# Table of Contents

## SECTION I

### **Pre-Bid Meeting**

### **Bid Documents**

- Bid Form
- Certification Regarding Federal Contract Language
- Certification of Compliance with FAA Buy American Preference
- Certifications Regarding Debarment
- Certification Regarding Lobbying
- Certification Regarding Trade Restriction
- Certification of Offeror/Bidder Regarding Tax Delinquency and Felony Convictions
- Section 20-02 Proposal Requirements

### **Federal Contract Provisions for AIP-Funded Projects**

#### **Part 1 – General Contract Provisions**

- Section 10 Definition of Terms
- Section 20 Proposal Requirements and Conditions
- Section 30 Award and Execution of Contract
- Section 40 Scope of Work
- Section 50 Control of Work
- Section 60 Control of Materials
- Section 70 Legal Regulations and Responsibility to Public
- Section 80 Execution and Progress
- Section 90 Measurement and Payment

## SECTION II

### **Special Provisions**

#### **Part 2 – General Construction Items**

- Item C-102 Temporary Air and Water Pollution, Soil Erosion, and Siltation Control
- Item C-105 Mobilization

#### **Part 3 – Sitework**

- Item P-152 Excavation, Subgrade, and Embankment

#### **Part 9 – Miscellaneous**

- Item M-103 Closed Runway or Taxiway Markers
- Item M-107 Aviation Barricades

#### **Part 12 – Turfing**

- Item T-901 Seeding
- Item T-908 Mulching

### **Part 13 – Lighting Installation**

- Item L-108 Underground Power Cable for Airports
- Item L-110 Airport Underground Electrical Duct Banks and Conduits
- Item L-115 Electrical Manholes and Junction Structures
- Item L-126 Automated Weather Observing System – Level III
- Item L-129 Installation, Splicing, and Testing of Cable

### **APPENDICES**

- Appendix A - Other Forms
- Appendix B - Construction Safety and Phasing Plan (Bethel Regional Airport)
- Appendix C - Construction Safety and Phasing Plan (Princeton Municipal Airport)

## Pre-Bid Meeting

**Project Name:** Construct AWOS-III - Bid Package 1  
**Airports:** Bethel Regional Airport (Bethel, ME)  
Princeton Municipal Airport (Princeton, ME)

**MEETING DATE:** March 26, 2025

**MEETING TIME:** 10:00 AM Local Time

**MEETING TYPE:** Virtual

All bidders are requested to attend to discuss the proposed construction and the plans and specifications. All potential bidders are strongly urged to attend.

### **VIRTUAL ATTENDEE MEETING DETAILS**

#### **Signing into the Meeting:**

Beginning approximately 15 minutes prior to the meeting time, copy and paste the meeting link below into your web browser and launch the Webex Webinar. For the best experience, use Google Chrome or Firefox. Microsoft Edge and Safari 7 or later are also supported. Meeting link:

<https://deltaairport.webex.com/deltaairport/j.php?MTID=m7bdbed411a4f15aeeeb1855dc8377aa4>

Webinar Number (Access Code): 253 787 90977

Password: mXYvvxCr933 (69988927 when dialing from a phone or video system)

#### **Questions Before, During, or After the Webinar:**

All attendees will be muted by default but may ask questions using the "Raise Your Hand" function. Once you receive the system message prompting you to unmute, unmute your microphone to speak.

Attendees may also type questions through the Q & A function during the webinar.

Project-related questions can also be asked in writing during the bidding process utilizing the Bidder Question Form contained within the contract documents.

#### **Technical Assistance:**

Please familiarize yourself with the login and features (including audio/video settings) of the platform well before the scheduled meeting. More information can be found in the Webex Help Center online at:

<https://help.webex.com/en-us/article/810y08/Join-a-webinar>

**Page Intentionally Blank**

# **Bid Documents**

**for**

**Construct AWOS-III - Bid Package 1**

**at**

**Bethel Regional Airport (Bethel, ME)**

**Princeton Municipal Airport (Princeton, ME)**

**Page Intentionally Blank**

**Bid Form**

**for**

**Construct AWOS-III - Bid Package 1**

**at**

**Bethel Regional Airport (Bethel, ME)**

**Princeton Municipal Airport (Princeton, ME)**

**Page Intentionally Blank**



# BID FORM

## Bethel Regional Airport (0B1) and Princeton Municipal Airport (PNN)

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

Bid Proposal Summary For All Work Depicted In The Plans And Specifications

ITEM NO.	APPROX. QUANTITY	ITEM WITH UNIT PRICE WRITTEN IN WORDS	UNIT PRICES IN FIGURES DOLLARS CENTS	EXTENDED TOTAL DOLLARS CENTS
1 C-105	1 LS	MOBILIZATION (0B1) _____ _____ PER LUMP SUM		
2 C-105	1 LS	MOBILIZATION (PNN) _____ _____ PER LUMP SUM		
3 L-126	1 LS	PREPARE AWOS SITE (0B1) _____ _____ PER LUMP SUM		
4 L-126	1 LS	PREPARE AWOS SITE (PNN) _____ _____ PER LUMP SUM		
5 L-126	1 LS	INSTALL AWOS SYSTEM (0B1) _____ _____ PER LUMP SUM		
6 L-126	1 LS	INSTALL AWOS SYSTEM (PNN) _____ _____ PER LUMP SUM		
7 L-126	1 LS	AWOS SYSTEM POWER & CONTROL (0B1) _____ _____ PER LUMP SUM		
8 L-126	1 LS	AWOS SYSTEM POWER & CONTROL (PNN) _____ _____ PER LUMP SUM		
9 L-126	1 LS	BUILDING MODIFICATIONS (0B1) _____ _____ PER LUMP SUM		
10 L-126	1 LS	BUILDING MODIFICATIONS (PNN) _____ _____ PER LUMP SUM		

# BID FORM

## Bethel Regional Airport (0B1) and Princeton Municipal Airport (PNN)

Bid Proposal Summary For All Work Depicted In The Plans And Specifications

ITEM NO.	APPROX. QUANTITY	ITEM WITH UNIT PRICE WRITTEN IN WORDS	UNIT PRICES IN FIGURES	EXTENDED TOTAL
			DOLLARS CENTS	DOLLARS CENTS
11 L-126	1 LS	SUPPLEMENTAL ANTENNA TOWER (PNN)		
		PER LUMP SUM		
12 L-126	1 LS	TRIANNUAL INSPECTIONS (0B1)		
		PER LUMP SUM		
13 L-126	1 LS	TRIANNUAL INSPECTIONS (PNN)		
		PER LUMP SUM		

Total Bid Amount \$ \_\_\_\_\_

## **Certification Regarding Federal Contract Language**

In addition to the specific Federal Contract Provisions listed within this proposal form, the bidder/offeror certifies by signing and submitting this bid or proposal, that they have read, understand, and will comply with all of the Federal Contract Provisions contained within the project documents as listed by reference and qualified below:

### **All Contracts Regardless of Funding Source**

Civil Rights – General Provisions

Civil Rights – Title VI

### **All AIP Funded Contracts**

Access to Records and Reports

Buy American Preference

Domestic Preferences for Procurements

Federal Fair Labor Standards Act (Minimum Wage)

Foreign Trade Restriction

Occupational Safety and Health Act

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Prohibition of Segregated Facilities

Rights to Inventions

Seismic Safety

Tax Delinquency and Felony Convictions

Veteran's Preference

### **Additional Provisions for AIP Funded Contracts that are \$2,000 and greater**

Copeland Anti-Kickback Act

Davis-Bacon Requirements

### **Additional Provisions for AIP Funded Contracts that are \$10,000 and greater**

Affirmative Action Requirement

Texting Messaging While Driving

Equal Employment Opportunity

Procurement of Recovered Materials

Termination of Contract

### **Additional Provisions for AIP Funded Contracts that are \$25,000 and greater**

Debarment and Suspension

**Additional Provisions for AIP Funded Contracts that are \$100,000 and greater**

Breach of Contract (AIP and Non-AIP)

Clean Air and Water Pollution Controls

Contract Work Hours and Safety Standards

Disadvantaged Business Enterprise

Lobbying Federal Employees

Name of Bidder: \_\_\_\_\_

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

Name: *(type or print)* \_\_\_\_\_

Official Title: \_\_\_\_\_ Date: \_\_\_\_\_

## Certification of Compliance with FAA Buy American Preference

### EQUIPMENT/BUILDING PROJECTS

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

\_\_\_\_\_ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA, and other related U.S. statutes, guidance, and policies of the FAA by:

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

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

- a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.
- b) To faithfully comply with providing U.S. domestic product.
- c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
- d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

\_\_\_\_\_ Bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
- b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.

- c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
- d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

## **REQUIRED DOCUMENTATION**

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

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

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

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

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

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

### FALSE STATEMENTS

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

---

Date

---

Signature

---

Company Name

---

Title

**Page Intentionally Blank**



## Certifications Regarding Debarment

### CERTIFICATION OF OFFEROR/BIDDER REGARDING DEBARMENT

*(2 CFR Part 180 (subpart B); 2 CFR Part 200, Appendix II(H); 2 CFR Part 1200; DOT Order 4200.5; Executive Orders 12549 and 12689)*

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

### CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

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

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

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

Name of Bidder: \_\_\_\_\_

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

Name: *(type or print)* \_\_\_\_\_

Official Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Page Intentionally Blank**

## Certification Regarding Lobbying

*(31 USC Par 1352 – Byrd Anti-Lobbying Amendment; 2 CFR Part 200, Appendix II(I); 49 CFR Part 20, Appendix A)*

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

Name of Bidder: \_\_\_\_\_

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

Name: *(type or print)* \_\_\_\_\_

Official Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Page Intentionally Blank**

## Certification Regarding Trade Restriction

*(49 USC Par 50104; 49 CFR Part 30)*

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

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

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

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

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous

certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

Name of Bidder: \_\_\_\_\_

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

Name: *(type or print)* \_\_\_\_\_

Official Title: \_\_\_\_\_ Date: \_\_\_\_\_

## Certification of Offeror/Bidder Regarding Tax Delinquency and Felony Convictions

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

### Certifications

- (1) The applicant represents that it is (    ) is not (    ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- (2) The applicant represents that it is (    ) is not (    ) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

### Note

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

### Term Definitions

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

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

Name of Bidder: \_\_\_\_\_

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

Name: (type or print) \_\_\_\_\_

Official Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Page Intentionally Blank**



## Section 20-02 Proposal Requirements

### CHECKLIST

Refer to Section 20 *Proposal Requirements and Conditions*, paragraph 20-02, for the following items to be furnished to the Owner at the time of bid opening. Insert a checkmark (✓) or the letter “X” to acknowledge inclusion:

A. Satisfactory evidence of his or her competency to perform the proposed work. Such evidence, unless otherwise specified, shall consist of:

- statements covering the bidder’s experience on similar work, \_\_\_\_\_
- a list of equipment that would be available for the work, and \_\_\_\_\_
- a list of key personnel that would be available. \_\_\_\_\_

### BIDDERS SHALL PROVIDE ITEMS IN SECTION B OR SECTION C:

B. Satisfactory evidence of his or her financial responsibility:

- Such evidence, unless otherwise specified, shall consist of a confidential statement or report of the bidder’s financial resources and liabilities as of the last calendar year or the bidder’s last fiscal year certified by a public accountant. \_\_\_\_\_
- Certify whether his or her financial responsibility is approximately the same as stated or reported by the public accountant. \_\_\_\_\_
- If the bidder’s financial responsibility has changed, the bidder shall qualify the public accountant’s statement or report to reflect the bidder’s true financial condition at the time such qualified statement or report is submitted to the Owner. \_\_\_\_\_

C. Unless otherwise specified, a bidder may submit evidence that he or she is prequalified with the State Highway Division and is on the current “bidder’s list” of the state in which the proposed work is located.

- Bidder is prequalified with the State Highway Division and is on the current “bidders list” of the State. In-lieu-of submitting items in Section B above, evidence of the pre-qualification is included with the Bid. \_\_\_\_\_

Name of Bidder: \_\_\_\_\_

**Page Intentionally Blank**

## Federal Contract Provisions for AIP-Funded Projects

Federal laws and regulations require that a Sponsor (a recipient of federal assistance) include specific provisions in certain contracts, solicitations, or specifications, regardless of whether the project is federally funded, to remain compliant with its obligations.

Unless otherwise stated, the following federally required contract provisions also flow down to subcontracts and sub-tier agreements. The Contractor (including all subcontractors) is required to insert these contract provisions in each lower tier contract (e.g., subcontract or sub-agreement). For work done under any purchase orders, rental agreements, and other agreements for supplies or services, the Contractor (including all subcontractors) is required to incorporate the requirements of these contract provisions by reference.

The prime Contractor is responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor, or service provider.

### **A1: ACCESS TO RECORDS AND REPORTS**

Sources: 2 CFR § 200.334; 2 CFR § 200.337; FAA Order 5100.38

Contract Dollar Threshold: \$0

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

### **A2: AFFIRMATIVE ACTION REQUIREMENT: NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

Sources: 41 CFR Part 60-4; Executive Order 11246

Contract Dollar Threshold: \$10,000

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

#### **Timetables**

Goals for minority participation for each trade:	0.5% for Bethel Regional Airport (Oxford County) 0.8% for Princeton Municipal Airport (Washington County)
Goals for female participation in each trade:	6.9%

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a

geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

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

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

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is Oxford County and Washington County, Maine.

### **A3: BREACH OF CONTRACT TERMS**

Source: 2 CFR § 200 Appendix II (A)

Contract Dollar Threshold: \$250,000

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

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

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

#### **A4: BUY AMERICAN PREFERENCE**

Sources: *Title 49 USC § 50101; Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers; Bipartisan Infrastructure Law (Pub. L. No. 117-58), Build America, Buy America (BABA)*

Contract Dollar Threshold: \$0

The Contractor certifies that its bid/offer is in compliance with 49 USC § 50101, BABA and other related Made in America Laws,<sup>1</sup> U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

The bidder or offeror must complete and submit the certification of compliance with FAA's Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA's Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

1: Per Executive Order 14005 "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

### **Certification of Compliance with FAA Buy American Preference – Construction Projects**

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

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing iron, steel and manufactured products produced in the United States;
  - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
  - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.
- ☐ By selecting this certification statement, the bidder or offeror agrees:
- a) To provide to the Airport Sponsor or the FAA evidence that documents the source and origin of the iron, steel, and/or manufactured product.
  - b) To faithfully comply with providing U.S. domestic products.
  - c) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
  - d) Certify that all construction materials used in the project are manufactured in the U.S. The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
    - a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
    - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
    - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
    - d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
    - e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

## Required Documentation

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

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

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

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

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

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

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

---

Date

---

Signature

---

Company Name

---

Title

### Certification of Compliance with FAA Buy American Preference – Equipment/Building Projects

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

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing steel and manufactured products produced in the United States;
  - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
  - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.
- ☐ By selecting this certification statement, the bidder or offeror agrees:
- a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.
  - b) To faithfully comply with providing U.S. domestic product.
  - c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
  - d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
  - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  - d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.



## Required Documentation

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

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

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

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

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

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

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

---

Date

---

Signature

---

Company Name

---

Title

## **A5: GENERAL CIVIL RIGHTS PROVISIONS**

Source: *49 USC § 47123*

Contract Dollar Threshold: \$0

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

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

## **A6: TITLE VI SOLICITATION NOTICE**

Sources: *49 USC § 47123; FAA Order 1400.11*

Contract Dollar Threshold: \$0

The Maine Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, businesses (including disadvantaged business enterprises) will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

### **Compliance with Nondiscrimination Requirements**

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

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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

Sources: 2 *CFR* § 200 Appendix II (G); 42 *USC* § 7401, *et seq*; 33 *USC* § 1251, *et seq*

Contract Dollar Threshold: \$150,000

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 *USC* §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 *USC* §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

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

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

Sources: 2 CFR § 200, Appendix II (E); 2 CFR § 5.5(b); 40 USC § 3702; 40 USC § 3704

Contract Dollar Threshold: \$100,000

### **1. Overtime Requirements.**

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

### **2. Violation; Liability for Unpaid Wages; Liquidated Damages.**

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

### **3. Withholding for Unpaid Wages and Liquidated Damages.**

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

### **4. Subcontractors.**

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

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

Sources: 2 CFR Part 200, Appendix II(D); 29 CFR Parts 3 and 5

Contract Dollar Threshold: \$2,000

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. The 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 covered work during the prior week. The Owner must report any violations of the Act to the Federal Aviation Administration.

### **A10: DAVIS-BACON REQUIREMENTS**

Sources: *2 CFR Part 200, Appendix II(D); 29 CFR Part 5; 49 USC § 47112(b); 40 USC §§ 3141-3144, 3146, and 3147*

Dollar Threshold: \$2,000

#### **1. Minimum Wages.**

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

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

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor,



Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall

maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

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



(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

#### 4. Apprentices and Trainees.

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

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and

Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

#### 5. Compliance with Copeland Act Requirements.

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

#### 6. Subcontracts.

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

#### 7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

#### 8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

#### 9. Disputes Concerning Labor Standards.

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

#### 10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

## **A11: DEBARMENT AND SUSPENSION**

Sources: 2 CFR Part 180 (Subpart B); 2 CFR Part 200, Appendix II(H); 2 CFR Part 1200; DOT Order 4200.5; Executive Orders 12549 and 12689

Contract Dollar Threshold: \$25,000

### **Certification of Offeror/Bidder Regarding Debarment**

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

### **Certification of Lower Tier Contractors Regarding Debarment**

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

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

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

## **A12: DISADVANTAGED BUSINESS ENTERPRISES REQUIRED PROVISIONS**

Source: 49 CFR Part 26

Dollar Threshold: \$0

### **A12.1: Solicitation for Proposals**

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the Maine Department of Transportation to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

### **A12.2: Prime Contracts Covered by a DBE Program**

#### **Contract Assurance (49 CFR § 26.13)**

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

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;

- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

#### **Prompt Payment (49 CFR § 26.29)**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the Maine Department of Transportation. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Maine Department of Transportation. This clause applies to both DBE and non-DBE subcontractors.

### **A13: TEXTING WHEN DRIVING**

Sources: *Executive Order 13513*; *DOT Order 3902.10*

Contract Dollar Threshold: \$10,000

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

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

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

Sources: *2 CFR § 200, Appendix II(K)*; *2 CFR § 200.216*

Contract Dollar Threshold: \$0

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

### **A15: DRUG-FREE WORKPLACE REQUIREMENTS**

Sources: *49 CFR Part 32*; *Drug-Free Workplace Act of 1988 (41 USC § 8101-8106, as amended)*

Not applicable to this contract.

## **A16: EQUAL OPPORTUNITY CLAUSE**

Sources: 2 CFR 200, Appendix II(C); 41 CFR § 60-1.4; 41 CFR § 60-4.3; Executive Order 11246

Contract Dollar Threshold: \$10,000

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

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.



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

### **Standard Federal Equal Employment Opportunity Construction Contract Specifications**

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
  - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation, and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female

utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.



- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each

employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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

Sources: *29 USC § 201, et seq; 2 CFR § 200.430*

Contract Dollar Threshold: \$0

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

The Contractor has full responsibility to monitor compliance with 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.

#### **A18: CERTIFICATION REGARDING LOBBYING**

Source: *31 USC §1352 - Byrd Anti-Lobbying Amendment; 2 CFR Part 200 Appendix II(I); 49 CFR Part 20, Appendix A*

Contract Dollar Threshold: \$100,000

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

#### **A19: PROHIBITION OF SEGREGATED FACILITIES**

Sources: *2 CFR Part 200, Appendix II(C); 41 CFR Part 60-1*

Contract Dollar Threshold: \$0

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

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

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

#### **A20: OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

Source: *29 CFR Part 1910*

Contract Dollar Threshold: \$0

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

## **A21: PROCUREMENT OF RECOVERED MATERIALS**

Sources: 2 CFR § 200.323; 2 CFR Part 200, Appendix II(J); 40 CFR Part 247; 42 USC § 6901, *et seq* (Resource Conservation and Recovery Act (RCRA))

Contract Dollar Threshold: \$10,000

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:

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

## **A22: RIGHT TO INVENTIONS**

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

Contract Dollar Threshold: \$0

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.

## **A23: SEISMIC SAFETY**

Source: 49 CFR Part 41

Contract Dollar Threshold: \$0

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.

#### **A24: CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

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

Contract Dollar Threshold: \$0

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

##### **Certifications**

- 1) The applicant represents that it is ( ) is not ( ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is ( ) is not ( ) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

##### **Note**

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

##### **Term Definitions**

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

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

## **A25: TERMINATION OF CONTRACT**

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

Contract Dollar Threshold: \$10,000

### **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 that Owner will take possession.

Owner agrees to pay Contractor for:

1. Completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
2. Documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
3. Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4. Reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

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

### **Termination for Cause (Construction)**

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

### **Termination for Cause (Equipment)**

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

1. Fails to begin the Work under the Contract within the time specified in the Notice-to-Proceed;



2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within 10 days of 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 the amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

## **A26: TRADE RESTRICTION CERTIFICATION**

Sources: *49 USC §50104; 49 CFR Part 30*

Contract Dollar Threshold: \$0

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

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

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

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

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

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

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

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

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

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

## **A27: VETERAN'S PREFERENCE**

Source: *49 USC § 47112(c)*

Contract Dollar Threshold: \$0

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



## **A28: CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS**

Sources: *2 CFR § 200.322; 2 CFR Part 200, APPENDIX II(L)*

Contract Dollar Threshold: \$0

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

### **End of Federal Contract Provisions for AIP-Funded Projects**

**Page Intentionally Blank**

## Part 1 – General Contract Provisions

### Section 10 Definition of Terms

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

Paragraph Number	Term	Definition
10-01	AASHTO	The American Association of State Highway and Transportation Officials.
10-02	Access Road	The right-of-way, the roadway and all improvements constructed thereon connecting the airport to a public roadway.
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	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; airport buildings and facilities located in any of these areas, and a heliport.
10-05	Airport Improvement Program (AIP)	A grant-in-aid program, administered by the Federal Aviation Administration (FAA).
10-06	Air Operations Area (AOA)	The term air operations area (AOA) shall mean any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operation area shall include such paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway, or apron.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-07</b>	<b>Apron</b>	Area where aircraft are parked, unloaded or loaded, fueled and/or serviced.
<b>10-08</b>	<b>ASTM International (ASTM)</b>	Formerly known as the American Society for Testing and Materials (ASTM).
<b>10-09</b>	<b>Award</b>	The Owner's notice to the successful bidder of the acceptance of the submitted bid.
<b>10-10</b>	<b>Bidder</b>	Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a proposal for the work contemplated.
<b>10-11</b>	<b>Building Area</b>	An area on the airport to be used, considered, or intended to be used for airport buildings or other airport facilities or rights-of-way together with all airport buildings and facilities located thereon.
<b>10-12</b>	<b>Calendar Day</b>	Every day shown on the calendar.
<b>10-13</b>	<b>Certificate of Analysis (COA)</b>	The COA is the manufacturer's Certificate of Compliance (COC) including all applicable test results required by the specifications.
<b>10-14</b>	<b>Certificate of Compliance (COC)</b>	The manufacturer's certification stating that materials or assemblies furnished fully comply with the requirements of the contract. The certificate shall be signed by the manufacturer's authorized representative.
<b>10-15</b>	<b>Change Order</b>	A written order to the Contractor covering changes in the plans, specifications, or proposal quantities and establishing the basis of payment and contract time adjustment, if any, for work within the scope of the contract and necessary to complete the project.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-16</b>	<b>Contract</b>	A written agreement between the Owner and the Contractor that establishes the obligations of the parties including but not limited to performance of work, furnishing of labor, equipment and materials and the basis of payment. The awarded contract includes but may not be limited to: Advertisement, Contract form, Proposal, Performance bond, payment bond, General provisions, certifications and representations, Technical Specifications, Plans, Supplemental Provisions, standards incorporated by reference and issued addenda.
<b>10-17</b>	<b>Contract Item (Pay Item)</b>	A specific unit of work for which a price is provided in the contract.
<b>10-18</b>	<b>Contract Time</b>	The number of calendar days or working days, stated in the proposal, allowed for completion of the contract, including authorized time extensions. If a calendar date of completion is stated in the proposal, in lieu of a number of calendar or working days, the contract shall be completed by that date.
<b>10-19</b>	<b>Contractor</b>	The individual, partnership, firm, or corporation primarily liable for the acceptable performance of the work contracted and for the payment of all legal debts pertaining to the work who acts directly or through lawful agents or employees to complete the contract work.
<b>10-20</b>	<b>Contractors Quality Control (QC) Facilities</b>	The Contractor's QC facilities in accordance with the Contractor Quality Control Program (CQCP).
<b>10-21</b>	<b>Contractor Quality Control Program (CQCP)</b>	Details the methods and procedures that will be taken to assure that all materials and completed construction required by the contract conform to contract plans, technical specifications and other requirements, whether manufactured by the Contractor, or procured from subcontractors or vendors.
<b>10-22</b>	<b>Control Strip</b>	A demonstration by the Contractor that the materials, equipment, and construction processes results in a product meeting the requirements of the specification.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-23</b>	<b>Construction Safety and Phasing Plan (CSPP)</b>	The overall plan for safety and phasing of a construction project developed by the airport operator or developed by the airport operator's consultant and approved by the airport operator. It is included in the invitation for bids and becomes part of the project specifications.
<b>10-24</b>	<b>Drainage System</b>	The system of pipes, ditches, and structures by which surface or subsurface waters are collected and conducted from the airport area.
<b>10-25</b>	<b>Engineer</b>	The individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for engineering, inspection, and/or observation of the contract work and acting directly or through an authorized representative.
<b>10-26</b>	<b>Equipment</b>	All machinery, together with the necessary supplies for upkeep and maintenance; and all tools and apparatus necessary for the proper construction and acceptable completion of the work.
<b>10-27</b>	<b>Extra Work</b>	An item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, but which is found by the Owner's Engineer or Resident Project Representative (RPR) to be necessary to complete the work within the intended scope of the contract as previously modified.
<b>10-28</b>	<b>FAA</b>	The Federal Aviation Administration. When used to designate a person, FAA shall mean the Administrator or their duly authorized representative.
<b>10-29</b>	<b>Federal Specifications</b>	The federal specifications and standards, commercial item descriptions, and supplements, amendments, and indices prepared and issued by the General Services Administration.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-30</b>	<b>Force Account</b>	<p><b>a.</b> Contract Force Account - A method of payment that addresses extra work performed by the Contractor on a time and material basis.</p> <p><b>b.</b> Owner Force Account - Work performed for the project by the Owner's employees.</p>
<b>10-31</b>	<b>Intention of Terms</b>	<p>Whenever, in these specifications or on the plans, the words “directed,” “required,” “permitted,” “ordered,” “designated,” “prescribed,” or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the Engineer and/or Resident Project Representative (RPR) is intended; and similarly, the words “approved,” “acceptable,” “satisfactory,” or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Engineer and/or RPR, subject in each case to the final determination of the Owner.</p> <p>Any reference to a specific requirement of a numbered paragraph of the contract specifications or a cited standard shall be interpreted to include all general requirements of the entire section, specification item, or cited standard that may be pertinent to such specific reference.</p>
<b>10-32</b>	<b>Lighting</b>	A system of fixtures providing or controlling the light sources used on or near the airport or within the airport buildings. The 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.
<b>10-33</b>	<b>Major and Minor Contract Items</b>	A major contract item shall be any item that is listed in the proposal, the total cost of which is equal to or greater than 20% of the total amount of the award contract. All other items shall be considered minor contract items.
<b>10-34</b>	<b>Materials</b>	Any substance specified for use in the construction of the contract work.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-35</b>	<b>Modification of Standards (MOS)</b>	Any deviation from standard specifications applicable to material and construction methods in accordance with FAA Order 5300.1.
<b>10-36</b>	<b>Notice to Proceed (NTP)</b>	A written notice to the Contractor to begin the actual contract work on a previously agreed to date. If applicable, the Notice to Proceed shall state the date on which the contract time begins.
<b>10-37</b>	<b>Owner</b>	The term “Owner” shall mean the party of the first part or the contracting agency signatory to the contract. Where the term “Owner” is capitalized in this document, it shall mean airport Sponsor only. The Owner for this project is the Maine Department of Transportation.
<b>10-38</b>	<b>Passenger Facility Charge (PFC)</b>	Per 14 Code of Federal Regulations (CFR) Part 158 and 49 United States Code (USC) § 40117, a PFC is a charge imposed by a public agency on passengers enplaned at a commercial service airport it controls.
<b>10-39</b>	<b>Pavement Structure</b>	The combined surface course, base course(s), and subbase course(s), if any, considered as a single unit.
<b>10-40</b>	<b>Payment bond</b>	The approved form of security furnished by the Contractor and their own surety as a guaranty that the Contractor will pay in full all bills and accounts for materials and labor used in the construction of the work.
<b>10-41</b>	<b>Performance bond</b>	The approved form of security furnished by the Contractor and their own surety as a guaranty that the Contractor will complete the work in accordance with the terms of the contract.
<b>10-42</b>	<b>Plans</b>	The official drawings or exact reproductions which show the location, character, dimensions and details of the airport and the work to be done and which are to be considered as a part of the contract, supplementary to the specifications. Plans may also be referred to as ‘contract drawings.’



<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-43</b>	<b>Project</b>	The agreed scope of work for accomplishing specific airport development with respect to a particular airport.
<b>10-44</b>	<b>Proposal</b>	The written offer of the bidder (when submitted on the approved proposal form) to perform the contemplated work and furnish the necessary materials in accordance with the provisions of the plans and specifications.
<b>10-45</b>	<b>Proposal guaranty</b>	The security furnished with a proposal to guarantee that the bidder will enter into a contract if their own proposal is accepted by the Owner.
<b>10-46</b>	<b>Quality Assurance (QA)</b>	Owner's responsibility to assure that construction work completed complies with specifications for payment.
<b>10-47</b>	<b>Quality Control (QC)</b>	Contractor's responsibility to control material(s) and construction processes to complete construction in accordance with project specifications.
<b>10-48</b>	<b>Quality Assurance (QA) Inspector</b>	An authorized representative of the Engineer and/or Resident Project Representative (RPR) assigned to make all necessary inspections, observations, tests, and/or observation of tests of the work performed or being performed, or of the materials furnished or being furnished by the Contractor.
<b>10-49</b>	<b>Quality Assurance (QA) Laboratory</b>	The official quality assurance testing laboratories of the Owner or such other laboratories as may be designated by the Engineer or RPR. May also be referred to as Engineer's, Owner's, or QA Laboratory.
<b>10-50</b>	<b>Resident Project Representative (RPR)</b>	The individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for all necessary inspections, observations, tests, and/or observations of tests of the contract work performed or being performed, or of the materials furnished or being furnished by the Contractor, and acting directly or through an authorized representative.
<b>10-51</b>	<b>Runway</b>	The area on the airport prepared for the landing and takeoff of aircraft.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-52</b>	<b>Runway Safety Area (RSA)</b>	A defined surface surrounding the runway prepared or suitable for reducing the risk of damage to aircraft. See the construction safety and phasing plan (CSPP) for limits of the RSA.
<b>10-53</b>	<b>Safety Plan Compliance Document (SPCD)</b>	Details how the Contractor will comply with the CSPP.
<b>10-54</b>	<b>Specifications</b>	A part of the contract containing the written directions and requirements for completing the contract work. Standards for specifying materials or testing which are cited in the contract specifications by reference shall have the same force and effect as if included in the contract physically.
<b>10-55</b>	<b>Sponsor</b>	A Sponsor is defined in 49 USC § 47102(24) as a public agency that submits to the FAA for an AIP grant; or a private Owner of a public-use airport that submits to the FAA an application for an AIP grant for the airport.
<b>10-56</b>	<b>Structures</b>	Airport facilities such as bridges; culverts; catch basins, inlets, retaining walls, cribbing; storm and sanitary sewer lines; water lines; underdrains; electrical ducts, manholes, handholes, lighting fixtures and bases; transformers; navigational aids; buildings; vaults; and, other manmade features of the airport that may be encountered in the work and not otherwise classified herein.
<b>10-57</b>	<b>Subgrade</b>	The soil that forms the pavement foundation.
<b>10-58</b>	<b>Superintendent</b>	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.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-59</b>	<b>Supplemental Agreement</b>	A written agreement between the Contractor and the Owner that establishes the basis of payment and contract time adjustment, if any, for the work affected by the supplemental agreement. A supplemental agreement is required if: (1) in scope work would increase or decrease the total amount of the awarded contract by more than 25%; (2) in scope work would increase or decrease the total of any major contract item by more than 25%; (3) work that is not within the scope of the originally awarded contract; or (4) adding or deleting of a major contract item.
<b>10-60</b>	<b>Surety</b>	The corporation, partnership, or individual, other than the Contractor, executing payment or performance bonds that are furnished to the Owner by the Contractor.
<b>10-61</b>	<b>Taxilane</b>	A taxiway designed for low speed movement of aircraft between aircraft parking areas and terminal areas.
<b>10-62</b>	<b>Taxiway</b>	The portion of the air operations area of an airport that has been designated by competent airport authority for movement of aircraft to and from the airport's runways, aircraft parking areas, and terminal areas.
<b>10-63</b>	<b>Taxiway/Taxilane Safety Area (TSA)</b>	A defined surface alongside the taxiway prepared or suitable for reducing the risk of damage to an aircraft. See the construction safety and phasing plan (CSPP) for limits of the TSA.
<b>10-64</b>	<b>Work</b>	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.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-65</b>	<b>Working day</b>	A working day shall be any day other than a legal holiday, Saturday, or Sunday on which the normal working forces of the Contractor may proceed with regular work for at least six (6) hours toward completion of the contract. When work is suspended for causes beyond the Contractor's control, it will not be counted as a working day. Saturdays, Sundays and holidays on which the Contractor's forces engage in regular work will be considered as working days.
	<b>Owner Defined Terms:</b>	
<b>10-66</b>	<b>ADDENDA</b>	Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents or the contract documents and become a part thereof.
<b>10-67</b>	<b>FAA ADVISORY CIRCULAR (AC)</b>	A document prepared by the Federal Aviation Administration to provide guidance and information in a designated aviation related subject area, including standards, materials, and/or methods. The most current edition of ACs, approved by the FAA, can be found on the FAA web site at <a href="https://www.faa.gov/regulations_policies/advisory_circulars/">https://www.faa.gov/regulations_policies/advisory_circulars/</a>
<b>10-68</b>	<b>INSTALL</b>	Unless described otherwise in the plans or specifications, "install" shall mean to furnish the item(s) referenced and to provide all materials, labor, equipment, and tools necessary to establish the referenced items(s) in place and in the correct working order.
<b>10-69</b>	<b>NOTICE OF AWARD</b>	The written notice by the Owner to the apparent low bidder that they are the successful bidder and, that upon compliance with the contract conditions, the Owner intends to execute the contract with the apparent low bidder.
<b>10-70</b>	<b>SHOP DRAWINGS</b>	All drawings, diagrams, illustrations, schedules, and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor and which illustrate the equipment, material or some portion of the work. All shop drawings shall be approved by the Contractor and submitted to the Engineer for review and acceptance for reasonable conformance to the contract documents.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-71</b>	<b>SUBCONTRACTOR</b>	An individual, firm or corporation having a direct contract with the Contractor or with any other subcontractor for the performance of a part of the work at the site.
<b>10-72</b>	<b>SUBSTANTIAL COMPLETION</b>	The work has progressed to the point where, in the opinion of the Owner as evidenced by the Engineer's definitive Certificate of Substantial Completion, it is sufficiently complete in accordance with the contract documents, so that the work can be utilized for the purposes for which it is intended.
<b>10-73</b>	<b>MAINE DEPARTMENT OF TRANSPORTATION (MAINEDOT) STANDARD SPECIFICATIONS</b>	The Maine Department of Transportation (MaineDOT) Standard Specifications, utilized for highway construction. These specifications may be incorporated by reference in some of the technical specifications for this project and shall have the same force and effect as if included in the contract physically.
<b>10-74</b>	<b>MAINE DEPARTMENT OF TRANSPORTATION (MAINEDOT) STANDARD DETAILS</b>	The Maine Department of Transportation (MaineDOT) Standard Details, utilized for highway construction. These standards may be incorporated by reference in some of the plans and technical specifications for this project and shall have the same force and effect as if included in the contract physically.

### END OF SECTION 10

**Page Intentionally Blank**

## Section 20 Proposal Requirements and Conditions

### 20-01 Advertisement (Notice to Bidders).

A copy of the advertisement for the project has been incorporated in the front of these specifications.

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

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

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

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

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

Mobilization is limited to 20 percent of the total project cost.

A prebid conference will be held for this project to discuss as a minimum, the following items: material requirements; submittals; Quality Control/Quality Assurance requirements; the construction safety and phasing plan including airport access and staging areas; and unique airfield paving construction requirements.

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

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

- c. Documented record of Contractor default under previous contracts with the Owner.
- d. Documented record of unsatisfactory work on previous contracts with the Owner.

**20-05 Interpretation of estimated proposal quantities.** An estimate of quantities of work to be done and materials to be furnished under these specifications is given in the proposal. It is the result of careful calculations and is believed to be correct. It is given only as a basis for comparison of proposals and the award of the contract.

The Owner does not expressly, or by implication, agree that the actual quantities involved will correspond exactly therewith; nor shall the bidder plead misunderstanding or deception because of such estimates of quantities, or of the character, location, or other conditions pertaining to the work. Payment to the Contractor will be made only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications. It is understood that the quantities may be increased or decreased as provided in Section 40, paragraph 40-02, *Alteration of Work and Quantities*, without in any way invalidating the unit bid prices.

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

Boring logs and other records of subsurface investigations and tests are available for inspection of bidders. It is understood and agreed that such subsurface information, whether included in the plans, 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 each bidder is solely responsible for all assumptions, deductions, or conclusions which the bidder may make or obtain from their own examination of the boring logs and other records of subsurface investigations and tests that are furnished by the Owner.

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

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

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



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

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

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

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

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

**20-11 Delivery of proposal.** Each proposal submitted shall be placed in a sealed envelope plainly marked with the project number, location of airport, and name and business address of the bidder on the outside. When sent by mail, preferably registered, the sealed proposal, marked as indicated above, should be enclosed in an additional envelope. No proposal will be considered unless received at the place specified in the advertisement or as modified by Addendum before the time specified for opening all bids. Proposals received after the bid opening time shall be returned to the bidder unopened.

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

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

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

- a. Submitting more than one proposal from the same partnership, firm, or corporation under the same or different name.
- b. Evidence of collusion among bidders. Bidders participating in such collusion shall be disqualified as bidders for any future work of the Owner until any such participating bidder has been reinstated by the Owner as a qualified bidder.

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

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

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

## END OF SECTION 20

## Section 30 Award and Execution of Contract

**30-01 Consideration of proposals.** After the proposals are publicly opened and read, they will be compared on the basis of the summation of the products obtained by multiplying the estimated quantities shown in the proposal by the unit bid prices. If a bidder's proposal contains a discrepancy between unit bid prices written in words and unit bid prices written in numbers, the unit bid price written in words shall govern.

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

- a. If the proposal is irregular as specified in Section 20, paragraph 20-09, *Irregular Proposals*.
- b. If the bidder is disqualified for any of the reasons specified Section 20, paragraph 20-14, *Disqualification of Bidders*.

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

**30-02 Award of contract.** The award of a contract, if it is to be awarded, shall be made NO LATER THAN OCTOBER 15, 2024, unless otherwise specified herein.

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

For AIP contracts, unless otherwise specified in this subsection, no award shall be made until the FAA has reviewed the Owner's recommendation to make such award in accordance with 2 CFR 200.324.

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

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

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

**30-06 Execution of contract.** The successful bidder shall sign (execute) the necessary agreements for entering into the contract and return the signed contract to the Owner, along with the fully executed surety

bond or bonds specified in paragraph 30-05, *Requirements of Contract Bonds*, of this section, within the number of calendar days specified in Contract Documents from the date mailed or otherwise delivered to the successful bidder.

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

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

### END OF SECTION 30

## Section 40 Scope of Work

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

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

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

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

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

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

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

**40-04 Extra work.** Should acceptable completion of the contract require the Contractor to perform an item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, Owner may issue a Change Order to cover the necessary extra work. Change orders for extra work shall contain agreed unit prices for performing the change order work in accordance with the requirements specified in the order and shall contain any adjustment to the contract time that, in the Engineer's opinion, is necessary for completion of the 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 as provided in Section 90, paragraph 90-05, *Payment for Extra Work*. Extra work that is necessary for acceptable completion of the project but is not within the general

scope of the work covered by the original contract shall be covered by a supplemental agreement as defined in Section 10, paragraph 10-59, *Supplemental Agreement*.

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

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

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

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

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

c. When the contract requires the maintenance of an existing road, street, or highway during the Contractor's performance of work that is otherwise provided for in the contract, plans, and specifications, the Contractor shall keep the road, street, or highway open to all traffic and shall provide maintenance as may be required to accommodate traffic. The Contractor, at their expense, shall be responsible for the repair to equal or better than preconstruction conditions of any damage caused by the Contractor's equipment and personnel. The Contractor shall furnish, erect, and maintain barricades, warning signs, flag person, and other traffic control devices in reasonable conformity with the Manual on Uniform Traffic Control Devices (MUTCD) (<http://mutcd.fhwa.dot.gov/>), unless otherwise specified. The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets or highways.

**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 Section 40, paragraph 40-07, *Rights in and Use of Materials Found in the Work*, it is intended that all existing materials or structures that may be encountered (within the lines, grades, or

grading sections established for completion of the work) shall be used in the work as otherwise provided for in the contract and shall remain the property of the Owner when so used in the work.

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

- a. Use such material in another contract item, providing such use is approved by the 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 the Contractor's own temporary construction on site; or,
- d. Use such material as intended by the terms of the contract.

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

Should the 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 their own exercise of option a., b., or c.

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

**40-08 Final cleanup.** Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. The Contractor shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily, unless the Contractor has obtained the written permission of the property Owner.

## END OF SECTION 40

**Page Intentionally Blank**



## Section 50 Control of Work

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

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

If the 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 their opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to the Owner, the Engineer will advise the Owner of their determination that the affected work be accepted and remain in place. The Engineer will document the determination and recommend to the Owner a basis of acceptance that will provide for an adjustment in the contract price for the affected portion of the work. Changes in the contract price must be covered by contract change order or supplemental agreement as applicable.

If the 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.

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 execution of the work, when, in the Engineer's opinion, such compliance is essential to provide an acceptable finished portion of the work.

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

The 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. If electronic files are provided and used on the project and there is a conflict between the electronic files and hard copy plans, the hard copy plans shall govern. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, calculated dimensions will govern over scaled dimensions; contract technical specifications shall govern over contract general provisions, plans, cited standards for materials or testing, and cited advisory circulars (ACs); contract general provisions shall govern over plans, cited standards for materials or testing, and cited ACs; plans shall govern over cited standards for materials or testing and cited ACs. If

any paragraphs contained in the Special Provisions conflict with General Provisions or Technical Specifications, the Special Provisions shall govern.

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

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

**50-04 List of Special Provisions.** See the Special Provisions section of the specification.

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

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

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

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

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

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

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

Prior to the start of construction, the Contractor will check all control points for horizontal and vertical accuracy and certify in writing to the Engineer that the Contractor concurs with survey control established for the project. All lines, grades and measurements from control points necessary for the proper execution

and control of the work on this project will be provided to the Engineer. The Contractor is responsible to establish all layout required for the construction of the project.

Copies of survey notes will be provided 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. Surveys will be provided to the Engineer prior to commencing work items that cover or disturb the survey staking. Survey(s) and notes shall be provided in the following format(s): AutoCAD 2018 or newer.

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

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

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

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

**50-09 Inspection of the work.** All materials and each part or detail of the work shall be subject to inspection. The 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.

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

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

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

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

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

Upon failure on the part of the Contractor to comply with any order of the 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 recover the resulting costs as a liquidated damage against the Contractor.

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

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

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

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

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

**50-13 Failure to maintain the work.** Should the Contractor at any time fail to maintain the work as provided in paragraph 50-12, *Maintenance during Construction*, the 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 recovered as a liquidated damage against the Contractor.

**50-14 Partial acceptance.** If at any time during the execution of the project the Contractor substantially completes a usable unit or portion of the work, the occupancy of which will benefit the Owner, the Contractor may request the 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, the Engineer

may accept it as being complete, and the Contractor may be relieved of further responsibility for that unit. Such partial acceptance and beneficial occupancy by the Owner shall not void or alter any provision of the contract.

**50-15 Final acceptance.** Upon due notice from the Contractor of presumptive completion of the entire project, the Engineer and Owner will make an inspection. If all construction provided for and contemplated by the contract is found to be complete in accordance with the contract, plans, and specifications, such inspection shall constitute the final inspection. The 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 notify the Contractor and the Contractor shall correct the unsatisfactory work. Upon correction of the work, another inspection will be made which shall constitute the final inspection, provided the work has been satisfactorily completed. In such event, the 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 for work or materials not clearly provided for in the contract, plans, or specifications or previously authorized as extra work, the Contractor shall notify the Engineer in writing of their intention to claim such additional compensation before the Contractor begins the work on which the Contractor bases the claim. If such notification is not given or the 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 10 calendar days, submit a 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.

## END OF SECTION 50

**Page Intentionally Blank**



## Section 60 Control of Materials

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

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

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

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

**60-02 Samples, tests, and cited specifications.** All materials used in the work shall be inspected, tested, and approved by the Engineer before incorporation in the work unless otherwise designated. 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, quality assurance tests will be made by and at the expense of the Owner in accordance with the cited standard methods of ASTM, American Association of State Highway and Transportation Officials (AASHTO), federal specifications, Commercial Item Descriptions, and all other cited methods, which are current on the date of advertisement for bids.

The testing organizations performing on-site quality assurance field tests shall have copies of all referenced standards on the construction site for use by all technicians and other personnel. Unless otherwise designated, samples for quality assurance will be taken by a qualified representative of the 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 their request after review and approval of the Engineer.

A copy of all Contractor QC test data shall be provided 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.

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

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

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

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

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

The 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.

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

Should the 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 the Contractor 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. Place office or working space in a convenient location with respect to the plant.

It is understood and agreed that the Owner shall have the right to retest any material that has been tested and approved at the source of supply after it has been delivered to the site. The 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/ Resident Project Representative (RPR) field office.** An Engineer/RPR field office is not required.

**60-06 Storage of materials.** Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located 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 and/or CSPP, the storage of materials and the location of the Contractor’s plant and parked equipment or vehicles shall be as directed by the 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 their expense, except as otherwise agreed to (in writing) by the Owner or lessee of the property.

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

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

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

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

## END OF SECTION 60

**Page Intentionally Blank**

## Section 70 Legal Regulations and Responsibility to Public

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

**70-02 Permits, licenses, and taxes.** The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful execution of the work.

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

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

A LISTING OF UTILITIES OR OTHER FACILITIES WHICH MAY BE ENCOUNTERED DURING THE WORK HAS BEEN PROVIDED BELOW.

Facility or Utility	Person to Contact (Name and Title)	Telephone/Email
Airport Facilities (Bethel Regional)	Randy Autrey	(207) 381-0202
Airport Facilities (Princeton Municipal)	Brad Richard	(207) 214-5144

Except as AUTHORIZED BY THE OWNER ~~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 public or private utility service, FAA, or NOAA facility, or a utility service of another government agency be authorized to construct, reconstruct, or maintain such utility service or facility during the progress of the work, the Contractor shall cooperate with such Owners by arranging and performing the work in this contract to facilitate such construction, reconstruction or maintenance by others whether or not such work by others is listed above. When ordered as extra work by the 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.

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

**70-06 Sanitary, health, and safety provisions.** The Contractor's worksite and facilities shall comply with applicable federal, state, and local requirements for health, safety and sanitary provisions.

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

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

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

**70-08 Construction Safety and Phasing Plan (CSPP).** The Contractor shall complete the work in accordance with the approved Construction Safety and Phasing Plan (CSPP) developed in accordance with AC 150/5370-2, *Operational Safety on Airports During Construction*. The CSPP is included in the Appendices.

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

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

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

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

**70-11 Responsibility for damage claims.** The Contractor shall indemnify and hold harmless the Engineer/RPR and the Owner and their officers, agents, and employees from all suits, actions, or claims, of any character, brought because of any injuries or damage received or sustained by any person, persons,

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

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

**70-13 Opening sections of the work to traffic.** If it is necessary for the Contractor to complete portions of the contract work for the beneficial occupancy of the Owner prior to completion of the entire contract, such "phasing" of the work ~~must be specified below and~~ SHALL BE indicated on the approved Construction Safety and Phasing Plan (CSPP) and the project plans. When so specified, the Contractor shall complete such portions of the work on or before the date specified or as otherwise specified.

Upon completion of any portion of work ~~listed above~~ INDICATED IN THE CSPP AND THE PROJECT PLANS, such portion shall be accepted by the Owner in accordance with Section 50, paragraph 50-14, *Partial Acceptance*.

No portion of the work may be opened by the Contractor until directed by the Owner in writing. Should it become necessary to open a portion of the work to traffic on a temporary or intermittent basis, such openings shall be made when, in the opinion of the 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 their expense.

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

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

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

**70-14 Contractor's responsibility for work.** Until the Engineer's final written acceptance of the entire completed work, excepting only those portions of the work accepted in accordance with Section 50, paragraph 50-14, *Partial Acceptance*, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part due to the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the

Contractor, including but not restricted to acts of God such as earthquake, tidal wave, tornado, hurricane or other cataclysmic phenomenon of nature, or acts of the public enemy or of government authorities.

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

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

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

See paragraph 70-04 for a list of all known services or utility providers with associated contact information.

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

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

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

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

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

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



Should the Contractor damage or interrupt the operation of a utility service or facility by accident or otherwise, the Contractor shall immediately notify the proper authority and the 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 their operations whether due to negligence or accident. The Owner reserves the right to deduct such costs from any monies due or which may become due the Contractor, or their own surety.

**70-15.1 FAA facilities and cable runs.** Section not used.

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

**70-17 Personal liability of public officials.** In carrying out any of the contract provisions or in exercising any power or authority granted by this contract, there shall be no liability upon the Engineer, RPR, their authorized representatives, or any officials of the Owner either personally or as an official of the Owner. It is understood that in such matters they act solely as agents and representatives of the Owner.

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

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

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

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

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

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

**70-21 Insurance Requirements.**

**a. Insurance Coverage.** The Contractor shall, at its sole expense, purchase and maintain, and shall require its subcontractors of any tier to purchase and maintain, in full force and effect during the performance of any contract issued hereunder the following insurance coverages with companies acceptable to the Owner: insurance shall be provided in accordance with MDOT Standard Specification Section 110.

**END OF SECTION 70**



## Section 80 Execution and Progress

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

The Contractor shall perform, with his organization, an amount of work equal to at least 51 percent of the total contract cost.

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

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

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

**80-02 Notice to proceed (NTP).** The Owner's notice to proceed will state the date on which contract time commences. The Contractor is expected to commence project operations within 10 days of the NTP date. The Contractor shall notify the Engineer at least 48 hours in advance of the time contract operations begins. The Contractor shall not commence any actual operations prior to the date on which the notice to proceed is issued by the Owner.

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

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 their operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the execution of the work be discontinued for any reason, the Contractor shall notify the Engineer at least 48 hours in advance of resuming operations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Should the Contractor fail to remove such person or persons, or fail to furnish suitable and sufficient personnel for the proper execution of the work, the 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 not cause injury to previously completed work, adjacent property, or existing airport facilities due to its use.

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

When the contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless otherwise authorized by the Engineer. If the Contractor desires to use a method or type of equipment other than specified in the contract, the Contractor may request authority from the 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 paragraph.

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

In the event that the Contractor is ordered by the Owner, in writing, to suspend work for some unforeseen cause not otherwise provided for in the contract and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the written order to suspend work to the effective date of the written order to resume the work. Claims for such compensation shall be filed with the Engineer within the time period stated in the Engineer's order to resume work. The Contractor shall submit with their own 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 or for any other delay provided for in the contract, plans, or specifications.

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

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

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

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

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

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

Schedule	Liquidated Damages Cost	Allowed Construction Time
SEE PLANS		

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

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

- a. Fails to begin the work under the contract within the time specified in the Notice to Proceed, or
- b. Fails to perform the work or fails to provide sufficient workers, equipment and/or materials to assure completion of work in accordance with the terms of the contract, or

- c. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
- d. Discontinues the execution of the work, or
- e. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- g. Allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days, or
- h. Makes an assignment for the benefit of creditors, or
- i. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

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

If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the Owner will, upon written notification from the 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 execution of the work out of the hands of the Contractor. The Owner may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the 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 execution of war or in the interest of national defense.

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

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

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

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

**80-11 Work area, storage area and sequence of operations.** The Contractor shall obtain approval from the 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 work in accordance with the approved CSPP and SPCD.

**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 their authorized representatives, using United States Customary Units of Measurement.

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.

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

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

When requested by the Contractor and approved by the 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.

### Measurement and Payment Terms

Term	Description
<b>Excavation and Embankment Volume</b>	In computing volumes of excavation, the average end area method will be used unless otherwise specified.
<b>Measurement and Proportion by Weight</b>	The term “ton” will mean the short ton consisting of 2,000 pounds (907 kg) avoirdupois. All materials that are measured or proportioned by weights shall be weighed on accurate, independently certified scales by competent, qualified personnel at locations designated by the 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.

<b>Term</b>	<b>Description</b>
<b>Measurement by Volume</b>	Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable for the materials hauled, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.
<b>Asphalt Material</b>	Asphalt materials will be measured by the gallon (liter) or ton (kg). When measured by volume, such volumes will be measured at 60°F (16°C) or will be corrected to the volume at 60°F (16°C) using ASTM D1250 for asphalts. Net certified scale weights or weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when asphalt material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work. When asphalt materials are shipped by truck or transport, net certified weights by volume, subject to correction for loss or foaming, will be used for computing quantities.
<b>Cement</b>	Cement will be measured by the ton (kg) or hundredweight (km).
<b>Structure</b>	Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.
<b>Timber</b>	Timber will be measured by the thousand feet board measure (MFBM) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.
<b>Plates and Sheets</b>	The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fraction of inch.
<b>Miscellaneous Items</b>	When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gauge, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.



Term	Description
<b>Scales</b>	<p>Scales must be tested for accuracy and serviced before use. Scales for weighing materials which are required to be proportioned or measured and paid for by weight shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales. Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.</p> <p>Scales shall be accurate within 0.5% of the correct weight throughout the range of use. The Contractor shall have the scales checked under the observation of the Engineer before beginning work and at such other times as requested. The intervals shall be uniform in spacing throughout the graduated or marked length of the beam or dial and shall not exceed 0.1% of the nominal rated capacity of the scale, but not less than one pound (454 grams). The use of spring balances will not be permitted.</p> <p>In the event inspection reveals the scales have been “overweighing” (indicating more than correct weight) they will be immediately adjusted. All materials received subsequent to the last previous correct weighting-accuracy test will be reduced by the percentage of error in excess of 0.5%.</p> <p>In the event inspection reveals the scales have been under-weighing (indicating less than correct weight), they shall be immediately adjusted. No additional payment to the Contractor will be allowed for materials previously weighed and recorded.</p> <p>Beams, dials, platforms, and other scale equipment shall be so arranged that the operator and the Engineer can safely and conveniently view them.</p> <p>Scale installations shall have available ten standard 50-pound (2.3 km) weights for testing the weighing equipment or suitable weights and devices for other approved equipment.</p> <p>All costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house; and for all other items specified in this subsection, for the weighing of materials for proportioning or payment, shall be included in the unit contract prices for the various items of the project.</p>

Term	Description
<b>Rental Equipment</b>	Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the work. Special equipment ordered in connection with extra work will be measured as agreed in the change order or supplemental agreement authorizing such work as provided in paragraph 90-05 Payment for Extra Work.
<b>Pay Quantities</b>	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 execution thereof, subject to the provisions of Section 70, paragraph 70-18, *No Waiver of Legal Rights*.

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

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

**90-04 Payment for omitted items.** As specified in Section 40, paragraph 40-03, *Omitted Items*, the 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 non-perform 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 work.** Extra work, performed in accordance with Section 40, paragraph 40-04, *Extra Work*, will be paid for at the contract prices or agreed prices specified in the change order or supplemental agreement authorizing the extra work.

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

**a.** From the total of the amount determined to be payable on a partial payment, after the first 50% of payment is made on the project, five (5) percent of subsequent payments will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made.

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

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

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

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

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the 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 paragraph 90-09, *Acceptance and Final Payment*.

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

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

- a. The material has been stored or stockpiled in a manner acceptable to the 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 stored or stockpiled.
- e. The Contractor has furnished the Owner evidence that the material stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.

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

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

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

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

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

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

**90-09 Acceptance and final payment.** When the contract work has been accepted in accordance with the requirements of Section 50, paragraph 50-15, *Final Acceptance*, the 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 the Contractor's objections to the final estimate which are based on disputes in measurements or computations of the final quantities to be paid under the contract as amended by change order or supplemental agreement. The Contractor and the 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 Section 50, paragraph 50-16, *Claims for Adjustment and Disputes*.

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

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

#### **90-10 Construction warranty.**

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

**b.** This warranty shall continue for a period of one year from the date of final acceptance of the work, except as noted. If the Owner takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date the Owner takes possession. However, this will not relieve the Contractor from corrective items required by the final acceptance of the project work. Light Emitting Diode emitting diode (LED) light fixtures with the exception of obstruction lighting, must be warranted by the manufacturer for a minimum of four (4) years after date of installation inclusive of all electronics.

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

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

**e.** The Owner will notify the Contractor, in writing, within seven (7) days after the discovery of any failure, defect, or damage.

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

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

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

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

**a.** Provide two (2) copies of all manufacturers' warranties specified for materials, equipment, and installations.

**b.** Provide weekly payroll records (not previously received) from the general Contractor and all subcontractors.

**c.** Complete final cleanup in accordance with Section 40, paragraph 40-08, Final Cleanup.

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

**e.** Provide complete release of all claims for labor and material arising out of the Contract.

**f.** Provide a certified statement signed by the subcontractors, indicating actual amounts paid to the Disadvantaged Business Enterprise (DBE) subcontractors and/or suppliers associated with the project.

**g.** When applicable per state requirements, return copies of sales tax completion forms.

**h.** Manufacturer's certifications for all items incorporated in the work.

**i.** All required record drawings, as-built drawings or as-constructed drawings.

**j.** Project Operation and Maintenance (O&M) Manual(s).

**k.** Security for Construction Warranty.

**l.** Equipment commissioning documentation submitted, if required.

## **END OF SECTION 90**



## Special Provisions

### 01.SP Additional Insured Requirements

The Contractor shall specify the Owner and the Engineer as named additional insured in all insurance required under the provisions of Section 70-21 *Insurance Requirements*. The cost for adding the Owner and Engineer shall be incidental to the overall project.

### 02.SP FAA Specifications

All FAA specifications are denoted with the AC reference and date of revision at the beginning of each specification section. The title of any non-FAA specification will be in all capital letters (EXAMPLE). Modifications by way of additions to the FAA standard text are denoted in all capital letters (EXAMPLE).

### 03.SP Conflict With Other Controls

In the event of conflict between these requirements and pollution control laws, rules, or regulations or other federal, state, or local agencies, the more restrictive laws, rules, or regulations shall apply. The Contractor shall be responsible for assuring compliance to the extent that construction practices, construction operations, and construction work are involved.

### 04.SP Pavement Loading

The existing airport pavements are designed for aircraft on single and dual gear configurations. The Contractor shall preserve and/or protect existing and new pavements from damage due to construction operations. Existing pavements which are damaged shall be replaced or repaved at the Contractor's expense. The Contractor shall take immediate action to alleviate the problem.

### 05.SP Communications

The Contractor shall keep the Engineer and/or Resident Project Representative apprised of his/her scheduled construction activities in order to allow proper notification of the airport manager and airport operators. As a minimum, weekly meetings to discuss construction progress and location should be anticipated. These meetings may be held virtually.

If stated on the plans, the Contractor shall have a two-way radio at the jobsite at all times work is in progress and shall monitor the ground control frequency or the Common Traffic Advisory Frequency (CTAF) or Airport UNICOM frequency.

### 06.SP Aircraft Operations

It is the intent of the Owner to minimize interference with aircraft operations. The Contractor shall coordinate his/her activities while working near the aircraft operational area, so as to create minimal interference with aircraft operations. Before starting his/her operations at any location on the airport, the Contractor shall assure proper safety precautions and separations are in place in accordance with the Plans. Where the requirement exists for a Construction Safety Phasing Plan (CSPP) and contractor's Safety Plan Compliance Document (SPCD), these shall be prepared in accordance with FAA Advisory Circular (AC) 150/5370-2G, *Operational Safety on Airports During Construction*.

### 07.SP Record Drawings

The Contractor shall maintain during the work and shall provide the Engineer with one set of marked prints showing any modifications between the original plans and final "as-constructed" conditions. The Contractor shall provide the marked set of drawings to the Engineer at the final inspection.

## **08.SP Final Inspections**

The Engineer will attend a final inspection of the completed work. The inspection will be scheduled when the Contractor indicates that the work is complete and ready for final inspection or that the punch list is totally complete, and the final inspection can be made. If the Engineer is required to conduct more than one(1) final inspections outlined above, the charges for the Engineer's services associated with such additional inspections shall be deducted by the Owner from the Contractor's final payment for the project.

## **09.SP Existing Airfield Features**

The Contractor shall protect existing items on the airfield that are not identified to be removed or modified. This may include pavements, markings, lighting fixtures, signs, survey monuments, etc. An inventory of conditions of the project and all items that are to remain shall be taken before construction begins and the Contractor shall be responsible for the cost of replacement of any fixtures damaged by his operations.

## **10.SP Project Schedule**

The Contractor shall submit prior to the Preconstruction Conference a detailed progress schedule for the entire project. The schedule shall be developed in a bar chart format to indicate the timing and sequencing of the key work components. Once the Contractor's schedule has been reviewed by the Engineer, any deviations must be incorporated into an updated schedule and submitted for review by the Engineer. The initial schedule will be used as a baseline for determining impacts to the critical path items of the schedule due to weather or other items as may be documented by the contractor that is potentially a reason to extend the contract time period.

The Contractor shall review the project schedule with the Engineer and/or Resident Project Representative (RPR) prior to submittal of the monthly Contractor Pay Request. Any update seemed necessary by the Engineer, RPR or Contractor shall be incorporated into an updated schedule. The updated schedule shall be submitted with the pay request. The Pay Request will not be processed unless an accurate up-to-date schedule is on file with the Engineer.

## **11.SP Contract Time Extensions**

The Contractor shall be responsible for providing justification and documentation for proposed time extensions. The Contractor shall submit the justification and documentation along with a copy of the original and updated project schedules to the Engineer for review.

The number of calendar days specified in the Contract includes an allowance for 80 percent of the calendar days available for productive work (i.e., 20% of the project time anticipates rain or other impacts to the overall schedule).

The Contractor will be entitled to an automatic extension in contract time, if requested, when the available days for productive work are less than 80 percent of the established contract time. The Engineer will furnish the Contractor with a copy of his/her weekly statement of the number of calendar days available for productive work. The Engineer shall base his/her weekly statement of available days for productive work on the following considerations:

A day will be considered available for productive work regardless of whether the Contractor actually worked or not, if, in the Engineers opinion, the Contractor could have been able to proceed with a principal work item for at least a 6-hour work period during normal work hours for the project.

The Contractor will be allowed one (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.

In the event the number of available calendar days for productive work is less than 80 percent, the contract time will be extended until the allowance number of available productive days is achieved.



No provisions 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 Contractor, for any other delay provided for in the contract, plans, or specifications.

## **12.SP Construction Flags and Amber Lights**

During work in the Air Operation Area (AOA), the Contractor shall furnish amber flashing hazard beacons or aircraft warning flags on all vehicles and equipment in accordance with Advisory Circular (AC) 150/5210-5D, *Painting, Marking, and Lighting of Vehicles Used on an Airport*. Amber flashing hazard beacons or aircraft warning flags may be used during the day. Amber flashing hazard beacons are required for nighttime operations.

The beacons shall be mounted on the uppermost part of the vehicle structure or equipment so that it will be visible from any direction, day and night, including from the air.

The flags shall be at least a 3-foot square having a checkered pattern of international orange and white squares at least 1 foot on each side in accordance with AC 150/5210-5D. Flags on equipment shall be mounted on a staff not less than 8 feet in length.

## **13.SP Employment History**

If requested by Airport management, the Contractor shall provide background information concerning the ten (10) year employment history on all its employees or affiliated personnel who will be involved with work inside the security fence. Based upon background information on an employee, the Owner reserves the right to restrict the access of an employee of the Contractor from working inside the security fence for reasons of airport security. Identification badges will be required for all personnel entering the aircraft operational areas (AOA) and can be obtained from the Airport Manager. A nominal fee may be charged to cover the cost of the materials for these identification badges.

## **14.SP Utility Conflicts**

The Contractor should anticipate conflicts with existing utilities. Where conflicts are encountered, the Contractor shall reroute electrical conduits, ducts, water pressure lines and/or force mains around gravity lines which will take precedence over pressure lines for maintaining vertical alignment as shown on plans. Conflicts between pressure lines shall be resolved as ordered by the Engineer. No additional payment will be made for rerouting utilities due to conflicts.

The Contractor shall be responsible for repair to utilities in service which are damaged by the Contractor's men and equipment. The Contractor shall assume all risk and liability for any inconvenience, delay, or expense that may be occasioned by public utilities. No additional compensation will be allowed for delays, inconvenience, or damage sustained by the Contractor due to interference from the said utility appurtenances or the operations of moving them. The time for completion may be extended if it is determined by the owner that a project delay to critical path work items has occurred.

## **15.SP Testing General**

The Contractor shall inform the Engineer when work in progress or an area will be subject to or has been prepared for testing. Timely communication between the Contractor and the Engineer will be required to schedule needed testing. All quality assurance testing will be performed by the Owner's testing laboratory under the direction of the Engineer. The Contractor is advised that the cost of failing tests requiring additional tests to confirm compliance will be deducted from the monies due to the Contractor through the Progress Payment Process. The testing laboratory shall not be used by the Contractor for quality control purposes.

## **16.SP Materials Testing**

The Contractor shall provide actual test results and/or certifications for all materials incorporated into the work to assure his/her compliance with the contract specifications. Current ASTM, AASHTO, and/or federal specifications on the date of advertisement for bids shall be used. The latest edition of other referenced specifications, handbooks or documents shall be used. Prior to installing, placing, or incorporating any materials into the work, the Contractor shall provide four (4) copies of the materials tests and/or certifications required by the specifications to the Engineer.

The Testing/Certification submittals required by the specifications shall be provided by the Contractor to the Engineer at the Contractor's expense. The required submittals shall be all tests and certifications required by the specifications.

## **17.SP Dust Control**

The Contractor is advised that aircraft maintenance operations are conducted adjacent to the project. Special attention to dust control will be required during the course of the project. The use of water and calcium chloride shall be anticipated. The Engineer reserves the right to halt work or hauling in non-conforming areas if corrective actions are not promptly taken by the Contractor to control dust.

## **18.SP On-Site Contractor Supervision**

The Contractor shall keep on the project at all times during its progress, a competent resident superintendent whose name and qualifications shall be furnished to the Engineer at the Pre-Construction Meeting and who shall not be replaced without prior written notice to the Engineer, except under extraordinary circumstances, in which event immediate written notice shall be given to the Engineer. The superintendent will be the Contractor's representative at the site and shall have the authority to act on behalf of the Contractor and to receive any and all notices or instructions given pursuant to the Contract Documents. The superintendent shall be an employee of the Contractor. The Contractor shall provide competent and suitable personnel, equipment and supplies to perform the work required by the Contract Documents. He/she shall at all times maintain good discipline and order at the site.

## **19.SP Storage / Staging Area**

All construction material storage, equipment, and vehicle parking will be designated by the Owner. Under no circumstances shall material, equipment, and/or vehicles be stored in such a place as to create an obstruction to vehicular traffic. All storage shall be limited to the designated area(s) on the project site; no storage of any equipment or material shall be allowed at any place other than the project site unless otherwise approved by the Owner. Climate conditioning for stored materials shall be the responsibility of the Contractor.

## **20.SP Security**

The Contractor shall be responsible for the security of his equipment and materials, as well as the security of the equipment and materials of his agents and Subcontractors. Further, he shall be responsible for the security of all entrances to the project site.

The Contractor shall provide the Owner or its designated representative a list of all his employees as well as a list of all the employees of his Subcontractors and shall, during the work of the project, advise such designated agent of changes to the list of personnel working on the project. The Contractor shall be responsible for the direct supervision of his employees, those of his agents and Subcontractors at all times while on the project site.

The Contractor shall exercise and take all precautions in the storage and dispensing of all flammable liquids such as, but not limited to, gasoline, fuel, and lubricants.

## **21.SP Motorized Vehicles**

The Contractor shall be responsible for the actions of his employees, agents, and Subcontractors. Personnel who do not abide by the applicable rules and regulations shall be subject to prosecution.

All motorized vehicles and equipment operating on the project site and anywhere else on the Airport shall not exceed a speed of 15 mph, and all aircraft shall have priority over all motorized vehicles and equipment.

## **22.SP Debris**

Waste and loose material shall be removed immediately and continuously during the construction work of the project. The removal and disposal of all debris shall be the responsibility of the Contractor. All debris shall be disposed of off the project site and the Airport property in conformance with prevailing local ordinances, codes, and Federal laws.

## **23.SP Contractor's Contact Persons**

The Contractor shall provide the name and mobile phone number of at least two (2) people to be contacted in case of emergencies at the work site during non-working hours. The contact people must be qualified and have the authority to make decisions on behalf of the Contractor. There must be at least one (1) contact person on-call and available to be at the site within one (1) hour. This item is to be considered incidental to the project and no additional or separate payment will be made.

The Contractor shall provide the name of the Project Manager. This person will be the Contractor's representative to whom the Engineer and Owner shall address all relevant correspondence or communications. The Contractor shall not change the Project Manager without approval of the Engineer and/or Owner.

The names of the Project Manager and the two (2) Emergency Contact Persons shall be provided at the Preconstruction Conference.

## **24.SP Safety Plan Compliance Document (SPCD)**

### Introduction:

The Contractor is responsible for compliance with FAA Advisory Circular (AC) 150/5370-2G, *Operational Safety on Airports During Construction* and the project Construction Safety and Phasing Plan (CSPP) and is responsible for preparing a project specific Safety Plan Compliance Document (SPCD) describing their plan for said compliance.

### Definitions and References:

*AC 150/5370-2G – Operational Safety on Airports During Construction*

This FAA Advisory Circular document outlines the responsibilities and requirements for CSPPs and SPCDs, as well as operational safety requirements. A copy is attached as an appendix to these specifications.

*CSPP – Construction Safety & Phasing Plan*

This Owner document is prepared in accordance with AC 150/5370-2G and outlines the project specific requirements for airfield operational safety, work area milestones, and sequencing during construction of the project. It is a project specific document that is prepared by the Owner. A copy is attached as an appendix to these specifications.

*SPCD – Safety Plan Compliance Document*

This Contractor document is prepared in accordance with AC 150/5370-2G and outlines the specific methods and actions to be taken by the Contractor to ensure compliance with the CSPP. The Contractor is

responsible for developing a project specific SPCD and submitting it to the Owner for review prior to the start of construction. The document shall include the items listed in AC 150/5370-2G, Chapter 2.4.2.

Summary:

The Contractor is responsible for complying with AC 150/5370-2G, the Owner prepared CSPP, and the Contractor prepared SPCD.

In accordance with the contract documents, jobsite safety is the sole responsibility of the Contractor. The Engineer is not responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions incident thereto. In reviewing any documents prepared by the Contractor, neither the Owner nor Engineer are assuming any responsibility for jobsite safety.

No separate measurement of payments shall be made for completion of the SPCD, or compliance with the noted three documents.

## **25.SP Shop Drawings and Samples**

The Contractor shall review and approve all shop drawings and submittals for conformance to the contract documents before submittal to the Engineer. After reviewing the plans and specifications and/or verifying all field measurements, the Contractor shall submit to the Engineer for review and approval copies of all shop drawings, certificates, and samples. These drawings shall bear a stamp or specific written indication that the Contractor has satisfied the Contractor's responsibilities under the Contract Documents with respect to the review of the submission. The Contractor shall certify the following by placing a stamp or specific written indication on the shop drawings.

*"This shop drawing has been reviewed by NAME OF CONTRACTOR and approved with respect to the means, methods, techniques, sequences, procedures of construction, safety precautions and programs incidental thereto. NAME OF CONTRACTOR also warrants that this shop drawing complies with the contract documents and comprises no variations thereto, unless noted below."*

*"NAME OF CONTRACTOR certifies that this shop drawing complies with Buy American requirements as established under 49 USC Section 50101. Steel products must be 100% U.S. domestic product Manufactured Products. Preference shall be given to products that are 100% manufactured and assembled in the U.S. Manufactured products not meeting the 100% U.S. domestic preference may only be used on the project if the FAA has officially granted a permissible waiver to Buy American Preferences."*

All submissions shall be identified as the Engineer may require. The data shown on the shop drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Engineer to review the information.

The Contractor shall also submit to the Engineer for review and approval with such promptness as to cause no delay in work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that the Contractor has satisfied the Contractor's responsibilities under the Contract Documents with respect to the review of the submission and shall be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

Before submission of each shop drawing or sample, the Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each shop drawing or sample with other shop drawings and samples and with the requirements of the work and the Contract Documents.

At the time of each submission, the Contractor shall give the Engineer specific written notice of each variation that the shop drawings or samples may have from the requirements of the Contract Documents,

and, in addition, shall cause a specific notation to be made on each shop drawing submitted to the Engineer for review and approval of each such variation.

For each shop drawing or sample submittal, the Contractor shall utilize a cover sheet similar in format and content to the "Sample Submittal Form" attached as an appendix to these specifications.

The Engineer will review with reasonable promptness, shop drawings and samples, but the Engineer's review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. The Contractor shall make corrections required by the Engineer and shall return the required number of corrected copies of shop drawings and submit as required new samples for review and approval. The Contractor shall direct specific attention, in writing, to revisions other than the corrections called for by the Engineer on previous submittals.

The Engineer's review of the shop drawings or samples shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Contractor has, in writing, called the Engineer's attention to each such variation at the time of submission and the Engineer has given written concurrence of each such variation by a specific written notation thereof, incorporated in, or accompanying the shop drawings or sample approval; nor will any review by the Engineer relieve the Contractor from responsibility for errors or omissions in the shop drawings.

Where a shop drawing or sample is required by the Specifications, any related work performed prior to the Engineer's review of the pertinent submission will be the sole expense and responsibility of the Contractor.

The Contractor shall submit shop drawings electronically, via the Engineers Newforma/Info Exchange site.

Contractor shall submit electronic versions of each individual submittal to the Engineer in a printable PDF format. Submittals that are larger than 11x17 shall be submitted with one hard copy in addition to the electronic version. Formatting of the PDF drawings shall be of the same size as the hard copy submittal.

The Contractor will be provided access to the Engineer's secured project hosting site (Newforma) via a personalized password protected account. This site utilizes a web browser interface that requires internet access, and an individual email account. The Engineer will provide the Contractor with submittal protocol and process documentation for the hosting site when the account information is verified and configured by the Engineer.

The Engineer will return submittals electronically in PDF format.

The Contractor shall furnish one hard copy of each individual approved submittal as part of the final bound Operations and Maintenance Manuals, prior to the Final Inspection.

## **26.SP Subgrade Drainage**

Subgrades and construction areas are highly susceptible to damage from intrusion of surface water. Surface water should not be allowed to collect in or on prepared subgrades during or after construction. The Contractor shall be responsible for protection of the subgrade from standing water by constructing drainage ditches or by grading the site to sheet flow towards natural or artificial drainage features. Excavated areas should be sloped toward one corner to facilitate removal of any collected rainwater, groundwater, or surface water. Subgrades should be crowned or sloped to prevent collection of water and a means of escape provided for runoff. Subgrades shall be sealed with a smooth-drum roller, or covered with a mud-mat of lean concrete or other easily removable materials if the possibility of precipitation



arises. Positive site drainage should be provided throughout the construction area to reduce infiltration of surface water around the perimeter of the site.

Subgrade repairs or undercut resulting from the Contractor's failure to provide positive site drainage shall be the responsibility of the Contractor and shall be completed as ordered by the Engineer at no cost to the Owner.

### **27.SP De-Watering During Construction**

The Contractor shall provide de-watering during construction. All impounded water required to be pumped shall be pumped to the nearest acceptable receiving inlet or ditch and not allowed to discharge across pavement. Sediment shall be filtered as necessary to meet local requirements. All de-watering costs shall be considered incidental to the project. Saturated subgrade or subbase materials shall be recompacted as required by the specifications prior to placing subsequent pavement layers.

### **28.SP Contract Time**

The contract time shall be as specified on the contract documents plans.

### **29.SP Liquidated Damages**

Liquidated damages for failure to complete the project within the allotted contract time shall be as specified on the contract documents plans.

### **30.SP Submittals Schedule**

The Contractor shall submit a detailed listing of all submittals and shop drawings required by the technical specifications. The listing can be developed in a spreadsheet format and shall include:

- Specification item number
- Item description
- Description of submittal
- Specification paragraph requiring submittal
- Scheduled date of submittal

### **31.SP Documentation**

The Contractor shall maintain daily records of all work, inspections, and tests performed. These records shall include a summary of the work performed and factual evidence that the required inspections or tests (as applicable) have been performed, including type and number of inspections or tests involved; results of inspections or tests; nature of defects, deviation, causes for rejection, etc.; proposed remedial action; and corrective action.

These records must cover both conforming and defective or deficient features and must include a statement that all supplies and materials incorporated in the work are in full compliance with the terms of the contract. Legible copies of these records shall be furnished to the Engineer daily. The records shall cover all work placed subsequent to the previously furnished records and shall be verified and signed by the Contractor's Project Superintendent.

### **32.SP Bidders Notice**

Bidders are hereby notified and agree by submission of their bid that should, after award of the contract, additional items not listed in the bid become necessary and require unit prices not established by their bid, that the unit prices of such items shall be negotiated and shall be directly proportional to the established unit prices of similar bid items.

### **33.SP Contractor's Application for Payment Form**

The Engineer shall provide to the Contractor the format to complete the Contractor's Application for Payment to submit for payment. At a minimum, the form shall include the following:

- Name of Project
- Name and address of Owner
- Name and address of Contractor
- Application number and date
- Applicable Project Numbers (Owner, Engineer, Contractor, etc.)
- Original contract amount
- Sum of approved change orders
- Total value of work completed to date
- Total value of materials stored on hand in accordance with Section 90-07 of the Specifications
- Amount retained in accordance with Section 90-06 of the Specifications
- Total amount earned to date
- Total amount received to date
- Amount currently due
- Balance to finish
- Contractor's Certification
- Line item for each bid item from the Bid Proposal with the following included:
  - Item No.
  - Specification No.
  - Description
  - Unit
  - Unit Price
  - Contract Quantity
  - Quantity this Request
  - Quantity to Date
  - Amount this Request
  - Amount to Date
- Total DBE participation to date
- Total DBE participation current application
- Signature blocks for the Contractor, Resident Project Representative (as applicable), and Engineer

### **END OF SPECIAL PROVISIONS**

**Page Intentionally Blank**



## Part 2 – General Construction Items

### Item C-102 Temporary Air and Water Pollution, Soil Erosion, and Siltation Control

#### DESCRIPTION

**102-1.1** This item shall consist of temporary control measures as shown on the plans or as ordered by the Engineer during the life of a contract to control pollution of air and water, soil erosion, and siltation through the use of silt fences, berms, dikes, dams, sediment basins, fiber mats, gravel, mulches, grasses, slope drains, and other erosion control devices or methods.

Temporary erosion control shall be in accordance with the approved erosion control plan; the approved Construction Safety and Phasing Plan (CSPP) (where applicable) and *AC 150/5370-2, Operational Safety on Airports During Construction*. The temporary erosion control measures contained herein shall be coordinated with the permanent erosion control measures specified as part of this contract to the extent practical to assure economical, effective, and continuous erosion control throughout the construction period.

Temporary control may include work outside the construction limits such as borrow pit operations, equipment and material storage sites, waste areas, and temporary plant sites.

Temporary control measures shall be designed, installed and maintained to minimize the creation of wildlife attractants that have the potential to attract hazardous wildlife on or near public-use airports.

#### MATERIALS

**102-2.1 Grass.** Grass that will not compete with the grasses sown later for permanent cover per Item T-901 shall be a quick-growing species (such as ryegrass, Italian ryegrass, or cereal grasses) suitable to the area providing a temporary cover. Selected grass species shall not create a wildlife attractant.

**102-2.2 Mulches.** Mulches may be hay, straw, fiber mats, netting, bark, wood chips, or other suitable material reasonably clean and free of noxious weeds and deleterious materials per Item T-908. Mulches shall not create a wildlife attractant.

**102-2.3 Fertilizer.** Fertilizer shall be a standard commercial grade and shall conform to all federal and state regulations and to the standards of the Association of Official Agricultural Chemists.

**102-2.4 Slope drains.** Slope drains may be constructed of pipe, fiber mats, rubble, concrete, asphalt, or other materials that will adequately control erosion.

**102-2.5 Silt fence.** Silt fence shall consist of polymeric filaments which are formed into a stable network such that filaments retain their relative positions. Synthetic filter fabric shall contain ultraviolet ray inhibitors and stabilizers to provide a minimum of six months of expected usable construction life. Silt fence shall meet the requirements of ASTM D6461.

**102-2.6 Other.** All other materials shall meet commercial grade standards and shall be approved by the Engineer before being incorporated into the project.

## CONSTRUCTION REQUIREMENTS

**102-3.1 General.** In the event of conflict between these requirements and pollution control laws, rules, or regulations of other federal, state, or local agencies, the more restrictive laws, rules, or regulations shall apply.

The Engineer shall be responsible for assuring compliance to the extent that construction practices, construction operations, and construction work are involved.

**102-3.2 Schedule.** Prior to the start of construction, the Contractor shall submit schedules in accordance with the approved Construction Safety and Phasing Plan (CSPP) (where applicable) and the plans for accomplishment of temporary and permanent erosion control work for clearing and grubbing; grading; construction; paving; and structures at watercourses. The Contractor shall also submit a proposed method of erosion and dust control on haul roads and borrow pits and a plan for disposal of waste materials. Work shall not be started until the erosion control schedules and methods of operation for the applicable construction have been accepted by the Engineer.

**102-3.3 Construction details.** The Contractor will be required to incorporate all permanent erosion control features into the project at the earliest practicable time as outlined in the plans and approved CSPP. Except where future construction operations will damage slopes, the Contractor shall perform the permanent seeding and mulching and other specified slope protection work in stages, as soon as substantial areas of exposed slopes can be made available. Temporary erosion and pollution control measures will be used to correct conditions that develop during construction that were not foreseen during the design stage; that are needed prior to installation of permanent control features; or that are needed temporarily to control erosion that develops during normal construction practices but are not associated with permanent control features on the project.

Where erosion may be a problem, schedule and perform clearing and grubbing operations so that grading operations and permanent erosion control features can follow immediately if project conditions permit. Temporary erosion control measures are required if permanent measures cannot immediately follow grading operations. The Engineer shall limit the area of clearing and grubbing, excavation, borrow, and embankment operations in progress, commensurate with the Contractor's capability and progress in keeping the finish grading, mulching, seeding, and other such permanent control measures current with the accepted schedule. If seasonal limitations make such coordination unrealistic, temporary erosion control measures shall be taken immediately to the extent feasible and justified as directed by the Engineer.

The Contractor shall provide immediate permanent or temporary pollution control measures to minimize contamination of adjacent streams or other watercourses, lakes, ponds, or other areas of water impoundment as directed by the Engineer. If temporary erosion and pollution control measures are required due to the Contractor's negligence, carelessness, or failure to install permanent controls as a part of the work as scheduled or directed by the Engineer, the work shall be performed by the Contractor and the cost shall be incidental to this item.

The Engineer may increase or decrease the area of erodible earth material that can be exposed at any time based on an analysis of project conditions.

The erosion control features installed by the Contractor shall be maintained by the Contractor during the construction period.

Provide temporary structures whenever construction equipment must cross watercourses at frequent intervals. Pollutants such as fuels, lubricants, bitumen, raw sewage, wash water from concrete mixing operations, and other harmful materials shall not be discharged into any waterways, impoundments or into natural or manmade channels.

**102-3.4 Installation, maintenance and removal of silt fence.** Silt fences shall extend a minimum of 16 inches (41 cm) and a maximum of 34 inches (86 cm) above the ground surface. Posts shall be set no more than 10 feet (3 m) on center. Filter fabric shall be cut from a continuous roll to the length required minimizing joints where possible. When joints are necessary, the fabric shall be spliced at a support post with a minimum 12-inch (300-mm) overlap and securely sealed. A trench shall be excavated approximately 4 inches (100 mm) deep by 4 inches (100 mm) wide on the upslope side of the silt fence. The trench shall be backfilled and the soil compacted over the silt fence fabric. The Contractor shall remove and dispose of silt that accumulates during construction and prior to establishment of permanent erosion control. The fence shall be maintained in good working condition until permanent erosion control is established. Silt fence shall be removed upon approval of the Engineer.

### **METHOD OF MEASUREMENT**

**102-4.1** All items included in this section are incidental to the pay items defined in Specification L-126 and shall not be separately measured.

### **BASIS OF PAYMENT**

**102-5.1** Payment for all items in this section is incidental to the pay items defined in Specification L-126.

### **REFERENCES**

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

#### **Advisory Circulars (AC)**

AC 150/5200-33 Hazardous Wildlife Attractants on or Near Airports

AC 150/5370-2 Operational Safety on Airports During Construction

#### **ASTM International (ASTM)**

ASTM D6461 Standard Specification for Silt Fence Materials

#### **United States Department of Agriculture (USDA)**

FAA/USDA Wildlife Hazard Management at Airports, A Manual for Airport Personnel

### **END OF ITEM C-102**

**Page Intentionally Blank**

## Item C-105 Mobilization

### DESCRIPTION

**105-1 Description.** This item of work shall consist of, but is not limited to, work and operations necessary for the movement of personnel, equipment, material and supplies to and from the project site for work on the project except as provided in the contract as separate pay items.

**105-2 Mobilization limit.** Mobilization shall be limited to 20 percent of the total project cost. THE MOBILIZATION AMOUNT SHALL BE DOCUMENTED IN ACCORDANCE WITH THE SPECIAL PROVISIONS. ANY MOBILIZATION COSTS OVER THE STATED PERCENTAGE WILL BE PAID FOR ON AN AS-INCURRED BASIS. ANY NON-INCURRED COSTS WILL NOT BE PAID.

**105-3 Posted notices.** Prior to commencement of construction activities, the Contractor must post the following documents in a prominent and accessible place where they may be easily viewed by all employees of the prime Contractor and by all employees of subcontractors engaged by the prime Contractor: Equal Employment Opportunity (EEO) Poster “Equal Employment Opportunity is the Law” in accordance with the Office of Federal Contract Compliance Programs Executive Order 11246, as amended; Davis Bacon Wage Poster (WH 1321) - DOL “Notice to All Employees” Poster; and Applicable Davis-Bacon Wage Rate Determination. These notices must remain posted until final acceptance of the work by the Owner.

**105-4 Engineer/RPR field office.** This item is not required.

### METHOD OF MEASUREMENT

**105-5 Basis of measurement and payment.** Based upon the contract lump sum price for “Mobilization” partial payments will be allowed as follows:

- a. With first pay request, 25%.
- b. When 25% or more of the original contract is earned, an additional 25%.
- c. When 50% or more of the original contract is earned, an additional 40%.
- d. After Final Inspection, Staging area clean-up and delivery of all Project Closeout materials as required by Section 90, or as otherwise noted, the final 10%.

### BASIS OF PAYMENT

**105-6 Payment will be made under:**

Item C-105 Mobilization (Airport)

**REFERENCES**

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

Office of Federal Contract Compliance Programs (OFCCP)

Executive Order 11246, as amended

EEOC-P/E-1 – Equal Employment Opportunity is the Law Poster

United States Department of Labor, Wage and Hour Division (WHD)

WH 1321 – Employee Rights under the Davis-Bacon Act Poster

**END OF ITEM C-105**

## Part 3 – Sitework

### Item P-152 Excavation, Subgrade, and Embankment

#### DESCRIPTION

**152-1.1** This item covers excavation, disposal, placement, and compaction of all materials within the limits of the work required to construct safety areas, runways, taxiways, aprons, and intermediate areas as well as other areas for drainage, building construction, parking, or other purposes in accordance with these specifications and in conformity to the dimensions and typical sections shown on the plans.

**152-1.2 Classification.** All material excavated shall be classified as defined below:

**a. Unclassified Excavation.** Unclassified excavation shall consist of the excavation and disposal of all material, regardless of its nature.

**152-1.3 Unsuitable excavation.** Unsuitable material shall be disposed in designated waste areas as shown on the plans. Materials containing vegetable or organic matter, such as muck, peat, organic silt, or sod shall be considered unsuitable for use in embankment construction. Material suitable for topsoil may be used on the embankment slope when approved by the Engineer.

#### CONSTRUCTION METHODS

**152-2.1 General.** Before beginning excavation, grading, and embankment operations in any area, the area shall be cleared or cleared and grubbed in accordance with Item P-151.

The suitability of material to be placed in embankments shall be subject to approval by the Engineer. All unsuitable material shall be disposed of in waste areas as shown on the plans. All waste areas shall be graded to allow positive drainage of the area and adjacent areas. The surface elevation of waste areas shall be specified on the plans or approved by the Engineer.

When the Contractor's excavating operations encounter artifacts of historical or archaeological significance, the operations shall be temporarily discontinued and the Engineer notified per Section 70, paragraph 70-20. At the direction of the Engineer, the Contractor shall excavate the site in such a manner as to preserve the artifacts encountered and allow for their removal. Such excavation will be paid for as extra work.

Areas outside the limits of the pavement areas where the top layer of soil has become compacted by hauling or other Contractor activities shall be scarified and disked to a depth of 4 inches (100 mm), to loosen and pulverize the soil. Stones or rock fragments larger than 4 inches (100 mm) in their greatest dimension will not be permitted in the top 6 inches (150 mm) of the subgrade.

If it is necessary to interrupt existing surface drainage, sewers or under-drainage, conduits, utilities, or similar underground structures, the Contractor shall be responsible for and shall take all necessary precautions to preserve them or provide temporary services. When such facilities are encountered, the Contractor shall notify the Engineer, who shall arrange for their removal if necessary. The Contractor, at their own expense, shall satisfactorily repair or pay the cost of all damage to such facilities or structures that may result from any of the Contractor's operations during the period of the contract.

**a. Blasting.** Blasting shall not be allowed.

**152-2.2 Excavation.** No excavation shall be started until the work has been staked out by the Contractor, and the Engineer has obtained from the Contractor the survey notes of the elevations and measurements of the ground surface. The Contractor and Engineer shall agree that the original ground lines shown on the original topographic mapping are accurate, or agree to any adjustments made to the original ground lines.

All areas to be excavated shall be stripped of vegetation and topsoil. Topsoil shall be stockpiled for future use in areas designated on the plans or by the Engineer. All suitable excavated material shall be used in the formation of embankment, subgrade, or other purposes as shown on the plans. All unsuitable material shall be disposed of as shown on the plans.

The grade shall be maintained so that the surface is well drained at all times.

When the volume of the excavation exceeds that required to construct the embankments to the grades as indicated on the plans, the excess shall be used to grade the areas of ultimate development or disposed as directed by the Engineer. When the volume of excavation is not sufficient for constructing the embankments to the grades indicated, the deficiency shall be obtained from borrow areas.

**a. Selective grading.** When selective grading is indicated on the plans, the more suitable material designated by the Engineer shall be used in constructing the embankment or in capping the pavement subgrade. If, at the time of excavation, it is not possible to place this material in its final location, it shall be stockpiled in approved areas until it can be placed. The more suitable material shall then be placed and compacted as specified. Selective grading shall be considered incidental to the work involved. The cost of stockpiling and placing the material shall be included in the various pay items of work involved.

**b. Undercutting.** Rock, shale, hardpan, loose rock, boulders, or other material unsatisfactory for safety areas, subgrades, roads, shoulders, or any areas intended for turf shall be excavated to a minimum depth of 12 inches (300 mm) below the subgrade or to the depth specified by the Engineer. Muck, peat, matted roots, or other yielding material, unsatisfactory for subgrade foundation, shall be removed to the depth specified. Unsuitable materials shall be disposed of at locations shown on the plans. This excavated material shall be paid for at the contract unit price per cubic yard for "Unclassified Excavation." The excavated area shall be backfilled with suitable material obtained from the grading operations or borrow areas and compacted to specified densities. The necessary backfill will constitute a part of the embankment. Where rock cuts are made, backfill with select material. Any pockets created in the rock surface shall be drained in accordance with the details shown on the plans. Undercutting will be paid as Unclassified Excavation.

**c. Over-break.** Over-break, including slides, is that portion of any material displaced or loosened beyond the finished work as planned or authorized by the Engineer. All over-break shall be graded or removed by the Contractor and disposed of as directed by the Engineer. The Engineer shall determine if the displacement of such material was unavoidable and their own decision shall be final. Payment will not be made for the removal and disposal of over-break that the Engineer determines as avoidable. Unavoidable over-break will be classified as "Unclassified Excavation."

**d. Removal of utilities.** The removal of existing structures and utilities required to permit the orderly progress of work will be accomplished by the Contractor as indicated on the plans. All existing foundations shall be excavated at least 2 feet (60 cm) below the top of subgrade or as indicated on the plans, and the material disposed of as directed by the Engineer. All foundations thus excavated shall be backfilled with suitable material and compacted as specified for embankment or as shown on the plans.

**152-2.3 Borrow excavation.** Borrow areas are not required.

**152-2.4 Drainage excavation.** Drainage excavation shall consist of excavating drainage ditches including intercepting, inlet, or outlet ditches; or other types as shown on the plans. The work shall be performed in



sequence with the other construction. Ditches shall be constructed prior to starting adjacent excavation operations. All satisfactory material shall be placed in embankment fills; unsuitable material shall be placed in designated waste areas or as directed by the Engineer. All necessary work shall be performed true to final line, elevation, and cross-section. The Contractor shall maintain ditches constructed on the project to the required cross-section and shall keep them free of debris or obstructions until the project is accepted.

**152-2.5 Preparation of cut areas or areas where existing pavement has been removed.** In those areas on which a subbase or base course is to be placed, the top 12 inches of subgrade shall be compacted to not less than 95% of maximum density for non-cohesive soils, and 95% of maximum density for cohesive soils as determined by ASTM D698. As used in this specification, "non-cohesive" shall mean those soils having a plasticity index (PI) of less than 3 as determined by ASTM D4318.

**152-2.6 Preparation of embankment area.** All sod and vegetative matter shall be removed from the surface upon which the embankment is to be placed. The cleared surface shall be broken up by plowing or scarifying to a minimum depth of 6 inches (150 mm) and shall then be compacted per paragraph 152-2.10.

Sloped surfaces steeper than one (1) vertical to four (4) horizontal shall be plowed, stepped, benched, or broken up so that the fill material will bond with the existing material. When the subgrade is part fill and part excavation or natural ground, the excavated or natural ground portion shall be scarified to a depth of 12 inches (300 mm) and compacted as specified for the adjacent fill.

No direct payment shall be made for the work performed under this section. The necessary clearing and grubbing and the quantity of excavation removed will be paid for under the respective items of work.

**152-2.7 Control Strip.** This item not required.

**152-2.8 Formation of embankments.** The material shall be constructed in lifts as established in the control strip, but not less than 6 inches (150 mm) nor more than 12 inches (300 mm) of compacted thickness.

When more than one lift is required to establish the layer thickness shown on the plans, the construction procedure described here shall apply to each lift. No lift shall be covered by subsequent lifts until tests verify that compaction requirements have been met. The Contractor shall rework, re-compact and retest any material placed which does not meet the specifications.

The lifts shall be placed, to produce a soil structure as shown on the typical cross-section or as directed by the Engineer. Materials such as brush, hedge, roots, stumps, grass and other organic matter, shall not be incorporated or buried in the embankment.

Earthwork operations shall be suspended at any time when satisfactory results cannot be obtained due to rain, freezing, or other unsatisfactory weather conditions in the field. Frozen material shall not be placed in the embankment nor shall embankment be placed upon frozen material. Material shall not be placed on surfaces that are muddy, frozen, or contain frost. The Contractor shall drag, blade, or slope the embankment to provide surface drainage at all times.

The material in each lift shall be within  $\pm 2\%$  of optimum moisture content before rolling to obtain the prescribed compaction. The material shall be moistened or aerated as necessary to achieve a uniform moisture content throughout the lift. Natural drying may be accelerated by blending in dry material or manipulation alone to increase the rate of evaporation.

The Contractor shall make the necessary corrections and adjustments in methods, materials or moisture content to achieve the specified embankment density.

The Engineer will take samples of excavated materials which will be used in embankment for testing and develop a Moisture-Density Relations of Soils Report (Proctor) in accordance with ASTM D698. A new Proctor shall be developed for each soil type based on visual classification.

Density tests will be taken by the Engineer for every 100 square yards of compacted embankment for each lift which is required to be compacted, or other appropriate frequencies as determined by the Engineer.

If the material has greater than 30% retained on the 3/4-inch (19.0 mm) sieve, follow AASHTO T-180 Annex Correction of maximum dry density and optimum moisture for oversized particles.

Rolling operations shall be continued until the embankment is compacted to not less than 95% of maximum density for non-cohesive soils, and 95% of maximum density for cohesive soils as determined by ASTM D698. Under all areas to be paved, the embankments shall be compacted to a depth of 12 inches and to a density of not less than 95%% of the maximum density as determined by ASTM D698. As used in this specification, "non-cohesive" shall mean those soils having a plasticity index (PI) of less than 3 as determined by ASTM D4318.

On all areas outside of the pavement areas, no compaction will be required on the top 4 inches which shall be prepared for a seedbed in accordance with Item T-901.

The in-place field density shall be determined in accordance with ASTM D6938 using Procedure A, the direct transmission method, and ASTM D6938 shall be used to determine the moisture content of the material. The machine shall be calibrated in accordance with ASTM D6938. The Engineer shall perform all density tests. If the specified density is not attained, the area represented by the test or as designated by the Engineer shall be reworked and/or re-compacted and additional random tests made. This procedure shall be followed until the specified density is reached.

Compaction areas shall be kept separate, and no lift shall be covered by another lift until the proper density is obtained.

During construction of the embankment, the Contractor shall route all construction equipment evenly over the entire width of the embankment as each lift is placed. Lift placement shall begin in the deepest portion of the embankment fill. As placement progresses, the lifts shall be constructed approximately parallel to the finished pavement grade line.

When rock, concrete pavement, asphalt pavement, and other embankment material are excavated at approximately the same time as the subgrade, the material shall be incorporated into the outer portion of the embankment and the subgrade material shall be incorporated under the future paved areas. Stones, fragmentary rock, and recycled pavement larger than 4 inches (100 mm) in their greatest dimensions will not be allowed in the top 12 inches (300 mm) of the subgrade. Rockfill shall be brought up in lifts as specified or as directed by the Engineer and the finer material shall be used to fill the voids forming a dense, compact mass. Rock, cement concrete pavement, asphalt pavement, and other embankment material shall not be disposed of except at places and in the manner designated on the plans or by the Engineer.

When the excavated material consists predominantly of rock fragments of such size that the material cannot be placed in lifts of the prescribed thickness without crushing, pulverizing or further breaking down the pieces, such material may be placed in the embankment as directed in lifts not exceeding 2 feet (60 cm) in thickness. Each lift shall be leveled and smoothed with suitable equipment by distribution of spalls and finer fragments of rock. The lift shall not be constructed above an elevation 4 feet (1.2 m) below the finished subgrade.

Payment for compacted embankment will be made under embankment in-place, and no payment will be made for excavation, borrow, or other items.

**152-2.9 Proof rolling.** The purpose of proof rolling the subgrade is to identify any weak areas in the subgrade and not for compaction of the subgrade. Before start of embankment and after compaction is completed, the subgrade area shall be proof rolled with a 20-ton Tandem axle Dual Wheel Dump Truck loaded to the legal limit with tires inflated to 100 psi in the presence of the Engineer. Apply a minimum of 2 coverages, or as specified by the Engineer, under pavement areas. A coverage is defined as the application of one tire print over the designated area. Soft areas of subgrade that deflect more than 1 inch (25 mm) or show permanent deformation greater than 1 inch (25 mm) shall be removed and replaced with suitable material or reworked to conform to the moisture content and compaction requirements in accordance with these specifications. Removal and replacement of soft areas is incidental to this item.

**152-2.10 Compaction requirements.** The subgrade under areas to be paved shall be compacted to a depth of 12 inches and to a density of not less than 95% of the maximum dry density as determined by ASTM D698. The subgrade in areas outside the limits of the pavement areas shall be compacted to a depth of 12 inches and to a density of not less than 95% of the maximum density as determined by ASTM D698.

The material to be compacted shall be within  $\pm 2\%$  of optimum moisture content before being rolled to obtain the prescribed compaction (except for expansive soils). When the material has greater than 30 percent retained on the  $\frac{3}{4}$  inch (19.0 mm) sieve, follow the methods in ASTM D698. Tests for moisture content and compaction will be taken at a minimum of 100 square yards of subgrade. All quality assurance testing shall be done by the Engineer.

The in-place field density shall be determined in accordance with ASTM D6938 using Procedure A, the direct transmission method, and ASTM D6938 shall be used to determine the moisture content of the material. The machine shall be calibrated in accordance with ASTM D6938 within 12 months prior to its use on this contract. The gage shall be field standardized daily.

Maximum density refers to maximum dry density at optimum moisture content unless otherwise specified.

If the specified density is not attained, the entire lot shall be reworked and/or re-compacted and additional random tests made. This procedure shall be followed until the specified density is reached.

All cut-and-fill slopes shall be uniformly dressed to the slope, cross-section, and alignment shown on the plans or as directed by the Engineer and the finished subgrade shall be maintained.

**152-2.11 Finishing and protection of subgrade.** Finishing and protection of the subgrade is incidental to this item. Grading and compacting of the subgrade shall be performed so that it will drain readily. All low areas, holes or depressions in the subgrade shall be brought to grade. Scarifying, blading, rolling and other methods shall be performed to provide a thoroughly compacted subgrade shaped to the lines and grades shown on the plans. All ruts or rough places that develop in the completed subgrade shall be graded, re-compacted, and retested. The Contractor shall protect the subgrade from damage and limit hauling over the finished subgrade to only traffic essential for construction purposes.

The Contractor shall maintain the completed course in satisfactory condition throughout placement of subsequent layers. No subbase, base, or surface course shall be placed on the subgrade until the subgrade has been accepted by the Engineer.

**152-2.12 Haul.** All hauling will be considered a necessary and incidental part of the work. The Contractor shall include the cost in the contract unit price for the pay of items of work involved. No payment will be made separately or directly for hauling on any part of the work.

The Contractor's equipment shall not cause damage to any excavated surface, compacted lift or to the subgrade as a result of hauling operations. Any damage caused as a result of the Contractor's hauling operations shall be repaired at the Contractor's expense.

The Contractor shall be responsible for providing, maintaining and removing any haul roads or routes within or outside of the work area, and shall return the affected areas to their former condition, unless otherwise authorized in writing by the Owner. No separate payment will be made for any work or materials associated with providing, maintaining and removing haul roads or routes.

**152-2.13 Surface Tolerances.** In those areas on which a subbase or base course is to be placed, the surface shall be tested for smoothness and accuracy of grade and crown. Any portion lacking the required smoothness or failing in accuracy of grade or crown shall be scarified to a depth of at least 3 inches (75 mm), reshaped and re-compacted to grade until the required smoothness and accuracy are obtained and approved by the Engineer. The Contractor shall perform all final smoothness and grade checks in the presence of the Engineer. Any deviation in surface tolerances shall be corrected by the Contractor at the Contractor's expense.

**a. Smoothness.** The finished surface shall not vary more than  $\pm \frac{1}{2}$  inch (12 mm) when tested with a 12-foot (3.7-m) straightedge applied parallel with and at right angles to the centerline. The straightedge shall be moved continuously forward at half the length of the 12-foot (3.7-m) straightedge for the full length of each line on a 50-foot (15-m) grid.

**b. Grade.** The grade and crown shall be measured on a 50-foot (15-m) grid and shall be within  $\pm 0.05$  feet (15 mm) of the specified grade.

On safety areas, turfed areas and other designated areas within the grading limits where no subbase or base is to be placed, grade shall not vary more than 0.10 feet (30 mm) from specified grade. Any deviation in excess of this amount shall be corrected by loosening, adding or removing materials, and reshaping.

**152-2.14 Topsoil.** When topsoil is specified or required as shown on the plans or under Item T-905, it shall be salvaged from stripping or other grading operations. The topsoil shall meet the requirements of Item T-905. If, at the time of excavation or stripping, the topsoil cannot be placed in its final section of finished construction, the material shall be stockpiled at approved locations. Stockpiles shall be located as shown on the plans and the approved CSPP, and shall not be placed on areas that subsequently will require any excavation or embankment fill. If, in the judgment of the Engineer, it is practical to place the salvaged topsoil at the time of excavation or stripping, the material shall be placed in its final position without stockpiling or further re-handling.

Upon completion of grading operations, stockpiled topsoil shall be handled and placed as shown on the plans and as required in Item T-905. Topsoil shall be paid for as provided in Item T-905. No direct payment will be made for topsoil under Item P-152.

## METHOD OF MEASUREMENT

**152-3.1** All items included in this section are incidental to the pay items defined in Specification L-126 and shall not be separately measured.

## BASIS OF PAYMENT

**152-4.1 Excavation.** Payment for all items in this section is incidental to the pay items defined in Specification L-126.

**152-4.2 Embankment.** Payment for all items in this section is incidental to the pay items defined in Specification L-126.

## REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

### American Association of State Highway and Transportation Officials (AASHTO)

AASHTO T-180      Standard Method of Test for Moisture-Density Relations of Soils Using a 4.54-kg (10-lb) Rammer and a 457-mm (18-in.) Drop

### ASTM International (ASTM)

ASTM D698      Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft<sup>3</sup> (600 kN-m/m<sup>3</sup>))

ASTM D1556      Standard Test Method for Density and Unit Weight of Soil in Place by the Sand-Cone Method

ASTM D1557      Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft<sup>3</sup> (2700 kN-m/m<sup>3</sup>))

ASTM D6938      Standard Test Methods for In-Place Density and Water Content of Soil and Soil-Aggregate by Nuclear Methods (Shallow Depth)

### Advisory Circulars (AC)

AC 150/5370-2      Operational Safety on Airports During Construction

### Software

FAARFIELD – FAA Rigid and Flexible Iterative Elastic Layered Design

### U.S. Department of Transportation

FAA RD-76-66      Design and Construction of Airport Pavements on Expansive Soils

## END OF ITEM P-152

**Page Intentionally Blank**

## **Part 9 – Miscellaneous**

### **ITEM M-103 CLOSED RUNWAY OR TAXIWAY MARKERS**

#### **DESCRIPTION**

**103-1.1** Closed runway and taxiway markers shall be installed and maintained at the time and location indicated on the plans, or when ordered by the Engineer. The markers shall remain in place and clearly visible until the runway or taxiway is operational. The Contractor shall make a frequent inspection of the markers and make prompt repairs, as necessary.

#### **MATERIALS**

**103-2.1 Lighted Portable (Mobile) Closed Runway Markers.** Lighted portable (mobile) closed runway markers shall be furnished by the Contractor. Markers shall be in accordance with AC 150/5345-55, “Specification for L-893, Lighted Visual Aid to Indicate Temporary Runway Closure” and shall be operated and maintained by the Contractor.

**103-2.2 Closed Taxiway Markers.** Closed taxiway markers may be constructed of plywood, lumber, cloth, plastic, or other satisfactory material as approved by the Engineer and secured to the pavement with sandbags or other method approved by the Engineer. The color shall be aviation yellow.

#### **METHOD OF MEASUREMENT**

**103-3.1** Closed taxiway and runway markers shall not be measured separately, and their cost shall be incidental to the total project.

#### **BASIS OF PAYMENT**

**103-4.1** Where this item is shown on the plans, the costs for procuring, placing, and relocating the markers shall be incidental to the total project.

#### **END OF ITEM M-103**

**Page Intentionally Blank**



## **ITEM M-107 AVIATION BARRICADES**

### **DESCRIPTION**

**107-1.1** Aviation barricades shall be furnished by the Contractor and placed and maintained as shown on the plans or as ordered by the Engineer. The aviation barricades shall be installed when ordered by the Engineer. The aviation barricades shall remain in-place, clearly visible, until ordered removed by the Engineer. Flashing or steady burning red lights shall be placed on the barricades for nighttime use. Aviation barricades shall be placed a maximum of four (4) feet apart.

### **MATERIALS**

**107-2.1** Materials shall be in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) or as shown on the plans.

### **METHOD OF MEASUREMENT**

**107-3.1** Aviation barricades shall not be measured separately, and their costs shall be incidental to the total project. No separate measurement will be made for relocation of the aviation barricades.

### **BASIS OF PAYMENT**

**107-4.1** Where this item is shown on the plans, the costs for procuring, placing, and relocating the barricades shall be incidental to the total project.

### **END OF ITEM M-107**

**Page Intentionally Blank**

## Part 12 – Turfing

### Item T-901 Seeding

#### DESCRIPTION

**901-1.1** This item shall consist of soil preparation, seeding, and fertilizing the areas shown on the plans or as directed by the Engineer in accordance with these specifications.

#### MATERIALS

**901-2.1 Seed.** The species and application rates of grass, legume, and cover-crop seed furnished shall be those stipulated herein. Seed shall conform to the requirements of Federal Specification JJJ-S-181, Federal Specification, Seeds, Agricultural.

Seed shall be furnished separately or in mixtures in standard containers labeled in conformance with the Agricultural Marketing Service (AMS) Seed Act and applicable state seed laws with the seed name, lot number, net weight, percentages of purity and of germination and hard seed, and percentage of maximum weed seed content clearly marked for each kind of seed. The Contractor shall furnish the Engineer duplicate signed copies of a statement by the vendor certifying that each lot of seed has been tested by a recognized laboratory for seed testing within six (6) months of date of delivery. This statement shall include: name and address of laboratory, date of test, lot number for each kind of seed, and the results of tests as to name, percentages of purity and of germination, and percentage of weed content for each kind of seed furnished, and, in case of a mixture, the proportions of each kind of seed. Wet, moldy, or otherwise damaged seed will be rejected.

Seeds shall be applied as follows:

#### Seed Properties and Rate of Application

Seed	Minimum Seed Purity (Percent)	Minimum Germination (Percent)	Rate of Application lb/acre (or lb/1,000 S.F.)
As identified on the plans.			

Seeding shall be performed during the period between May 1 and August 31 inclusive, unless otherwise approved by the Engineer.

**901-2.2 Lime.** Not required.

**901-2.3 Fertilizer.** Fertilizer shall be standard commercial fertilizers supplied separately or in mixtures containing the percentages of total nitrogen, available phosphoric acid, and water-soluble potash. They shall be applied at the rate and to the depth specified and shall meet the requirements of applicable state laws. They shall be furnished in standard containers with name, weight, and guaranteed analysis of contents clearly marked thereon. No cyanamide compounds or hydrated lime shall be permitted in mixed fertilizers.

The fertilizers may be supplied in one of the following forms:

- a. A dry, free-flowing fertilizer suitable for application by a common fertilizer spreader;
- b. A finely-ground fertilizer soluble in water, suitable for application by power sprayers; or

- c. A granular or pellet form suitable for application by blower equipment.

Fertilizers shall be a commercial fertilizer AS INDICATED IN THE PLANS and shall be spread at the rate AS SHOWN ON THE PLANS.

**901-2.4 Soil for repairs.** The soil for fill and topsoiling of areas to be repaired shall be at least of equal quality to that which exists in areas adjacent to the area to be repaired. The soil shall be relatively free from large stones, roots, stumps, or other materials that will interfere with subsequent sowing of seed, compacting, and establishing turf, and shall be approved by the Engineer before being placed.

## CONSTRUCTION METHODS

**901-3.1 Advance preparation and cleanup.** After grading of areas has been completed and before applying fertilizer and ground limestone, areas to be seeded shall be raked or otherwise cleared of stones larger than 2 inches (50 mm) in any diameter, sticks, stumps, and other debris that might interfere with sowing of seed, growth of grasses, or subsequent maintenance of grass-covered areas. If any damage by erosion or other causes has occurred after the completion of grading and before beginning the application of fertilizer and ground limestone, the Contractor shall repair such damage include filling gullies, smoothing irregularities, and repairing other incidental damage.

An area to be seeded shall be considered a satisfactory seedbed without additional treatment if it has recently been thoroughly loosened and worked to a depth of not less than 5 inches (125 mm) as a result of grading operations and, if immediately prior to seeding, the top 3 inches (75 mm) of soil is loose, friable, reasonably free from large clods, rocks, large roots, or other undesirable matter, and if shaped to the required grade.

When the area to be seeded is sparsely sodded, weedy, barren and unworked, or packed and hard, any grass and weeds shall first be cut or otherwise satisfactorily disposed of, and the soil then scarified or otherwise loosened to a depth not less than 5 inches (125 mm). Clods shall be broken and the top 3 inches (75 mm) of soil shall be worked into a satisfactory seedbed by discing, or by use of cultipackers, rollers, drags, harrows, or other appropriate means.

### **901-3.2 Dry application method.**

- a. **Liming.** Not required.

b. **Fertilizing.** Following advance preparations and cleanup fertilizer shall be uniformly spread at the rate that will provide not less than the minimum quantity stated in paragraph 901-2.3.

c. **Seeding.** Grass seed shall be sown at the rate specified in paragraph 901-2.1 immediately after fertilizing. The fertilizer and seed shall be raked within the depth range stated in the special provisions. Seeds of legumes, either alone or in mixtures, shall be inoculated before mixing or sowing, in accordance with the instructions of the manufacturer of the inoculant. When seeding is required at other than the seasons shown on the plans or in the special provisions, a cover crop shall be sown by the same methods required for grass and legume seeding.

d. **Rolling.** After the seed has been properly covered, the seedbed shall be immediately compacted by means of an approved lawn roller, weighing 40 to 65 pounds per foot (60 to 97 kg per meter) of width for clay soil (or any soil having a tendency to pack), and weighing 150 to 200 pounds per foot (223 to 298 kg per meter) of width for sandy or light soils.

### 901-3.3 Wet application method.

**a. General.** The Contractor may elect to apply seed and fertilizer (and lime, if required) by spraying them on the previously prepared seedbed in the form of an aqueous mixture and by using the methods and equipment described herein. The rates of application shall be as specified in the special provisions.

**b. Spraying equipment.** The spraying equipment shall have a container or water tank equipped with a liquid level gauge calibrated to read in increments not larger than 50 gallons (190 liters) over the entire range of the tank capacity, mounted so as to be visible to the nozzle operator. The container or tank shall also be equipped with a mechanical power-driven agitator capable of keeping all the solids in the mixture in complete suspension at all times until used.

The unit shall also be equipped with a pressure pump capable of delivering 100 gallons (380 liters) per minute at a pressure of 100 lb / sq inches (690 kPa). The pump shall be mounted in a line that will recirculate the mixture through the tank whenever it is not being sprayed from the nozzle. All pump passages and pipe lines shall be capable of providing clearance for 5/8 inch (16 mm) solids. The power unit for the pump and agitator shall have controls mounted so as to be accessible to the nozzle operator. There shall be an indicating pressure gauge connected and mounted immediately at the back of the nozzle.

The nozzle pipe shall be mounted on an elevated supporting stand in such a manner that it can be rotated through 360 degrees horizontally and inclined vertically from at least 20 degrees below to at least 60 degrees above the horizontal. There shall be a quick-acting, three-way control valve connecting the recirculating line to the nozzle pipe and mounted so that the nozzle operator can control and regulate the amount of flow of mixture delivered to the nozzle. At least three different types of nozzles shall be supplied so that mixtures may be properly sprayed over distance varying from 20 to 100 feet (6 to 30 m). One shall be a close-range ribbon nozzle, one a medium-range ribbon nozzle, and one a long-range jet nozzle. For ease of removal and cleaning, all nozzles shall be connected to the nozzle pipe by means of quick-release couplings.

In order to reach areas inaccessible to the regular equipment, an extension hose at least 50 feet (15 m) in length shall be provided to which the nozzles may be connected.

**c. Mixtures.** Lime, if required, shall be applied separately, in the quantity specified, prior to the fertilizing and seeding operations. Not more than 220 pounds (100 kg) of lime shall be added to and mixed with each 100 gallons (380 liters) of water. Seed and fertilizer shall be mixed together in the relative proportions specified, but not more than a total of 220 pounds (100 kg) of these combined solids shall be added to and mixed with each 100 gallons (380 liters) of water.

All water used shall be obtained from fresh water sources and shall be free from injurious chemicals and other toxic substances harmful to plant life. The Contractor shall identify to the Engineer all sources of water at least two (2) weeks prior to use. The Engineer may take samples of the water at the source or from the tank at any time and have a laboratory test the samples for chemical and saline content. The Contractor shall not use any water from any source that is disapproved by the Engineer following such tests.

All mixtures shall be constantly agitated from the time they are mixed until they are finally applied to the seedbed. All such mixtures shall be used within two (2) hours from the time they were mixed or they shall be wasted and disposed of at approved locations.

**d. Spraying.** Lime, if required, shall be sprayed only upon previously prepared seedbeds. After the applied lime mixture has dried, the lime shall be worked into the top 3 inches (75 mm), after which the seedbed shall again be properly graded and dressed to a smooth finish.

Mixtures of seed and fertilizer shall only be sprayed upon previously prepared seedbeds on which the lime, if required, shall already have been worked in. The mixtures shall be applied by means of a high-pressure spray that shall always be directed upward into the air so that the mixtures will fall to the ground like rain in a uniform spray. Nozzles or sprays shall never be directed toward the ground in such a manner as might produce erosion or runoff.

Particular care shall be exercised to ensure that the application is made uniformly and at the prescribed rate and to guard against misses and overlapped areas. Proper predetermined quantities of the mixture in accordance with specifications shall be used to cover specified sections of known area.

Checks on the rate and uniformity of application may be made by observing the degree of wetting of the ground or by distributing test sheets of paper or pans over the area at intervals and observing the quantity of material deposited thereon.

On surfaces that are to be mulched as indicated by the plans or designated by the Engineer, seed and fertilizer applied by the spray method need not be raked into the soil or rolled. However, on surfaces on which mulch is not to be used, the raking and rolling operations will be required after the soil has dried.

**901-3.4 Maintenance of seeded areas.** The Contractor shall protect seeded areas against traffic or other use by warning signs or barricades, as approved by the Engineer. Surfaces gullied or otherwise damaged following seeding shall be repaired by regrading and reseeding as directed. The Contractor shall mow, water as directed, and otherwise maintain seeded areas in a satisfactory condition until final inspection and acceptance of the work.

When either the dry or wet application method outlined above is used for work done out of season, it will be required that the Contractor establish a good stand of grass of uniform color and density to the satisfaction of the Engineer. A grass stand shall be considered adequate when bare spots are one square foot (0.01 sq m) or less, randomly dispersed, and do not exceed 3% of the area seeded.

## **METHOD OF MEASUREMENT**

**901-4.1** All items included in this section are incidental to the pay items defined in Specification L-126 and shall not be separately measured.

## **BASIS OF PAYMENT**

**901-5.1** Payment for all items in this section is incidental to the pay items defined in Specification L-126.

## **REFERENCES**

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

ASTM International (ASTM)

ASTM C602                      Standard Specification for Agricultural Liming Materials

Federal Specifications (FED SPEC)

FED SPEC                      JJJ-S-181, Federal Specification, Seeds, Agricultural

Advisory Circulars (AC)

AC 150/5200-33              Hazardous Wildlife Attractants on or Near Airports

FAA/United States Department of Agriculture  
Wildlife Hazard Management at Airports, A Manual for Airport Personnel

**END OF ITEM T-901**

**Page Intentionally Blank**



## Item T-908 Mulching

### DESCRIPTION

**908-1.1** This item shall consist of furnishing, hauling, placing, and securing mulch on surfaces indicated on the plans or designated by the Engineer.

### MATERIALS

**908-2.1 Mulch material.** Acceptable mulch shall be the materials listed below or any approved locally available material that is similar to those specified. Mulch shall be free from noxious weeds, mold, and other deleterious materials. Mulch materials, which contain matured seed of species that would volunteer and be detrimental to the proposed overseeding, or to surrounding farm land, will not be acceptable. Straw or other mulch material which is fresh and/or excessively brittle, or which is in such an advanced stage of decomposition as to smother or retard the planted grass, will not be acceptable.

**a. Hay.** Not used.

**b. Straw.** Not used.

**c. Hay mulch containing seed.** Not used.

**d. Manufactured mulch.** Cellulose-fiber or wood-pulp mulch shall be products commercially available for use in spray applications.

**e. Asphalt binder.** Not used.

**908-2.2 Inspection.** The Engineer shall be notified of sources and quantities of mulch materials available, and the Contractor shall furnish him with representative samples of the materials to be used 30 days before delivery to the project. These samples may be used as standards with the approval of the Engineer and any materials brought on the site that do not meet these standards shall be rejected.

### CONSTRUCTION METHODS

**908-3.1 Mulching.** Before spreading mulch, all large clods, stumps, stones, brush, roots, and other foreign material shall be removed from the area to be mulched. Mulch shall be applied immediately after seeding. The spreading of the mulch may be by hand methods, blower, or other mechanical methods, provided a uniform covering is obtained.

Mulch material shall be furnished, hauled, and evenly applied on the area shown on the plans or designated by the Engineer. ~~Straw or hay shall be spread over the surface to a uniform thickness at the rate of 2 to 3 tons per acre (1800—2700 kg per acre) to provide a loose depth of not less than 1 1/2 inches (38 cm) nor more than 3 inches (75 mm).~~ Other organic material shall be spread at the rate directed by the Engineer. ~~Mulch may be blown on the slopes and the use of cutters in the equipment for this purpose will be permitted to the extent that at least 95% of the mulch in place on the slope shall be 6 inches (150 mm) or more in length. When mulches applied by the blowing method are cut, the loose depth in place shall be not less than one inch (25 mm) nor more than 2 inches (50 mm).~~

**908-3.2 Securing mulch.** The mulch shall be held in place by light discing, a very thin covering of topsoil, pins, stakes, wire mesh, asphalt binder, or other adhesive material approved by the Engineer. ~~Where mulches have been secured by either of the asphalt binder methods, it will not be permissible to walk on the slopes after the binder has been applied. When an application of asphalt binder material is~~

~~used to secure the mulch, the Contractor must take every precaution to guard against damaging or disfiguring structures or property on or adjacent to the areas worked and will be held responsible for any such damage resulting from the operation.~~

~~If the “peg and string” method is used, the mulch shall be secured by the use of stakes or wire pins driven into the ground on 5 foot (1.5 m) centers or less. Binder twine shall be strung between adjacent stakes in straight lines and crisscrossed diagonally over the mulch, after which the stakes shall be firmly driven nearly flush to the ground to draw the twine down tight onto the mulch.~~

### **908-3.3 Care and repair.**

a. The Contractor shall care for the mulched areas until final acceptance of the project. Care shall consist of providing protection against traffic or other use by placing warning signs, as approved by the Engineer, and erecting any barricades that may be shown on the plans before or immediately after mulching has been completed on the designated areas.

b. The Contractor shall be required to repair or replace any mulch that is defective or becomes damaged until the project is finally accepted. When, in the judgment of the Engineer, such defects or damages are the result of poor workmanship or failure to meet the requirements of the specifications, the cost of the necessary repairs or replacement shall be borne by the Contractor.

~~c. If the “asphalt spray” method is used, all mulched surfaces shall be sprayed with asphalt binder material so that the surface has a uniform appearance. The binder shall be uniformly applied to the mulch at the rate of approximately 8 gallons (32 liters) per 1,000 square feet (100 sq m), or as directed by the Engineer, with a minimum of 6 gallons (24 liters) and a maximum of 10 gallons (40 liters) per 1,000 square feet (100 sq m) depending on the type of mulch and the effectiveness of the binder securing it. Asphalt binder material may be sprayed on the mulched slope areas from either the top or the bottom of the slope. An approved spray nozzle shall be used. The nozzle shall be operated at a distance of not less than 4 feet (1.2 m) from the surface of the mulch and uniform distribution of the asphalt material shall be required. A pump or an air compressor of adequate capacity shall be used to ensure uniform distribution of the asphalt material.~~

~~d. If the “asphalt mix” method is used, the mulch shall be applied by blowing, and the asphalt binder material shall be sprayed into the mulch as it leaves the blower. The binder shall be uniformly applied to the mulch at the rate of approximately 8 gallons (32 liters) per 1,000 square feet (100 sq m) or as directed by the Engineer, with a minimum of 6 gallons (24 liters) and a maximum of 10 gallons (40 liters) per 1,000 square feet (100 sq m) depending on the type of mulch and the effectiveness of the binder securing it.~~

## **METHOD OF MEASUREMENT**

**908-4.1** All items included in this section are incidental to the pay items defined in Specification L-126 and shall not be separately measured.

## **BASIS OF PAYMENT**

**908-5.1** Payment for all items in this section is incidental to the pay items defined in Specification L-126.

### REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

ASTM International (ASTM)

ASTM D977            Standard Specification for Emulsified Asphalt

Advisory Circulars (AC)

AC 150/5200-33      Hazardous Wildlife Attractants on or Near Airports

FAA/United States Department of Agriculture

Wildlife Hazard Management at Airports, A Manual for Airport Personnel

**END OF ITEM T-908**

**Page Intentionally Blank**

## Part 13 – Lighting Installation

### Item L-108 Underground Power Cable for Airports

#### DESCRIPTION

**108-1.1** This item shall consist of furnishing and installing power cables that are direct buried and furnishing and/or installing power cables within conduit or duct banks per these specifications at the locations shown on the plans. It includes excavation and backfill of trench for direct-buried cables only. Also included are the installation of counterpoise wires, ground wires, ground rods and connections, cable splicing, cable marking, cable testing, and all incidentals necessary to place the cable in operating condition as a completed unit to the satisfaction of the Engineer. This item shall not include the installation of duct banks or conduit, trenching and backfilling for duct banks or conduit, or furnishing or installation of cable for FAA owned/operated facilities.

#### EQUIPMENT AND MATERIALS

##### 108-2.1 General.

**a.** Airport lighting equipment and materials covered by advisory circulars (AC) shall be approved under the Airport Lighting Equipment Certification Program per AC 150/5345-53, current version.

**b.** All other equipment and materials covered by other referenced specifications shall be subject to acceptance through manufacturer's certification of compliance with the applicable specification, when requested by the Engineer.

**c.** Manufacturer's certifications shall not relieve the Contractor of the responsibility to provide materials per these specifications. Materials supplied and/or installed that do not comply with these specifications shall be removed (when directed by the Engineer) and replaced with materials that comply with these specifications at the Contractor's cost.

**d.** All materials and equipment used to construct this item shall be submitted to the Engineer for approval prior to ordering the equipment. Submittals consisting of marked catalog sheets or shop drawings shall be provided. Submittal data shall be presented in a clear, precise and thorough manner. Original catalog sheets are preferred. Photocopies are acceptable provided they are as good a quality as the original. Clearly and boldly mark each copy to identify products or models applicable to this project. Indicate all optional equipment and delete any non-pertinent data. Submittals for components of electrical equipment and systems shall identify the equipment to which they apply on each submittal sheet. Markings shall be made bold and clear with arrows or circles (highlighting is not acceptable). The Contractor is solely responsible for delays in the project that may accrue directly or indirectly from late submissions or resubmissions of submittals.

**e.** The data submitted shall be sufficient, in the opinion of the Engineer, to determine compliance with the plans and specifications. The Contractor's submittals shall be electronically submitted in pdf format. The Engineer reserves the right to reject any and all equipment, materials, or procedures that do not meet the system design and the standards and codes, specified in this document.

**f.** All equipment and materials furnished and installed under this section shall be guaranteed against defects in materials and workmanship for at least twelve (12) months from the date of final acceptance by the Owner. The defective materials and/or equipment shall be repaired or replaced, at the Owner's

discretion, with no additional cost to the Owner. The Contractor shall maintain a minimum insulation resistance in accordance with paragraph 108-3.10e with isolation transformers connected in new circuits and new segments of existing circuits through the end of the contract warranty period when tested in accordance with AC 150/5340-26, *Maintenance Airport Visual Aid Facilities*, paragraph 5.1.3.1, Insulation Resistance Test.

### **108-2.2 Cable.**

Wire for electrical circuits up to 600 volts shall comply with Specification L-824 and/or Commercial Item Description A-A-59544A and shall be type THWN-2, 75°C for installation in conduit and RHW-2, 75°C for direct burial installations. Conductors for parallel (voltage) circuits shall be type and size and installed in accordance with NFPA-70, National Electrical Code.

Unless noted otherwise, all 600-volt and less non-airfield lighting conductor sizes are based on a 75°C, THWN-2, 600-volt insulation, copper conductors, not more than three single insulated conductors, in raceway, in free air. The conduit/duct sizes are based on the use of THWN-2, 600-volt insulated conductors. The Contractor shall make the necessary increase in conduit/duct sizes for other types of wire insulation. In no case shall the conduit/duct size be reduced. The minimum power circuit wire size shall be #12 AWG.

Conductor sizes may have been adjusted due to voltage drop or other engineering considerations. Equipment provided by the Contractor shall be capable of accepting the quantity and sizes of conductors shown in the Contract Documents. All conductors, pigtails, cable step-down adapters, cable step-up adapters, terminal blocks and splicing materials necessary to complete the cable termination/splice shall be considered incidental to the respective pay items provided.

Cable type, size, number of conductors, strand and service voltage shall be as specified in the Contract Document.

**108-2.3 Bare copper wire (counterpoise, bare copper wire ground and ground rods).** Wire for counterpoise or ground installations for airfield lighting systems shall be No. 6 AWG bare solid copper wire for counterpoise and/or No. 6 AWG insulated stranded for grounding bond wire per ASTM B3 and ASTM B8, and shall be bare copper wire. For voltage powered circuits, the equipment grounding conductor shall comply with NEC Article 250.

Ground rods shall be solid stainless steel, copper, copper-clad steel, or sectional copper-clad steel. The ground rods shall be of the length and diameter specified on the plans, but in no case be less than 10 feet long and 3/4 inch in diameter.

**108-2.4 Cable connections.** In-line connections or splices of underground primary cables shall be of the type called for on the plans, and shall be one of the types listed below. No separate payment will be made for cable connections.

**a. The cast splice.** A cast splice, employing a plastic mold and using epoxy resin equivalent to that manufactured by 3M™ Company, "Scotchcast" Kit No. 82-B, or an approved equivalent, used for potting the splice is acceptable.

**b. The field-attached plug-in splice.** Field attached plug-in splices shall be installed as shown on the plans. The Contractor shall determine the outside diameter of the cable to be spliced and furnish appropriately sized connector kits and/or adapters. Tape or heat shrink tubing with integral sealant shall be in accordance with the manufacturer's requirements. Primary Connector Kits manufactured by Amerace, "Super Kit", Integro "Complete Kit", or approved equal is acceptable.

**c. The factory-molded plug-in splice.** Specification for L-823 Connectors, Factory-Molded to Individual Conductors, is acceptable.

**d. The taped or heat-shrink splice.** Taped splices employing field-applied rubber, or synthetic rubber tape covered with plastic tape is acceptable. The rubber tape should meet the requirements of ASTM D4388 and the plastic tape should comply with Military Specification MIL-I-24391 or Commercial Item Description A-A-55809. Heat shrinkable tubing shall be heavy-wall, self-sealing tubing rated for the voltage of the wire being spliced and suitable for direct-buried installations. The tubing shall be factory coated with a thermoplastic adhesive-sealant that will adhere to the insulation of the wire being spliced forming a moisture- and dirt-proof seal. Additionally, heat shrinkable tubing for multi-conductor cables, shielded cables, and armored cables shall be factory kits that are designed for the application. Heat shrinkable tubing and tubing kits shall be manufactured by Tyco Electronics/ Raychem Corporation, Energy Division, or approved equivalent.

In all the above cases, connections of cable conductors shall be made using crimp connectors using a crimping tool designed to make a complete crimp before the tool can be removed. All L-823/L-824 splices and terminations shall be made per the manufacturer's recommendations and listings.

All connections of counterpoise, grounding conductors and ground rods shall be made by the exothermic process or approved equivalent, except that a light base ground clamp connector shall be used for attachment to the light base. All exothermic connections shall be made per the manufacturer's recommendations and listings.

**108-2.5 Splicer qualifications.** Every airfield lighting cable splicer shall be qualified in making airport cable splices and terminations on cables rated at or above 5,000 volts AC. The Contractor shall submit to the Engineer proof of the qualifications of each proposed cable splicer for the airport cable type and voltage level to be worked on. Cable splicing/terminating personnel shall have a minimum of three (3) years continuous experience in terminating/splicing medium voltage cable.

**108-2.6 Concrete.** Concrete shall be proportioned, placed, and cured per state department of transportation structural concrete with a minimum allowable compressive strength of 3,000 psi (28 MPa).

**108-2.7 Flowable backfill.** Flowable material used to backfill trenches for power cable trenches shall conform to the requirements of Item P-153, Controlled Low Strength Material.

**108-2.8 Cable identification tags.** Cable identification tags shall be made from a non-corrosive material with the circuit identification stamped or etched onto the tag. The tags shall be of the type as detailed on the plans.

**108-2.9 Tape.** Electrical tapes shall be Scotch™ Electrical Tapes – Scotch™ 88 (1-1/2 inch (38 mm) wide) and Scotch™ 130C® linerless rubber splicing tape (2-inch (50 mm) wide) – as manufactured by the Minnesota Mining and Manufacturing Company (3M™), or an approved equivalent.

**108-2.10 Electrical coating.** Electrical coating shall be Scotchkote™ as manufactured by 3M™, or an approved equivalent.

**108-2.11 Existing circuits.** Whenever the scope of work requires connection to an existing circuit, the existing circuit's insulation resistance shall be tested, in the presence of the Engineer. The test shall be performed per this item and prior to any activity that will affect the respective circuit. The Contractor shall record the results on forms acceptable to the Engineer. When the work affecting the circuit is complete, the circuit's insulation resistance shall be checked again, in the presence of the Engineer. The Contractor shall record the results on forms acceptable to the Engineer. The second reading shall be equal to or greater than the first reading or the Contractor shall make the necessary repairs to the existing circuit to bring the second reading above the first reading. All repair costs including a complete replacement of the L-823 connectors, L-830 transformers and L-824 cable, if necessary, shall be borne by the Contractor. All test results shall be submitted in the Operation and Maintenance (O&M) Manual.



**108-2.12 Detectable warning tape.** Plastic, detectable, American Public Works Association (APWA) Red (electrical power lines, cables, conduit and lighting cable) with continuous legend tape shall be polyethylene film with a metalized foil core and shall be 3-6 inches (75-150 mm) wide. Detectable tape is incidental to the respective bid item. Detectable warning tape for communication cables shall be orange. Detectable warning tape color code shall comply with the APWA Uniform Color Code.

## CONSTRUCTION METHODS

**108-3.1 General.** The Contractor shall install the specified cable at the approximate locations indicated on the plans. Unless otherwise shown on the plans, all cable required to cross under pavements expected to carry aircraft loads shall be installed in concrete encased duct banks. Cable shall be run without splices, from fixture to fixture.

Cable connections between lights will be permitted only at the light locations for connecting the underground cable to the primary leads of the individual isolation transformers. The Contractor shall be responsible for providing cable in continuous lengths for home runs or other long cable runs without connections unless otherwise authorized in writing by the Engineer or shown on the plans.

In addition to connectors being installed at individual isolation transformers, L-823 cable connectors for maintenance and test points shall be installed at locations shown on the plans. Cable circuit identification markers shall be installed on both sides of the L-823 connectors installed and on both sides of slack loops where a future connector would be installed.

Provide not less than 3 feet (1 m) of cable slack on each side of all connections, isolation transformers, light units, and at points where cable is connected to field equipment. Where provisions must be made for testing or for future above grade connections, provide enough slack to allow the cable to be extended at least one foot (30 cm) vertically above the top of the access structure. This requirement also applies where primary cable passes through empty light bases, junction boxes, and access structures to allow for future connections, or as designated by the Engineer.

Primary airfield lighting cables installed shall have cable circuit identification markers attached on both sides of each L-823 connector and on each airport lighting cable entering or leaving cable access points, such as manholes, hand holes, pull boxes, junction boxes, etc. Markers shall be of sufficient length for imprinting the cable circuit identification legend on one line, using letters not less than 1/4 inch (6 mm) in size. The cable circuit identification shall match the circuits noted on the construction plans.

**108-3.2 Installation in duct banks or conduits.** This item includes the installation of the cable in duct banks or conduit per the following paragraphs. The maximum number and voltage ratings of cables installed in each single duct or conduit, and the current-carrying capacity of each cable shall be per the latest version of the National Electric Code, or the code of the local agency or authority having jurisdiction.

The Contractor shall make no connections or splices of any kind in cables installed in conduits or duct banks.

Unless otherwise designated in the plans, where ducts are in tiers, use the lowest ducts to receive the cable first, with spare ducts left in the upper levels. Check duct routes prior to construction to obtain assurance that the shortest routes are selected and that any potential interference is avoided.

Duct banks or conduits shall be installed as a separate item per Item L-110, Airport Underground Electrical Duct Banks and Conduit. The Contractor shall run a mandrel through duct banks or conduit prior to installation of cable to ensure that the duct bank or conduit is open, continuous and clear of debris. The mandrel size shall be compatible with the conduit size. The Contractor shall swab out all



conduits/ducts and clean light bases, manholes, etc., interiors immediately prior to pulling cable. Once cleaned and swabbed, the light bases and all accessible points of entry to the duct/conduit system shall be kept closed except when installing cables. Cleaning of ducts, light bases, manholes, etc., is incidental to the pay item of the item being cleaned. All raceway systems left open, after initial cleaning, for any reason shall be re-cleaned at the Contractor's expense. The Contractor shall verify existing ducts proposed for use in this project as clear and open. The Contractor shall notify the Engineer of any blockage in the existing ducts.

The cable shall be installed in a manner that prevents harmful stretching of the conductor, damage to the insulation, or damage to the outer protective covering. The ends of all cables shall be sealed with moisture-seal tape providing moisture-tight mechanical protection with minimum bulk, or alternately, heat shrinkable tubing before pulling into the conduit and it shall be left sealed until connections are made. Where more than one cable is to be installed in a conduit, all cable shall be pulled in the conduit at the same time. The pulling of a cable through duct banks or conduits may be accomplished by hand winch or power winch with the use of cable grips or pulling eyes. Maximum pulling tensions shall not exceed the cable manufacturer's recommendations. A non-hardening cable-pulling lubricant recommended for the type of cable being installed shall be used where required.

The Contractor shall submit the recommended pulling tension values to the Engineer prior to any cable installation. If required by the Engineer, pulling tension values for cable pulls shall be monitored by a dynamometer in the presence of the Engineer. Cable pull tensions shall be recorded by the Contractor and reviewed by the Engineer. Cables exceeding the maximum allowable pulling tension values shall be removed and replaced by the Contractor at the Contractor's expense.

The manufacturer's minimum bend radius or NEC requirements (whichever is more restrictive) shall apply. Cable installation, handling and storage shall be per manufacturer's recommendations. During cold weather, particular attention shall be paid to the manufacturer's minimum installation temperature. Cable shall not be installed when the temperature is at or below the manufacturer's minimum installation temperature. At the Contractor's option, the Contractor may submit a plan, for review by the Engineer, for heated storage of the cable and maintenance of an acceptable cable temperature during installation when temperatures are below the manufacturer's minimum cable installation temperature.

Cable shall not be dragged across base can or manhole edges, pavement or earth. When cable must be coiled, lay cable out on a canvas tarp or use other appropriate means to prevent abrasion to the cable jacket.

**108-3.3 Installation of direct-buried cable in trenches.** This section not used.

**108-3.4 Cable markers for direct-buried cable.** This section not used.

**108-3.5 Splicing.** Connections of the type shown on the plans shall be made by experienced personnel regularly engaged in this type of work and shall be made as follows:

**a. Cast splices.** These shall be made by using crimp connectors for jointing conductors. Molds shall be assembled, and the compound shall be mixed and poured per the manufacturer's instructions and to the satisfaction of the Engineer.

**b. Field-attached plug-in splices.** These shall be assembled per the manufacturer's instructions. These splices shall be made by plugging directly into mating connectors. The joint where the connectors come together shall be finished by one of the following methods: (1) wrapped with at least one layer of rubber or synthetic rubber tape and one layer of plastic tape, one-half lapped, extending at least 1-1/2 inches (38 mm) on each side of the joint (2) Covered with heat shrinkable tubing with integral sealant extending at least 1-1/2 inches (38 mm) on each side of the joint or (3) On connector kits equipped with water seal flap; roll-over water seal flap to sealing position on mating connector.

**c. Factory-molded plug-in splices.** These shall be made by plugging directly into mating connectors. The joint where the connectors come together shall be finished by one of the following methods: (1) Wrapped with at least one layer of rubber or synthetic rubber tape and one layer of plastic tape, one-half lapped, extending at least 1-1/2 inches (38 mm) on each side of the joint. (2) Covered with heat shrinkable tubing with integral sealant extending at least 1-1/2 inches (38 mm) on each side of the joint. or (3) On connector kits so equipped with water seal flap; roll-over water seal flap to sealing position on mating connector.

**d. Taped or heat-shrink splices.** A taped splice shall be made in the following manner:

Bring the cables to their final position and cut so that the conductors will butt. Remove insulation and jacket allowing for bare conductor of proper length to fit compression sleeve connector with 1/4 inch (6 mm) of bare conductor on each side of the connector. Prior to splicing, the two ends of the cable insulation shall be penciled using a tool designed specifically for this purpose and for cable size and type. Do not use emery paper on splicing operation since it contains metallic particles. The copper conductors shall be thoroughly cleaned. Join the conductors by inserting them equidistant into the compression connection sleeve. Crimp conductors firmly in place with crimping tool that requires a complete crimp before tool can be removed. Test the crimped connection by pulling on the cable. Scrape the insulation to assure that the entire surface over which the tape will be applied (plus 3 inches (75 mm) on each end) is clean. After scraping, wipe the entire area with a clean lint-free cloth. Do not use solvents.

Apply high-voltage rubber tape one-half lapped over bare conductor. This tape should be tensioned as recommended by the manufacturer. Voids in the connector area may be eliminated by highly elongating the tape, stretching it just short of its breaking point. The manufacturer's recommendation for stretching tape during splicing shall be followed. Always attempt to exactly half-lap to produce a uniform buildup. Continue buildup to 1-1/2 times cable diameter over the body of the splice with ends tapered a distance of approximately one inch (25 mm) over the original jacket. Cover rubber tape with two layers of vinyl pressure-sensitive tape one-half lapped. Do not use glyptol or lacquer over vinyl tape as they react as solvents to the tape. No further cable covering or splice boxes are required.

Heat shrinkable tubing shall be installed following manufacturer's instructions. Direct flame heating shall not be permitted unless recommended by the manufacturer. Cable surfaces within the limits of the heat-shrink application shall be clean and free of contaminants prior to application.

**e. Assembly.** Surfaces of equipment or conductors being terminated or connected shall be prepared in accordance with industry standard practice and manufacturer's recommendations. All surfaces to be connected shall be thoroughly cleaned to remove all dirt, grease, oxides, nonconductive films, or other foreign material. Paints and other nonconductive coatings shall be removed to expose base metal. Clean all surfaces at least 1/4 inch (6.4 mm) beyond all sides of the larger bonded area on all mating surfaces. Use a joint compound suitable for the materials used in the connection. Repair painted/coated surface to original condition after completing the connection.

**108-3.6 Bare counterpoise wire installation for lightning protection and grounding.** If shown on the plans or included in the job specifications, bare solid #6 AWG copper counterpoise wire shall be installed for lightning protection of the underground cables. The Engineer shall select one of two methods of lightning protection for the airfield lighting circuit based upon sound engineering practice and lightning strike density.

**a. Equipotential.** The counterpoise size is as shown on the plans. The equipotential method is applicable to all airfield lighting systems; i.e., runway, taxiway, apron – touchdown zone, centerline, edge, threshold and approach lighting systems. The equipotential method is also successfully applied to provide lightning protection for power, signal and communication systems. The light bases, counterpoise,

etc., – all components – are bonded together and bonded to the vault power system ground loop/electrode.

Counterpoise wire shall be installed in the same trench for the entire length of buried cable, conduits and duct banks that are installed to contain airfield cables. The counterpoise is centered over the cable/conduit/duct to be protected.

The counterpoise conductor shall be installed no less than 8 inches (200 mm) minimum or 12 inches (300 mm) maximum above the raceway or cable to be protected, except as permitted below:

(1) The minimum counterpoise conductor height above the raceway or cable to be protected shall be permitted to be adjusted subject to coordination with the airfield lighting and pavement designs.

(2) The counterpoise conductor height above the protected raceway(s) or cable(s) shall be calculated to ensure that the raceway or cable is within a 45-degree area of protection, (45 degrees on each side of vertical creating a 90 degree angle).

The counterpoise conductor shall be bonded to each metallic light base, mounting stake, and metallic airfield lighting component.

All metallic airfield lighting components in the field circuit on the output side of the constant current regulator (CCR) or other power source shall be bonded to the airfield lighting counterpoise system.

All components rise and fall at the same potential; with no potential difference, no damaging arcing and no damaging current flow.

See AC 150/5340-30, Design and Installation Details for Airport Visual Aids and NFPA 780, Standard for the Installation of Lightning Protection Systems, Chapter 11, for a detailed description of the Equipotential Method of lightning protection.

Reference FAA STD-019E, Lightning and Surge Protection, Grounding Bonding and Shielding Requirements for Facilities and Electronic Equipment, Part 4.1.1.7.

**b.** The counterpoise conductor shall be installed halfway between the pavement edge and the light base, mounting stake, raceway, or cable being protected.

**c. Common Installation requirements.** When a metallic light base is used, the grounding electrode shall be bonded to the metallic light base or mounting stake with a No. 6 AWG bare, annealed or soft drawn, solid copper conductor. When a nonmetallic light base is used, the grounding electrode shall be bonded to the metallic light fixture or metallic base plate with a No. 6 AWG bare, annealed or soft drawn, solid copper conductor. Grounding electrodes may be rods, ground dissipation plates, radials, or other electrodes listed in the NFPA 70 (NEC) or NFPA 780.

Where raceway is installed by the directional bore, jack and bore, or other drilling method, the counterpoise conductor shall be permitted to be installed concurrently with the directional bore, jack and bore, or other drilling method raceway, external to the raceway or sleeve.

The counterpoise wire shall also be exothermically welded to ground rods installed as shown on the plans but not more than 500 feet (150 m) apart around the entire circuit. The counterpoise system shall be continuous and terminate at the transformer vault or at the power source. It shall be securely attached to the vault or equipment external ground ring or other made electrode-grounding system. The connections shall be made as shown on the plans and in the specifications.

Where an existing airfield lighting system is being extended or modified, the new counterpoise conductors shall be interconnected to existing counterpoise conductors at each intersection of the new and existing airfield lighting counterpoise systems.

**d. Parallel Voltage Systems.** Provide grounding and bonding in accordance with NFPA 70, National Electrical Code.

**108-3.7 Counterpoise installation above multiple conduits and duct banks.** Counterpoise wires shall be installed above multiple conduits/duct banks for airfield lighting cables, with the intent being to provide a complete area of protection over the airfield lighting cables. When multiple conduits and/or duct banks for airfield cable are installed in the same trench, the number and location of counterpoise wires above the conduits shall be adequate to provide a complete area of protection measured 45 degrees each side of vertical.

Where duct banks pass under pavement to be constructed in the project, the counterpoise shall be placed above the duct bank. Reference details on the construction plans.

**108-3.8 Counterpoise installation at existing duct banks.** When airfield lighting cables are indicated on the plans to be routed through existing duct banks, the new counterpoise wiring shall be terminated at ground rods at each end of the existing duct bank where the cables being protected enter and exit the duct bank. The new counterpoise conductor shall be bonded to the existing counterpoise system.

**108-3.9 Exothermic bonding.** Bonding of counterpoise wire shall be by the exothermic welding process or equivalent method accepted by the Engineer. Only personnel experienced in and regularly engaged in this type of work shall make these connections.

Contractor shall demonstrate to the satisfaction of the Engineer, the welding kits, materials and procedures to be used for welded connections prior to any installations in the field. The installations shall comply with the manufacturer's recommendations and the following:

- a. All slag shall be removed from welds.
- b. Using an exothermic weld to bond the counterpoise to a lug on a galvanized light base is not recommended unless the base has been specially modified. Consult the manufacturer's installation directions for proper methods of bonding copper wire to the light base. See AC 150/5340-30 for galvanized light base exception.
- c. If called for in the plans, all buried copper and weld material at weld connections shall be thoroughly coated with 6 mm of 3M™ Scotchkote™, or approved equivalent, or coated with coal tar Bitumastic® material to prevent surface exposure to corrosive soil or moisture.

**108-3.10 Testing.** The Contractor shall furnish all necessary equipment and appliances for testing the airport electrical systems and underground cable circuits before and after installation. The Contractor shall perform all tests in the presence of the Engineer. The Contractor shall demonstrate the electrical characteristics to the satisfaction of the Engineer. All costs for testing are incidental to the respective item being tested. For phased projects, the tests must be completed by phase. The Contractor must maintain the test results throughout the entire project as well as during the warranty period that meet the following:

- a. Earth resistance testing methods shall be submitted to the Engineer for approval. Earth resistance testing results shall be recorded on an approved form and testing shall be performed in the presence of the Engineer. All such testing shall be at the sole expense of the Contractor.
- b. Should the counterpoise or ground grid conductors be damaged or suspected of being damaged by construction activities the Contractor shall test the conductors for continuity with a low resistance ohmmeter. The conductors shall be isolated such that no parallel path exists and tested for continuity. The Engineer shall approve of the test method selected. All such testing shall be at the sole expense of the Contractor.

After installation, the Contractor shall test and demonstrate to the satisfaction of the Engineer the following:

c. That all affected lighting power and control circuits (existing and new) are continuous and free from short circuits.

d. That all affected circuits (existing and new) are free from unspecified grounds.

e. That the insulation resistance to ground of all new non-grounded high voltage series circuits or cable segments is not less than 50 megohms. Verify continuity of all series airfield lighting circuits prior to energization.

f. That the insulation resistance to ground of all new non-grounded conductors of new multiple circuits or circuit segments is not less than 100 megohms.

g. That all affected circuits (existing and new) are properly connected per applicable wiring diagrams.

h. That all affected circuits (existing and new) are operable. Tests shall be conducted that include operating each control not less than 10 times and the continuous operation of each lighting and power circuit for not less than 1/2 hour.

i. That the impedance to ground of each ground rod does not exceed 25 ohms prior to establishing connections to other ground electrodes. The fall-of-potential ground impedance test shall be used, as described by American National Standards Institute/Institute of Electrical and Electronic Engineers (ANSI/IEEE) Standard 81, to verify this requirement. As an alternate, clamp-on style ground impedance test meters may be used to satisfy the impedance testing requirement. Test equipment and its calibration sheets shall be submitted for review and approval by the Engineer prior to performing the testing.

Two copies of tabulated results of all cable tests performed shall be supplied by the Contractor to the Engineer. Where connecting new cable to existing cable, insulation resistance tests shall be performed on the new cable prior to connection to the existing circuit.

There are no approved "repair" procedures for items that have failed testing other than complete replacement.

### **METHOD OF MEASUREMENT**

**108-4.1** All items included in this section are incidental to the pay items defined in Specification L-126 and shall not be separately measured.

### **BASIS OF PAYMENT**

**108-5.1** Payment for all items in this section are incidental to the pay items defined in Specification L-126.

### **REFERENCES**

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

#### **Advisory Circulars (AC)**

AC 150/5340-26	Maintenance of Airport Visual Aid Facilities
AC 150/5340-30	Design and Installation Details for Airport Visual Aids
AC 150/5345-7	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits

AC 150/5345-26	Specification for L-823 Plug and Receptacle, Cable Connectors
AC 150/5345-53	Airport Lighting Equipment Certification Program
Commercial Item Description	
A-A-59544A	Cable and Wire, Electrical (Power, Fixed Installation)
A-A-55809	Insulation Tape, Electrical, Pressure-Sensitive Adhesive, Plastic
ASTM International (ASTM)	
ASTM B3	Standard Specification for Soft or Annealed Copper Wire
ASTM B8	Standard Specification for Concentric-Lay-Stranded Copper Conductors, Hard, Medium-Hard, or Soft
ASTM B33	Standard Specification for Tin-Coated Soft or Annealed Copper Wire for Electrical Purposes
ASTM D4388	Standard Specification for Nonmetallic Semi-Conducting and Electrically Insulating Rubber Tapes
Mil Spec	
MIL-PRF-23586F	Performance Specification: Sealing Compound (with Accelerator), Silicone Rubber, Electrical
MIL-I-24391	Insulation Tape, Electrical, Plastic, Pressure Sensitive
National Fire Protection Association (NFPA)	
NFPA-70	National Electrical Code (NEC)
NFPA-780	Standard for the Installation of Lightning Protection Systems
American National Standards Institute (ANSI)/Institute of Electrical and Electronics Engineers (IEEE)	
ANSI/IEEE STD 81	IEEE Guide for Measuring Earth Resistivity, Ground Impedance, and Earth Surface Potentials of a Ground System
Federal Aviation Administration Standard	
FAA STD-019E	Lightning and Surge Protection, Grounding Bonding and Shielding Requirements for Facilities and Electronic Equipment

### END OF ITEM L-108



## Item L-110 Airport Underground Electrical Duct Banks and Conduits

### DESCRIPTION

**110-1.1** This item shall consist of underground electrical conduits and duct banks (single or multiple conduits encased in concrete or buried in sand) installed per this specification at the locations and per the dimensions, designs, and details shown on the plans. This item shall include furnishing and installing of all underground electrical duct banks and individual and multiple underground conduits. It shall also include all turfing trenching, backfilling, removal, and restoration of any paved or turfed areas; concrete encasement, mandrelling, pulling lines, duct markers, plugging of conduits, and the testing of the installation as a completed system ready for installation of cables per the plans and specifications. This item shall also include furnishing and installing conduits and all incidentals for providing positive drainage of the system. Verification of existing ducts is incidental to the pay items provided in this specification.

### EQUIPMENT AND MATERIALS

#### 110-2.1 General.

a. All equipment and materials covered by referenced specifications shall be subject to acceptance through manufacturer's certification of compliance with the applicable specification when requested by the Engineer.

b. Manufacturer's certifications shall not relieve the Contractor of the responsibility to provide materials per these specifications and acceptable to the Engineer. Materials supplied and/or installed that do not comply with these specifications shall be removed, when directed by the Engineer and replaced with materials, that comply with these specifications, at the Contractor's cost.

c. All materials and equipment used to construct this item shall be submitted to the Engineer for approval prior to ordering the equipment. Submittals consisting of marked catalog sheets or shop drawings shall be provided. Submittal data shall be presented in a clear, precise and thorough manner. Original catalog sheets are preferred. Photocopies are acceptable provided they are as good a quality as the original. Clearly and boldly mark each copy to identify products or models applicable to this project. Indicate all optional equipment and delete non-pertinent data. Submittals for components of electrical equipment and systems shall identify the equipment for which they apply on each submittal sheet. Markings shall be made bold and clear with arrows or circles (highlighting is not acceptable). The Contractor is solely responsible for delays in project that accrue directly or indirectly from late submissions or resubmissions of submittals.

d. The data submitted shall be sufficient, in the opinion of the Engineer, to determine compliance with the plans and specifications. The Contractor's submittals shall be electronically submitted in pdf format, tabbed by specification section. The RPR reserves the right to reject any and all equipment, materials or procedures that do not meet the system design and the standards and codes specified in this document.

e. All equipment and materials furnished and installed under this section shall be guaranteed against defects in materials and workmanship for a period of at least twelve (12) months from final acceptance by the Owner. The defective materials and/or equipment shall be repaired or replaced, at the Owner's discretion, with no additional cost to the Owner.

**110-2.2 Steel conduit.** Rigid galvanized steel (RGS) conduit and fittings shall be hot dipped galvanized inside and out and conform to the requirements of Underwriters Laboratories Standards 6, 514B, and

1242. All RGS conduits or RGS elbows installed below grade, in concrete, permanently wet locations or other similar environments shall be painted with a 10-mil thick coat of asphaltum sealer or shall have a factory-bonded polyvinyl chloride (PVC) cover. Any exposed galvanizing or steel shall be coated with 10 mils of asphaltum sealer. When using PVC coated RGS conduit, care shall be exercised not to damage the factory PVC coating. Damaged PVC coating shall be repaired per the manufacturer's written instructions. In lieu of PVC coated RGS, corrosion wrap tape shall be permitted to be used where RGS is in contact with direct earth."

**110-2.3 Plastic conduit.** Plastic conduit and fittings shall conform to the following requirements:

- UL 514B covers W-C-1094 – Conduit fittings all types, classes 1 thru 3 and 6 thru 10.
- UL 514C covers W-C-1094 – all types, Class 5 junction box and cover in plastic (PVC).
- UL 651 covers W-C-1094 – Rigid PVC Conduit, types I and II, Class 4.
- UL 651A covers W-C-1094 – Rigid PVC Conduit and high-density polyethylene (HDPE) Conduit type III and Class 4.

Underwriters Laboratories Standards UL-651 and Article 352 of the current National Electrical Code shall be one of the following, as shown on the plans:

- a. Type I – Schedule 40 and Schedule 80 PVC suitable for underground use either direct-buried or encased in concrete.
- b. Type II – Schedule 40 PVC suitable for either above ground or underground use.
- c. Type III – Schedule 80 PVC suitable for either above ground or underground use either direct-buried or encased in concrete.
- d. Type III – HDPE pipe, minimum standard dimensional ratio (SDR) 11, suitable for placement with directional boring under pavement.

The type of solvent cement shall be as recommended by the conduit/fitting manufacturer.

**110-2.4 Split conduit.** Split conduit shall be pre-manufactured for the intended purpose and shall be made of steel or plastic.

**110-2.5 Conduit spacers.** Conduit spacers shall be prefabricated interlocking units manufactured for the intended purpose. They shall be of double wall construction made of high-grade, high-density polyethylene complete with interlocking cap and base pads. They shall be designed to accept No. 4 reinforcing bars installed vertically.

**110-2.6 Concrete.** Concrete shall be proportioned, placed, and cured per state department of transportation structural concrete and a minimum allowable compressive strength of 3,000 psi.

**110-2.7 Precast concrete structures.** Precast concrete structures shall be furnished by a plant meeting National Precast Concrete Association Plant Certification Program or another Engineer approved third party certification program. Precast concrete structures shall conform to ASTM C478.

**110-2.8 Flowable backfill.** Flowable material used to back fill conduit and duct bank trenches shall conform to the requirements of Item P-153, Controlled Low Strength Material.

**110-2.9 Detectable warning tape.** Plastic, detectable, American Public Works Association (APWA) red (electrical power lines, cables, conduit and lighting cable), orange (telephone/fiber optic cabling) with continuous legend magnetic tape shall be polyethylene film with a metallized foil core and shall be 3-6 inches (75-150 mm) wide. Detectable tape is incidental to the respective bid item.



## CONSTRUCTION METHODS

**110-3.1 General.** The Contractor shall install underground duct banks and conduits at the approximate locations indicated on the plans. The Engineer shall indicate specific locations as the work progresses, if required to differ from the plans. Duct banks and conduits shall be of the size, material, and type indicated on the plans or specifications. Where no size is indicated on the plans or in the specifications, conduits shall be not less than 2 inches (50 mm) inside diameter or comply with the National Electrical Code based on cable to be installed, whichever is larger. All duct bank and conduit lines shall be laid so as to grade toward access points and duct or conduit ends for drainage. Unless shown otherwise on the plans, grades shall be at least 3 inches (75 mm) per 100 feet (30 m). On runs where it is not practicable to maintain the grade all one way, the duct bank and conduit lines shall be graded from the center in both directions toward access points or conduit ends, with a drain into the storm drainage system. Pockets or traps where moisture may accumulate shall be avoided. Under pavement, the top of the duct bank shall not be less than 18 inches (0.5 m) below the subgrade; in other locations, the top of the duct bank or underground conduit shall be not less than 18 inches (0.5 m) below finished grade.

The Contractor shall mandrel each individual conduit whether the conduit is direct-buried or part of a duct bank. An iron-shod mandrel, not more than 1/4 inch (6 mm) smaller than the bore of the conduit shall be pulled or pushed through each conduit. The mandrel shall have a leather or rubber gasket slightly larger than the conduit hole.

The Contractor shall swab out all conduits/ducts and clean base can, manhole, pull boxes, etc., interiors immediately prior to pulling cable. Once cleaned and swabbed the light bases, manholes, pull boxes, etc., and all accessible points of entry to the duct/conduit system shall be kept closed except when installing cables. Cleaning of ducts, base cans, manholes, etc., is incidental to the pay item of the item being cleaned. All raceway systems left open, after initial cleaning, for any reason shall be recleaned at the Contractor's expense. All accessible points shall be kept closed when not installing cable. The Contractor shall verify existing ducts proposed for use in this project as clear and open. The Contractor shall notify the Engineer of any blockage in the existing ducts.

For pulling the permanent wiring, each individual conduit, whether the conduit is direct-buried or part of a duct bank, shall be provided with a 200-pound (90 kg) test polypropylene pull rope. The ends shall be secured and sufficient length shall be left in access points to prevent it from slipping back into the conduit. Where spare conduits are installed, as indicated on the plans, the open ends shall be plugged with removable tapered plugs, designed for this purpose.

All conduits shall be securely fastened in place during construction and shall be plugged to prevent contaminants from entering the conduits. Any conduit section having a defective joint shall not be installed. Ducts shall be supported and spaced apart using approved spacers at intervals not to exceed 5 feet (1.5 m).

Unless otherwise shown on the plans, concrete encased duct banks shall be used when crossing under pavements expected to carry aircraft loads, such as runways, taxiways, taxilanes, ramps and aprons. When under paved shoulders and other paved areas, conduit and duct banks shall be encased using flowable fill for protection.

All conduits within concrete encasement of the duct banks shall terminate with female ends for ease in current and future use. Install factory plugs in all unused ends. Do not cover the ends or plugs with concrete.

Where turf is well established and the sod can be removed, it shall be carefully stripped and properly stored.

Trenches for conduits and duct banks may be excavated manually or with mechanical trenching equipment unless in pavement, in which case they shall be excavated with mechanical trenching equipment. Walls of trenches shall be essentially vertical so that a minimum of shoulder surface is disturbed. Blades of graders shall not be used to excavate the trench.

When rock is encountered, the rock shall be removed to a depth of at least 3 inches (75 mm) below the required conduit or duct bank depth and it shall be replaced with bedding material of earth or sand containing no mineral aggregate particles that would be retained on a 1/4-inch (6.3 mm) sieve. Flowable backfill may alternatively be used.

Underground electrical warning (Caution) tape shall be installed in the trench above all underground duct banks and conduits in unpaved areas. Contractor shall submit a sample of the proposed warning tape for approval by the Engineer. If not shown on the plans, the warning tape shall be located 6 inches above the duct/conduit or the counterpoise wire if present.

Joints in plastic conduit shall be prepared per the manufacturer's recommendations for the particular type of conduit. Plastic conduit shall be prepared by application of a plastic cleaner and brushing a plastic solvent on the outside of the conduit ends and on the inside of the couplings. The conduit fitting shall then be slipped together with a quick one-quarter turn twist to set the joint tightly. Where more than one conduit is placed in a single trench, or in duct banks, joints in the conduit shall be staggered a minimum of 2 feet (60 cm).

Changes in direction of runs exceeding 10 degrees, either vertical or horizontal, shall be accomplished using manufactured sweep bends.

Whether or not specifically indicated on the drawings, where the soil encountered at established duct bank grade is an unsuitable material, as determined by the Engineer, the unsuitable material shall be removed per Item P-152 and replaced with suitable material. Additional duct bank supports shall be installed, as approved by the Engineer.

All excavation shall be unclassified and shall be considered incidental to Item L-110. Dewatering necessary for duct installation, and erosion per federal, state, and local requirements is incidental to Item L-110.

Unless otherwise specified, excavated materials that are deemed by the Engineer to be unsuitable for use in backfill or embankments shall be removed and disposed of offsite.

Any excess excavation shall be filled with suitable material approved by the Engineer and compacted per Item P-152.

It is the Contractor's responsibility to locate existing utilities within the work area prior to excavation. Where existing active cables cross proposed installations, the Contractor shall ensure that these cables are adequately protected. Where crossings are unavoidable, no splices will be allowed in the existing cables, except as specified on the plans. Installation of new cable where such crossings must occur shall proceed as follows:

**a.** Existing cables shall be located manually. Unearthed cables shall be inspected to assure absolutely no damage has occurred.

**b.** Trenching, etc., in cable areas shall then proceed with approval of the Engineer, with care taken to minimize possible damage or disruption of existing cable, including careful backfilling in area of cable.

In the event that any previously identified cable is damaged during the course of construction, the Contractor shall be responsible for the complete repair.

**110-3.2 Duct banks.** Unless otherwise shown in the plans, duct banks shall be installed so that the top of the concrete envelope is not less than 18 inches (0.5 m) below the bottom of the base or stabilized base course layers where installed under runways, taxiways, aprons, or other paved areas, and not less than 18 inches (0.5 m) below finished grade where installed in unpaved areas.

Unless otherwise shown on the plans, duct banks under paved areas shall extend at least 3 feet (1 m) beyond the edges of the pavement or 3 feet (1 m) beyond any under drains that may be installed alongside the paved area. Trenches for duct banks shall be opened the complete length before concrete is placed so that if any obstructions are encountered, provisions can be made to avoid them. Unless otherwise shown on the plans, all duct banks shall be placed on a layer of concrete not less than 3 inches (75 mm) thick prior to its initial set. The Contractor shall space the conduits not less than 3 inches (75 mm) apart (measured from outside wall to outside wall). All such multiple conduits shall be placed using conduit spacers applicable to the type of conduit. As the conduit laying progresses, concrete shall be placed around and on top of the conduits not less than 3 inches (75 mm) thick unless otherwise shown on the plans. All conduits shall terminate with female ends for ease of access in current and future use. Install factory plugs in all unused ends. Do not cover the ends or plugs with concrete.

Conduits forming the duct bank shall be installed using conduit spacers. No. 4 reinforcing bars shall be driven vertically into the soil a minimum of 6 inches (150 mm) to anchor the assembly into the earth prior to placing the concrete encasement. For this purpose, the spacers shall be fastened down with locking collars attached to the vertical bars. Spacers shall be installed at 5-foot (1.5-m) intervals. Spacers shall be in the proper sizes and configurations to fit the conduits. Locking collars and spacers shall be submitted to the Engineer for review prior to use.

When specified, the Contractor shall reinforce the bottom side and top of encasements with steel reinforcing mesh or fabric or other approved metal reinforcement. When directed, the Contractor shall supply additional supports where the ground is soft and boggy, where ducts cross under roadways, or where shown on the plans. Under such conditions, the complete duct structure shall be supported on reinforced concrete footings, piers, or piles located at approximately 5-foot (1.5-m) intervals.

All pavement surfaces that are to have ducts installed therein shall be neatly saw cut to form a vertical face. All excavation shall be included in the contract with price for the duct.

Install a plastic, detectable, color as noted, 3 to 6 inches (75 to 150 mm) wide tape, 8 inches (200 mm) minimum below grade above all underground conduit or duct lines not installed under pavement. Utilize the 3-inch (75-mm) wide tape only for single conduit runs. Utilize the 6-inch (150-mm) wide tape for multiple conduits and duct banks. For duct banks equal to or greater than 24 inches (600 mm) in width, utilize more than one tape for sufficient coverage and identification of the duct bank as required.

When existing cables are to be placed in split duct, encased in concrete, the cable shall be carefully located and exposed by hand tools. Prior to being placed in duct, the Engineer shall be notified so that he may inspect the cable and determine that it is in good condition. Where required, split duct shall be installed as shown on the drawings or as required by the Engineer.

**110-3.3 Conduits without concrete encasement.** Trenches for single-conduit lines shall be not less than 6 inches (150 mm) nor more than 12 inches (300 mm) wide. The trench for 2 or more conduits installed at the same level shall be proportionately wider. Trench bottoms for conduits without concrete encasement shall be made to conform accurately to grade so as to provide uniform support for the conduit along its entire length.

Unless otherwise shown on the plans, a layer of fine earth material, at least 4 inches (100 mm) thick (loose measurement) shall be placed in the bottom of the trench as bedding for the conduit. The bedding material shall consist of soft dirt, sand or other fine fill, and it shall contain no particles that would be

retained on a 1/4-inch (6.3 mm) sieve. The bedding material shall be tamped until firm. Flowable backfill may alternatively be used.

Unless otherwise shown on plans, conduits shall be installed so that the tops of all conduits within the Airport's secured area where trespassing is prohibited are at least 18 inches (0.5 m) below the finished grade. Conduits outside the Airport's secured area shall be installed so that the tops of the conduits are at least 24 inches (60 cm) below the finished grade per National Electric Code (NEC), Table 300.5.

When two or more individual conduits intended to carry conductors of equivalent voltage insulation rating are installed in the same trench without concrete encasement, they shall be spaced not less than 3 inches (75 mm) apart (measured from outside wall to outside wall) in a horizontal direction and not less than 6 inches (150 mm) apart in a vertical direction. Where two or more individual conduits intended to carry conductors of differing voltage insulation rating are installed in the same trench without concrete encasement, they shall be placed not less than 3 inches (75 mm) apart (measured from outside wall to outside wall) in a horizontal direction and not less than 6 inches (150 mm) apart in a vertical direction.

Trenches shall be opened the complete length between normal termination points before conduit is installed so that if any unforeseen obstructions are encountered, proper provisions can be made to avoid them.

Conduits shall be installed using conduit spacers. No. 4 reinforcing bars shall be driven vertically into the soil a minimum of 6 inches (150 mm) to anchor the assembly into the earth while backfilling. For this purpose, the spacers shall be fastened down with locking collars attached to the vertical bars. Spacers shall be installed at 5-foot (1.5-m) intervals. Spacers shall be in the proper sizes and configurations to fit the conduits. Locking collars and spacers shall be submitted to the Engineer for review prior to use.

**110-3.4 Markers.** The location of each end and of each change of direction of conduits and duct banks shall be marked by a concrete slab marker 2 feet (60 cm) square and 4 - 6 inches (100 - 150 mm) thick extending approximately one inch (25 mm) above the surface. The markers shall also be located directly above the ends of all conduits or duct banks, except where they terminate in a junction/access structure or building. Each cable or duct run from a line of lights and signs to the equipment vault must be marked at approximately every 200 feet (61 m) along the cable or duct run, with an additional marker at each change of direction of cable or duct run.

The Contractor shall impress the word "DUCT" or "CONDUIT" on each marker slab, or a different message if indicated on the plans. Impression of letters shall be done in a manner, approved by the Engineer, for a neat, professional appearance. All letters and words must be neatly stenciled. After placement, all markers shall be given one coat of high-visibility orange paint, as approved by the Engineer. The Contractor shall also impress on the slab the number and size of conduits beneath the marker along with all other necessary information as determined by the Engineer. The letters shall be 4 inches (100 mm) high and 3 inches (75 mm) wide with width of stroke 1/2 inch (12 mm) and 1/4 inch (6 mm) deep or as large as the available space permits. Furnishing and installation of duct markers is incidental to the respective duct pay item.

**110-3.5 Backfilling for conduits.** For conduits, 8 inches (200 mm) of sand, soft earth, or other fine fill (loose measurement) shall be placed around the conduits ducts and carefully tamped around and over them with hand tampers. The remaining trench shall then be backfilled and compacted per Item P-152 except that material used for back fill shall be select material not larger than 4 inches (100 mm) in diameter.

Flowable backfill may alternatively be used.

Trenches shall not contain pools of water during back filling operations.

The trench shall be completely backfilled and tamped level with the adjacent surface; except that, where sod is to be placed over the trench, the backfilling shall be stopped at a depth equal to the thickness of the sod to be used, with proper allowance for settlement.

Any excess excavated material shall be removed and disposed of per instructions issued by the Engineer.

**110-3.6 Backfilling for duct banks.** After the concrete has cured, the remaining trench shall be backfilled and compacted per Item P-152 "Excavation and Embankment" except that the material used for backfill shall be select material not larger than 4 inches (100 mm) in diameter. In addition to the requirements of Item P-152, where duct banks are installed under pavement, one moisture/density test per lift shall be made for each 250 linear feet (76 m) of duct bank or one work period's construction, whichever is less.

Flowable backfill may alternatively be used.

Trenches shall not contain pools of water during backfilling operations.

The trench shall be completely backfilled and tamped level with the adjacent surface; except that, where sod is to be placed over the trench, the backfilling shall be stopped at a depth equal to the thickness of the sod to be used, with proper allowance for settlement.

Any excess excavated material shall be removed and disposed of per instructions issued by the Engineer.

**110-3.7 Restoration.** Where sod has been removed, it shall be replaced as soon as possible after the backfilling is completed. All areas disturbed by the work shall be restored to its original condition. The restoration shall include topsoiling, fertilizing, seeding, and mulching shown on the plans. The Contractor shall be held responsible for maintaining all disturbed surfaces and replacements until final acceptance. All restoration shall be considered incidental to the respective L-110 pay item. Following restoration of all trenching near airport movement surfaces, the Contractor shall thoroughly visually inspect the area for foreign object debris (FOD) and remove any such FOD that is found. This FOD inspection and removal shall be considered incidental to the pay item of which it is a component part.

**110-3.8 Ownership of removed cable.** All removed or superfluous cable shall become the property of the Contractor to be disposed of offsite.

## METHOD OF MEASUREMENT

**110-4.1** All items included in this section are incidental to the pay items defined in Specification L-126 and shall not be separately measured.

## BASIS OF PAYMENT

**110-5.1** Payment for all items in this section are incidental to the pay items defined in Specification L-126.

## REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

Advisory Circular (AC)

AC 150/5340-30	Design and Installation Details for Airport Visual Aids
AC 150/5345-53	Airport Lighting Equipment Certification Program

## ASTM International (ASTM)

ASTM A615      Standard Specification for Deformed and Plain Carbon-Steel Bars for Concrete Reinforcement

## National Fire Protection Association (NFPA)

NFPA-70      National Electrical Code (NEC)

## Underwriters Laboratories (UL)

UL Standard 6      Electrical Rigid Metal Conduit - Steel

UL Standard 514B      Conduit, Tubing, and Cable Fittings

UL Standard 514C      Nonmetallic Outlet Boxes, Flush-Device Boxes, and Covers

UL Standard 1242      Electrical Intermediate Metal Conduit Steel

UL Standard 651      Schedule 40, 80, Type EB and A Rigid PVC Conduit and Fittings

UL Standard 651A      Type EB and A Rigid PVC Conduit and HDPE Conduit

**END OF ITEM L-110**



## Item L-115 Electrical Manholes and Junction Structures

### DESCRIPTION

**115-1.1** This item shall consist of electrical manholes and junction structures (hand holes, pull boxes, junction cans, etc.) installed per this specification, at the indicated locations and conforming to the lines, grades and dimensions shown on the plans or as required by the Engineer. This item shall include the installation of each electrical manhole and/or junction structures with all associated excavation, backfilling, sheeting and bracing, concrete, reinforcing steel, ladders, appurtenances, testing, dewatering and restoration of surfaces to the satisfaction of the Engineer, including removal of existing manholes and junction structures as shown on the plans.

### EQUIPMENT AND MATERIALS

#### 115-2.1 General.

a. All equipment and materials covered by referenced specifications shall be subject to acceptance through manufacturer's certification of compliance with the applicable specification when so requested by the Engineer.

b. Manufacturer's certifications shall not relieve the Contractor of the responsibility to provide materials per these specifications. Materials supplied and/or installed that do not comply with these specifications shall be removed (when directed by the Engineer) and replaced with materials that comply with these specifications at the Contractor's cost.

c. All materials and equipment used to construct this item shall be submitted to the Engineer for approval prior to ordering the equipment. Submittals consisting of marked catalog sheets or shop drawings shall be provided. Submittal data shall be presented in a clear, precise, and thorough manner. Original catalog sheets are preferred. Photocopies are acceptable provided they are as good a quality as the original. Clearly and boldly mark each copy to identify products or models applicable to this project. Indicate all optional equipment and delete any non-pertinent data. Submittals for components of electrical equipment and systems shall identify the equipment to which they apply on each submittal sheet. Markings shall be made bold and clear with arrows or circles (highlighting is not acceptable). The Contractor is solely responsible for delays in the project that may accrue directly or indirectly from late submissions or resubmissions of submittals.

d. The data submitted shall be sufficient, in the opinion of the Engineer, to determine compliance with the plans and specifications. The Contractor's submittals shall be electronically submitted in pdf format, tabbed by specification section. The Engineer reserves the right to reject any and all equipment, materials or procedures that do not meet the system design and the standards and codes, specified in this document.

e. All equipment and materials furnished and installed under this section shall be guaranteed against defects in materials and workmanship for a period of at least twelve (12) months from the date of final acceptance by the Owner. The defective materials and/or equipment shall be repaired or replaced, at the Owner's discretion, with no additional cost to the Owner.

**115-2.2 Concrete structures.** Concrete shall be proportioned, placed, and cured per the requirements of the State DOT. Cast-in-place concrete structures shall be as shown on the plans.

**115-2.3 Precast concrete structures.** Precast concrete structures shall be furnished by a plant meeting National Precast Concrete Association Plant Certification Program, or another engineer approved third party certification program. Provide precast concrete structures where shown on the plans.

Precast concrete structures shall be an approved standard design of the manufacturer. Precast units shall have mortar or bitumastic sealer placed between all joints to make them watertight. The structure shall be designed to withstand AASHTO H-10 traffic loading, unless otherwise shown on the plans. Openings or knockouts shall be provided in the structure as detailed on the plans.

Threaded inserts and pulling eyes shall be cast in as shown on the plans.

If the Contractor chooses to propose a different structural design, signed and sealed shop drawings, design calculations, and other information requested by the Engineer shall be submitted by the Contractor to allow for a full evaluation by the Engineer. The Engineer shall review per the process defined in the General Provisions.

**115-2.4 Junction boxes.** Junction boxes shall be L-867 Class 1 (non-load bearing) or L-868 Class 1 (load bearing) airport light bases that are encased in concrete. The light bases shall have a L-894 blank cover, gasket, and stainless-steel hardware. All bolts, studs, nuts, lock washers, and other similar fasteners used for the light fixture assemblies must be fabricated from 316L (equivalent to EN 1.4404), 18-8, 410, or 416 stainless steel. If 18-8, 410, or 416 stainless steel is utilized it shall be passivated and be free from any discoloration. Covers shall be 3/8-inch (9-mm) thickness for L-867 and 3/4-inch (19-mm) thickness for L-868. All junction boxes shall be provided with both internal and external ground lugs.

**115-2.5 Mortar.** The mortar shall be composed of one part of cement and two parts of mortar sand, by volume. The cement shall be per the requirements in ASTM C150, Type I. The sand shall be per the requirements in ASTM C144. Hydrated lime may be added to the mixture of sand and cement in an amount not to exceed 15% of the weight of cement used. The hydrated lime shall meet the requirements of ASTM C206. Water shall be potable, reasonably clean and free of oil, salt, acid, alkali, sugar, vegetable, or other substances injurious to the finished product.

**115-2.6 Concrete.** Concrete shall be proportioned, placed, and cured per state department of transportation structural concrete and a minimum allowable compressive strength of 3,000 psi.

**115-2.7 Frames and covers.** The frames shall conform to one of the following requirements:

- a. ASTM A48: Gray iron castings
- b. ASTM A47: Malleable iron castings
- c. ASTM A27: Steel castings
- d. ASTM A283, Grade D: Structural steel for grates and frames
- e. ASTM A536: Ductile iron castings
- f. ASTM A897: Austempered ductile iron castings

All castings specified shall withstand a minimum AASHTO H-10 loading.

All castings or structural steel units shall conform to the dimensions shown on the plans and shall be designed to support the loadings specified.

Each frame and cover unit shall be provided with fastening members to prevent it from being dislodged by traffic, but which will allow easy removal for access to the structure.

All castings shall be thoroughly cleaned. After fabrication, structural steel units shall be galvanized to meet the requirements of ASTM A123.



Each cover shall have the word "ELECTRIC" or other approved designation cast on it. Each frame and cover shall be as shown on the plans or approved equivalent. No cable notches are required.

Each manhole shall be provided with a "DANGER -- PERMIT-REQUIRED CONFINED SPACE, DO NOT ENTER" safety warning sign as detailed in the Contract Documents and in accordance with OSHA 1910.146 (c)(2).

**115-2.8 Ladders.** Ladders, if specified, shall be galvanized steel or as shown on the plans.

**115-2.9 Reinforcing steel.** All reinforcing steel shall be deformed bars of new billet steel meeting the requirements of ASTM A615, Grade 60.

**115-2.10 Bedding/special backfill.** Bedding or special backfill shall be as shown on the plans.

**115-2.11 Flowable backfill.** Flowable material used to backfill shall conform to the requirements of Item P-153, Controlled Low Strength Material.

**115-2.12 Cable trays.** Cable trays shall be of galvanized steel. Cable trays shall be located as shown on the plans.

**115-2.13 Plastic conduit.** Plastic conduit shall comply with Item L-110, Airport Underground Electrical Duct Banks and Conduits.

**115-2.14 Conduit terminators.** Conduit terminators shall be pre-manufactured for the specific purpose and sized as required or as shown on the plans.

**115-2.15 Pulling-in irons.** Pulling-in irons shall be manufactured with 7/8-inch (22 mm) diameter hot-dipped galvanized steel or stress-relieved carbon steel roping designed for concrete applications (7 strand, 1/2-inch (12 mm) diameter with an ultimate strength of 270,000 psi (1862 MPa)). Where stress-relieved carbon steel roping is used, a rustproof sleeve shall be installed at the hooking point and all exposed surfaces shall be encapsulated with a polyester coating to prevent corrosion.

**115-2.16 Ground rods.** Ground rods shall be one piece, solid stainless steel, copper, or copper clad steel. The ground rods shall be of the length and diameter specified on the plans, but in no case shall they be less than 8 feet (2.4 m) long nor less than 5/8 inch (16 mm) in diameter.

## CONSTRUCTION METHODS

**115-3.1 Unclassified excavation.** It is the Contractor's responsibility to locate existing utilities within the work area prior to excavation. Damage to utility lines, through lack of care in excavating, shall be repaired or replaced to the satisfaction of the Engineer without additional expense to the Owner.

The Contractor shall perform excavation for structures and structure footings to the lines and grades or elevations shown on the plans or as staked by the Engineer. The excavation shall be of sufficient size to permit the placing of the full width and length of the structure or structure footings shown.

All excavation shall be unclassified and shall be considered incidental to Item L-115. Dewatering necessary for structure installation and erosion per federal, state, and local requirements is incidental to Item L-115.

Boulders, logs, and all other objectionable material encountered in excavation shall be removed. All rock and other hard foundation material shall be cleaned of all loose material and cut to a firm surface either level, stepped or serrated, as directed by the Engineer. All seams, crevices, disintegrated rock, and thin strata shall be removed. When concrete is to rest on a surface other than rock, special care shall be taken not to disturb the bottom of the excavation. Excavation to final grade shall not be made until just before the concrete or reinforcing is to be placed.

The Contractor shall provide all bracing, sheeting, and shoring necessary to implement and protect the excavation and the structure as required for safety or conformance to governing laws. The cost of bracing, sheeting, and shoring shall be included in the unit price bid for the structure.

Unless otherwise provided, bracing, sheeting, and shoring involved in the construction of this item shall be removed by the Contractor after the completion of the structure. Removal shall be affected in a manner that will not disturb or mar finished masonry. The cost of removal shall be included in the unit price bid for the structure.

After each excavation is completed, the Contractor shall notify the Engineer. Structures shall be placed after the Engineer has approved the depth of the excavation and the suitability of the foundation material.

Prior to installation the Contractor shall provide a minimum of 6 inches (150 mm) of sand, or a material approved by the Engineer as a suitable base to receive the structure. The base material shall be compacted and graded level and at proper elevation to receive the structure in proper relation to the conduit grade or ground cover requirements, as indicated on the plans.

**115-3.2 Concrete structures.** Concrete structures shall be built on prepared foundations conforming to the dimensions and form indicated on the plans. The concrete and construction methods shall conform to the requirements specified for concrete in this Section. Any reinforcement required shall be placed as indicated on the plans and shall be approved by the Engineer before the concrete is placed.

**115-3.3 Precast unit installations.** Precast units shall be installed plumb and true. Joints shall be made watertight by use of sealant at each tongue-and-groove joint and at roof of manhole. Excess sealant shall be removed and severe surface projections on exterior of neck shall be removed.

**115-3.4 Placement and treatment of castings, frames, and fittings.** All castings, frames and fittings shall be placed in the positions indicated on the Plans or as directed by the Engineer and shall be set true to line and to correct elevation. If frames or fittings are to be set in concrete or cement mortar, all anchors or bolts shall be in place and position before the concrete or mortar is placed. The unit shall not be disturbed until the mortar or concrete has set.

Field connections shall be made with bolts, unless indicated otherwise. Welding will not be permitted unless shown otherwise on the approved shop drawings and written approval is granted by the casting manufacturer. Erection equipment shall be suitable and safe for the workman. Errors in shop fabrication or deformation resulting from handling and transportation that prevent the proper assembly and fitting of parts shall be reported immediately to the Engineer and approval of the method of correction shall be obtained. Approved corrections shall be made at the Contractor's expense.

Anchor bolts and anchors shall be properly located and built into connection work. Bolts and anchors shall be preset by the use of templates, or such other methods as may be required to locate the anchors and anchor bolts accurately.

Pulling-in irons shall be located opposite all conduit entrances into structures to provide a strong, convenient attachment for pulling-in blocks when installing cables. Pulling-in irons shall be set directly into the concrete walls of the structure.

**115-3.5 Installation of ladders.** Ladders shall be installed such that they may be removed if necessary. Mounting brackets shall be supplied top and bottom and shall be cast in place during fabrication of the structure or drilled and grouted in place after erection of the structure.

**115-3.6 Removal of sheeting and bracing.** In general, all sheeting and bracing used to support the sides of trenches or other open excavations shall be withdrawn as the trenches or other open excavations are being refilled. That portion of the sheeting extending below the top of a structure shall be withdrawn, unless otherwise directed, before more than 6 inches (150 mm) of material is placed above the top of the

structure and before any bracing is removed. Voids left by the sheeting shall be carefully refilled with selected material and rammed tight with tools especially adapted for the purpose or otherwise as may be approved.

The Engineer may direct the Contractor to delay the removal of sheeting and bracing if, in his judgment, the installed work has not attained the necessary strength to permit placing of backfill.

**115-3.7 Backfilling.** After a structure has been completed, the area around it shall be backfilled in horizontal layers not to exceed 6 inches (150 mm) in thickness measured after compaction to the density requirements in Item P-152. Each layer shall be deposited all around the structure to approximately the same elevation. The top of the fill shall meet the elevation shown on the plans or as directed by the Engineer.

Backfill shall not be placed against any structure until approval is given by the Engineer. In the case of concrete, such approval shall not be given until tests made by the laboratory under supervision of the Engineer establish that the concrete has attained sufficient strength to provide a factor of safety against damage or strain in withstanding any pressure created by the backfill or the methods used in placing it.

Where required, the Engineer may direct the Contractor to add, at his own expense, sufficient water during compaction to assure a complete consolidation of the backfill. The Contractor shall be responsible for all damage or injury done to conduits, duct banks, structures, property, or persons due to improper placing or compacting of backfill.

**115-3.8 Connection of duct banks.** To relieve stress of the joint between concrete-encased duct banks and structure walls, reinforcement rods shall be placed in the structure wall and shall be formed and tied into duct bank reinforcement at the time the duct bank is installed.

**115-3.9 Grounding.** A ground rod shall be installed in the floor of all concrete structures so that the top of rod extends 6 inches (150 mm) above the floor. The ground rod shall be installed within one foot (30 cm) of a corner of the concrete structure. Ground rods shall be installed prior to casting the bottom slab. Where the soil condition does not permit driving the ground rod into the earth without damage to the ground rod, the Contractor shall drill a 4-inch (100 mm) diameter hole into the earth to receive the ground rod. The hole around the ground rod shall be filled throughout its length, below slab, with Portland cement grout. Ground rods shall be installed in precast bottom slab of structures by drilling a hole through bottom slab and installing the ground rod. Bottom slab penetration shall be sealed watertight with Portland cement grout around the ground rod.

A grounding bus of 4/0 bare stranded copper shall be exothermically bonded to the ground rod and loop the concrete structure walls. The ground bus shall be a minimum of one foot (30 cm) above the floor of the structure and separate from other cables. No. 2 American wire gauge (AWG) bare copper pigtailed shall bond the grounding bus to all cable trays and other metal hardware within the concrete structure. Connections to the grounding bus shall be exothermic. If an exothermic weld is not possible, connections to the grounding bus shall be made by using connectors approved for direct burial in soil or concrete per UL 467. Hardware connections may be mechanical, using a lug designed for that purpose.

**115-3.10 Cleanup and repair.** After erection of all galvanized items, damaged areas shall be repaired by applying a liquid cold-galvanizing compound per MIL-P-21035. Surfaces shall be prepared, and compound applied per the manufacturer's recommendations.

Prior to acceptance, the entire structure shall be cleaned of all dirt and debris.

**115-3.11 Restoration.** After the backfill is completed, the Contractor shall dispose of all surplus material, dirt, and rubbish from the site. The Contractor shall restore all disturbed areas equivalent to or better than their original condition. All sodding, grading and restoration shall be considered incidental to the respective Item L-115 pay item.

The Contractor shall grade around structures as required to provide positive drainage away from the structure.

Areas with special surface treatment, such as roads, sidewalks, or other paved areas shall have backfill compacted to match surrounding areas, and surfaces shall be repaired using materials comparable to original materials.

Following restoration of all trenching near airport movement surfaces, the Contractor shall thoroughly visually inspect the area for foreign object debris (FOD) and remove any such FOD that is found. This FOD inspection and removal shall be considered incidental to the pay item of which it is a component part.

After all work is completed, the Contractor shall remove all tools and other equipment, leaving the entire site free, clear and in good condition.

**115-3.12 Inspection.** Prior to final approval, the electrical structures shall be thoroughly inspected for conformance with the plans and this specification. Any indication of defects in materials or workmanship shall be further investigated and corrected. The earth resistance to ground of each ground rod shall not exceed 25 ohms. Each ground rod shall be tested using the fall-of-potential ground impedance test per American National Standards Institute / Institute of Electrical and Electronic Engineers (ANSI/IEEE) Standard 81. This test shall be performed prior to establishing connections to other ground electrodes.

**115-3.13 Manhole elevation adjustments.** The Contractor shall adjust the tops of existing manholes in areas designated in the Contract Documents to the new elevations shown. The Contractor shall be responsible for determining the exact height adjustment required to raise or lower the top of each manhole to the new elevations. The existing top elevation of each manhole to be adjusted shall be determined in the field and subtracted/added from the proposed top elevation.

The Contractor shall remove/extend the existing top section or ring and cover on the manhole structure or manhole access. The Contractor shall install precast concrete sections or grade rings of the required dimensions to adjust the manhole top to the new proposed elevation or shall cut the existing manhole walls to shorten the existing structure, as required by final grades. The Contractor shall reinstall the manhole top section or ring and cover on top and check the new top elevation.

The Contractor shall construct a concrete slab around the top of adjusted structures located in graded areas that are not to be paved. The concrete slab shall conform to the dimensions shown on the plans.

**115-3.14 Duct extension to existing ducts.** Where existing concrete encased ducts are to be extended, the duct extension shall be concrete encased plastic conduit. The fittings to connect the ducts together shall be standard manufactured connectors designed and approved for the purpose. The duct extensions shall be installed according to the concrete encased duct detail and as shown on the plans.

## METHOD OF MEASUREMENT

**115-4.1** All items included in this section are incidental to the pay items defined in Specification L-126 and shall not be separately measured.

## BASIS OF PAYMENT

**115-5.1** Payment for all items in this section are incidental to the pay items defined in Specification L-126.

## REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

American National Standards Institute / Insulated Cable Engineers Association (ANSI/ICEA)

ANSI/IEEE STD 81 IEEE Guide for Measuring Earth Resistivity, Ground Impedance, and Earth Surface Potentials of a Ground System

Advisory Circular (AC)

AC 150/5345-7 Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits

AC 150/5345-26 Specification for L-823 Plug and Receptacle, Cable Connectors

AC 150/5345-42 Specification for Airport Light Bases, Transformer Housings, Junction Boxes, and Accessories

AC 150/5340-30 Design and Installation Details for Airport Visual Aids

AC 150/5345-53 Airport Lighting Equipment Certification Program

Commercial Item Description (CID)

A-A 59544 Cable and Wire, Electrical (Power, Fixed Installation)

ASTM International (ASTM)

ASTM A27 Standard Specification for Steel Castings, Carbon, for General Application

ASTM A47 Standard Specification for Ferritic Malleable Iron Castings

ASTM A48 Standard Specification for Gray Iron Castings

ASTM A123 Standard Specification for Zinc (Hot Dip Galvanized) Coatings on Iron and Steel Products

ASTM A283 Standard Specification for Low and Intermediate Tensile Strength Carbon Steel Plates

ASTM A536 Standard Specification for Ductile Iron Castings

ASTM A615 Standard Specification for Deformed and Plain Carbon-Steel Bars for Concrete Reinforcement

ASTM A897 Standard Specification for Austempered Ductile Iron Castings

ASTM C144 Standard Specification for Aggregate for Masonry Mortar

ASTM C150 Standard Specification for Portland Cement

ASTM C206 Standard Specification for Finishing Hydrated Lime

FAA Engineering Brief (EB)

EB #83 In Pavement Light Fixture Bolts

Mil Spec

MIL-P-21035 Paint High Zinc Dust Content, Galvanizing Repair

National Fire Protection Association (NFPA)

NFPA-70 National Electrical Code (NEC)

## END OF ITEM L-115

**Page Intentionally Blank**

## ITEM L-126 AUTOMATED WEATHER OBSERVING SYSTEM – LEVEL III

### DESCRIPTION

**126-1.1** This item shall consist of installing an FAA approved Level III automatic weather observing system (AWOS) in accordance with this specification, the referenced specification, and the applicable FAA advisory circulars and orders. The systems shall be installed at the location and in accordance with the dimensions and details shown in the plans and FAA criteria. This item shall include the furnishing of all equipment, materials, services, and incidentals necessary to place the system in operation as a completed unit to the satisfaction of the Engineer and ready for commissioning by the Federal Aviation Administration.

This section includes payment for items which may reference standards and requirements included in other technical sections of these contract documents. In this case those technical sections shall govern the procurement and installation of those items, even if the payment for them is indicated under this section.

### EQUIPMENT AND MATERIALS

**126-2.1 General.** The automatic weather observing system and other equipment and material covered by FAA specifications shall have the prior approval of the Federal Aviation Administration, Washington, D.C., 20591, as listed in Advisory Circular 150/5345-1, latest edition at time of bid opening.

All other equipment and materials covered by other referenced specifications shall be subject to acceptance through the manufacturer's certification of compliance with the applicable specifications.

**126-2.2 AWOS System.** The automated weather observing system (AWOS) shall be an FAA (type certificated) system in accordance with AC 150/5220-16 and Order 6560.20, latest edition, as manufactured by:

- a. All Weather, Inc.
- b. DBT Transportation Services, LLC
- c. Mesotech International

Additional manufacturers of the automatic weather observing systems (AWOS) will be considered subject to verification that the system has been type certificated by the Federal Aviation Administration on the bid opening date. The selected manufacturer shall forward certification that their system meets the Federal Aviation Administration's requirements along with a copy of the FAA's certification letter.

**126-2.3 System Features.** The AWOS system provided for this project shall, as a minimum, include the following features:

#### a. Output Modes: (Level III)

(1) Provide continuous ground-to-air broadcast on an assigned VHF frequency. The assigned frequency shall be confirmed with the Engineer immediately prior to installation. The VHF antenna shall be securely mounted in the location indicated on the plans. All penetrations to any buildings required for the mounting of the antenna or cabling shall be neat and weather tight.

(2) Provide hookup for telephone audio output on an assigned dial up telephone number. The telephone line shall be provided by Airport management through a Voice Over IP (VOIP) system or



through a copper line system. The proposed AWOS system shall be capable of operating through either communication method.

(3) Provide video monitor, audio output, printer, keyboard, and master monitor at the location(s) noted on the plans. The Contractor shall provide all necessary interface equipment, monitor, printer, detachable keyboard, audio output equipment, and incidentals necessary to complete the unit. The audio output unit shall be provided with an on/off switch and volume control.

(4) Provide hookup for the AWOS to the National Airspace Data Interchange Network (NADIN) in conformance with the AWOS/ADAS Interface Control Document. The proposed AWOS system shall be capable of operating the NADIN through a modem or internet connection.

#### **b. Input Modes: (Level III)**

(1) Altimeter setting, vented per FAA requirements. The proposed finished elevation of the AWOS equipment building or equipment mast footer will be provided by the Owner. The Contractor shall provide an as-built location and elevation of the system for purposes of establishing the altimeter elevation and shall coordinate this elevation with the AWOS remanufacture. This information shall be collected by a professional land surveyor.

(2) Wind speed, direction, and gusts.

(3) Temperature.

(4) Dew point.

(5) Density altitude.

(6) Visibility.

(7) Cloud Height.

(8) "Notice-to-Air-Missions" (NOTAM) Messages.

A minimum of three (3) copies of all system documentation, including system description, maintenance manual, data recording forms, installation, check-out and operation instructions, and other documentation as required in FAA Advisory Circular AC 150/5220-16 and FAA Order 6560-20.

**126-2.4 Equipment Enclosure.** AWOS components not designed for outdoor use shall be located indoors as shown in the plans and in accordance with manufacturer and FAA guidelines.

**126-2.5 Concrete.** The concrete shall have a minimum twenty-eight (28) day compressive strength of 3,500 PSI, unless higher strengths are recommended by the equipment manufacturer.

**126-2.6 Reinforcing Steel.** Reinforcing steel shall consist of deformed bars meeting the requirements of AASHTO-M31, grade 60.

**126-2.7 Conduit.** Conduit shall meet the requirements of the national electrical code and local code and AWOS equipment recommendation. In addition, all outdoor conduit shall meet the requirements of FAA Specification L-110.

**126-2.8 Wire and Control Cables.** Wire and control cables shall meet the requirements of the national electric code, local electric code and AWOS equipment manufacturers recommendation. Control cables shall be the manufacturer's required number of pairs plus two spare pairs individually shielded and suitable for direct earth burial. Power conductors shall meet the requirements of FAA Specification L-108.

**126-2.9 AWOS Data Link.** AWOS systems utilizing a radio data link for transmitting collected AWOS data to the system processor shall conform to all applicable FCC regulations, FAA requirements, and



AWOS equipment manufacturers recommendations. The data link will operate on an assigned discrete UHF offset frequency. The selected frequency shall be confirmed with the Engineer immediately prior to installation. The UHF antenna shall be securely mounted at the location shown on the plans. All penetrations to the building shall be neat and weather tight.

**126-2.10 Tower.** The tower utilized to mount the wind sensor, and any supporting towers, shall match the height specified in the plans. The tower shall conform to all AWOS equipment manufacturers specifications. Towers shall be of a tilt-down style as indicated on the plans.

**126-2.11 Painting.** The tower shall be painted with alternating bands of aviation surface orange and white in accordance with AC 70/7460-1 or approved waivers. The band widths shall be 1/7 of the height of the tower, and perpendicular to the vertical axis of the tower. Paint and aviation colors referred to in the specifications should conform to Federal Standards FED-STD-595, Colors as follows:

- a. Orange Number 12197 (Aviation Surface Orange) – 4 Bands
- b. White Number 17875 (Aviation White) – 3 Bands

The tower shall be primed in accordance with the manufacturer's specifications at the manufacturer's facilities.

**126-2.12 Obstruction Light.** A 2-bulb L-810 LED obstruction light shall be placed atop the wind tower in accordance with FAA requirements and Manufacturer's plans and specifications. The bulb type shall be one which is specifically designed to be visible to night vision goggles (NVG).

**126-2.13 Wind Tower and Sensor Foundations.** The wind tower and sensor foundations shall be constructed in accordance with the manufacturer's plans and specifications. The wind tower and sensors shall be located in the areas designated in the plans. The Contractor shall provide a sensor siting plan showing proposed locations of all sensors to the Engineer prior to construction.

**126-2.14 Transient and Lightning Protection.** AWOS equipment shall be protected against damage or operational upset due to lightning - induced surges on all sensors input lines, sensor supply lines, and incoming power and data communication lines. Equipment (including electrical circuits of fiber optics modems) and personnel shall be protected from lightning surges and voltages, from power line transients and charges. Lightning protection systems shall be designed and installed in accordance with the Lightning Protection Code, NFPA 7B, and manufacturers recommendations for all equipment and structures. Minimal lightning mitigation requirements are indicated on the plans. The Contractor shall enhance these items where required to meet the manufacture's minimum requirements.

## CONSTRUCTION METHODS

**126-3.1 General.** The installation and testing of the equipment shall be completed in accordance with the national electric code, local electric code, AWOS equipment manufacturers and FAA guidelines per Specifications L-108, L-110, L-115, and L-129. The Contractor shall have the AWOS equipment manufacturer visit the site, provide instructions on the equipment's use, and inspect the final installation. The AWOS equipment manufacturer shall provide written certification that the equipment has been installed in conformance with their recommendations and guidelines.

**126-3.2 AWOS CPU Power.** Unless otherwise shown on the plans the Contractor shall utilize existing terminal building power sources for the indoor AWOS equipment. Where a new circuit specified, the circuit shall be sized in accordance with code requirements. The conduit run shall be concealed.

## METHOD OF MEASUREMENT

**126-4.1 Prepare AWOS Site.** The Contractor shall complete the site stripping and clearing, excavation and embankment operations, compaction, topsoil handling, erosion and sediment controls, seeding, mulching and restoration of all disturbed areas required to install the AWOS system, including all incidental items associated with this work. The Contractor shall install the gravel housekeeping pad at the AWOS site and its associated work items. Measurement and payment for this item shall not be measured separately for payment but shall be measured on a lump sum basis, complete to provide all site grading, preparation, and restoration required for the AWOS. No separate measurement will be made.

**126-4.2 Install AWOS System.** The Contractor shall install the AWOS sensor, conduit runs, sensor power and control cable, data link, tower and foundations, obstruction lights, sensors, AWOS Computer equipment, peripheral and all other incidentals for a turnkey installation. Measurement for payment of cable, conduit and trench required shall be considered incidental to the AWOS installation. No separate measurement will be made for the remaining items necessary to complete the AWOS power and control system. The AWOS system equipment installed by the Contractor shall be measured as a lump sum, complete, in-place unit ready for operation and certified by the AWOS equipment manufacturer as properly installed and accepted by the Engineer. No separate measurement will be made.

**126-4.3 AWOS System Power and Control.** The Contractor shall complete all conduit, cable, junction boxes, grounding, trenching, duct markers, restoration, and associated incidentals, required to provide power and communications (where indicated) from the power source location shown on the plans to the AWOS location in the field. The Contractor shall install and complete the AWOS service rack as shown on the plans. Measurement and payment for this item shall not be measured separately for payment but shall be measured on a lump sum basis, complete to provide all work required to provide, install, and establish power and communications for the AWOS. No separate measurement will be made.

**126-4.4 Building Modifications.** The Contractor shall complete all modifications and additions to existing buildings or facilities required to establish power and communication services between the terminal building (or its equivalent as shown on the plans) and the AWOS system. This may include modifications to more than one building and may include modifications to existing electrical panels or other devices located inside of or mounted to these buildings. Modifications may be required to make new penetrations to existing walls, eaves, soffits, or similar, and where completed such penetrations shall be made in a weathertight manner appropriate for the construction type of the building. Measurement and payment for this item shall not be measured separately for payment but shall be measured on a lump sum basis, complete to provide all work required to modify existing buildings and their electrical components to provide power and communications for the AWOS. No separate measurement will be made.

**126-4.5 Supplemental Antenna Tower.** The Contractor shall provide and install any supplemental antenna tower indicated on the plans. This work shall include the appropriate tower to the style, type, lines, and grades indicated on the plans, and to include all tower appurtenances indicated for the tower. This work shall include all foundations, site establishment and site restoration required for the tower. Measurement and payment for this item shall not be measured separately for payment but shall be measured on a lump sum basis, complete to provide all work required to provide, install, and establish the supplemental antenna tower(s). No separate measurement will be made.

**126-4.6 Triannual Inspections.** Beginning on the effective date of the AWOS Commissioning NOTAM the Contractor shall complete on-site service to complete the FAA-mandated Triannual (3 times per year) inspections. This shall also include work to diagnose and remedy other issues which arise with the system during the inspections. This item shall not include costs which are otherwise covered by the project and equipment Warranty and which are otherwise included with or incidental to the project. The technician shall check in with Airport Management upon arrival and departure from the site. The complete annual series of three (3) Triannual trips shall be measured on a lump sum basis.

### **BASIS OF PAYMENT**

**126-5.1** Payment for items described above shall be made as follows:

Item L-126-5.1 Prepare AWOS Site (0B1) - per lump Sum

Item L-126-5.1 Prepare AWOS Site (PNN) – per lump sum

Item L-126-5.2 Install AWOS System (0B1) – per lump sum

Item L-126-5.2 Install AWOS System (PNN) - per lump sum

Item L-126-5.3 AWOS System Power & Control (0B1) – per lump sum

Item L-126-5.3 AWOS System Power & Control (PNN) - per lump sum

Item L-126-5.4 Building Modifications (0B1) – per lump sum

Item L-126-5.4 Building Modifications (PNN) - per lump sum

Item L-126-5.5 Supplemental Antenna Tower (PNN) – per lump sum

Item L-126-5.6 Triannual Inspections (0B1) – per lump sum

Item L-126-5.6 Triannual Inspections (PNN) - per lump sum

### **END OF ITEM L-126**

**Page Intentionally Blank**

## ITEM L-129 INSTALLATION, SPLICING, AND TESTING OF CABLE

### DESCRIPTION

**129-1.1 Scope.** This specification covers the installation and splicing of cable buried directly in ground or installed in duct and conduit. It includes trenches, installation of cables, installation in duct, and/or conduit and backfilling trenches.

**129-1.2 Applicable Specifications.**

Federal Specification WW-C-581	Galvanized Steel Conduit
Federal Specification W-C-581	Bituminized Fiber Duct
Military Specification MIL-I-7798	Plastic Electrical Insulating Tape
Federal Specification HH-T-111	Rubber Insulating Tape
National Electrical Code	Current Edition

**129-1.3 Materials.** The Contractor shall furnish all necessary materials not shown on the list of Government furnished material included as part of the contract. All electrical conductors shall be copper.

### CABLE INSTALLATION DETAILS

**129-2.1 Trench for Direct Earth Burial of Cables.**

**a. Excavation.** Trenches shall be excavated in essentially straight lines and to such width and depth such that the cable will be a minimum of 24" below finished grade.

**b. Backfill.** The trench shall be backfilled in eight-inch maximum layers and tamped and compacted to at least the density of adjacent undisturbed ground. A minimum of three inches of bedding material under the cable and eight inches over the cable. Bedding material shall be sand.

The remainder of the trench backfilling may be done with excavated material provided it does not contain stones larger than four inches in diameter, and further provided that such material contains sufficient earth to prevent the trench from functioning as a drainage ditch.

Trenches shall not be excessively wet and shall not contain pools of water during the backfilling operations.

Unless otherwise specified in the contract, all trenches within airport boundaries shall be completely backfilled and tamped level with the adjacent surface; all trenches outside the boundaries shall be completely backfilled and tamped with backfill heaped over the trench.

**c. Reconditioning Surface.** Any excess excavated material shall be removed and disposed of in accordance with instructions from the Government's representative. After backfilling, the surface shall be left free from ruts and rough spots and subject to the conditions of the preceding paragraphs, shall be restored to its original level and conditions. In cultivated areas, sod or topsoil shall be preserved carefully and replaced by sod of quality equal to that removed. Where the disturbed surface is a newly seeded area, the restored surface shall be reseeded with the same quantity and formula of seed as that used in the original seeding.

The Contractor will be held responsible for maintaining all disturbed surfaces and replacements until final acceptance of the work involved.

At the time of final inspection, the Contractor shall be required to dig and properly backfill by hand, one test hole for every 400 feet of cable in trench. The location shall be determined by the Government representative. If the cables have not been installed correctly in accordance with the drawings and specifications, the Contractor shall unearth the cables by hand digging only and reinstall the cables in accordance with the drawings and specifications at no additional cost to the Government.

**129-2.2 Cable Installation.** Cable shall be run in one piece, without splices where possible, from connection to connection. The number of splices shall be kept to a minimum. The Contractor shall provide a plan for laying each reel of cable to the Engineer prior to installing any of the cable. When cutting is required, cable ends shall be effectively sealed against moisture immediately after cutting.

Cable plows shall not be used for installing cable. Bends of a radius of less than eight times the diameter for rubber, plastic, and twelve times the diameter for metallic armored cable shall not be made. Cable that has been kinked shall not be installed.

### **129-2.3 Direct Earth Burial.**

**a. Laying Cable.** Cable for direct earth burial shall be unreeled in place in the open trench or along the trench and carefully placed in the trench bottom. Pulling the cable into the trench or dragging along the trench will not be permitted.

**b. Separation.** The separation of power and control cables shall be as shown on the applicable drawings.

**c. Cable Loop.** Except where directed otherwise, a slack loop of approximately three feet shall be left on each end of cable runs, on one side of splices, and at all points where cable connections are brought above ground, the slack loop shall be installed with the same minimum depth requirements as the cable run. Loops shall have no bends with an inner radius less than twelve times the maximum diameter of the cable. Where cable is brought above ground, additional slack cable shall be left to make the required connections.

The location of each underground cable splice shall be shown by a cable marker slab placed above the splice with approximately one inch of the slab projecting above the surface. The concrete marker shall be as described above, except the words "Power Splice" or "Control Splice" shall be substituted for "Cable".

**129-2.4 Installation of Cable in Ducts and Conduit.** Cable shall be installed in ducts and/or galvanized conduit at the places shown on the drawings. The cable shall be installed in such a manner and by such methods to ensure against harmful stretching of the conductor, injury to the insulation, or damage to the outer protective covering. No splices or joints will be permitted to be drawn inside ducts or conduit. If necessary to relieve strain on cable during pulling, a lubricant approved by Underwriters' Laboratories, Inc. shall be used.

**a. Conduit and Conduit Fittings.** All exposed conduits shall be adequately plugged or capped during construction to prevent entrance of foreign matter. Ground bushings shall be installed on all risers except as noted on installation drawings and connected to ground with No. 6 bare, solid, copper wire.

All conduit and conduit fittings shall be in accordance with Federal Specifications WW-C-581 and W-F-406. Sherardized conduit or conduit having equal protection may be substituted for zinc-coated conduit, where authorized by the Government representative. The bends and offsets in rigid conduit shall be made with an approved hickey or conduit bending machine. Pipe joint compound shall be used on all threaded joints and all joints shall be made up tight. Conduit shall be installed as a complete system for each unit, before conductors are pulled in. Conduit shall be fastened securely in place, and attached to steel work with galvanized clamps, straps, wraplock, or other approved fasteners. Conduit terminating in cabinets or boxes shall be fastened with locknuts, washers and bushings, except when otherwise specified. Conduits terminated underground shall be provided with groundings and bushings.

**129-2.5 Cable Terminating.** Cables shall be terminated in the manner specified on the drawings and in accordance with the best practice of the art. Where potheads are used, strict conformance to the manufacturer's recommendations shall be followed. Terminations with or without potheads shall be made by experienced personnel regularly engaged in that type of work.

Potheads shall be tagged as to function, i.e., facility which it serves or other pertinent data. Tags shall be corrosion resistant metal and securely fastened to pothead conduit. Where terminations are made at substation high voltage bushings, they shall be taped for full voltage and varnished.

**129-2.6 Stenciling and Marking.** All terminals, boxes and conductors shall be appropriately marked as to phase, function or some other logical numbering or lettering system, as directed by the Government representative. The type of marking shall be marking tape, tags or other logical permanent, lasting, and weatherproof methods as approved by the Government representative.

**129-2.7 Grounding.** All metal cases of electrical equipment shall be grounded in accordance with the requirements of the National Electrical Code, the National Electrical Safety Code as specified herein. Ground rods shall be installed at locations detailed in the drawings and shall be driven into the ground so that the top is at 12 inches below grade. The ground rods shall be located at least two feet from concrete pads. Ground connectors, clamps and lugs where used shall be of the best commercial quality for lasting, trouble-free service and designed specifically for the service intended. Pipe straps shall not be used specifically for grounding purposes. The grounding conductor shall be No. 6 or larger bare copper wire and shall connect to the ground rod using a welding process similar and equal to Erico Products Corp. "Cadweld" or Burndy Corp. "Thermoweld." The ground wire shall be dressed flat against all steel surfaces over which it is installed. Ground rods shall be equal to Copperweld sectional ground rods with rolled threads at one end for joining together with couplings to form multiples of the individual 10-foot length.

**129-2.8 Ground Resistance Test.** The ground resistance shall be checked at each component with a "ground megger" instrument subject to the approval of the Resident Engineer. Ground resistance measurements shall be made for each individual ground rod (isolated from counterpoise system) by the "Fall-of-Potential" Method.

The ground resistance of each light station shall not exceed 25 ohms. Additional ground rods will be driven (minimum spacing 6') if necessary and connected in parallel to produce the desired readings. Additional ground rods may be secured to the original to increase the rod depth to 16 or 24 feet in lieu of parallel ground rods. This will be done at no additional cost to the Government.

A record shall be kept of each ground resistance reading and six copies turned over to the Resident Engineer.

## **SPLICING OF CABLES**

**129-3.1 General Splicing Requirements.** Cable splicing shall be performed only by experienced and qualified cable splicers regularly engaged in this type of work. Metallic armored cables and metallic shielded cables shall have the armor and shield bonded across splices to provide a continuous electrical path for the entire run.

The Contractor shall test each splice for conductor continuity and ground insulation resistance at the completion of each splice along the length of the cable run.

The cable ends to be spliced shall be trained, racked, or arranged as nearly as possible in the final position they will after splicing. The ends should be cut off squarely and with sufficient conductor overlap to allow



a symmetrical staggering of joints of individual conductors. It is desirable to tie or bind the cables so that they will not move during the splicing operation.

In the splicing operation, care must be exercised so that individual wire conductors and insulation are not nicked or damaged.

The individual wire conductors, prior to splicing, shall be cleaned bright to secure a low resistance electrical connection. When a cable is opened preparatory to splicing, the work should proceed without delay. If delay is encountered in completing a splice, the opened cable ends shall be protected to prevent entrance of moisture and foreign matter. Individual splices within a cable shall be staggered to keep the diameter of the resulting splice bundles as small as practical.

**129-3.2 Methods.** Splicing shall be performed in a manner similar and equal to that prescribed for the type of cable involved. Methods and materials described represent the minimum acceptable requirements. Improved techniques and materials may be employed provided the completed splice meets or exceeds the requirements specified herein. Plastic electrical insulating tape, when used, shall meet the requirements of Military Specification MIL-I-7798.

**129-3.3 Cable Splicing Procedures.** The cable shall be spliced with material from splice kits that shall be specifically designed for the type of cable being spliced.

**129-3.4 Cable Splicing, Terminating and Arcproofing Materials.** Tapes for splices or terminations shall be dated by the tape manufacturer to indicate that they have been manufactured no longer than six months prior to use in the work of this section.

All splicing, terminating and arcproofing materials shall be compatible, so that no one material will adversely affect the physical or electrical properties of any other, or of the wire or cable itself.

Splicing materials required for this installation shall conform to the following:

**a. Connectors.** Connectors shall be as follows:

- (1) Split sleeve solder connectors shall be high conductivity, corrosion-resistant type.
- (2) Solderless, uninsulated, compression connectors shall be high conductivity, corrosion resistant type.
- (3) Insulated, indenter type compression butt connectors.
- (4) Insulated integral self-locking flexible shell, expandable spring connectors.
- (5) Uninsulated, indenter type compression pigtail connectors.
- (6) Welded type connectors.

**b. Terminals.**

- (1) Solder terminals shall be high conductivity, corrosion resistant type.
- (2) Solderless, uninsulated, compression terminals shall be high conductivity, corrosion-resistant type.
- (3) Insulated, compression terminals.
- (4) Solderless, bolted terminals shall be high conductivity, corrosion-resistant, hex-screw type.
- (5) Welded type terminals.

**c. Shrinkable Tubing.**



(1) Heat shrinkable tubing shall be either irradiated modified polyvinyl chloride or irradiated modified polyolefin.

(2) Cold shrinkable tubing.

**d. Tapes and sealers.**

(1) Vinyl tape shall be flame-retardant, cold, and weather-resistant ¾-inch and 1 ½-inch wide, as required, conforming to UL 510 and ASTM D3005.

(a) Interior, dry locations: 7-mil conforming to ASTM D 3005 (Type I) Scotch (3M) No. 33 or approved equal.

(b) Exterior or damp and wet locations: 8.5-mil and conforming to ASTM D 3005 (Type II) Scotch (3M) No. 88 or approved equal.

(2) Rubber tape shall be ethylene-propylene, rubber-based, 30-mil splicing tape, rated for 130 degrees C operation: ¾-inch and wider (1, 1 ½, 2 inches) as required and approved, conforming to ASTM D 1373 and Federal Specification HH-I 553 (Grade A); Scotch (3M) No. 130C, or approved equal.

**e. Binding wire.** Binding wire shall be uninsulated, tinned copper.

**f. Lead sleeve.** Lead sleeve shall be 5/32 inches thick, commercially, and chemically pure, and shall conform to ICEA S-68-516 and ASTM B 29.

**g. Solder.**

(1) Solder used on the shielding braids of any cable shall be 50 Tin/50 Lead.

(2) Solder used for wiping the lead splice sleeve to the lead sheath of any cable shall be 40 Tin/60 Lead, Class A.

(3) Flux used when soldering conductor connectors or shielding tapes and shielding braids shall be of a non-corrosive and non-acid type.

**h. Insulating compound.** Insulating compound shall be installed in all lead covered splices and all potheads.

**i. Arcproofing material.**

(1) Fire resistant tape shall be Scotch No. 77 or approved equal.

(2) Glass cloth binding tape shall be Scotch No. 69 or approved equal.

**j. Ground straps.** Ground straps shall be flexible, tinned copper braid, equivalent to #6 AWG.

**k. Special splicing materials and methods.** Special splicing materials and methods shall be as shown on the Contract Drawings.

**129-3.5 Wire and Cable Installation.** Wires and cables shall be kept dry at all times.

Wire and cable ends shall be sealed with watertight caps if splicing or terminating does not follow at once.

Before splicing or terminating wires and cables, Contractor shall make a thorough inspection to determine that water has not entered the wires and cables or that the wires and cables have not been damaged.

Adequate lubrication shall be used when installing cables in conduits or raceways. Pulling compounds shall be of the type which will be compatible with the finish of the wires and cables furnished.

**129-3.6 Grounding Wires and Cables.** Splices and terminations shall be made by using either a welded type connection or a solderless, high conductivity, corrosion-resistant, compression type connector installed in accordance with the manufacturer's recommendation.

In hazardous or classified locations, splices shall be solderless, high conductivity, corrosion-resistant, compression type connectors and terminations shall be clamp type pressure connectors suitable for such use.

All underground connections shall be covered with two coats of asphalt base paint.

Each splice shall be bonded to ground, using a flexible ground strap, 2 feet long, #6 AWG or equivalent size.

**129-3.7 Splices and Terminations.** All wires and cables shall be spliced in each manhole through which they pass, unless otherwise noted herein or on the Contract Drawings, or where the Contractor submits pulling tension and sidewall pressure calculations and they are approved by the Engineer. Sufficient slack shall be provided for several resplicings.

Splices and terminations shall be completed by workmen trained and experienced in the type of cable and the voltage class, with not less than three years' experience in this specialty type of work.

Where required by the Engineer, sample splices shall be demonstrated to the Engineer, by each splicer working on the contract. The sample shall be provided to the Engineer after completion of the demonstration.

Terminations using stress-relief cones (conforming to Class 1, IEEE 48) shall be made in accordance with the cable manufacturer's recommendations.

Splices shall conform to IEEE 404 and shall:

- a. Meet the full electrical and physical integrity of the wire and cable construction, including voltage rating, ampacity, BIL, and type of waterproofing.

- b. Conform to the wire and cable manufacturer's requirements and recommendations.

Where cable is lead-sheathed construction, prior to splicing or terminating each cable shall be nitrogen purged to remove all moisture. The purging procedure shall be submitted in advance to the Engineer. All terminators shall include a lead wiping collar or adaptor and all splices shall be lead-sleeve, wiped construction. Each splice shall be air-tested, prior to filling with insulating compound. Where cable is jacketed over the lead sheath, apply two half-laps of vinyl tape over the complete splice.

Where splices or terminators are on the Utility side of incoming service equipment, the splices or terminations shall be of the type and style approved by the Utility and shall be submitted to the Utility for approval.

### **129-3.8 Arcproofing.**

- a. Wires and cables shall be arcproofed, as follows:

- (1) Arcproofing on wires and cables which have been disturbed for any reason shall be reinstalled as soon as possible after the disturbance.

- (2) All wire and cables operating at greater than 600 volts (line-to-line) shall be arcproofed.

- b. Arcproofing shall be installed as follows:

- (1) Wires and cables shall be grouped by circuit and arcproofing shall be applied over the group of cables comprising one circuit. Splices shall be arcproofed individually and the taping shall join with and be overlapped by the group taping.

(2) Arcproofing shall be applied in two wrappings of half-lapped tape, bound with glass cloth tape applied at the ends of the tape and at intervals not to exceed 24 inches along the entire length of the cables. The two wrappings shall be wrapped with opposing-lays.

(3) Arcproofing shall extend into the conduit opening or end bell of the raceway entering a handhole, manhole or box.

(4) Arcproofing tape shall be 1 ½ -inches wide where the diameter of the individual cable, or the circumscribed circle for the circuit group, is less than 1 ¾-inches. For larger diameters, the tape shall be 3 inches wide.

**129-3.9 Identification of Wires and Cables.** All wires and cables shall be identified by circuits in all cabinets, boxes, manholes, handholes, wiring troughs, and other enclosures, and at all terminal points.

The circuit designations shall be as shown on the Contract Drawings. Tags shall be attached to wires and cables, so that they will be readily visible and available.

The tag ties shall be wrapped around all conductors comprising the circuit or feeder to be identified.

Wires and cables which are arcproofed shall be identified outside of the applied arcproofing.

Wires and cable tags shall be stainless steel metal tags, gauge and ¾-inch wide, embossed with letters and numbers 5/16-inch high, fastened to the cable at both ends of tags with 1/16-inch diameter monel metal wire or stainless-steel cable ties.

**129-3.10 Test of Splices in Power Cables.** The cable furnished for the job will be assumed to be capable of rated performance unless the Contractor makes tests prior to installation and reports otherwise in writing to the Engineer.

Prior to performing any electrical tests, the Resident Engineer shall be notified. His presence will be required during the tests described herein.

**129-3.11 Cables, 5,000 Volt.** After installation, the cables, their splices and any terminations such as potheads installed by the Contractor, shall be tested for compliance with specification requirements. The Contractor shall furnish the necessary instruments except where indicated otherwise. The Contractor shall show evidence that the instruments have been calibrated within a period of two years preceding the test. The tests will be performed as follows:

a. Conductors, splices, wiring, etc., will be hi-potted at 10,000 volts D.C. by qualified contractor personnel using approved contractor equipment after complete installation and backfilling of trenches. The test will be made between conductors and from conductors to ground with cable shield and armor grounded, and for a period of not less than one minute after instrument readings have stabilized.

Minimums acceptable resistance values will be 50 megohms when measured at 10 KV D.C. Original insulation values of the cable have been substantially reduced to the specified 50 megohms in order to compensate for cable length, ageing of conductor insulation and other factors which may affect test results both before and during installation. Unless cable length should appreciably exceed ten thousand feet, no reduction in the specified insulation resistance will be considered.

b. A test will be made by the Contractor for continuity of the cable's shield and armor. An ohmmeter type instrument may be used.

c. If cables do not meet the applicable criteria after testing, it will be the Contractor's responsibility to make the necessary corrections to the cable so that the cable will test satisfactorily.

**129-3.12 Secondary Power Cables.** The Contractor shall furnish the necessary instruments. The Contractor shall show evidence that the instruments he uses for testing have been calibrated within a period of two years preceding this test.

The Contractor shall obtain approval from the Resident Engineer of the information to be impressed on the cable marker and for the method of impression. The letters shall be four inches high, three inches wide and one-half inch deep.

#### **METHOD OF MEASUREMENT**

**129-4.1** All items included in this section are incidental to the pay items defined in Specification L-126 and shall not be separately measured.

#### **BASIS OF PAYMENT**

**129-5.1** Payment for all items in this section is incidental to the pay items defined in Specification L-126.

#### **END OF ITEM L-129**

## **Appendix A - Other Forms**



## **ELECTRONIC FILE RELEASE AGREEMENT**

### **DELTA PROJECT #23042**

\_\_\_\_\_(RECIPIENT) has requested that Delta Airport Consultants, Inc., (ENGINEER) provide electronic files for the RECIPIENT's use on the Construct AWOS-III - Bid Package 1 project at the Bethel Regional Airport (Bethel, ME) and Princeton Municipal Airport (Princeton, ME), subject to the following terms and conditions. Electronic files are available only to the successful low bidder.

The ENGINEER's electronic files are compatible with AutoCAD 2018 or newer releases. The ENGINEER makes no representation as to the compatibility of these files with your hardware or your software.

Data contained in these electronic files is part of the ENGINEER's instruments of service, who shall be deemed the author and shall retain all common law, statutory law, and other rights, without limitation, including copyrights, and shall not be used by you or anyone else receiving this data through or from you for any purpose other than that intended. Any other use or reuse by you or others will be at your sole risk and without liability or legal exposure to the ENGINEER. The RECIPIENT agrees to make no claim and hereby waive, to the fullest extent permitted by law, any claim or cause of action of any nature against the ENGINEER, its officers, directors, employees, agents or subconsultants which may arise out of or in conjunction with the RECIPIENT's use or reuse of the electronic files for any purpose.

Furthermore, the RECIPIENT shall, to the fullest extent permitted by law, indemnify and hold harmless the ENGINEER from all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from such use or reuse, by the RECIPIENT or others, of these electronic files.

These electronic files are not contract documents, nor are they considered as being the engineering drawings for the project. Significant differences may exist between these electronic files and corresponding hard copy contract documents (project engineering drawings) due to addenda, change orders, or other revisions. The ENGINEER makes no representation regarding the accuracy or completeness of the electronic files received by the RECIPIENT. In the event a conflict arises between the signed contract documents prepared by the ENGINEER and electronic files, the signed contract documents shall govern. The RECIPIENT is responsible for determining if any conflicts exist. By the RECIPIENT's use of these electronic files, the RECIPIENT is not relieved of his duty to fully comply with the contract documents, including and without limitation, the need to check, confirm, and coordinate all dimensions and details, take measurements, verify field conditions and coordinate your work with that of other contractors for the project.

Because of the potential that the information presented on the electronic files can be modified, unintentionally or otherwise, the ENGINEER reserves the right to remove all indicia of its ownership and/or involvement from each electronic display or file.

Signature of this agreement shall cover any and all digital correspondence released from the ENGINEER to the RECIPIENT.

Under no circumstances shall delivery of the electronic files for use by the RECIPIENT be deemed a sale by the ENGINEER and the ENGINEER makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the ENGINEER be liable for any loss of profit or any consequential damages as a result of your use or reuse of these electronic files.

---

RECIPIENT (please print name of company)

---

RECIPIENT's Representative Signature

---

RECIPIENT's Representative Name (please print)

---

Witness Signature

---

RECIPIENT's Email Address (please print)

---

RECIPIENT's Phone Number

Electronic File Release Agreement  
Delta Project #: 23042  
Construct AWOS-III - Bid Package 1



## SAMPLE SUBMITTAL FORM

Project Title: Construct AWOS-III - Bid Package 1

Delta Project #: 23042 - MaineDOT

Submittal #:

Submittal Description:

Bid/Pay Item #:

Drawing Sheet #:

Date:

### CONTRACTOR CERTIFICATIONS:

This shop drawing has been reviewed by [Name of Contractor] and approved with respect to the means, methods, techniques, sequences, procedures of construction, safety precautions and programs incidental thereto. [Name of Contractor] also warrants that this shop drawing complies with the contract documents and comprises no variations thereto, unless noted below.

[Name of Contractor] certifies that this shop drawing complies with Buy American requirements as established under 49 USC Section 50101. Steel products must be 100% U.S. domestic product Manufactured Products. Preference shall be given to products that are 100% manufactured and assembled in the U.S. Manufactured products not meeting the 100% U.S. domestic preference may only be used on the project if the FAA has officially granted a permissible waiver to Buy American Preferences.

### PROPOSED VARIATIONS OR SUBSTITUTIONS

---

---

---

---

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

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

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

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



## CERTIFICATE OF SUBSTANTIAL COMPLETION

**Project:** Construct AWOS-III - Bid Package 1  
**Airports:** Bethel Regional Airport (Bethel, ME)  
Princeton Municipal Airport (Princeton, ME)  
**AIP Project No.:** Pending  
**MaineDOT Project No.:** WIN 18717.08  
**Contract Date:** \_\_\_\_\_

This Certificate of Substantial Completion applies to all Work under the Contract Documents and approved Change Orders for the Construct AWOS-III - Bid Package 1 project completed by \_\_\_\_\_ (CONTRACTOR) for the Maine Department of Transportation (OWNER).

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR, and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents as of \_\_\_\_\_.

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by the CONTRACTOR within thirty (30) calendar days of the above Date of Substantial Completion.

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

ENGINEER: Delta Airport Consultants, Inc. \_\_\_\_\_

Name: *(print)* \_\_\_\_\_

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

CONTRACTOR: \_\_\_\_\_

Name: *(print)* \_\_\_\_\_

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

OWNER: Maine Department of Transportation \_\_\_\_\_

Name: *(print)* \_\_\_\_\_

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



## CERTIFICATE OF FINAL ACCEPTANCE

**Project:** Construct AWOS-III - Bid Package 1  
**Airports:** Bethel Regional Airport (Bethel, ME)  
Princeton Municipal Airport (Princeton, ME)  
**AIP Project No.:** Pending  
**MaineDOT Project No.:** WIN 18717.08  
**Contract Date:** \_\_\_\_\_

This Certificate of Final Acceptance applies to all Work under the Contract Documents and approved Change Orders for the Construct AWOS-III - Bid Package 1 project completed by \_\_\_\_\_ (CONTRACTOR) for the Maine Department of Transportation (OWNER).

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR, and ENGINEER, and that Work is hereby accepted as complete on \_\_\_\_\_.

The following documents and information are attached to and made a part of this Certificate:

- (1) Warranty of Construction
- (2) Lien and Claims Release
- (3) Final DBE Accomplishments

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

ENGINEER: Delta Airport Consultants, Inc. \_\_\_\_\_

Name: *(print)* \_\_\_\_\_

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

CONTRACTOR: \_\_\_\_\_

Name: *(print)* \_\_\_\_\_

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

OWNER: Maine Department of Transportation \_\_\_\_\_

Name: *(print)* \_\_\_\_\_

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



## **Appendix B - Construction Safety and Phasing Plan (Bethel Regional Airport)**





# CONSTRUCTION SAFETY & PHASING PLAN

Construct AWOS-III – Bid Package 1

Bethel Regional Airport

Bethel, Maine

AIP Project No. PENDING

State Project No. PENDING

Delta Project No. 23042

May 2024



## CONTENTS

INTRODUCTION .....	2
PROJECT SCOPE .....	3
1. COORDINATION.....	3
2. PHASING (CONSTRUCTION SEQUENCING) .....	5
3. AREAS AND OPERATIONS AFFECTED BY CONSTRUCTION ACTIVITY .....	6
4. NAVIGATION AIDS (NAVAIDS) PROTECTION.....	7
5. CONTRACTOR ACCESS .....	8
6. WILDLIFE MANAGEMENT.....	11
7. FOREIGN OBJECT DEBRIS (FOD) MANAGEMENT.....	11
8. HAZARDOUS MATERIALS (HAZMAT) MANAGEMENT .....	12
9. NOTIFICATION OF CONSTRUCTION ACTIVITIES.....	12
10. INSPECTION REQUIREMENTS.....	13
11. UNDERGROUND UTILITIES .....	13
12. PENALTIES.....	14
13. SPECIAL CONDITIONS.....	14
14. RUNWAY AND TAXIWAY VISUAL AIDS.....	15
15. MARKING AND SIGNS FOR ACCESS ROUTES .....	15
16. HAZARD MARKING, LIGHTING, AND SIGNAGE .....	16
17. PROTECTION OF RUNWAY AND TAXIWAY SAFETY AREAS.....	18
18. OTHER LIMITATIONS ON CONSTRUCTION .....	22
ATTACHMENT A – PHASING PLANS .....	23
ATTACHMENT B – SAMPLE CHECKLISTS .....	24



## INTRODUCTION

Aviation safety is a primary consideration at airports, especially during construction. In accordance with FAA Advisory Circular (AC) 150/5370-2G, “Operational Safety on Airports During Construction,” a Construction Safety and Phasing Plan (CSPP) must be developed on each on-airfield construction project funded by the Airport Improvement Program (AIP), Passenger Facility Charge (PFC) program or for any project located on an airport certificated under Part 139.

The CSPP sets forth benchmarks and requirements for the project and is the airport operator’s guideline for developing the highest levels of safety, security, and efficiency at the airport during project construction. The CSPP is to be used by all personnel involved in the project, including construction personnel, inspection personnel, and airport staff. This document has been developed for this construction project in order to minimize interruptions to airport operations, control construction costs, and maximize the performance and safety of construction activity.

The Contractor shall be required to submit a Safety Plan Compliance Document (SPCD) to the airport operator describing how the Contractor will comply with the requirements set forth in this CSPP. The SPCD must be submitted to and approved by the airport operator prior to issuance of the Notice to Proceed. The SPCD includes a certification statement by the Contractor that indicates it understands the operational safety requirements of the CSPP and asserts it will not deviate from the approved CSPP and SPCD unless written approval is granted by the airport operator.

In the event the Contractor’s activities are found in non-compliance with the provisions of the CSPP or the SPCD, the Contractor shall immediately cease those operations in violation. In addition, the Contractor will conduct a safety meeting, with the airport operator’s representative present, and review those provisions in the CSPP/SPCD which were violated. The Contractor will not be allowed to resume construction operations until conclusion of the safety meeting and implementation of corrective actions.

## **PROJECT SCOPE**

This CSPP has been prepared for upcoming airfield projects at the Bethel Regional Airport in Bethel, Maine.

The project includes the construction of an AWOS-III weather observing system.

The Bethel Regional Airport is an Airport Reference Code (ARC) B-II, small general aviation facility with general aviation activity. The airport has one runway, 14-32 which is 3,818' long by 75' wide.

## **1. COORDINATION**

Coordination of safety issues will occur throughout all stages of the project. Key conferences and meetings include:

### **1.1. Design Coordination**

Design coordination will be completed with the affected agencies and organizations to discuss operational safety. Participants will include tenants, funding agencies, FAA District Office, State Aviation personnel, the Engineer, and airport operator staff. Input will be solicited on key safety issues to be considered, methods to ensure safety during construction, required protocols, advance notices, and other requirements that need to be incorporated in the contract bid documents.

### **1.2. Prebid Meeting**

A prebid meeting with potential bidders and construction contractors will take place. The meeting will be held approximately 10 days prior to the bid opening date. During the meeting, safety will be discussed, with an emphasis on the unique aspects of construction on an active airfield. FAA Advisory Circular 150/5370-2G will be reviewed, as will the requirements for the Contractor-prepared SPCD. It will be made clear in both the contract documents as well as the pre-bid meeting that the SPCD is the responsibility of the Contractor.

### **1.3. Preconstruction Meeting**

A preconstruction meeting will be held once a construction contract has been awarded, but prior to the start of construction. Invitees will include users, tenants, prime contractor, subcontractors, funding agencies, FAA District Office, State Aviation personnel, the Engineer, Resident Project Representative,

and the airport operator staff. The FAA Airports District Office should ensure that all appropriate FAA offices and Federal agencies that may have an interest in the project are notified.

The airport operator, or authorized agent will prepare an agenda prior to the preconstruction meeting. This will include, but not be limited to:

- a. project scope and phasing requirements;
- b. relationship between airport operator, airport operator's authorized agent, and the Contractor;
- c. relationship between the airport operator and the FAA;
- d. identification of Contractor's superintendent and discussion of authority and responsibilities;
- e. designation of airport operator representative responsible for notifying the Flight Service Station of any circumstances requiring a NOTAM;
- f. scheduling of work and phasing requirements;
- g. notice to proceed date;
- h. safety during construction, including responsibility for marking and lighting of closed and hazardous areas, all in accordance with FAA AC 150/5370-2G *Operational Safety on Airports During Construction*;
- i. security requirements;
- j. communications and documentation protocols, including contact information for all key personnel.

Emphasis will be placed on compliance with the established CSPP and approved SPCD.

#### **1.4. Contractor Progress Meetings**

Progress meetings will be held throughout the construction phase, with operational safety as a standing agenda item. Given the sequence of the work, standing meetings are not anticipated and may occur to address key phases of the work. Current compliance issues and upcoming critical work will be reviewed. Meeting participants will include the Engineer, the Resident Project Representative, the Contractor, and the airport operator. Daily meetings between the Resident Project Representative and key Contractor personnel will also occur to address daily work schedules and associated operational concerns. When necessary, appropriate FAA/State personnel, airport staff, or affected tenants will attend progress meetings.

### **1.5. Scope or Schedule Changes**

Coordination between the Engineer, Contractor, FAA, and the airport operator will occur in the event of any scope or schedule changes. It will be determined if revisions to either the CSPP or the SPCD are required as a result of any scope or schedule changes. Revisions to these documents will be routed through the appropriate approval channels prior to beginning construction in areas of impact.

## **2. PHASING (CONSTRUCTION SEQUENCING)**

This discussion reviews the construction phasing and work areas defined for the project. The phasing generally provides the desired sequencing for the project. The defined work areas address work limitations. These limitations are primarily associated with operational safety, focusing on maintaining adequate separation between the Contractor's activities and aircraft operations and limiting the time that Contractor activities impact airport operations. Refer to the phasing plans in Attachment A for work areas. General elements of this sequencing and phasing are described in the following subsections.

### **2.1. Construction Staging Areas**

Refer to the phasing plans in Attachment A for staging area locations and general safety and security notes concerning use of the staging areas. Construction staging areas and Contractor employee parking areas are to remain outside of all object free areas and all safety areas for all active airfield surfaces.

### **2.2. Construction Access and Haul Routes**

Refer to phasing plans in Attachment A for access and haul route locations and general safety and security notes concerning use of access and haul routes. Applicable control along haul routes for both safety and security must be maintained at all times.

### **2.3. Firefighting Access Routes**

Emergency firefighting access in and around the site will be maintained by the Contractor, as required, for the duration of this project. Construction contractors must prominently mark open trenches and excavations within the construction site, with approval from the airport operator, and light them with red lights during hours of restricted visibility or darkness. There are no designated ARFF or EMS routes on the airport.



#### **2.4. Required Hazard Marking and Lighting**

Refer to the phasing plans in Attachment A for required hazard marking and lighting. Reference Sections 15, 16, and 17 of this CSPP for additional information.

#### **2.5. Work Area Phasing.**

Work areas have been defined to limit the Contractor's activities and minimize impact to airport operations. The project includes a single work area adjacent to the terminal apron. The work in this area will not require closure of the apron. The site may be accessed without impacts to airport operations.

### **3. AREAS AND OPERATIONS AFFECTED BY CONSTRUCTION ACTIVITY**

Runways and taxiways shall remain in use to the maximum extent possible without compromising safety. See Table 3-1 for a summary of effects on airport operations created by this project. Meetings with the Engineer, Contractor, and the airport operator will occur before construction begins on each phase. Items discussed during these meetings are described below:

#### **3.1. Identification of Affected Areas**

The affected areas for each construction phase are identified in the phasing plans in Attachment A.

**3.1.1. Closing or partial closing of runways, taxiways, and aprons.** See Attachment A.

**3.1.2. Closing of firefighting access routes.** Access into, through, and/or around the project work area by emergency vehicles may be affected during construction. Refer to the phasing plans (Attachment A) for requirements. There are no dedicated ARFF routes at the airport.

**3.1.3. Approach/departure surfaces affected by heights of objects.** Contractor equipment used in the project and/or staging area may impact approach/departure surfaces. Equipment locations shall not violate runway Part 77 surfaces except under special waiver conditions. FAA Form 7460-1, *Notice of Proposed Construction or Alteration*, must be submitted by the airport operator to the FAA ADO, and approved prior to construction. Refer to the phasing plans (Attachment A) for requirements.

**3.1.4. Construction areas.** Construction areas, including actual construction, storage/stockpiles, employee parking, staging areas, and haul routes are located near active airfield surfaces. Refer to the phasing plans (Attachment A) for requirements.

### **3.2. Mitigation of Effects**

Establishment of specific procedures is necessary to maintain the safety and efficiency of airport operations. All coordination pertaining to airport operations during construction shall be with the airport operator's designated representative. Specific contacts will be discussed in detail at the preconstruction meeting.

**3.2.1. Temporary and permanent changes to runway and/or taxi operations.** Affected runway and taxiways will be barricaded as indicated on the phasing plans (Attachment A).

**3.2.2. Detours for ARFF and other airport vehicles.** The project work site shall remain open to all firefighting and rescue vehicles in emergency situations. The Contractor is required to maintain access into the project work area for firefighting and rescue vehicles.

**3.2.3. Maintenance of essential utilities.** Special attention will be given by the Contractor to preventing unscheduled interruption of utility services and facilities. Where required by construction, the Contractor will follow prescribed procedures to locate all utilities (aboveground and underground) prior to working around them. All utility outages will be coordinated in advance in accordance with the procedures included in the plans and specifications. When a utility is damaged, it shall immediately be repaired by the Contractor in accordance with the procedures in the plans and specifications.

## **4. NAVIGATION AIDS (NAVAIDS) PROTECTION**

Before beginning any construction activity, parking of equipment, or storing construction materials near a NAVAID, coordination with the appropriate FAA ATO to evaluate the effects of construction activity on the facility must take place. Necessary clearance distances will be coordinated at daily and weekly progress meetings (refer to Section 1, "Coordination"). No NAVAIDS are anticipated to be impacted by this project.

## 5. CONTRACTOR ACCESS

### 5.1. Location of Stockpiled Construction Materials

Stockpiled materials and equipment storage are not permitted within the safety area, obstacle free zone, or object free area of any active runway or taxiway. Stockpiled materials shall be stored at a location approved by the airport operator and constrained in a manner to prevent movement resulting either from prop wash, jet blast, or wind. Stockpile heights shall not exceed 5 feet and shall not penetrate protected airspace (refer to the plans for information on protected airspace). Stockpiled materials and equipment adjacent to these areas shall be prominently marked and lighted during hours of restricted visibility or darkness. Further reference is directed to Section 6, “Wildlife Management,” Section 7, “Foreign Object Debris Management,” and Section 17, “Protection of Runway and Taxiway Safety Areas.”

### 5.2. Vehicle and Pedestrian Operations

Vehicle and pedestrian access routes for airport construction projects must be controlled to prevent inadvertent or unauthorized entry of persons, vehicles, or animals into the AOA.

**5.2.1. Construction site parking.** Vehicle parking areas for Contractor employees shall be as shown on the plans or as designated by the airport operator.

**5.2.2. Construction equipment parking.** Equipment not in use shall be parked in the construction staging area shown on the plans.

**5.2.3. Access and haul roads.** Access routes used by contractors shall be clearly marked to prevent inadvertent entry to open aircraft operational areas. If the access routes share or cross any routes designated for use by ARFF, right of way shall be maintained at all times unless alternate routes have been established. The Contractor shall only use the access and haul roads designated by the airport operator. The airport operator will provide access to the Contractor only after the Contractor has received training from the airport operator. These haul routes are shown in the construction plans.

**5.2.4. Marking and lighting of vehicles.** Equipment and vehicles shall be marked with 3-foot by 3-foot orange and white checker flags (day only) or yellow flashing dome type lights (day or night). Additionally, all Contractor vehicles operating in the AOA shall be clearly labeled with the Contractor's name visible from 200 feet.

**5.2.5. Description of proper vehicle operations.** Vehicle operations shall be in accordance with Advisory Circular 150/5210-20 "Ground Vehicle Operations on Airports."

**5.2.5.1. Normal conditions.** Project haul routes and phasing have been established to prevent the crossing of any open airfield pavements. At no time will the Contractor enter an active runway or taxiway safety area.

**5.2.5.2. Lost communications or emergency conditions.** In the event that radio communications are lost, the driver shall pull onto the shoulder out of the way of any possible aircraft. The vehicle should then visually verify no aircraft are approaching the area and then proceed to a safe location on the airport. There is no air traffic control tower at this airport.

**5.2.6. Required escorts.** All untrained drivers shall be escorted at all times when on the AOA side of the security fence. Escorted vehicles shall be marked and lighted in accordance with this Section 5.

**5.2.7. Training requirements.** The airport operator will provide access to the Contractor only after the Contractor has received safety and security training from the Owner.

**5.2.8. Situational awareness.** Vehicle drivers must confirm by personal observation that no aircraft is approaching their position (either in the air or on the ground) when given clearance to cross a runway, taxiway, or any other area open to airport operations. In addition, it is the responsibility of the escort vehicle driver to verify the movement/position of all escorted vehicles at any given time.

**5.2.9. Two-way radio communication procedures.**

Given the nature of the construction the Contractor is not required to maintain radio communications with aircraft.

#### **5.2.10. Maintenance of the secured area of the airport**

5.2.10.1. Care shall be taken to maintain security during construction when access points are created in the security fencing to permit the passage of construction vehicles or personnel. Temporary gates shall be equipped so that they can be securely closed and locked to prevent access by animals and unauthorized persons. Procedures shall be established to ensure that only authorized persons and vehicles have access to the AOA and that vehicles are allowed through the gate one at a time, i.e. no “piggybacking” behind another person or vehicle. The Contractor is responsible for ensuring that all employees of the Contractor and Subcontractors use only the authorized access point to the AOA and verifying that the access point is secure immediately after use. Gates that fail shall be reported immediately to the airport operator and shall be guarded by the Contractor until the airport operator mobilizes to secure the opening.

5.2.10.2. The Contractor shall maintain separation between the airside and non-secure side of the airport at all times. The perimeter fence shall be maintained on a continuous basis with any temporary opening being continuously guarded by the Contractor’s designated employee. The airport is subject to FAA security requirements and rigid adherence is mandatory. Any fines for unauthorized personnel entering through the Contractor’s entrance points will be deducted from monies due the Contractor. Reference is directed to Section 5. Temporary openings and construction gates shall be secured and locked at the completion of work each day.

5.2.10.3. The Contractor shall delineate limits of construction prior to beginning work each day. The Contractor’s personnel shall not be beyond the limits of construction without authorization from the Owner. Violators are subject to removal from the jobsite and loss of AOA working privileges.

5.2.10.4. The Airport reserves the right to require all personnel working inside the AOA to security training from the Airport. The Airport also reserves the right to bar personnel from the Airport for any security-related reason.

## **6. WILDLIFE MANAGEMENT**

### **6.1. Trash**

Food scraps shall be collected from construction personnel activity. Trash shall be disposed of weekly, or more frequently if necessary, to discourage wildlife encroachment.

### **6.2. Standing Water**

Areas of standing water shall be kept to a minimum so as not to attract wildlife.

### **6.3. Tall Grass and Seeds**

Only the grasses specified on the plans and in the specifications may be used for either temporary or permanent seeding. Incompatible plants could be an unwanted bird attractant.

### **6.4. Poorly Maintained Fencing and Gates**

Reference is directed to Section 5 “Contractor Access” in regard to the importance of maintaining security on the airport so as to discourage access by wildlife.

### **6.5. Disruption of Existing Wildlife Habitat / Wildlife Sightings**

Contractor personnel shall immediately notify the airport operator of significant wildlife sightings.

## **7. FOREIGN OBJECT DEBRIS (FOD) MANAGEMENT**

Waste and loose materials, commonly referred to as FOD, are capable of causing damage to aircraft landing gears, propellers, and jet engines. Materials capable of creating FOD shall be continuously removed during the project and must not be left or placed near active aircraft movement areas. The following measures will be utilized to control and monitor FOD:

- Worksite housekeeping
- Ground vehicle tire inspections
- Runway and taxiway sweeps

Inspection requirements are outlined in Section 10.

## **8. HAZARDOUS MATERIALS (HAZMAT) MANAGEMENT**

The Contractor shall be prepared to immediately contain and clean-up spills resulting from fuel or hydraulic fluid leaks. Provisions for HAZMAT management shall be addressed in the Contractor's Storm Water Pollution Prevention Plan (SWPPP). The HAZMAT management procedures shall include, but not be limited to the following:

- Fuel deliveries
- Spill recovery procedures
- Material Safety Data Sheets (MSDS) availability

## **9. NOTIFICATION OF CONSTRUCTION ACTIVITIES**

This section outlines procedures for maintaining communication in the event that airport users and the FAA must be notified immediately of any conditions adversely affecting the operational safety of the airport.

### **9.1. Contact List**

The Contractor shall provide a list of responsible representatives/points of contact for all involved parties, and procedures for contacting each of them, including after hours. The Contractor must have someone available to take emergency calls from the airport operator throughout the entire construction time period. The Contractor's list shall also include the airport point of contact, ATCT (if applicable), and the Engineer to ensure that Contractor personnel have the contacts that they need in the event of a safety related event.

**Airport points of contact are as follows:**

- Emergency Telephone Number (Police/Fire/Rescue): 911
- Information, Compliance, and Assistance:
  - Airport Manager: (207) 214-5144 (Brad Richard)

### **9.2. NOTAMs**

The airport operator shall be responsible for the issuance of all NOTAMs. Only the airport operator may initiate or cancel NOTAMs on airport conditions and is the only entity that can open or close a runway. The airport operator shall coordinate the issuance, maintenance, and cancellation of NOTAMs

regarding airport conditions resulting from construction activities with tenants and provide information on closed or hazardous conditions on airport movement areas to the FAA Flight Service Station (FSS) for issuance of NOTAMs.

### **9.3. Emergency notification procedures**

In the event of an emergency, the Contractor shall call 911. Additional notification procedures will be reviewed at the preconstruction meeting, and periodically at construction progress meetings, and distributed to all appropriate parties.

### **9.4. Notification to the FAA**

**9.4.1. Part 77.** Any proposed construction or alteration of objects that affect navigable airspace, as defined in FAR Part 77, shall be coordinated with the FAA by submitting FAA Form 7460-1, “Notice of Proposed Construction or Alteration” to the appropriate FAA Airports Regional or District Office. This includes construction equipment and proposed parking areas for this equipment (i.e. cranes, graders, and other equipment) on the airport.

**9.4.2. NAVAIDS.** No NAVAIDS are anticipated to be impacted by this project.

## **10. INSPECTION REQUIREMENTS**

### **10.1. Daily Inspections**

Inspections shall be conducted by the Contractor at least daily to ensure compliance with the CSPP. A sample checklist is provided in Attachment B. In addition, daily inspections will be conducted by the airport operator or their Representative to ensure compliance with the CSPP and the SPCD.

### **10.2. Final Inspections**

A Final Inspection will be conducted by the airport operator, Engineer, FAA, and State upon substantial completion of the project.

## **11. UNDERGROUND UTILITIES**

Special attention shall be given to preventing unscheduled interruption of utility services and facilities. The Contractor shall locate, or arrange for the location of underground utilities, cables, wires, pipelines, and other underground facilities located in excavation areas shall be located. This shall include coordination



with public utilities, “One Call” or “Miss Utility” services. FAA ATO/Technical Operations shall be contacted for location and marking of FAA NAVAID cables. Full coordination between the airport operator’s representatives and construction personnel will take place to ensure that these items are protected at all times during construction. If the Contractor damages any active utility during construction, immediate action shall be taken by the Contractor to repair the utility. Refer to Section 9 “Notification of Construction Activities” for contact information.

## **12. PENALTIES**

12.1. Failure on the part of the Contractor to adhere to the requirements of this CSPP, and the plans and specifications, may have consequences that jeopardize the health and safety of persons on or near the construction site. Penalties for such actions are established by the airport operator and may include fines, suspension of construction, and/or removal from the job site. The airport operator reserves the right to deduct fines from money due to the Contractor.

12.2. Unauthorized personnel entering through the Contractor’s access point is a violation of this CSPP and may result in a fine. The airport operator reserves the right to deduct fines from money due to the Contractor.

12.3. Contractor personnel found to be beyond the limits of construction without authorization from the Owner are subject to removal from the jobsite and loss of security badge and/or secured area working privileges.

## **13. SPECIAL CONDITIONS**

Special conditions that require safety mitigation action include the following:

- Low-visibility operations
- Snow removal
- Aircraft in distress
- Aircraft accident
- Security breach
- Vehicle/pedestrian deviation (VPD)

During these events the Contractor will be required to suspend operations, clear active construction zones, or other measures as directed by the airport operator. Notification procedures in Section 9 shall be followed. See also Sections 5, “Contractor Access,” and 14, “Runway and Taxiway Visual Aids.”

## **14. RUNWAY AND TAXIWAY VISUAL AIDS**

### **14.1. General**

Those areas where aircraft will be operating shall be clearly marked to separate them from construction areas. Airport markings, lighting, signs, and visual NAVAIDs shall be clearly visible to pilots and not misleading, confusing, or deceptive. This shall be verified throughout the construction of the project. All facilities shall be secured in place to prevent movement by prop wash, jet blast, wing vortices, or other wind currents. The facilities shall be constructed of materials that would minimize damage to an aircraft in the event of inadvertent contact.

### **14.2. Markings**

Temporary markings are not required.

**14.2.1. Temporarily Closed or New Taxiways.** For temporarily closed taxiways or new taxiways prior to opening, an X shall be placed at the entrance to each taxiway as indicated in the phasing plans.

### **14.3. Lighting and Signage.**

Temporary lighting is required. Refer to the phasing plans (Attachment A) for details on temporary lighting for the project.

**14.3.1. Temporarily Closed Taxiways.** Temporary closed taxiways shall have their lights de-energized or covered. Directional sign panels associated with temporary closed pavements shall be removed and replaced with a blank panel or covered.

### **14.4. NAVAIDs.**

No temporary NAVAIDs are required.

## **15. MARKING AND SIGNS FOR ACCESS ROUTES**

Pavement markings and signs for construction personnel shall conform to AC 150/5340-18 on the runway and taxiway. Elsewhere, access route marking and signs shall conform to the Federal Highway

Administration Manual on Uniform Traffic Control Devices (MUTCD) and/or State highway specifications. Signs adjacent to areas used by aircraft shall comply with the frangibility requirements on AC 150/5220-23, “Frangible Connections.” The height of temporary signage shall be restricted so as not to penetrate any avigational surfaces (avigational surfaces are described in the phasing plans in Attachment A). Temporary markings and signage are indicated in the phasing plans.

## **16. HAZARD MARKING, LIGHTING, AND SIGNAGE**

### **16.1. Purpose**

The purpose for delineating work areas is to prevent pilots and other airport personnel who do not belong in the construction area from entering. Work areas will be delineated with closed markers, aviation barricades, and bucket barricades. The first item of work in any work area will be the installation of the necessary closed markers and barricades to isolate the areas of proposed construction. All runway and taxiway closures will be fully coordinated with the airport operator to ensure that the proper NOTAMs are issued.

### **16.2. Barricades**

Barricades are acceptable methods used to identify and define the limits of construction and hazardous areas on airports. The types of barricades allowed are detailed on the phasing plans (Attachment A).

### **16.3. Lights**

Lights shall be red, either steady burning or flashing, and meet the luminance requirements of the State Highway Department. Lights shall be mounted on barricades and spaced at no more than ten (10) feet apart. Lights shall be operated between sunset and sunrise and during periods of low visibility whenever the airport is open for operations.

### **16.4. Signs**

The barricades shall be supplemented with signs (for example “No Entry,” “No Vehicles”) as necessary. Signs shall conform to the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD) and/or State highway specifications.

### **16.5. Air Operations Area – General**

Barricades are not permitted in any active safety area. Within a runway or taxiway object free area, and on aprons, the following shall be used to separate all construction/maintenance areas from the movement area:

- Orange traffic cones
- Flashing or steady burning red lights
- Collapsible barricades with diagonal, alternating orange & white stripes
- Signs

All barricades adjacent to an open runway or taxiway / taxilane safety area or apron shall be as low as possible to the ground, and no more than 18 inches high, exclusive of supplementary lights and flags. Barricades shall be of low mass; easily collapsible upon contact with aircraft or any of its components; and weighted or sturdily attached to the surface to prevent displacement from prop wash, jet blast, wing vortex, or other surface wind currents. Barricades affixed to the surface shall be frangible at grade level or as low as possible, but not to exceed 3 inches above the ground. The types of barricades allowed are detailed on the phasing plans (Attachment A).

#### **16.6. Air Operations Area – Runway / Taxiway Intersections**

Highly reflective barricades with lights shall be used to close taxiways leading to closed runways. The types of barricades allowed are detailed on the phasing plans (Attachment A).

#### **16.7. Air Operations Area – Other**

For areas outside runway and taxiway object free areas and safety areas and aprons, barricades intended for construction vehicles and personnel may consist of different shapes and may be constructed from various materials, including railroad ties, sawhorses, jersey barriers, or barrels. The Contractor shall coordinate these barricades, and their locations with the airport operator's representative.

#### **16.8. Maintenance**

The construction specifications include a provision requiring the Contractor to have personnel on call 24 hours a day for emergency maintenance of airport hazard lighting and barricades.

Refer to the phasing plans in Attachment A for graphical depictions of hazard marking, lighting, and signage.

## **17. PROTECTION OF RUNWAY AND TAXIWAY SAFETY AREAS**

**17.1. Runway Safety Area.** Construction activities within the existing RSA are subject to the following conditions:

**17.1.1.** No activity is permitted while the runway is open for aircraft operations. Reference is directed to Section 5 for information on Contractor access to runway safety areas. No construction is proposed within an RSA at any time.

### **17.1.2. Excavations**

**17.1.2.1.** Stockpiling of materials, open trenches, or excavations are not permitted within the RSA while the runway is open. Stockpiled materials shall be removed prior to opening the runway. Trenches shall be either backfilled or covered prior to opening the runway. If the runway must be reopened before excavations are backfilled, the excavations shall be covered appropriately. Covering for open trenches shall be designed to allow the safe operation of the heaviest aircraft operating on the runway across the trench without damage to the aircraft.

**17.1.2.2.** Open trenches and excavations at the construction site shall be prominently marked by the Contractor with red or orange flags, as approved by the Owner, and lighted with red lights during hours of restricted visibility or darkness. Refer to Section 16 for additional information on hazard marking and lighting.

### **17.1.3. Erosion Control**

Soil erosion shall be controlled to maintain RSA standards, that is, the RSA must be cleared and graded and have no potentially hazardous ruts, humps, depressions, or other surface variations, and be capable, under dry conditions, of supporting snow removal equipment, aircraft rescue and firefighting equipment, and the occasional passage of aircraft without causing structural damage to the equipment or aircraft.

**17.1.4.** For this project, the following distances (in accordance with FAA Advisory Circular 150/5300-13), must be protected along the runway edges:

Runway	Aircraft Approach Category A, B, C, or D	Airplane Design Group I, II, III, or IV	RSA Width in Feet Divided by 2
14	B	II-Small	75
32	B	II-Small	75

17.1.5. For this project, the following distances (in accordance with FAA Advisory Circular 150/5300-13), must be protected before the runway threshold:

Runway End Number	Airplane Design Group I, II, III, or IV	Aircraft Approach Category A, B, C, or D	Minimum Safety Area Prior to the Threshold	Minimum Distance to Threshold Based on Required Approach Slope
14	II	B-Small	300	1,000 ft 20:1
32	II	B-Small	300	1,000 ft 20:1

## 17.2. Runway Object Free Area (ROFA)

Construction, including excavations, may be permitted in the ROFA only if performed in accordance with the requirements in the phasing plans (Attachment A). Equipment must be removed from the ROFA when not in use, and material shall not be stockpiled in the ROFA if not necessary. Stockpiling material in the OFA shall not occur until a 7460-1 form and justification is provided to the appropriate FAA Airports Regional or District Office and approved. ROFA dimensions shall be as identified in the following table, which is in accordance with FAA Advisory Circular 150/5300-13.

Runway	ROFA Distance from Centerline (ft)	ROFA Width (ft)	ROFA Length from End of Runway (ft)
14	250	500	300
32	250	500	300

6

## 17.3. Taxiway Safety Area (TSA)

17.3.1. No construction is permitted within the taxiway safety area while the taxiway is open for aircraft operations. No construction is proposed in an open TSA.

**Excavations**

17.3.1.1. Stockpiling of materials, open trenches, or excavations are not permitted within the TSA while the taxiway is open. Stockpiled materials shall be removed prior to opening the taxiway. Trenches shall be either backfilled or covered prior to opening the taxiway. If the taxiway must be reopened before excavations are backfilled, the excavations shall be covered appropriately. Covering for open trenches shall be designed to allow the safe operation of the heaviest aircraft operating on the taxiway across the trench without damage to the aircraft.

17.3.1.2. Open trenches and excavations at the construction site shall be prominently marked by the Contractor with red or orange flags, as approved by the Owner, and lighted with red lights during hours of restricted visibility or darkness. Refer to Section 16 for additional information on hazard marking and lighting.

**17.3.2. Erosion Control**

Soil erosion shall be controlled to maintain TSA standards, that is, the TSA must be cleared and graded and have no potentially hazardous ruts, humps, depressions, or other surface variations, and capable, under dry conditions, of supporting snow removal equipment, aircraft rescue and firefighting equipment, and the occasional passage of aircraft without causing structural damage to the equipment or aircraft.

17.3.3. For this project, the following distances (in accordance with FAA Advisory Circular 150/5300-13) must be protected along the taxiway edges:

Taxiway	Aircraft Approach Category A, B, C, or D	Airplane Design Group I, II, III, or IV	TSA Width in Feet Divided by 2
All taxiways	B	II	39.5

**17.4. Taxiway Object Free Area (TOFA)**

No work is permitted inside the TOFA without the taxiway being closed. No work is proposed within an open TOFA. For this project, the following distances (in accordance with FAA Advisory Circular 150/5300-13) must be protected along the taxiway:

Taxiway	Aircraft Approach Category A, B, C, or D	Airplane Design Group I, II, III, or IV	TOFA Width in Feet Divided by 2
All taxiways	B	II	62

### 17.5. Obstacle Free Zone (OFZ)

Typically, no personnel, equipment, or material shall be permitted inside the OFZ while the runway is open for aircraft operations. If access is required, the express permission of the airport operator shall be obtained. Any request for such permission shall be submitted in writing by the Contractor, along with justification in order for the owner to coordinate the request with FAA. The Runway OFZ is the airspace above the runway whose elevation at any point is the same as the elevation of the nearest point on the runway centerline. For this project, the OFZ dimensions (in accordance with FAA Advisory Circular 150/5300-13) are as follows:

Runway	OFZ Distance from Centerline (ft)	OFZ Width (ft)	OFZ Length from End of Runway (ft)
14	250	250	200
32	250	250	200

Dimensions for applicable inner-approach and inner-transitional OFZ's are shown on the phasing plans in Attachment A. This information is in accordance with FAA Advisory Circular 150/5300-13.

### 17.6. Runway Approach/ Departure Areas and Clearways

All personnel, equipment, and material shall remain outside the protected approaches and surfaces as shown on the phasing plans in Attachment A. Objects that do not penetrate these surfaces may still be obstructions to air navigation and may affect standard instrument approach procedures. Prior to placing such objects, a 7460-1 form and justification must be provided to the appropriate FAA Airports Regional or District Office and approved. Particular attention is called to the placement of cranes, excavators, and other tall equipment.



## **18. OTHER LIMITATIONS ON CONSTRUCTION**

### **18.1. Prohibitions.**

The following are prohibited:

18.1.1. No use of tall equipment (cranes, concrete pumps, etc.) unless a 7460-1 determination letter is issued for such equipment.

18.1.2. No uses of open flame welding or torches unless fire safety precautions are provided, and the airport operator has approved their use.

18.1.3. No use of electrical blasting caps on or within 1,000 feet (300 meters) of the airport property.

18.1.4. No use of flare pots within the AOA.

### **18.2. Restrictions.**

The following are restricted:

18.2.1. Activities during special condition events as outlined in Section 13.

18.2.2. Areas that cannot be worked on simultaneously as outlined in the phasing plans. Also refer to Section 2, “Phasing.”

18.2.3. Day or night construction restrictions as outlined in the phasing plans. Also refer to Section 2, “Phasing.”

18.2.4. Work area restrictions as outlined in the phasing plans. Also refer to Section 2, “Phasing.”

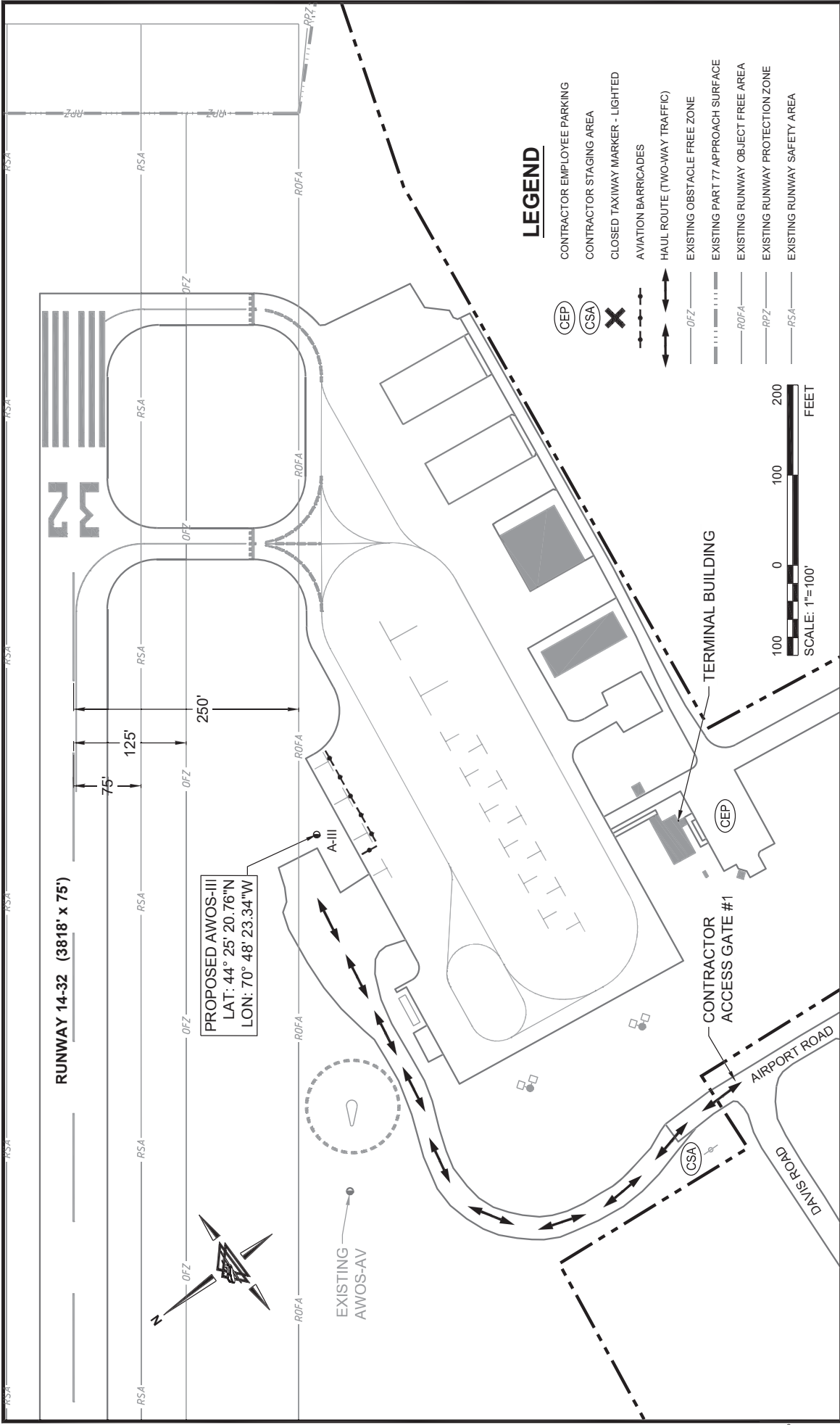


## **ATTACHMENT A – PHASING PLANS**



(Also see Contract Documents plans issued for project)







CONSTRUCTION SAFETY & PHASING PLAN - EXHIBIT A  
BETHEL REGIONAL AIRPORT

DRAWN BY:	CHECKED BY:	DATE:	SCALE:
ADJ	ADJ	MAY 2024	1"=100'

EXHIBIT  
1



## **ATTACHMENT B – SAMPLE CHECKLISTS**



(Insert the PDFs of the checklists from FAA AC 150/5370-2G)–





**APPENDIX C. SAFETY AND PHASING PLAN CHECKLIST**

This appendix is keyed to Chapter 2. In the electronic version of this AC, clicking on the paragraph designation in the Reference column will access the applicable paragraph. There may be instances where the CSPP requires provisions that are not covered by the list in this appendix.

This checklist is intended as an aid, not a required submittal.

**Table C-1. CSPP Checklist**

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
General Considerations					
Requirements for predesign, prebid, and preconstruction conferences to introduce the subject of airport operational safety during construction are specified.	<u>2.5</u>				
Operational safety is a standing agenda item for construction progress meetings.	<u>2.5</u>				
Scheduling of the construction phases is properly addressed.	<u>2.6</u>				
Any formal agreements are established.	<u>2.5.3</u>				
Areas and Operations Affected by Construction Activity					
Drawings showing affected areas are included.	<u>2.7.1</u>				
Closed or partially closed runways, taxiways, and aprons are depicted on drawings.	<u>2.7.1.1</u>				
Access routes used by ARFF vehicles affected by the project are addressed.	<u>2.7.1.2</u>				
Access routes used by airport and airline support vehicles affected by the project are addressed.	<u>2.7.1.3</u>				
Underground utilities, including water supplies for firefighting and drainage.	<u>2.7.1.4</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
Approach/departure surfaces affected by heights of temporary objects are addressed.	<u>2.7.1.5</u>				
Construction areas, storage areas, and access routes near runways, taxiways, aprons, or helipads are properly depicted on drawings.	<u>2.7.1</u>				
Temporary changes to taxi operations are addressed.	<u>2.7.2.1</u>				
Detours for ARFF and other airport vehicles are identified.	<u>2.7.2.2</u>				
Maintenance of essential utilities and underground infrastructure is addressed.	<u>2.7.2.3</u>				
Temporary changes to air traffic control procedures are addressed.	<u>2.7.2.4</u>				
<b>NAVAIDs</b>					
Critical areas for NAVAIDs are depicted on drawings.	<u>2.8</u>				
Effects of construction activity on the performance of NAVAIDS, including unanticipated power outages, are addressed.	<u>2.8</u>				
Protection of NAVAID facilities is addressed.	<u>2.8</u>				
The required distance and direction from each NAVAID to any construction activity is depicted on drawings.	<u>2.8</u>				
Procedures for coordination with FAA ATO/Technical Operations, including identification of points of contact, are included.	<u>2.8, 2.13.1, 2.13.5.3.1, 2.18.1</u>				
<b>Contractor Access</b>					
The CSPP addresses areas to which contractor will have access and how	<u>2.9</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
the areas will be accessed.					
The application of 49 CFR Part 1542 Airport Security, where appropriate, is addressed.	<u>2.9</u>				
The location of stockpiled construction materials is depicted on drawings.	<u>2.9.1</u>				
The requirement for stockpiles in the ROFA to be approved by FAA is included.	<u>2.9.1</u>				
Requirements for proper stockpiling of materials are included.	<u>2.9.1</u>				
Construction site parking is addressed.	<u>2.9.2.1</u>				
Construction equipment parking is addressed.	<u>2.9.2.2</u>				
Access and haul roads are addressed.	<u>2.9.2.3</u>				
A requirement for marking and lighting of vehicles to comply with <i>AC 150/5210-5, Painting, Marking and Lighting of Vehicles Used on an Airport</i> , is included.	<u>2.9.2.4</u>				
Proper vehicle operations, including requirements for escorts, are described.	<u>2.9.2.5, 2.9.2.6</u>				
Training requirements for vehicle drivers are addressed.	<u>2.9.2.7</u>				
Two-way radio communications procedures are described.	<u>2.9.2.9</u>				
Maintenance of the secured area of the airport is addressed.	<u>2.9.2.10</u>				
<b>Wildlife Management</b>					
The airport operator's wildlife management procedures are addressed.	<u>2.10</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
Foreign Object Debris Management					
The airport operator’s FOD management procedures are addressed.	<u>2.11</u>				
Hazardous Materials Management					
The airport operator’s hazardous materials management procedures are addressed.	<u>2.12</u>				
Notification of Construction Activities					
Procedures for the immediate notification of airport user and local FAA of any conditions adversely affecting the operational safety of the airport are detailed.	<u>2.13</u>				
Maintenance of a list by the airport operator of the responsible representatives/points of contact for all involved parties and procedures for contacting them 24 hours a day, seven days a week is specified.	<u>2.13.1</u>				
A list of local ATO/Technical Operations personnel is included.	<u>2.13.1</u>				
A list of ATCT managers on duty is included.	<u>2.13.1</u>				
A list of authorized representatives to the OCC is included.	<u>2.13.2</u>				
Procedures for coordinating, issuing, maintaining and cancelling by the airport operator of NOTAMS about airport conditions resulting from construction are included.	<u>2.8, 2.13.2, 2.18.3.3.9</u>				
Provision of information on closed or hazardous conditions on airport movement areas by the airport operator to the OCC is specified.	<u>2.13.2</u>				
Emergency notification procedures for medical, fire fighting, and police	<u>2.13.3</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
response are addressed.					
Coordination with ARFF personnel for non-emergency issues is addressed.	<u>2.13.4</u>				
Notification to the FAA under 14 CFR parts 77 and 157 is addressed.	<u>2.13.5</u>				
Reimbursable agreements for flight checks and/or design and construction for FAA owned NAVAIDs are addressed.	<u>2.13.5.3.2</u>				
<b>Inspection Requirements</b>					
Daily and interim inspections by both the airport operator and contractor are specified.	<u>2.14.1, 2.14.2</u>				
Final inspections at certificated airports are specified when required.	<u>2.14.3</u>				
<b>Underground Utilities</b>					
Procedures for protecting existing underground facilities in excavation areas are described.	<u>2.15</u>				
<b>Penalties</b>					
Penalty provisions for noncompliance with airport rules and regulations and the safety plans are detailed.	<u>2.16</u>				
<b>Special Conditions</b>					
Any special conditions that affect the operation of the airport or require the activation of any special procedures are addressed.	<u>2.17</u>				
<b>Runway and Taxiway Visual Aids - Marking, Lighting, Signs, and Visual NAVAIDs</b>					
The proper securing of temporary airport markings, lighting, signs, and visual NAVAIDs is addressed.	<u>2.18.1</u>				
Frangibility of airport markings, lighting, signs, and visual NAVAIDs is specified.	<u>2.18.1, 2.18.3, 2.18.4.2, 2.20.2.4</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
The requirement for markings to be in compliance with <u>AC 150/5340-1</u> , <i>Standards for Airport Markings</i> , is specified.	<u>2.18.2</u>				
Detailed specifications for materials and methods for temporary markings are provided.	<u>2.18.2</u>				
The requirement for lighting to conform to <u>AC 150/5340-30</u> , <i>Design and Installation Details for Airport Visual Aids</i> ; <u>AC 150/5345-50</u> , <i>Specification for Portable Runway and Taxiway Lights</i> ; and <u>AC 150/5345-53</u> , <i>Airport Lighting Certification Program</i> , is specified.	<u>2.18.3</u>				
The use of a lighted X is specified where appropriate.	<u>2.18.2.1.2</u> , <u>2.18.3.2</u>				
The requirement for signs to conform to <u>AC 150/5345-44</u> , <i>Specification for Runway and Taxiway Signs</i> ; <u>AC 150/5340-18</u> , <i>Standards for Airport Sign Systems</i> ; and <u>AC 150/5345-53</u> , <i>Airport Lighting Certification Program</i> , is specified.	<u>2.18.4</u>				
<b>Marking and Signs For Access Routes</b>					
The CSPP specifies that pavement markings and signs intended for construction personnel should conform to <u>AC 150/5340-18</u> and, to the extent practicable, with the MUTCD and/or State highway specifications.	<u>2.18.4.2</u>				
<b>Hazard Marking and Lighting</b>					
Prominent, comprehensible warning indicators for any area affected by construction that is normally accessible to aircraft, personnel, or vehicles are specified.	<u>2.20.1</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
Hazard marking and lighting are specified to identify open manholes, small areas under repair, stockpiled material, and waste areas.	<u>2.20.1</u>				
The CSPP considers less obvious construction-related hazards.	<u>2.20.1</u>				
Equipment that poses the least danger to aircraft but is sturdy enough to remain in place when subjected to typical winds, prop wash and jet blast is specified.	<u>2.20.2.1</u>				
The spacing of barricades is specified such that a breach is physically prevented barring a deliberate act.	<u>2.20.2.1</u>				
Red lights meeting the luminance requirements of the State Highway Department are specified.	<u>2.20.2.2</u>				
Barricades, temporary markers, and other objects placed and left in areas adjacent to any open runway, taxiway, taxi lane, or apron are specified to be as low as possible to the ground, and no more than 18 inch high.	<u>2.20.2.3</u>				
Barricades are specified to indicate construction locations in which no part of an aircraft may enter.	<u>2.20.2.3</u>				
Highly reflective barriers with lights are specified to barricade taxiways leading to closed runways.	<u>2.20.2.5</u>				
Markings for temporary closures are specified.	<u>2.20.2.5</u>				
The provision of a contractor's representative on call 24 hours a day for emergency maintenance of airport hazard lighting and barricades is specified.	<u>2.20.2.7</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
Work Zone Lighting for Nighttime Construction					
If work is to be conducted at night, the CSPP identifies construction lighting units and their general locations and aiming in relationship to the ATCT and active runways and taxiways.	<u>2.21</u>				
Protection of Runway and Taxiway Safety Areas					
The CSPP clearly states that no construction may occur within a safety area while the associated runway or taxiway is open for aircraft operations.	<u>2.22.1.1,</u> <u>2.22.3.1</u>				
The CSPP specifies that the airport operator coordinates the adjustment of RSA or TSA dimensions with the ATCT and the appropriate FAA Airports Regional or District Office and issues a local NOTAM.	<u>2.22.1.2,</u> <u>2.22.3.2</u>				
Procedures for ensuring adequate distance for protection from blasting operations, if required by operational considerations, are detailed.	<u>2.22.3.3</u>				
The CSPP specifies that open trenches or excavations are not permitted within a safety area while the associated runway or taxiway is open, subject to approved exceptions.	<u>2.22.1.4</u>				
Appropriate covering of excavations in the RSA or TSA that cannot be backfilled before the associated runway or taxiway is open is detailed.	<u>2.22.1.4</u>				
The CSPP includes provisions for prominent marking of open trenches and excavations at the construction site.	<u>2.22.1.4</u>				
Grading and soil erosion control to maintain RSA/TSA standards are	<u>2.22.3.5</u>				



Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
addressed.					
The CSPP specifies that equipment is to be removed from the ROFA when not in use.	<u>2.22.2</u>				
The CSPP clearly states that no construction may occur within a taxiway safety area while the taxiway is open for aircraft operations.	<u>2.22.3</u>				
Appropriate details are specified for any construction work to be accomplished in a taxiway object free area.	<u>2.22.4</u>				
Measures to ensure that personnel, material, and/or equipment do not penetrate the OFZ or threshold siting surfaces while the runway is open for aircraft operations are included.	<u>2.22.4.3.6</u>				
Provisions for protection of runway approach/departure areas and clearways are included.	<u>2.22.6</u>				
<b>Other Limitations on Construction</b>					
The CSPP prohibits the use of open flame welding or torches unless adequate fire safety precautions are provided and the airport operator has approved their use.	<u>2.23.1.2</u>				
The CSPP prohibits the use of electrical blasting caps on or within 1,000 ft (300 m) of the airport property.	<u>2.23.1.3</u>				

**APPENDIX D. CONSTRUCTION PROJECT DAILY SAFETY INSPECTION CHECKLIST**

The situations identified below are potentially hazardous conditions that may occur during airport construction projects. Safety area encroachments, unauthorized and improper ground vehicle operations, and unmarked or uncovered holes and trenches near aircraft operating surfaces pose the most prevalent threats to airport operational safety during airport construction projects. The list below is one tool that the airport operator or contractor may use to aid in identifying and correcting potentially hazardous conditions. It should be customized as appropriate for each project including information such as the date, time and name of the person conducting the inspection.

**Table D-1. Potentially Hazardous Conditions**

<b>Item</b>	<b>Action Required (Describe)</b>	<b>No Action Required (Check)</b>
Excavation adjacent to runways, taxiways, and aprons improperly backfilled.		
Mounds of earth, construction materials, temporary structures, and other obstacles near any open runway, taxiway, or taxi lane; in the related Object Free area and aircraft approach or departure areas/zones; or obstructing any sign or marking.		
Runway resurfacing projects resulting in lips exceeding 3 inch (7.6 cm) from pavement edges and ends.		
Heavy equipment (stationary or mobile) operating or idle near AOA, in runway approaches and departures areas, or in OFZ.		
Equipment or material near NAVAIDs that may degrade or impair radiated signals and/or the monitoring of navigation and visual aids. Unauthorized or improper vehicle operations in localizer or glide slope critical areas, resulting in electronic interference and/or facility shutdown.		
Tall and especially relatively low visibility units (that is, equipment with slim profiles) — cranes, drills, and similar objects — located in critical areas, such as OFZ and		

Item	Action Required (Describe)	No Action Required (Check)
approach zones.		
Improperly positioned or malfunctioning lights or unlighted airport hazards, such as holes or excavations, on any apron, open taxiway, or open taxi lane or in a related safety, approach, or departure area.		
Obstacles, loose pavement, trash, and other debris on or near AOA. Construction debris (gravel, sand, mud, paving materials) on airport pavements may result in aircraft propeller, turbine engine, or tire damage. Also, loose materials may blow about, potentially causing personal injury or equipment damage.		
Inappropriate or poorly maintained fencing during construction intended to deter human and animal intrusions into the AOA. Fencing and other markings that are inadequate to separate construction areas from open AOA create aviation hazards.		
Improper or inadequate marking or lighting of runways (especially thresholds that have been displaced or runways that have been closed) and taxiways that could cause pilot confusion and provide a potential for a runway incursion. Inadequate or improper methods of marking, barricading, and lighting of temporarily closed portions of AOA create aviation hazards.		
Wildlife attractants — such as trash (food scraps not collected from construction personnel activity), grass seeds, tall grass, or standing water — on or near airports.		
Obliterated or faded temporary markings on active operational areas.		
Misleading or malfunctioning obstruction lights. Unlighted or unmarked obstructions in the approach to any open runway pose aviation hazards.		

Item	Action Required (Describe)	No Action Required (Check)
Failure to issue, update, or cancel NOTAMs about airport or runway closures or other construction related airport conditions.		
Failure to mark and identify utilities or power cables. Damage to utilities and power cables during construction activity can result in the loss of runway / taxiway lighting; loss of navigation, visual, or approach aids; disruption of weather reporting services; and/or loss of communications.		
Restrictions on ARFF access from fire stations to the runway / taxiway system or airport buildings.		
Lack of radio communications with construction vehicles in airport movement areas.		
Objects, regardless of whether they are marked or flagged, or activities anywhere on or near an airport that could be distracting, confusing, or alarming to pilots during aircraft operations.		
Water, snow, dirt, debris, or other contaminants that temporarily obscure or derogate the visibility of runway/taxiway marking, lighting, and pavement edges. Any condition or factor that obscures or diminishes the visibility of areas under construction.		
Spillage from vehicles (gasoline, diesel fuel, oil) on active pavement areas, such as runways, taxiways, aprons, and airport roadways.		
Failure to maintain drainage system integrity during construction (for example, no temporary drainage provided when working on a drainage system).		

Item	Action Required (Describe)	No Action Required (Check)
Failure to provide for proper electrical lockout and tagging procedures. At larger airports with multiple maintenance shifts/workers, construction contractors should make provisions for coordinating work on circuits.		
Failure to control dust. Consider limiting the amount of area from which the contractor is allowed to strip turf.		
Exposed wiring that creates an electrocution or fire ignition hazard. Identify and secure wiring, and place it in conduit or bury it.		
Site burning, which can cause possible obscuration.		
Construction work taking place outside of designated work areas and out of phase.		



**Appendix C - Construction Safety and Phasing Plan  
(Princeton Municipal Airport)**





# CONSTRUCTION SAFETY & PHASING PLAN

Construct AWOS-III – Bid Package 1

Princeton Municipal Airport

Princeton, Maine

AIP Project No. PENDING

State Project No. PENDING

Delta Project No. 23042

May 2024



## CONTENTS

INTRODUCTION .....	2
PROJECT SCOPE .....	3
1. COORDINATION.....	3
2. PHASING (CONSTRUCTION SEQUENCING) .....	5
3. AREAS AND OPERATIONS AFFECTED BY CONSTRUCTION ACTIVITY .....	6
4. NAVIGATION AIDS (NAVAIDS) PROTECTION.....	7
5. CONTRACTOR ACCESS .....	8
6. WILDLIFE MANAGEMENT.....	11
7. FOREIGN OBJECT DEBRIS (FOD) MANAGEMENT.....	11
8. HAZARDOUS MATERIALS (HAZMAT) MANAGEMENT .....	12
9. NOTIFICATION OF CONSTRUCTION ACTIVITIES.....	12
10. INSPECTION REQUIREMENTS.....	13
11. UNDERGROUND UTILITIES .....	13
12. PENALTIES.....	14
13. SPECIAL CONDITIONS.....	14
14. RUNWAY AND TAXIWAY VISUAL AIDS.....	15
15. MARKING AND SIGNS FOR ACCESS ROUTES .....	15
16. HAZARD MARKING, LIGHTING, AND SIGNAGE .....	16
17. PROTECTION OF RUNWAY AND TAXIWAY SAFETY AREAS.....	18
18. OTHER LIMITATIONS ON CONSTRUCTION .....	22
ATTACHMENT A – PHASING PLANS .....	23
ATTACHMENT B – SAMPLE CHECKLISTS .....	24



## INTRODUCTION

Aviation safety is a primary consideration at airports, especially during construction. In accordance with FAA Advisory Circular (AC) 150/5370-2G, “Operational Safety on Airports During Construction,” a Construction Safety and Phasing Plan (CSPP) must be developed on each on-airfield construction project funded by the Airport Improvement Program (AIP), Passenger Facility Charge (PFC) program or for any project located on an airport certificated under Part 139.

The CSPP sets forth benchmarks and requirements for the project and is the airport operator’s guideline for developing the highest levels of safety, security, and efficiency at the airport during project construction. The CSPP is to be used by all personnel involved in the project, including construction personnel, inspection personnel, and airport staff. This document has been developed for this construction project in order to minimize interruptions to airport operations, control construction costs, and maximize the performance and safety of construction activity.

The Contractor shall be required to submit a Safety Plan Compliance Document (SPCD) to the airport operator describing how the Contractor will comply with the requirements set forth in this CSPP. The SPCD must be submitted to and approved by the airport operator prior to issuance of the Notice to Proceed. The SPCD includes a certification statement by the Contractor that indicates it understands the operational safety requirements of the CSPP and asserts it will not deviate from the approved CSPP and SPCD unless written approval is granted by the airport operator.

In the event the Contractor’s activities are found in non-compliance with the provisions of the CSPP or the SPCD, the Contractor shall immediately cease those operations in violation. In addition, the Contractor will conduct a safety meeting, with the airport operator’s representative present, and review those provisions in the CSPP/SPCD which were violated. The Contractor will not be allowed to resume construction operations until conclusion of the safety meeting and implementation of corrective actions.

## **PROJECT SCOPE**

This CSPP has been prepared for upcoming airfield projects at the Princeton Municipal Airport in Princeton, Maine. The project includes the construction of an AWOS-III weather observing system.

The Princeton Municipal Airport is an Airport Reference Code (ARC) B-I general aviation facility with general aviation activity. The airport has one runway, 15-33 which is 4,007' long by 75' wide.

## **1. COORDINATION**

Coordination of safety issues will occur throughout all stages of the project. Key conferences and meetings include:

### **1.1. Design Coordination**

Design coordination will be completed with the affected agencies and organizations to discuss operational safety. Participants will include tenants, funding agencies, FAA District Office, State Aviation personnel, the Engineer, and airport operator staff. Input will be solicited on key safety issues to be considered, methods to ensure safety during construction, required protocols, advance notices, and other requirements that need to be incorporated in the contract bid documents.

### **1.2. Prebid Meeting**

A prebid meeting with potential bidders and construction contractors will take place. The meeting will be held approximately 10 days prior to the bid opening date. During the meeting, safety will be discussed, with an emphasis on the unique aspects of construction on an active airfield. FAA Advisory Circular 150/5370-2G will be reviewed, as will the requirements for the Contractor-prepared SPCD. It will be made clear in both the contract documents as well as the pre-bid meeting that the SPCD is the responsibility of the Contractor.

### **1.3. Preconstruction Meeting**

A preconstruction meeting will be held once a construction contract has been awarded, but prior to the start of construction. Invitees will include users, tenants, prime contractor, subcontractors, funding agencies, FAA District Office, State Aviation personnel, the Engineer, Resident Project Representative,

and the airport operator staff. The FAA Airports District Office should ensure that all appropriate FAA offices and Federal agencies that may have an interest in the project are notified.

The airport operator, or authorized agent will prepare an agenda prior to the preconstruction meeting. This will include, but not be limited to:

- a. project scope and phasing requirements;
- b. relationship between airport operator, airport operator's authorized agent, and the Contractor;
- c. relationship between the airport operator and the FAA;
- d. identification of Contractor's superintendent and discussion of authority and responsibilities;
- e. designation of airport operator representative responsible for notifying the Flight Service Station of any circumstances requiring a NOTAM;
- f. scheduling of work and phasing requirements;
- g. notice to proceed date;
- h. safety during construction, including responsibility for marking and lighting of closed and hazardous areas, all in accordance with FAA AC 150/5370-2G *Operational Safety on Airports During Construction*;
- i. security requirements;
- j. communications and documentation protocols, including contact information for all key personnel.

Emphasis will be placed on compliance with the established CSPP and approved SPCD.

#### **1.4. Contractor Progress Meetings**

Progress meetings will be held throughout the construction phase, with operational safety as a standing agenda item. Given the sequence of the work, standing meetings are not anticipated and may occur to address key phases of the work. Current compliance issues and upcoming critical work will be reviewed. Meeting participants will include the Engineer, the Resident Project Representative, the Contractor, and the airport operator. Daily meetings between the Resident Project Representative and key Contractor personnel will also occur to address daily work schedules and associated operational concerns. When necessary, appropriate FAA/State personnel, airport staff, or affected tenants will attend progress meetings.

### **1.5. Scope or Schedule Changes**

Coordination between the Engineer, Contractor, FAA, and the airport operator will occur in the event of any scope or schedule changes. It will be determined if revisions to either the CSPP or the SPCD are required as a result of any scope or schedule changes. Revisions to these documents will be routed through the appropriate approval channels prior to beginning construction in areas of impact.

## **2. PHASING (CONSTRUCTION SEQUENCING)**

This discussion reviews the construction phasing and work areas defined for the project. The phasing generally provides the desired sequencing for the project. The defined work areas address work limitations. These limitations are primarily associated with operational safety, focusing on maintaining adequate separation between the Contractor's activities and aircraft operations and limiting the time that Contractor activities impact airport operations. Refer to the phasing plans in Attachment A for work areas. General elements of this sequencing and phasing are described in the following subsections.

### **2.1. Construction Staging Areas**

Refer to the phasing plans in Attachment A for staging area locations and general safety and security notes concerning use of the staging areas. Construction staging areas and Contractor employee parking areas are to remain outside of all object free areas and all safety areas for all active airfield surfaces.

### **2.2. Construction Access and Haul Routes**

Refer to phasing plans in Attachment A for access and haul route locations and general safety and security notes concerning use of access and haul routes. Applicable control along haul routes for both safety and security must be maintained at all times.

### **2.3. Firefighting Access Routes**

Emergency firefighting access in and around the site will be maintained by the Contractor, as required, for the duration of this project. Construction contractors must prominently mark open trenches and excavations within the construction site, with approval from the airport operator, and light them with red lights during hours of restricted visibility or darkness. There are no designated ARFF or EMS routes on the airport.



#### **2.4. Required Hazard Marking and Lighting**

Refer to the phasing plans in Attachment A for required hazard marking and lighting. Reference Sections 15, 16, and 17 of this CSPP for additional information.

#### **2.5. Work Area Phasing.**

Work areas have been defined to limit the Contractor's activities and minimize impact to airport operations. The project includes a single work area adjacent to Taxiway B. The work in this area will require closure of Taxiway B. The site may be accessed without impacts to airport operations via Edgerly Drive.

### **3. AREAS AND OPERATIONS AFFECTED BY CONSTRUCTION ACTIVITY**

Runways and taxiways shall remain in use to the maximum extent possible without compromising safety. See Table 3-1 for a summary of effects on airport operations created by this project. Meetings with the Engineer, Contractor, and the airport operator will occur before construction begins on each phase. Items discussed during these meetings are described below:

#### **3.1. Identification of Affected Areas**

The affected areas for each construction phase are identified in the phasing plans in Attachment A.

**3.1.1. Closing or partial closing of runways, taxiways, and aprons.** See Attachment A.

**3.1.2. Closing of firefighting access routes.** Access into, through, and/or around the project work area by emergency vehicles may be affected during construction. Refer to the phasing plans (Attachment A) for requirements. There are no dedicated ARFF routes at the airport.

**3.1.3. Approach/departure surfaces affected by heights of objects.** Contractor equipment used in the project and/or staging area may impact approach/departure surfaces. Equipment locations shall not violate runway Part 77 surfaces except under special waiver conditions. FAA Form 7460-1, *Notice of Proposed Construction or Alteration*, must be submitted by the airport operator to the FAA ADO, and approved prior to construction. Refer to the phasing plans (Attachment A) for requirements.

**3.1.4. Construction areas.** Construction areas, including actual construction, storage/stockpiles, employee parking, staging areas, and haul routes are located near active airfield surfaces. Refer to the phasing plans (Attachment A) for requirements.

### **3.2. Mitigation of Effects**

Establishment of specific procedures is necessary to maintain the safety and efficiency of airport operations. All coordination pertaining to airport operations during construction shall be with the airport operator's designated representative. Specific contacts will be discussed in detail at the preconstruction meeting.

**3.2.1. Temporary and permanent changes to runway and/or taxi operations.** Affected runway and taxiways will be barricaded as indicated on the phasing plans (Attachment A).

**3.2.2. Detours for ARFF and other airport vehicles.** The project work site shall remain open to all firefighting and rescue vehicles in emergency situations. The Contractor is required to maintain access into the project work area for firefighting and rescue vehicles.

**3.2.3. Maintenance of essential utilities.** Special attention will be given by the Contractor to preventing unscheduled interruption of utility services and facilities. Where required by construction, the Contractor will follow prescribed procedures to locate all utilities (aboveground and underground) prior to working around them. All utility outages will be coordinated in advance in accordance with the procedures included in the plans and specifications. When a utility is damaged, it shall immediately be repaired by the Contractor in accordance with the procedures in the plans and specifications.

## **4. NAVIGATION AIDS (NAVAIDS) PROTECTION**

Before beginning any construction activity, parking of equipment, or storing construction materials near a NAVAID, coordination with the appropriate FAA ATO to evaluate the effects of construction activity on the facility must take place. Necessary clearance distances will be coordinated at daily and weekly progress meetings (refer to Section 1, "Coordination"). No NAVAIDS are anticipated to be impacted by this project.

## 5. CONTRACTOR ACCESS

### 5.1. Location of Stockpiled Construction Materials

Stockpiled materials and equipment storage are not permitted within the safety area, obstacle free zone, or object free area of any active runway or taxiway. Stockpiled materials shall be stored at a location approved by the airport operator and constrained in a manner to prevent movement resulting either from prop wash, jet blast, or wind. Stockpile heights shall not exceed 5 feet and shall not penetrate protected airspace (refer to the plans for information on protected airspace). Stockpiled materials and equipment adjacent to these areas shall be prominently marked and lighted during hours of restricted visibility or darkness. Further reference is directed to Section 6, “Wildlife Management,” Section 7, “Foreign Object Debris Management,” and Section 17, “Protection of Runway and Taxiway Safety Areas.”

### 5.2. Vehicle and Pedestrian Operations

Vehicle and pedestrian access routes for airport construction projects must be controlled to prevent inadvertent or unauthorized entry of persons, vehicles, or animals into the AOA.

**5.2.1. Construction site parking.** Vehicle parking areas for Contractor employees shall be as shown on the plans or as designated by the airport operator.

**5.2.2. Construction equipment parking.** Equipment not in use shall be parked in the construction staging area shown on the plans.

**5.2.3. Access and haul roads.** Access routes used by contractors shall be clearly marked to prevent inadvertent entry to open aircraft operational areas. If the access routes share or cross any routes designated for use by ARFF, right of way shall be maintained at all times unless alternate routes have been established. The Contractor shall only use the access and haul roads designated by the airport operator. The airport operator will provide access to the Contractor only after the Contractor has received training from the airport operator. These haul routes are shown in the construction plans.

**5.2.4. Marking and lighting of vehicles.** Equipment and vehicles shall be marked with 3-foot by 3-foot orange and white checker flags (day only) or yellow flashing dome type lights (day or night). Additionally, all Contractor vehicles operating in the AOA shall be clearly labeled with the Contractor's name visible from 200 feet.

**5.2.5. Description of proper vehicle operations.** Vehicle operations shall be in accordance with Advisory Circular 150/5210-20 "Ground Vehicle Operations on Airports."

**5.2.5.1. Normal conditions.** Project haul routes and phasing have been established to prevent the crossing of any open airfield pavements. At no time will the Contractor enter an active runway or taxiway safety area.

**5.2.5.2. Lost communications or emergency conditions.** In the event that radio communications are lost, the driver shall pull onto the shoulder out of the way of any possible aircraft. The vehicle should then visually verify no aircraft are approaching the area and then proceed to a safe location on the airport. There is no air traffic control tower at this airport.

**5.2.6. Required escorts.** All untrained drivers shall be escorted at all times when on the AOA side of the security fence. Escorted vehicles shall be marked and lighted in accordance with this Section 5.

**5.2.7. Training requirements.** The airport operator will provide access to the Contractor only after the Contractor has received safety and security training from the Owner.

**5.2.8. Situational awareness.** Vehicle drivers must confirm by personal observation that no aircraft is approaching their position (either in the air or on the ground) when given clearance to cross a runway, taxiway, or any other area open to airport operations. In addition, it is the responsibility of the escort vehicle driver to verify the movement/position of all escorted vehicles at any given time.

**5.2.9. Two-way radio communication procedures.**

Given the nature of the construction the Contractor is not required to maintain radio communications with aircraft.

#### **5.2.10. Maintenance of the secured area of the airport**

5.2.10.1. Care shall be taken to maintain security during construction when access points are created in the security fencing to permit the passage of construction vehicles or personnel. Temporary gates shall be equipped so that they can be securely closed and locked to prevent access by animals and unauthorized persons. Procedures shall be established to ensure that only authorized persons and vehicles have access to the AOA and that vehicles are allowed through the gate one at a time, i.e. no “piggybacking” behind another person or vehicle. The Contractor is responsible for ensuring that all employees of the Contractor and Subcontractors use only the authorized access point to the AOA and verifying that the access point is secure immediately after use. Gates that fail shall be reported immediately to the airport operator and shall be guarded by the Contractor until the airport operator mobilizes to secure the opening.

5.2.10.2. The Contractor shall maintain separation between the airside and non-secure side of the airport at all times. The perimeter fence shall be maintained on a continuous basis with any temporary opening being continuously guarded by the Contractor’s designated employee. The airport is subject to FAA security requirements and rigid adherence is mandatory. Any fines for unauthorized personnel entering through the Contractor’s entrance points will be deducted from monies due the Contractor. Reference is directed to Section 5. Temporary openings and construction gates shall be secured and locked at the completion of work each day.

5.2.10.3. The Contractor shall delineate limits of construction prior to beginning work each day. The Contractor’s personnel shall not be beyond the limits of construction without authorization from the Owner. Violators are subject to removal from the jobsite and loss of AOA working privileges.

5.2.10.4. The Airport reserves the right to require all personnel working inside the AOA to security training from the Airport. The Airport also reserves the right to bar personnel from the Airport for any security-related reason.

## **6. WILDLIFE MANAGEMENT**

### **6.1. Trash**

Food scraps shall be collected from construction personnel activity. Trash shall be disposed of weekly, or more frequently if necessary, to discourage wildlife encroachment.

### **6.2. Standing Water**

Areas of standing water shall be kept to a minimum so as not to attract wildlife.

### **6.3. Tall Grass and Seeds**

Only the grasses specified on the plans and in the specifications may be used for either temporary or permanent seeding. Incompatible plants could be an unwanted bird attractant.

### **6.4. Poorly Maintained Fencing and Gates**

Reference is directed to Section 5 “Contractor Access” in regard to the importance of maintaining security on the airport so as to discourage access by wildlife.

### **6.5. Disruption of Existing Wildlife Habitat / Wildlife Sightings**

Contractor personnel shall immediately notify the airport operator of significant wildlife sightings.

## **7. FOREIGN OBJECT DEBRIS (FOD) MANAGEMENT**

Waste and loose materials, commonly referred to as FOD, are capable of causing damage to aircraft landing gears, propellers, and jet engines. Materials capable of creating FOD shall be continuously removed during the project and must not be left or placed near active aircraft movement areas. The following measures will be utilized to control and monitor FOD:

- Worksite housekeeping
- Ground vehicle tire inspections
- Runway and taxiway sweeps

Inspection requirements are outlined in Section 10.

## **8. HAZARDOUS MATERIALS (HAZMAT) MANAGEMENT**

The Contractor shall be prepared to immediately contain and clean-up spills resulting from fuel or hydraulic fluid leaks. Provisions for HAZMAT management shall be addressed in the Contractor's Storm Water Pollution Prevention Plan (SWPPP). The HAZMAT management procedures shall include, but not be limited to the following:

- Fuel deliveries
- Spill recovery procedures
- Material Safety Data Sheets (MSDS) availability

## **9. NOTIFICATION OF CONSTRUCTION ACTIVITIES**

This section outlines procedures for maintaining communication in the event that airport users and the FAA must be notified immediately of any conditions adversely affecting the operational safety of the airport.

### **9.1. Contact List**

The Contractor shall provide a list of responsible representatives/points of contact for all involved parties, and procedures for contacting each of them, including after hours. The Contractor must have someone available to take emergency calls from the airport operator throughout the entire construction time period. The Contractor's list shall also include the airport point of contact, ATCT (if applicable), and the Engineer to ensure that Contractor personnel have the contacts that they need in the event of a safety related event.

**Airport points of contact are as follows:**

- Emergency Telephone Number (Police/Fire/Rescue): 911
- Information, Compliance, and Assistance:
  - Airport Manager: (207) 381-0202 (Randy Autrey)

### **9.2. NOTAMs**

The airport operator shall be responsible for the issuance of all NOTAMs. Only the airport operator may initiate or cancel NOTAMs on airport conditions and is the only entity that can open or close a runway. The airport operator shall coordinate the issuance, maintenance, and cancellation of NOTAMs

regarding airport conditions resulting from construction activities with tenants and provide information on closed or hazardous conditions on airport movement areas to the FAA Flight Service Station (FSS) for issuance of NOTAMs.

### **9.3. Emergency notification procedures**

In the event of an emergency, the Contractor shall call 911. Additional notification procedures will be reviewed at the preconstruction meeting, and periodically at construction progress meetings, and distributed to all appropriate parties.

### **9.4. Notification to the FAA**

**9.4.1. Part 77.** Any proposed construction or alteration of objects that affect navigable airspace, as defined in FAR Part 77, shall be coordinated with the FAA by submitting FAA Form 7460-1, “Notice of Proposed Construction or Alteration” to the appropriate FAA Airports Regional or District Office. This includes construction equipment and proposed parking areas for this equipment (i.e. cranes, graders, and other equipment) on the airport.

**9.4.2. NAVAIDS.** No NAVAIDS are anticipated to be impacted by this project.

## **10. INSPECTION REQUIREMENTS**

### **10.1. Daily Inspections**

Inspections shall be conducted by the Contractor at least daily to ensure compliance with the CSPP. A sample checklist is provided in Attachment B. In addition, daily inspections will be conducted by the airport operator or their Representative to ensure compliance with the CSPP and the SPCD.

### **10.2. Final Inspections**

A Final Inspection will be conducted by the airport operator, Engineer, FAA, and State upon substantial completion of the project.

## **11. UNDERGROUND UTILITIES**

Special attention shall be given to preventing unscheduled interruption of utility services and facilities. The Contractor shall locate, or arrange for the location of underground utilities, cables, wires, pipelines, and other underground facilities located in excavation areas shall be located. This shall include coordination



with public utilities, “One Call” or “Miss Utility” services. FAA ATO/Technical Operations shall be contacted for location and marking of FAA NAVAID cables. Full coordination between the airport operator’s representatives and construction personnel will take place to ensure that these items are protected at all times during construction. If the Contractor damages any active utility during construction, immediate action shall be taken by the Contractor to repair the utility. Refer to Section 9 “Notification of Construction Activities” for contact information.

## **12. PENALTIES**

12.1. Failure on the part of the Contractor to adhere to the requirements of this CSPP, and the plans and specifications, may have consequences that jeopardize the health and safety of persons on or near the construction site. Penalties for such actions are established by the airport operator and may include fines, suspension of construction, and/or removal from the job site. The airport operator reserves the right to deduct fines from money due to the Contractor.

12.2. Unauthorized personnel entering through the Contractor’s access point is a violation of this CSPP and may result in a fine. The airport operator reserves the right to deduct fines from money due to the Contractor.

12.3. Contractor personnel found to be beyond the limits of construction without authorization from the Owner are subject to removal from the jobsite and loss of security badge and/or secured area working privileges.

## **13. SPECIAL CONDITIONS**

Special conditions that require safety mitigation action include the following:

- Low-visibility operations
- Snow removal
- Aircraft in distress
- Aircraft accident
- Security breach
- Vehicle/pedestrian deviation (VPD)

During these events the Contractor will be required to suspend operations, clear active construction zones, or other measures as directed by the airport operator. Notification procedures in Section 9 shall be followed. See also Sections 5, “Contractor Access,” and 14, “Runway and Taxiway Visual Aids.”

## **14. RUNWAY AND TAXIWAY VISUAL AIDS**

### **14.1. General**

Those areas where aircraft will be operating shall be clearly marked to separate them from construction areas. Airport markings, lighting, signs, and visual NAVAIDs shall be clearly visible to pilots and not misleading, confusing, or deceptive. This shall be verified throughout the construction of the project. All facilities shall be secured in place to prevent movement by prop wash, jet blast, wing vortices, or other wind currents. The facilities shall be constructed of materials that would minimize damage to an aircraft in the event of inadvertent contact.

### **14.2. Markings**

Temporary markings are not required.

**14.2.1. Temporarily Closed or New Taxiways.** For temporarily closed taxiways or new taxiways prior to opening, an X shall be placed at the entrance to each taxiway as indicated in the phasing plans.

### **14.3. Lighting and Signage.**

Temporary lighting is required. Refer to the phasing plans (Attachment A) for details on temporary lighting for the project.

**14.3.1. Temporarily Closed Taxiways.** Temporary closed taxiways shall have their lights de-energized or covered. Directional sign panels associated with temporary closed pavements shall be removed and replaced with a blank panel or covered.

### **14.4. NAVAIDs.**

No temporary NAVAIDs are required.

## **15. MARKING AND SIGNS FOR ACCESS ROUTES**

Pavement markings and signs for construction personnel shall conform to AC 150/5340-18 on the runway and taxiway. Elsewhere, access route marking and signs shall conform to the Federal Highway

Administration Manual on Uniform Traffic Control Devices (MUTCD) and/or State highway specifications. Signs adjacent to areas used by aircraft shall comply with the frangibility requirements on AC 150/5220-23, “Frangible Connections.” The height of temporary signage shall be restricted so as not to penetrate any avigational surfaces (avigational surfaces are described in the phasing plans in Attachment A). Temporary markings and signage are indicated in the phasing plans.

## **16. HAZARD MARKING, LIGHTING, AND SIGNAGE**

### **16.1. Purpose**

The purpose for delineating work areas is to prevent pilots and other airport personnel who do not belong in the construction area from entering. Work areas will be delineated with closed markers, aviation barricades, and bucket barricades. The first item of work in any work area will be the installation of the necessary closed markers and barricades to isolate the areas of proposed construction. All runway and taxiway closures will be fully coordinated with the airport operator to ensure that the proper NOTAMs are issued.

### **16.2. Barricades**

Barricades are acceptable methods used to identify and define the limits of construction and hazardous areas on airports. The types of barricades allowed are detailed on the phasing plans (Attachment A).

### **16.3. Lights**

Lights shall be red, either steady burning or flashing, and meet the luminance requirements of the State Highway Department. Lights shall be mounted on barricades and spaced at no more than ten (10) feet apart. Lights shall be operated between sunset and sunrise and during periods of low visibility whenever the airport is open for operations.

### **16.4. Signs**

The barricades shall be supplemented with signs (for example “No Entry,” “No Vehicles”) as necessary. Signs shall conform to the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD) and/or State highway specifications.

### **16.5. Air Operations Area – General**

Barricades are not permitted in any active safety area. Within a runway or taxiway object free area, and on aprons, the following shall be used to separate all construction/maintenance areas from the movement area:

- Orange traffic cones
- Flashing or steady burning red lights
- Collapsible barricades with diagonal, alternating orange & white stripes
- Signs

All barricades adjacent to an open runway or taxiway / taxilane safety area or apron shall be as low as possible to the ground, and no more than 18 inches high, exclusive of supplementary lights and flags. Barricades shall be of low mass; easily collapsible upon contact with aircraft or any of its components; and weighted or sturdily attached to the surface to prevent displacement from prop wash, jet blast, wing vortex, or other surface wind currents. Barricades affixed to the surface shall be frangible at grade level or as low as possible, but not to exceed 3 inches above the ground. The types of barricades allowed are detailed on the phasing plans (Attachment A).

#### **16.6. Air Operations Area – Runway / Taxiway Intersections**

Highly reflective barricades with lights shall be used to close taxiways leading to closed runways. The types of barricades allowed are detailed on the phasing plans (Attachment A).

#### **16.7. Air Operations Area – Other**

For areas outside runway and taxiway object free areas and safety areas and aprons, barricades intended for construction vehicles and personnel may consist of different shapes and may be constructed from various materials, including railroad ties, sawhorses, jersey barriers, or barrels. The Contractor shall coordinate these barricades, and their locations with the airport operator's representative.

#### **16.8. Maintenance**

The construction specifications include a provision requiring the Contractor to have personnel on call 24 hours a day for emergency maintenance of airport hazard lighting and barricades.

Refer to the phasing plans in Attachment A for graphical depictions of hazard marking, lighting, and signage.

## **17. PROTECTION OF RUNWAY AND TAXIWAY SAFETY AREAS**

**17.1. Runway Safety Area.** Construction activities within the existing RSA are subject to the following conditions:

**17.1.1.** No activity is permitted while the runway is open for aircraft operations. Reference is directed to Section 5 for information on Contractor access to runway safety areas. No construction is proposed within an RSA at any time.

### **17.1.2. Excavations**

**17.1.2.1.** Stockpiling of materials, open trenches, or excavations are not permitted within the RSA while the runway is open. Stockpiled materials shall be removed prior to opening the runway. Trenches shall be either backfilled or covered prior to opening the runway. If the runway must be reopened before excavations are backfilled, the excavations shall be covered appropriately. Covering for open trenches shall be designed to allow the safe operation of the heaviest aircraft operating on the runway across the trench without damage to the aircraft.

**17.1.2.2.** Open trenches and excavations at the construction site shall be prominently marked by the Contractor with red or orange flags, as approved by the Owner, and lighted with red lights during hours of restricted visibility or darkness. Refer to Section 16 for additional information on hazard marking and lighting.

### **17.1.3. Erosion Control**

Soil erosion shall be controlled to maintain RSA standards, that is, the RSA must be cleared and graded and have no potentially hazardous ruts, humps, depressions, or other surface variations, and be capable, under dry conditions, of supporting snow removal equipment, aircraft rescue and firefighting equipment, and the occasional passage of aircraft without causing structural damage to the equipment or aircraft.

**17.1.4.** For this project, the following distances (in accordance with FAA Advisory Circular 150/5300-13), must be protected along the runway edges:

Runway	Aircraft Approach Category A, B, C, or D	Airplane Design Group I, II, III, or IV	RSA Width in Feet Divided by 2
15	B	I	75
33	B	I	75

17.1.5. For this project, the following distances (in accordance with FAA Advisory Circular 150/5300-13), must be protected before the runway threshold:

Runway End Number	Airplane Design Group I, II, III, or IV	Aircraft Approach Category A, B, C, or D	Minimum Safety Area Prior to the Threshold	Minimum Distance to Threshold Based on Required Approach Slope
15	I	B	300	1,000 ft 20:1
33	I	B	300	1,000 ft 20:1

## 17.2. Runway Object Free Area (ROFA)

Construction, including excavations, may be permitted in the ROFA only if performed in accordance with the requirements in the phasing plans (Attachment A). Equipment must be removed from the ROFA when not in use, and material shall not be stockpiled in the ROFA if not necessary. Stockpiling material in the OFA shall not occur until a 7460-1 form and justification is provided to the appropriate FAA Airports Regional or District Office and approved. ROFA dimensions shall be as identified in the following table, which is in accordance with FAA Advisory Circular 150/5300-13.

Runway	ROFA Distance from Centerline (ft)	ROFA Width (ft)	ROFA Length from End of Runway (ft)
15	250	500	300
33	250	500	300

6

## 17.3. Taxiway Safety Area (TSA)

17.3.1. No construction is permitted within the taxiway safety area while the taxiway is open for aircraft operations. No construction is proposed in an open TSA.

**Excavations**

17.3.1.1. Stockpiling of materials, open trenches, or excavations are not permitted within the TSA while the taxiway is open. Stockpiled materials shall be removed prior to opening the taxiway. Trenches shall be either backfilled or covered prior to opening the taxiway. If the taxiway must be reopened before excavations are backfilled, the excavations shall be covered appropriately. Covering for open trenches shall be designed to allow the safe operation of the heaviest aircraft operating on the taxiway across the trench without damage to the aircraft.

17.3.1.2. Open trenches and excavations at the construction site shall be prominently marked by the Contractor with red or orange flags, as approved by the Owner, and lighted with red lights during hours of restricted visibility or darkness. Refer to Section 16 for additional information on hazard marking and lighting.

**17.3.2. Erosion Control**

Soil erosion shall be controlled to maintain TSA standards, that is, the TSA must be cleared and graded and have no potentially hazardous ruts, humps, depressions, or other surface variations, and capable, under dry conditions, of supporting snow removal equipment, aircraft rescue and firefighting equipment, and the occasional passage of aircraft without causing structural damage to the equipment or aircraft.

17.3.3. For this project, the following distances (in accordance with FAA Advisory Circular 150/5300-13) must be protected along the taxiway edges:

Taxiway	Aircraft Approach Category A, B, C, or D	Airplane Design Group I, II, III, or IV	TSA Width in Feet Divided by 2
All taxiways	B	I	24.5

**17.4. Taxiway Object Free Area (TOFA)**

No work is permitted inside the TOFA without the taxiway being closed. No work is proposed within an open TOFA. For this project, the following distances (in accordance with FAA Advisory Circular 150/5300-13) must be protected along the taxiway:

Taxiway	Aircraft Approach Category A, B, C, or D	Airplane Design Group I, II, III, or IV	TOFA Width in Feet Divided by 2
All taxiways	B	I	44.5

### 17.5. Obstacle Free Zone (OFZ)

Typically, no personnel, equipment, or material shall be permitted inside the OFZ while the runway is open for aircraft operations. If access is required, the express permission of the airport operator shall be obtained. Any request for such permission shall be submitted in writing by the Contractor, along with justification in order for the owner to coordinate the request with FAA. The Runway OFZ is the airspace above the runway whose elevation at any point is the same as the elevation of the nearest point on the runway centerline. For this project, the OFZ dimensions (in accordance with FAA Advisory Circular 150/5300-13) are as follows:

Runway	OFZ Distance from Centerline (ft)	OFZ Width (ft)	OFZ Length from End of Runway (ft)
15	250	250	200
33	250	250	200

Dimensions for applicable inner-approach and inner-transitional OFZ's are shown on the phasing plans in Attachment A. This information is in accordance with FAA Advisory Circular 150/5300-13.

### 17.6. Runway Approach/ Departure Areas and Clearways

All personnel, equipment, and material shall remain outside the protected approaches and surfaces as shown on the phasing plans in Attachment A. Objects that do not penetrate these surfaces may still be obstructions to air navigation and may affect standard instrument approach procedures. Prior to placing such objects, a 7460-1 form and justification must be provided to the appropriate FAA Airports Regional or District Office and approved. Particular attention is called to the placement of cranes, excavators, and other tall equipment.



## **18. OTHER LIMITATIONS ON CONSTRUCTION**

### **18.1. Prohibitions.**

The following are prohibited:

18.1.1. No use of tall equipment (cranes, concrete pumps, etc.) unless a 7460-1 determination letter is issued for such equipment.

18.1.2. No uses of open flame welding or torches unless fire safety precautions are provided, and the airport operator has approved their use.

18.1.3. No use of electrical blasting caps on or within 1,000 feet (300 meters) of the airport property.

18.1.4. No use of flare pots within the AOA.

### **18.2. Restrictions.**

The following are restricted:

18.2.1. Activities during special condition events as outlined in Section 13.

18.2.2. Areas that cannot be worked on simultaneously as outlined in the phasing plans. Also refer to Section 2, "Phasing."

18.2.3. Day or night construction restrictions as outlined in the phasing plans. Also refer to Section 2, "Phasing."

18.2.4. Work area restrictions as outlined in the phasing plans. Also refer to Section 2, "Phasing."



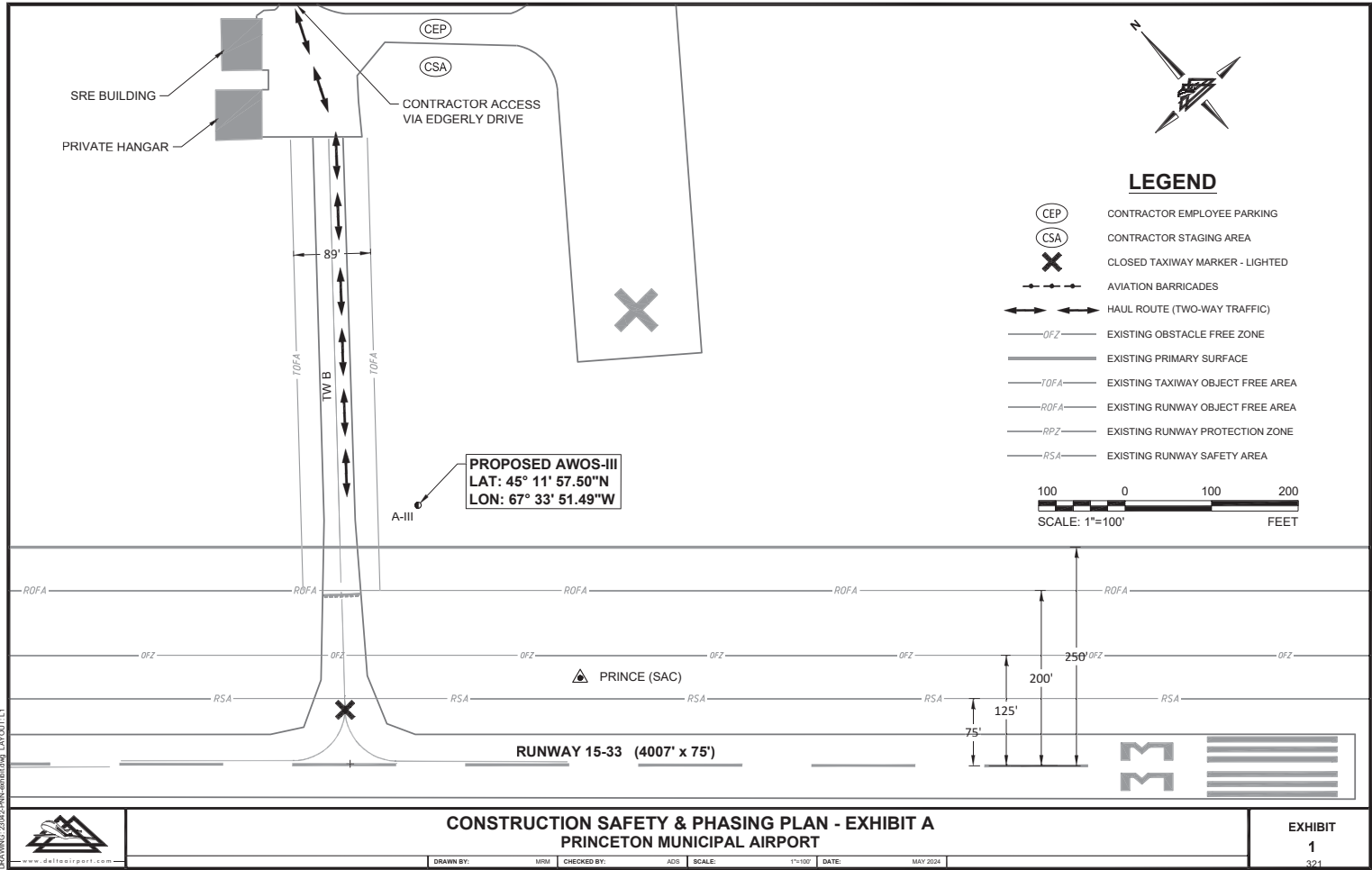
## **ATTACHMENT A – PHASING PLANS**



(Also see Contract Documents plans issued for project)



C:\Users\ratha\OneDrive\Documents\23042\Project Files\Exhibits\23042-PMN-exhibit.dwg, L1, 5/29/2024 8:37:47 AM, ratha





## **ATTACHMENT B – SAMPLE CHECKLISTS**



(Insert the PDFs of the checklists from FAA AC 150/5370-2G)–





**APPENDIX C. SAFETY AND PHASING PLAN CHECKLIST**

This appendix is keyed to Chapter 2. In the electronic version of this AC, clicking on the paragraph designation in the Reference column will access the applicable paragraph. There may be instances where the CSPP requires provisions that are not covered by the list in this appendix.

This checklist is intended as an aid, not a required submittal.

**Table C-1. CSPP Checklist**

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
General Considerations					
Requirements for predesign, prebid, and preconstruction conferences to introduce the subject of airport operational safety during construction are specified.	<u>2.5</u>				
Operational safety is a standing agenda item for construction progress meetings.	<u>2.5</u>				
Scheduling of the construction phases is properly addressed.	<u>2.6</u>				
Any formal agreements are established.	<u>2.5.3</u>				
Areas and Operations Affected by Construction Activity					
Drawings showing affected areas are included.	<u>2.7.1</u>				
Closed or partially closed runways, taxiways, and aprons are depicted on drawings.	<u>2.7.1.1</u>				
Access routes used by ARFF vehicles affected by the project are addressed.	<u>2.7.1.2</u>				
Access routes used by airport and airline support vehicles affected by the project are addressed.	<u>2.7.1.3</u>				
Underground utilities, including water supplies for firefighting and drainage.	<u>2.7.1.4</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
Approach/departure surfaces affected by heights of temporary objects are addressed.	<u>2.7.1.5</u>				
Construction areas, storage areas, and access routes near runways, taxiways, aprons, or helipads are properly depicted on drawings.	<u>2.7.1</u>				
Temporary changes to taxi operations are addressed.	<u>2.7.2.1</u>				
Detours for ARFF and other airport vehicles are identified.	<u>2.7.2.2</u>				
Maintenance of essential utilities and underground infrastructure is addressed.	<u>2.7.2.3</u>				
Temporary changes to air traffic control procedures are addressed.	<u>2.7.2.4</u>				
<b>NAVAIDs</b>					
Critical areas for NAVAIDs are depicted on drawings.	<u>2.8</u>				
Effects of construction activity on the performance of NAVAIDS, including unanticipated power outages, are addressed.	<u>2.8</u>				
Protection of NAVAID facilities is addressed.	<u>2.8</u>				
The required distance and direction from each NAVAID to any construction activity is depicted on drawings.	<u>2.8</u>				
Procedures for coordination with FAA ATO/Technical Operations, including identification of points of contact, are included.	<u>2.8, 2.13.1, 2.13.5.3.1, 2.18.1</u>				
<b>Contractor Access</b>					
The CSPP addresses areas to which contractor will have access and how	<u>2.9</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
the areas will be accessed.					
The application of 49 CFR Part 1542 Airport Security, where appropriate, is addressed.	<u>2.9</u>				
The location of stockpiled construction materials is depicted on drawings.	<u>2.9.1</u>				
The requirement for stockpiles in the ROFA to be approved by FAA is included.	<u>2.9.1</u>				
Requirements for proper stockpiling of materials are included.	<u>2.9.1</u>				
Construction site parking is addressed.	<u>2.9.2.1</u>				
Construction equipment parking is addressed.	<u>2.9.2.2</u>				
Access and haul roads are addressed.	<u>2.9.2.3</u>				
A requirement for marking and lighting of vehicles to comply with <i>AC 150/5210-5, Painting, Marking and Lighting of Vehicles Used on an Airport</i> , is included.	<u>2.9.2.4</u>				
Proper vehicle operations, including requirements for escorts, are described.	<u>2.9.2.5, 2.9.2.6</u>				
Training requirements for vehicle drivers are addressed.	<u>2.9.2.7</u>				
Two-way radio communications procedures are described.	<u>2.9.2.9</u>				
Maintenance of the secured area of the airport is addressed.	<u>2.9.2.10</u>				
<b>Wildlife Management</b>					
The airport operator's wildlife management procedures are addressed.	<u>2.10</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
Foreign Object Debris Management					
The airport operator’s FOD management procedures are addressed.	<u>2.11</u>				
Hazardous Materials Management					
The airport operator’s hazardous materials management procedures are addressed.	<u>2.12</u>				
Notification of Construction Activities					
Procedures for the immediate notification of airport user and local FAA of any conditions adversely affecting the operational safety of the airport are detailed.	<u>2.13</u>				
Maintenance of a list by the airport operator of the responsible representatives/points of contact for all involved parties and procedures for contacting them 24 hours a day, seven days a week is specified.	<u>2.13.1</u>				
A list of local ATO/Technical Operations personnel is included.	<u>2.13.1</u>				
A list of ATCT managers on duty is included.	<u>2.13.1</u>				
A list of authorized representatives to the OCC is included.	<u>2.13.2</u>				
Procedures for coordinating, issuing, maintaining and cancelling by the airport operator of NOTAMS about airport conditions resulting from construction are included.	<u>2.8, 2.13.2, 2.18.3.3.9</u>				
Provision of information on closed or hazardous conditions on airport movement areas by the airport operator to the OCC is specified.	<u>2.13.2</u>				
Emergency notification procedures for medical, fire fighting, and police	<u>2.13.3</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
response are addressed.					
Coordination with ARFF personnel for non-emergency issues is addressed.	<u>2.13.4</u>				
Notification to the FAA under 14 CFR parts 77 and 157 is addressed.	<u>2.13.5</u>				
Reimbursable agreements for flight checks and/or design and construction for FAA owned NAVAIDs are addressed.	<u>2.13.5.3.2</u>				
<b>Inspection Requirements</b>					
Daily and interim inspections by both the airport operator and contractor are specified.	<u>2.14.1, 2.14.2</u>				
Final inspections at certificated airports are specified when required.	<u>2.14.3</u>				
<b>Underground Utilities</b>					
Procedures for protecting existing underground facilities in excavation areas are described.	<u>2.15</u>				
<b>Penalties</b>					
Penalty provisions for noncompliance with airport rules and regulations and the safety plans are detailed.	<u>2.16</u>				
<b>Special Conditions</b>					
Any special conditions that affect the operation of the airport or require the activation of any special procedures are addressed.	<u>2.17</u>				
<b>Runway and Taxiway Visual Aids - Marking, Lighting, Signs, and Visual NAVAIDs</b>					
The proper securing of temporary airport markings, lighting, signs, and visual NAVAIDs is addressed.	<u>2.18.1</u>				
Frangibility of airport markings, lighting, signs, and visual NAVAIDs is specified.	<u>2.18.1, 2.18.3, 2.18.4.2, 2.20.2.4</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
The requirement for markings to be in compliance with <u>AC 150/5340-1</u> , <i>Standards for Airport Markings</i> , is specified.	<u>2.18.2</u>				
Detailed specifications for materials and methods for temporary markings are provided.	<u>2.18.2</u>				
The requirement for lighting to conform to <u>AC 150/5340-30</u> , <i>Design and Installation Details for Airport Visual Aids</i> ; <u>AC 150/5345-50</u> , <i>Specification for Portable Runway and Taxiway Lights</i> ; and <u>AC 150/5345-53</u> , <i>Airport Lighting Certification Program</i> , is specified.	<u>2.18.3</u>				
The use of a lighted X is specified where appropriate.	<u>2.18.2.1.2</u> , <u>2.18.3.2</u>				
The requirement for signs to conform to <u>AC 150/5345-44</u> , <i>Specification for Runway and Taxiway Signs</i> ; <u>AC 150/5340-18</u> , <i>Standards for Airport Sign Systems</i> ; and <u>AC 150/5345-53</u> , <i>Airport Lighting Certification Program</i> , is specified.	<u>2.18.4</u>				
<b>Marking and Signs For Access Routes</b>					
The CSPP specifies that pavement markings and signs intended for construction personnel should conform to <u>AC 150/5340-18</u> and, to the extent practicable, with the MUTCD and/or State highway specifications.	<u>2.18.4.2</u>				
<b>Hazard Marking and Lighting</b>					
Prominent, comprehensible warning indicators for any area affected by construction that is normally accessible to aircraft, personnel, or vehicles are specified.	<u>2.20.1</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
Hazard marking and lighting are specified to identify open manholes, small areas under repair, stockpiled material, and waste areas.	<u>2.20.1</u>				
The CSPP considers less obvious construction-related hazards.	<u>2.20.1</u>				
Equipment that poses the least danger to aircraft but is sturdy enough to remain in place when subjected to typical winds, prop wash and jet blast is specified.	<u>2.20.2.1</u>				
The spacing of barricades is specified such that a breach is physically prevented barring a deliberate act.	<u>2.20.2.1</u>				
Red lights meeting the luminance requirements of the State Highway Department are specified.	<u>2.20.2.2</u>				
Barricades, temporary markers, and other objects placed and left in areas adjacent to any open runway, taxiway, taxi lane, or apron are specified to be as low as possible to the ground, and no more than 18 inch high.	<u>2.20.2.3</u>				
Barricades are specified to indicate construction locations in which no part of an aircraft may enter.	<u>2.20.2.3</u>				
Highly reflective barriers with lights are specified to barricade taxiways leading to closed runways.	<u>2.20.2.5</u>				
Markings for temporary closures are specified.	<u>2.20.2.5</u>				
The provision of a contractor's representative on call 24 hours a day for emergency maintenance of airport hazard lighting and barricades is specified.	<u>2.20.2.7</u>				

Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
Work Zone Lighting for Nighttime Construction					
If work is to be conducted at night, the CSPP identifies construction lighting units and their general locations and aiming in relationship to the ATCT and active runways and taxiways.	<u>2.21</u>				
Protection of Runway and Taxiway Safety Areas					
The CSPP clearly states that no construction may occur within a safety area while the associated runway or taxiway is open for aircraft operations.	<u>2.22.1.1,</u> <u>2.22.3.1</u>				
The CSPP specifies that the airport operator coordinates the adjustment of RSA or TSA dimensions with the ATCT and the appropriate FAA Airports Regional or District Office and issues a local NOTAM.	<u>2.22.1.2,</u> <u>2.22.3.2</u>				
Procedures for ensuring adequate distance for protection from blasting operations, if required by operational considerations, are detailed.	<u>2.22.3.3</u>				
The CSPP specifies that open trenches or excavations are not permitted within a safety area while the associated runway or taxiway is open, subject to approved exceptions.	<u>2.22.1.4</u>				
Appropriate covering of excavations in the RSA or TSA that cannot be backfilled before the associated runway or taxiway is open is detailed.	<u>2.22.1.4</u>				
The CSPP includes provisions for prominent marking of open trenches and excavations at the construction site.	<u>2.22.1.4</u>				
Grading and soil erosion control to maintain RSA/TSA standards are	<u>2.22.3.5</u>				



Coordination	Reference	Addressed?			Remarks
		Yes	No	NA	
addressed.					
The CSPP specifies that equipment is to be removed from the ROFA when not in use.	<u>2.22.2</u>				
The CSPP clearly states that no construction may occur within a taxiway safety area while the taxiway is open for aircraft operations.	<u>2.22.3</u>				
Appropriate details are specified for any construction work to be accomplished in a taxiway object free area.	<u>2.22.4</u>				
Measures to ensure that personnel, material, and/or equipment do not penetrate the OFZ or threshold siting surfaces while the runway is open for aircraft operations are included.	<u>2.22.4.3.6</u>				
Provisions for protection of runway approach/departure areas and clearways are included.	<u>2.22.6</u>				
<b>Other Limitations on Construction</b>					
The CSPP prohibits the use of open flame welding or torches unless adequate fire safety precautions are provided and the airport operator has approved their use.	<u>2.23.1.2</u>				
The CSPP prohibits the use of electrical blasting caps on or within 1,000 ft (300 m) of the airport property.	<u>2.23.1.3</u>				

**APPENDIX D. CONSTRUCTION PROJECT DAILY SAFETY INSPECTION CHECKLIST**

The situations identified below are potentially hazardous conditions that may occur during airport construction projects. Safety area encroachments, unauthorized and improper ground vehicle operations, and unmarked or uncovered holes and trenches near aircraft operating surfaces pose the most prevalent threats to airport operational safety during airport construction projects. The list below is one tool that the airport operator or contractor may use to aid in identifying and correcting potentially hazardous conditions. It should be customized as appropriate for each project including information such as the date, time and name of the person conducting the inspection.

**Table D-1. Potentially Hazardous Conditions**

<b>Item</b>	<b>Action Required (Describe)</b>	<b>No Action Required (Check)</b>
Excavation adjacent to runways, taxiways, and aprons improperly backfilled.		
Mounds of earth, construction materials, temporary structures, and other obstacles near any open runway, taxiway, or taxi lane; in the related Object Free area and aircraft approach or departure areas/zones; or obstructing any sign or marking.		
Runway resurfacing projects resulting in lips exceeding 3 inch (7.6 cm) from pavement edges and ends.		
Heavy equipment (stationary or mobile) operating or idle near AOA, in runway approaches and departures areas, or in OFZ.		
Equipment or material near NAVAIDs that may degrade or impair radiated signals and/or the monitoring of navigation and visual aids. Unauthorized or improper vehicle operations in localizer or glide slope critical areas, resulting in electronic interference and/or facility shutdown.		
Tall and especially relatively low visibility units (that is, equipment with slim profiles) — cranes, drills, and similar objects — located in critical areas, such as OFZ and		

Item	Action Required (Describe)	No Action Required (Check)
approach zones.		
Improperly positioned or malfunctioning lights or unlighted airport hazards, such as holes or excavations, on any apron, open taxiway, or open taxi lane or in a related safety, approach, or departure area.		
Obstacles, loose pavement, trash, and other debris on or near AOA. Construction debris (gravel, sand, mud, paving materials) on airport pavements may result in aircraft propeller, turbine engine, or tire damage. Also, loose materials may blow about, potentially causing personal injury or equipment damage.		
Inappropriate or poorly maintained fencing during construction intended to deter human and animal intrusions into the AOA. Fencing and other markings that are inadequate to separate construction areas from open AOA create aviation hazards.		
Improper or inadequate marking or lighting of runways (especially thresholds that have been displaced or runways that have been closed) and taxiways that could cause pilot confusion and provide a potential for a runway incursion. Inadequate or improper methods of marking, barricading, and lighting of temporarily closed portions of AOA create aviation hazards.		
Wildlife attractants — such as trash (food scraps not collected from construction personnel activity), grass seeds, tall grass, or standing water — on or near airports.		
Obliterated or faded temporary markings on active operational areas.		
Misleading or malfunctioning obstruction lights. Unlighted or unmarked obstructions in the approach to any open runway pose aviation hazards.		

Item	Action Required (Describe)	No Action Required (Check)
Failure to issue, update, or cancel NOTAMs about airport or runway closures or other construction related airport conditions.		
Failure to mark and identify utilities or power cables. Damage to utilities and power cables during construction activity can result in the loss of runway / taxiway lighting; loss of navigation, visual, or approach aids; disruption of weather reporting services; and/or loss of communications.		
Restrictions on ARFF access from fire stations to the runway / taxiway system or airport buildings.		
Lack of radio communications with construction vehicles in airport movement areas.		
Objects, regardless of whether they are marked or flagged, or activities anywhere on or near an airport that could be distracting, confusing, or alarming to pilots during aircraft operations.		
Water, snow, dirt, debris, or other contaminants that temporarily obscure or derogate the visibility of runway/taxiway marking, lighting, and pavement edges. Any condition or factor that obscures or diminishes the visibility of areas under construction.		
Spillage from vehicles (gasoline, diesel fuel, oil) on active pavement areas, such as runways, taxiways, aprons, and airport roadways.		
Failure to maintain drainage system integrity during construction (for example, no temporary drainage provided when working on a drainage system).		

Item	Action Required (Describe)	No Action Required (Check)
Failure to provide for proper electrical lockout and tagging procedures. At larger airports with multiple maintenance shifts/workers, construction contractors should make provisions for coordinating work on circuits.		
Failure to control dust. Consider limiting the amount of area from which the contractor is allowed to strip turf.		
Exposed wiring that creates an electrocution or fire ignition hazard. Identify and secure wiring, and place it in conduit or bury it.		
Site burning, which can cause possible obscuration.		
Construction work taking place outside of designated work areas and out of phase.		





# **Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects**

(Issued on May 24, 2023)

## **Contents**

Current Changes .....	3
Contract Guidance .....	4
1. Purpose of this Document .....	4
2. Sponsor Actions .....	5
3. Typical Procurement Steps .....	5
4. Applicability Matrix for Contract Provisions .....	6
Appendix A – CONTRACT PROVISIONS .....	1
A1 ACCESS TO RECORDS AND REPORTS.....	1
A2 AFFIRMATIVE ACTION REQUIREMENT .....	2
A3 BREACH OF CONTRACT TERMS .....	5
A4 BUY AMERICAN PREFERENCE .....	6
A5 CIVIL RIGHTS - GENERAL .....	16
A6 CIVIL RIGHTS – TITLE VI ASSURANCE.....	18
A7 CLEAN AIR AND WATER POLLUTION CONTROL .....	27
A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS.....	28
A9 COPELAND “ANTI-KICKBACK” ACT .....	30
A10 DAVIS-BACON REQUIREMENTS.....	32
A11 DEBARMENT AND SUSPENSION.....	39
A12 DISADVANTAGED BUSINESS ENTERPRISE .....	41
A13 DISTRACTED DRIVING .....	45
A14 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.....	46
A15 DRUG FREE WORKPLACE REQUIREMENTS.....	47

A16	EQUAL EMPLOYMENT OPPORTUNITY (EEO).....	48
A17	FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE) .....	55
A18	LOBBYING AND INFLUENCING FEDERAL EMPLOYEES.....	56
A19	PROHIBITION of SEGREGATED FACILITIES.....	58
A20	OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 .....	60
A21	PROCUREMENT OF RECOVERED MATERIALS.....	61
A22	RIGHT TO INVENTIONS.....	63
A23	SEISMIC SAFETY.....	64
A24	TAX DELINQUENCY AND FELONY CONVICTIONS .....	66
A25	TERMINATION OF CONTRACT .....	68
A26	TRADE RESTRICTION CERTIFICATION .....	72
A27	VETERAN’S PREFERENCE .....	74
A28	DOMESTIC PREFERENCES FOR PROCUREMENTS.....	75



## CURRENT CHANGES

Item	Change
Editorial update made to the January 23, 2023 version (effective May 24, 2023)	The link on page 35 was updated to reflect changes to the Department of Labor website.
Editorial updates made to the November 17, 2022 version (effective January 23, 2023)	Pages 7, 16, 19, 20, 25, and 42 of Appendix A were edited to correct grammatical mistakes, update internal document links, and correct the name of the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

# CONTRACT GUIDANCE

## 1. Purpose of this Document

- 1) The purpose of this document is to establish a convenient resource for Sponsors that consolidates federal contract provisions and clauses into one document that includes an applicability matrix. This document itself does not create, revise or delete requirements for participation in the Airport Improvement Program (AIP). The source of requirements addressed within this document are identified within the section for each individual clause.
- 2) **While this document is intended to assist Sponsors with their compliance efforts, it does not alter or modify the terms of any applicable statute or regulation, is not a substitute for reading the regulation and the applicability matrix, and each corresponding document section, nor does it constitute legal advice.**
- 3) Federal laws and regulations require that a Sponsor (a recipient of federal assistance) include specific clauses in certain contracts, solicitations, or specifications regardless of whether or not the project is federally funded.
- 4) For purposes of remaining compliant with its obligations, a Sponsor must incorporate applicable contract provisions in all its procurements and contract documents. Unless otherwise stated, these provisions flow down to subcontracts and sub-tier agreements.
- 5) Terminology:
  - a. The term **“Sponsor”** is used in this document to mean either an obligated Sponsor on a project that is not federally funded, or a Sponsor on an AIP funded project. A Sponsor is a “recipient” of federal assistance when receiving AIP or other FAA grant funds.
  - b. The term **“Owner”** of a public use airport is generally used in the solicitation or contract clauses because of its common use in public contracts. An Owner becomes an obligated Sponsor upon acceptance of the AIP grant assurances associated with current or prior AIP grant funded projects.
  - c. For purposes of determining requirements for contract provisions, the term **“contract”** includes professional services, and subcontracts and supplier contracts such as purchase orders.
  - d. The term **“contractor”** is understood to mean a contractor, subcontractor, or consultant; and means one who participates, through a contract or subcontract (at any tier).
  - e. The term **“bid”** is understood to mean a bid, an offer, or a proposal.
  - f. The term **“applicant”** is understood to mean the following in different contexts:
    - i. For the Equal Employment Opportunity (EEO) clause, the term **“applicant”** means an applicant for employment (whether or not the phrase, *for employment*, follows the word applicant or applicants).

- ii. For all other clauses, the term “**applicant**” means a bidder, offeror, or proposer for a contract.

## 2. Sponsor Actions

In general, Sponsor’s actions consistent with obligations:

- 1) Include in its procurements the provisions that are applicable to its project.
- 2) Not incorporate the entire contract provisions guidelines in its solicitation or contract documents, whether by reference or by inclusion in whole. Incorporation of this entire guidance document creates potential for ambiguous interpretation and may lead to improper application that unnecessarily increases price. A Sponsor that fails to properly incorporate applicable contract clauses may place themselves at risk for audit findings or denial of Federal funding.
- 3) Incorporate applicable contract provisions using mandatory language as required. The subheading entitled *Applicability* advises whether a particular clause or provision has mandatory language that a Sponsor must use.
  - (a) Mandatory Language – Whenever a clause or provision has mandatory text, the Sponsor must incorporate the text of the provision without change, except where specific adaptive input is necessary (e.g., such as the Sponsor’s name).
  - (b) No Mandatory Language – For provisions without mandatory language, this guidance provides model language acceptable to the FAA. Some Sponsors may have standard procurement language that is equivalent to those federal provisions. In these cases, Sponsors may use their existing standard procurement provision language provided the text meets the intent and purpose of the Federal law or regulation.
- 4) Require the contractor (including all subcontractors) to insert these contract provisions in each lower tier contract (e.g., subcontract or sub-agreement).
- 5) Require the contractor (including all subcontractors) to incorporate the requirements of these contract provisions by reference for work done under any purchase orders, rental agreements, and other agreements for supplies or services.
- 6) Require that the prime contractor be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor, or service provider.
- 7) Verify that any required local or State provision does not conflict with or alter a Federal law or regulation.

## 3. Typical Procurement Steps

The typical procurement steps in a project are:

- 1) Solicitation, Request for Bids, or Request for Proposals – This is also called the Advertisement or Notice to Bidders.
- 2) Bidding or Accepting Proposals – In this stage, the bidders receive a complete set of the procurement documents, also known as the project manual. The project manual will typically

include a copy of the solicitation, instructions-to-bidders, bid forms, certifications and representations, general provisions, contract conditions, copy of contract, project drawings, technical specifications, and related project documents.

- 3) Bid/Proposal Evaluation – Period when Sponsor tabulates, reviews, and evaluates all proposals for bid responsiveness and bidder responsibility.
- 4) Award – Point when the Sponsor formally awards the contract to the successful bidder.
- 5) Execution of Contract – Point at which the Sponsor formally enters into a legally binding agreement with bidder to perform services or provide goods.

#### **4. Applicability Matrix for Contract Provisions**

[Table 1](#) Matrix summarizes the applicability of contract provisions based upon the type of contract or agreement. The dollar threshold represents the value at which, when equal to or exceeded, the Sponsor must incorporate the provision in the contract or agreement.

Supplemental information addressing applicability and use for each provision is located in Appendix A. Appendix A and the Matrix include notes indicating when the Sponsor may incorporate references in the solicitation in lieu of including the entire text.

**Sponsors are responsible for reviewing both the Matrix and each corresponding section to determine applicability of specific contract provisions.**

#### **Meaning of cell values in table below:**

- Info – Sponsor has discretion on whether to include clause in its contracts.
- Limited – Provision with limited applicability depending on circumstances of the procurement.
- n/a – Provision that is not applicable for that procurement type.
- NIS – Provision that does not need to be included or referenced in the solicitation document
- REF – Provision to be incorporated into the solicitation by reference.
- REQD – Provision the Sponsor must incorporate into procurement documents.

**Table 1 – Applicability of Provisions**

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
<a href="#">Access to Records and Reports</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Affirmative Action Requirement</a>	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
<a href="#">Breach of Contract</a>	\$250,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Buy American Preferences</a>	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) <a href="#">Buy American Statement</a>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) <a href="#">Construction</a>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) <a href="#">Equipment/Building Projects</a>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
<a href="#">Civil Rights – General</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
<a href="#">Civil Rights - Title VI Assurances</a>	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) <a href="#">Notice - Solicitation</a>	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) <a href="#">Clause - Contracts</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) <a href="#">Clause – Transfer of U.S. Property</a>	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) <a href="#">Clause – Transfer of Real Property</a>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) <a href="#">Clause - Construct/Use/Access to Real Property</a>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) <a href="#">List – Pertinent Authorities</a>	\$0	NIS	REQD	REQD	REQD	REQD	REQD
<a href="#">Clean Air/Water Pollution Control</a>	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Contract Work Hours and Safety Standards</a>	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Copeland Anti-Kickback</a>	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Davis Bacon Requirements</a>	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a
<a href="#">Debarment and Suspension</a>	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
<a href="#">Disadvantaged Business Enterprise</a>	\$ 250,000	REQD	REQD	REQD	REQD	REQD	n/a
<a href="#">Distracted Driving</a>	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Domestic Preferences for Procurements</a>	\$0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Equal Employment Opportunity</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(1) <a href="#">EEO Contract Clause</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(2) <a href="#">EEO Specification</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Federal Fair Labor Standards Act</a>	\$ 0	REQD	REQD	REQD	REQD	REQD	Info
<a href="#">Foreign Trade Restriction</a>	\$ 0	REQD	REQD	REQD	REQD	REQD	n/a
<a href="#">Lobbying Federal Employees</a>	\$ 100,000	REF	REQD	REQD	REQD	REQD	n/a
<a href="#">Occupational Safety and Health Act</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment</a>	\$0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Prohibition of Segregated Facilities</a>	\$0	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Recovered Materials</a>	\$10,000	REF	Limited	REQD	REQD	Limited	n/a
<a href="#">Right to Inventions</a>	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
<a href="#">Seismic Safety</a>	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
<a href="#">Tax Delinquency and Felony Conviction</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Termination of Contract</a>	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Veteran's Preference</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a

**Airport Concessions Disadvantage Business Enterprise (ACDBE) Notes:**

1. Language relative to solicitation for ACDBEs does not need to be included in AIP funded solicitations, since in no case are concessions activities funded with federal funds.
2. Airport Sponsors must include the appropriate Civil Rights – Title VI language in their solicitation notices when they seek proposals for concessions.
3. For ACDBE agreements, use the column for *Non-AIP Contracts*.

## **APPENDIX A – CONTRACT PROVISIONS**

### **A1 ACCESS TO RECORDS AND REPORTS**

#### **A1.1 SOURCE**

2 CFR § 200.334

2 CFR § 200.337

FAA Order 5100.38

#### **A1.2 APPLICABILITY**

2 CFR § 200.334 requires a Sponsor to retain records pertinent to a Federal award for a period of three years from submission of final closure documents. 2 CFR § 200.337 establishes that Sponsors must provide Federal entities the right to access records pertinent to the Federal award. FAA policy extends these requirements to the Sponsor's contracts and subcontracts of AIP funded projects.

**Contract Types** – The Sponsor must include this provision in all contracts and subcontracts of AIP funded projects.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA with meeting the intent of this requirement. If the Sponsor prefers to use different language, the Sponsor's language must fully satisfy the requirements of 2 CFR §§ 200.334 and 200.337.

#### **A1.3 MODEL CONTRACT CLAUSE**

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

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

## A2 AFFIRMATIVE ACTION REQUIREMENT

### A2.1 SOURCE

41 CFR Part 60-4

Executive Order 11246

### A2.2 APPLICABILITY

**Minority Participation.** Sponsors are required to set goals for minority participation in AIP funded projects exceeding \$10,000. The goals for minority participation derive from Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA) as established in Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table of all EAs and SMSAs and the associated minority participation goals.

To find the goals for minority participation, a Sponsor must either refer to the Federal Register Notice or to the Department of Labor online document, "[Participation Goals for Minorities and Females](#)". EAs and SMSAs span state boundaries. A Sponsor may have to refer to entries for adjacent states in order to locate the goal for the project location.

**Female Participation.** Executive Order 11246 has set a goal of 6.9% nationally for female participation for all construction projects. This value remains constant for all counties and states.

#### **Contract Types –**

*Construction* – The Sponsor must incorporate this notice in all solicitations for bids or requests for proposals for AIP funded construction work contracts and subcontracts that exceed \$10,000. Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

*Equipment* – The Sponsor must incorporate this notice in any equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at a manufacturer's plant (e.g., firefighting and snow removal vehicles).

*Professional Services* – The Sponsor must incorporate this notice in any professional service agreement if the professional services agreement includes tasks that meet the definition of construction work [as defined by the U.S. Department of Labor (DOL)] and exceeds \$10,000. Examples include installation of monitoring systems (e.g., noise, environmental, etc.).

*Property/Land* – The Sponsor must incorporate this notice in any agreement associated with land acquisition if the agreement includes construction work (defined above) that exceeds \$10,000. Examples include demolition of structures or installation of boundary fencing.



**Use of Provision – MANDATORY TEXT.** The Sponsor must:

- (a) Incorporate the text of this provision in its solicitations without modification.
- (b) Incorporate the applicable minority participation goal and the covered area by geographic name.
- (c) Not simply insert a reference to the 1980 Federal Register Notice.

### **A2.3 MANDATORY SOLICITATION CLAUSE**

#### **NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

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

##### **Timetables**

Goals for minority participation for each trade:	<b>1.97%</b>
Goals for female participation in each trade:	6.9%

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

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

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

4. As used in this notice and in the contract resulting from this solicitation, the “covered area” is *State of Maine, County of Oxford, Town of Bethel and in County of Washington, Town of Princeton.*

## A3 BREACH OF CONTRACT TERMS

### A3.1 SOURCE

2 CFR Part 200, Appendix II(A)

### A3.2 APPLICABILITY

This provision requires Sponsors to incorporate administrative, contractual or legal remedies in the event that a contractor violates or breaches contract terms. The Sponsor must also include appropriate sanctions and penalties.

**Contract Types** – This provision is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II (A). This threshold is occasionally adjusted for inflation and is \$250,000.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA as meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 2 CFR Part 200. Select either "contractor" or "consultant" as applicable.

### A3.3 MODEL CONTRACT CLAUSE

#### BREACH OF CONTRACT TERMS

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

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

## **A4 BUY AMERICAN PREFERENCE**

### **A4.1 SOURCE**

Title 49 USC § 50101

Executive Order 14005, *Ensuring the Future is Made in All of America by All of America's Workers*

Bipartisan Infrastructure Law (Pub. L. No. 117-58), Build America, Buy America (BABA)

### **A4.2 APPLICABILITY**

The Buy American Preference incorporates statutory requirements and policies outlined in the in 49 USC § 50101, Executive Order 14005, and BABA.

Section 50101 of 49 USC requires that all steel and manufactured goods used on AIP projects be produced in the United States. This section also gives the FAA the ability to issue a waiver to a Sponsor to use non-domestic material on an AIP funded project subject to meeting certain conditions. A Sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

- 1) Applying the provision is not in the public interest.
- 2) The steel or manufactured goods are not available in sufficient quantity or quality in the United States.
- 3) The cost of components and subcomponents produced in the United States is more than 60 percent of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number (such as specific airport lighting equipment) are considered the equipment.
- 4) Applying this provision would increase the cost of the overall project by more than 25 percent.

Executive Order 14005 advances the Administration's priority to use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The Order directs, to the extent appropriate and consistent with applicable law, agencies shall partner with the Hollings Manufacturing Extension Partnership (MEP) to conduct supplier scouting in order to identify American companies that are able to produce goods, products, and materials in the United States that meet Federal procurement needs, prior to consideration of using non-domestic products.

The Bipartisan Infrastructure Law, Build America, Buy America (BABA) Act strengthens Made in America Laws and bolsters America's industrial base, protects national security, and supports high-paying jobs. Under BABA, iron, steel and certain construction materials are required to be 100% produced in the United States.

Under the Bipartisan Infrastructure Law (Pub. L. No. 117-58) BABA three waivers are available for iron and steel, manufactured products, and construction materials when a Federal agency finds that –

- 1) Applying the domestic content procurement preference would be inconsistent with the public interest (a "public interest waiver");

- 2) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- 3) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).

BABA defines construction materials, items that are or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber or drywall.

Items that consist of two or more of the aforementioned materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

The Buy America Preference requirements flow down from the Sponsor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

**Note:** The Buy American Preference does not apply to temporary equipment a contractor uses as a tool of its trade and which does not remain as part of the project.

### Required Documentation

**The FAA Buy American Requests.** All applications (requests) for an FAA Buy American Preference Waiver includes, at minimum, a completed Content Percentage Worksheet and Final Assembly Questionnaire. Additional information may be requested from the applicant by the FAA. Airport Sponsors, consultants, construction contractors, or equipment manufacturers are responsible for completing and submitting waiver applications. The FAA is unable to make a determination on waiver requests with incomplete information. Sponsors must confirm with the bidder or offeror to assess the adequacy of the waiver request and associated information prior to forwarding a waiver request to the FAA for action. All FAA waivers forms are available from the FAA Buy American Requirements webpage.

**Proprietary Confidentiality.** Exemption 4 of the Freedom of Information Act protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential. Proprietary manufacturing and design information submitted to the Federal Aviation Administration for the purposes of receiving a Buy American Waiver shall not be disclosed outside the FAA. The FAA will provide a written notification to the Airport Sponsor, manufacturer(s), contractor(s) or supplier(s) when a waiver determination is complete.

**Timing of Waiver Requests.** Sponsors desiring a Type 2 waiver should submit their waiver request, with justification, *before* issuing a solicitation for bids or a request for proposal for a project.

The Sponsor must submit a Type 2, Type 3, or Type 4 waiver request *prior* to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary and extenuating circumstances exist.

**The Buy American Notice of Determination (NOD) Process.** The FAA Reauthorization Act of 2018 requires that all approved waivers must be posted to the FAA’s website and remain posted for public comment for 10 days, before becoming effective. All FAA waivers must complete the NOD process. Sponsors are encouraged to wait until approved waivers become effective before executing AIP projects.

**Buy American Conformance Lists.** The FAA Office of Airports maintains listings of projects and products that have received a waiver from the Buy American Preference requirements for project specific and nationwide use. Each of these conformance lists is available online at [www.faa.gov/airports/aip/buy\\_american/](http://www.faa.gov/airports/aip/buy_american/). Products listed on the FAA Nationwide Buy American Conformance list do not require additional submittal of domestic content information. Nationwide waivers expire five years from the date issued, unless revoked earlier by the FAA.

**Facility Waiver Requests.** For construction of a facility, the Sponsor may submit the waiver request after bid opening, but prior to contract execution. Examples of facility construction include terminal buildings, terminal renovation, and snow removal equipment buildings.

#### **Contract Types –**

*Construction and Equipment* – The Sponsor must meet the Buy American Preference requirements of 49 USC § 50101 and BABA for all AIP funded projects that require materials that are or consists primarily of iron, steel or manufactured goods and construction materials.

*Professional Services* – Professional service agreements (PSAs) do not normally result in a deliverable that meets the definition of a manufactured product. However, the emergence of various project delivery methods has created situations where task deliverables under a PSA may include a manufactured product. If a PSA includes providing a manufactured good as a deliverable under the contract, the Sponsor must include the Buy American Preference provision in the agreement.

*Property* – Most land transactions do not involve acquiring a manufactured product. However, under certain circumstances, a property acquisition project could result in the installation of a manufactured product. For example, the installation of property fencing, gates, doors and locks, etc. represent manufactured products acquired under an AIP funded land project that must comply with Buy American Preferences.

**Use of Provisions** – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully comply with 49 USC § 50101 and BABA.

There are two types of FAA Buy American certifications. The Sponsor must incorporate the appropriate certifications of compliance with FAA Buy American Preference in the solicitation:

- **Construction Projects** involving the replacement, rehabilitation, reconstruction of airfield surfaces such as on runways, taxiways, taxilanes, aprons, roadways, parking lots, etc. – Insert the Certificate of compliance to FAA Buy American Preference based on Construction Projects.

- **Equipment and Buildings Projects** involving and including the acquisition of equipment such as snow removal equipment, navigational aids, wind cones, and the construction of buildings such as hangars, terminal development, lighting vaults, aircraft rescue & firefighting buildings, etc. - Insert the Certificate of Compliance with FAA Buy American Preference Based on Equipment/Building Projects.

#### **A4.3 MODEL SOLICITATION CLAUSES**

##### **A4.3.1 Certification of Compliance with FAA Buy American Preference Statement**

###### **FAA BUY AMERICAN PREFERENCE**

The Contractor certifies that its bid/offer is in compliance with 49 USC § 50101, BABA and other related Made in America Laws,<sup>1</sup> U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

The bidder or offeror must complete and submit the certification of compliance with FAA’s Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA’s Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

---

<sup>1</sup> Per Executive Order 14005 “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to “Buy America” or “Buy American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

#### **A4.3.2 Certification of Compliance with FAA Buy American Preference – Construction Projects**

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

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

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

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



- d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
- e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### **Required Documentation**

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

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

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

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

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

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

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

---

Date

---

Signature

---

Company Name

---

Title

### **A4.3.3 Certification of Compliance with FAA Buy American Preference – Equipment/Building Projects**

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

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

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

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

- d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### **Required Documentation**

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

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

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

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

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

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

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

---

Date

---

Signature

---

Company Name

---

Title

## A5 CIVIL RIGHTS - GENERAL

### A5.1 SOURCE

49 USC § 47123

### A5.2 APPLICABILITY

There are two separate civil rights provisions that apply to projects:

1. FAA General Civil Rights Provision and,
2. Title VI provisions, which are addressed in Appendix A6.

**Contract Types** – The General Civil Rights Provisions found in 49 USC § 47123, derived from the Airport and Airway Improvement Act of 1982, Section 520, apply to all Sponsor contracts *regardless* of funding source.

**Use of Provision – MANDATORY TEXT.** Each contract must include two civil rights provisions. The first general clause must be included in all contracts, lease agreements, or transfer agreements. An additional specific provision must be included; the applicable text is based on whether the contract is a general contract or whether the contract is a lease or transfer agreement. The Sponsor must incorporate the text of the appropriate general clause and specific clause without modification into the contract, lease, or transfer agreement.

The required clauses for each type of contract are summarized in the table below:

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Clause that is used for all contracts, lease agreements and transfer agreements	Every contract or agreement <b>regardless of funding source.</b>	A5.3.1
Clause that is used for general contract agreements	This applies to all contracts that do not involve property agreements. It applies to all contracts not covered by A5.3.3 <b>regardless of funding source.</b>	A5.3.2
Clause that is used for lease agreements and transfer agreements	This applies to all property agreements such leases of concession space in a terminal and leases where a physical portion of the airport is transferred for use. It applies to all contracts not covered by A5.3.2 <b>regardless of funding source.</b>	A5.3.3

## **A5.3 MANDATORY CONTRACT CLAUSES**

### **A5.3.1 General Clause that is used for Contracts, Lease Agreements, and Transfer Agreements**

#### **GENERAL CIVIL RIGHTS PROVISIONS**

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

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### **A5.3.2 Specific Clause that is used for General Contract Agreements**

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

### **A5.3.3 Specific Clause that is used for Lease Agreements or Transfer Agreements**

If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor.

The above provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration.

## A6 CIVIL RIGHTS – TITLE VI ASSURANCE

### A6.1 SOURCE

49 USC § 47123

FAA Order 1400.11

### A6.2 APPLICABILITY

Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance.

Sponsors must include appropriate clauses from the Standard DOT Title VI Assurances in all contracts and solicitations.

The text of each individual clause comes from the U.S. Department of Transportation [Order DOT 1050.2](#), Standard Title VI Assurances and Nondiscrimination Provisions, effective April 24, 2013. These assurances require that the Recipient (the Sponsor) insert the appropriate clauses in the form provided by the DOT. Where the clause refers to the applicable activity, project, or program, it means the AIP project.

The clauses are as follows:

#### A6.2.1 Applicability of Title VI Solicitation Notice

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Title VI Solicitation Notice – <ul style="list-style-type: none"><li>Assurance 2 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li><li>Assurance 30(d) of the Airport Sponsors Assurances</li></ul>	1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and 2) All Sponsor proposals for negotiated agreements <b>regardless of funding source.</b>	A6.3.1



Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<p>Title VI Clauses for Compliance with Nondiscrimination Requirements</p> <ul style="list-style-type: none"> <li>Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30(e)(1) of the Airport Sponsor Assurances</li> </ul>	<p>Every contract or agreement (unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities, which is a rare occurrence).</p> <p>It has been determined that service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements must include this clause.</p>	A6.4.2
<p>Title VI Required Clause for Property Interests Transferred from the United States</p> <ul style="list-style-type: none"> <li>Assurance 4 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30e.3 of the Airport Sponsor Assurances</li> </ul>	<p>As a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Sponsor.</p> <p>This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract.</p>	A6.4.3
<p>Title VI Required Clause for Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program –</p> <ul style="list-style-type: none"> <li>Assurance 5 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30(e)(4)(a) of the Airport Sponsor Assurances</li> </ul>	<p>As a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for all transfers of real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases where a physical portion of the airport is transferred for use, for example a fuel farm, apron space, or a parking facility. It applies to agreements not covered by A6.4.4.</p>	A6.4.4

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<p>Clause for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program</p> <ul style="list-style-type: none"> <li>Assurance 6 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30(e)(4)(b) of the Airport Sponsor Assurances</li> </ul>	<p>In any future (deeds, leases, licenses, permits, or similar instruments) entered into by the Sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases of concession space in a terminal not covered by A6.4.3.</p>	A6.4.5
<p>Title VI List of Pertinent Nondiscrimination Acts and Authorities</p> <ul style="list-style-type: none"> <li>Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30(e)(2) of the Airport Sponsor Assurances</li> </ul>	<p>Insert this list in every contract or agreement, unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities, which is a rare occurrence.</p> <p><b>This list can only be omitted if the FAA has determined that the contractor or company is already subject to substantively identical nondiscrimination requirements.</b></p>	<p>A6.4.1</p> <p><b>List must be included in all applicable contracts.</b></p>

### A6.3 MANDATORY SOLICITATION CLAUSE

The Sponsor must include this clause in:

- 1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and
- 2) All Sponsor proposals for negotiated agreements **regardless of funding source.**

#### A6.3.1 Title VI Solicitation Notice

**Title VI Solicitation Notice:**

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

## **A6.4 MANDATORY CONTRACT CLAUSES**

### **A6.4.1 Title VI List of Pertinent Nondiscrimination Acts and Authorities**

Insert this list in every contract or agreement, unless the Sponsor has determined and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities. This list can be omitted if the FAA has determined that the contractor or company is already subject to nondiscrimination requirements, which is a rare occurrence.

#### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must

take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

#### **A6.4.2 Nondiscrimination Requirements/Title VI Clauses for Compliance**

The Sponsor must include this contract clause in:

- 1) Every contract or agreement (unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities); and
- 2) Service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements.
- 3) Other types of contracts with utility companies involving property covered by A6.4.2, A6.4.3, or A6.4.4.

#### **Compliance with Nondiscrimination Requirements:**

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

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or

refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **A6.4.3 Title VI Clauses for Deeds Transferring United States Property**

This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract. It will be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Sponsor.

#### **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances:

**NOW, THEREFORE**, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Sponsor*) will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC §§ 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

### (HABENDUM CLAUSE)

**TO HAVE AND TO HOLD** said lands and interests therein unto (*Title of Sponsor*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Sponsor*), its successors and assigns.

The (*Title of Sponsor*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the (*Title of Sponsor*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

#### **A6.4.4 Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program**

This applies to agreements such as leases where a physical portion of the airport is transferred for use—for example a fuel farm, apron space, or a parking facility—and will be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for all transfers of real property acquired or improved under the Airport Improvement Program.

#### **CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances:

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee,



licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (*Title of Sponsor*) will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the (*Title of Sponsor*) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

#### **A6.4.5 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program**

This applies to agreements such as leases of concession space in a terminal and any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under the Airport Improvement Program.

#### **CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, (*Title of Sponsor*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities

thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*

- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, (*Title of Sponsor*) will there upon revert to and vest in and become the absolute property of (*Title of Sponsor*) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)



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

### **A7.1 SOURCE**

2 CFR Part 200, Appendix II(G)

42 USC § 7401, et seq

33 USC § 1251, et seq

### **A7.2 APPLICABILITY**

**Contract Types** – This provision is required for all contracts and lower tier contracts that exceed \$150,000.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of Appendix II to 2 CFR § 200.

### **A7.3 MODEL CONTRACT CLAUSE**

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

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

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

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

### **A8.1 SOURCE**

2 CFR Part 200, Appendix II(E)

2 CFR § 5.5(b)

40 USC § 3702

40 USC § 3704

### **A8.2 APPLICABILITY**

Contract Work Hours and Safety Standards Act Requirements (CWHSSA) (40 USC §§ 3702 & 3704) requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts not less than one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. CWHSSA prohibits unsanitary, hazardous, or dangerous working conditions on federally-assisted projects. The Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this Act, while DOL's Occupational Safety and Health Administration (OSHA) enforces the safety and health requirements.

#### **Contract Types –**

*Construction* – This provision applies to all contracts and lower tier contracts that exceed \$100,000, and employ laborers, mechanics, watchmen, and guards.

*Equipment* – This provision applies to any equipment project exceeding \$100,000 that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g., ARFF and SRE vehicles).

*Professional Services* – This provision applies to professional service agreements that exceed \$100,000 and employs laborers, mechanics, watchmen, and guards. This includes members of survey crews and exploratory drilling operations.

*Property* – While most land transactions do not involve employment of laborers, mechanics, watchmen, and guards, under certain circumstances, a property acquisition project could require such employment. Examples include the installation of property fencing or testing for environmental contamination

**Use of Provision – MANDATORY TEXT.** Sponsors must incorporate this text without modification.

## **A8.3 MANDATORY CONTRACT CLAUSE**

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

#### **1. Overtime Requirements.**

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

#### **2. Violation; Liability for Unpaid Wages; Liquidated Damages.**

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

#### **3. Withholding for Unpaid Wages and Liquidated Damages.**

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

#### **4. Subcontractors.**

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

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

### **A9.1 SOURCE**

2 CFR Part 200, Appendix II(D)

29 CFR Parts 3 and 5

### **A9.2 APPLICABILITY and PURPOSE**

The Copeland (Anti-Kickback) Act (18 USC § 874 and 40 USC § 3145) makes it unlawful to induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

#### **Contract Types –**

*Construction* – This provision applies to all construction contracts and subcontracts financed under the AIP that exceed \$2,000.

*Equipment* – This provision applies to all equipment installation projects (e.g., electrical vault improvements) financed under the AIP that exceed \$2,000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g., SRE and ARFF vehicles).

*Professional Services* –The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) include tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate the Copeland Anti-kickback provision.

*Property* –Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the Copeland Anti-Kickback provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The Sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 29 CFR Part 5.

### **A9.3 MODEL CONTRACT CLAUSE**

#### **COPELAND “ANTI-KICKBACK” ACT**

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

## **A10 DAVIS-BACON REQUIREMENTS**

### **A10.1 SOURCE**

2 CFR Part 200, Appendix II(D)

29 CFR Part 5

49 USC § 47112(b)

40 USC §§ 3141-3144, 3146, and 3147

### **A10.2 APPLICABILITY**

The Davis-Bacon Act (40 USC §§ 3141-3144, 3146, and 3147) ensures that laborers and mechanics employed under the contract receive pay no less than the locally prevailing wages and fringe benefits as determined by the Department of Labor.

#### **Contract Types –**

*Construction* – Incorporate into all construction contracts and subcontracts that exceed \$2,000 and include funding from the AIP.

*Equipment* – This provision applies to all equipment installation projects (e.g., electrical vault improvements) financed under the AIP that exceed \$ 2,000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g., SRE and ARFF vehicles)

*Professional Services* – The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) includes tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate this clause.

*Property* – Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The Sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

*Fencing Projects* – Fencing projects that exceed \$2,000 must include this provision.

**Use of Provision – MANDATORY TEXT.** 29 CFR part 5 establishes specific language a Sponsor must use. The Sponsor may not make any modification to the standard language. A/E firms that employ laborers and mechanics on a task that meets the definition of construction, alteration, or repair are acting as a contractor. The Sponsor may not substitute the term “Contractor” for “Consultant” in such instances.

## **A10.3 MANDATORY CONTRACT CLAUSE**

### **DAVIS-BACON REQUIREMENTS**

#### **1. Minimum Wages.**

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

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

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor,

Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding. The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### 3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types



described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

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

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the Contractor’s or subcontractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits,

apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

#### 5. Compliance with Copeland Act Requirements.

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

#### 6. Subcontracts.

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

#### 7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

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

10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

## **A11 DEBARMENT AND SUSPENSION**

### **A11.1 SOURCE**

2 CFR Part 180 (Subpart B)

2 CFR Part 200, Appendix II(H)

2 CFR Part 1200

DOT Order 4200.5

Executive Orders 12549 and 12689

### **A11.2 APPLICABILITY**

The Sponsor must verify that the firm or individual that it is entering into a contract with is not presently suspended, excluded, or debarred by any Federal department or agency from participating in federally-assisted projects. The Sponsor accomplishes this by:

- 1) Checking the System for Award Management (SAM.gov) to verify that the firm or individual is not listed in SAM.gov as being suspended, debarred, or excluded;
- 2) Collecting a certification from the firm or individual that it is not suspended, debarred, or excluded; and
- 3) Incorporating a clause in the contract that requires lower tier contracts to verify that no suspended, debarred, or excluded firm or individual is included in the project.

**Contract Types** – This requirement applies to *covered transactions*, which are defined in 2 CFR part 180 (Subpart B). AIP funded contracts are non-procurement transactions, as defined by 2 CFR § 180.970. Covered transactions include any AIP-funded contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000. This includes contracts associated with land acquisition projects.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 2 CFR part 180. For professional service agreements, Sponsor may substitute "bidder/offeree" with "consultant."

### **A11.3 MODEL BID/PROPOSAL CERTIFICATION CLAUSES**

#### **A11.3.1 Bidder or Offeror Certification**

##### **CERTIFICATION OF OFFEROR/BIDDER REGARDING DEBARMENT**

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

### **A11.3.2 Lower Tier Contract Certification**

#### **CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT**

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

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

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

## A12 DISADVANTAGED BUSINESS ENTERPRISE

### A12.1 SOURCE

49 CFR Part 26

### A12.2 APPLICABILITY

A Sponsor that anticipates awarding \$250,000 or more in AIP funded prime contracts in a federal fiscal year must have an approved Disadvantaged Business Enterprise (DBE) program on file with the FAA Office of Civil Rights (49 CFR § 26.21). The approved DBE program will identify a 3-year overall program goal that the Sponsor bases on the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on the project (49 CFR § 26.45).

**Contract Types** – Sponsors with a DBE program on file with the FAA must include the following provisions, if applicable:

- 1) Clause in all solicitations for proposals for which a contract goal has been established,
- 2) Clause in each prime contract, and
- 3) Clause in solicitations that are obtaining DBE participation through race/gender neutral means.

#### Use of Provision –

1. *Solicitations with a DBE Contract Goal* – No mandatory language provided. 49 CFR §26.53 requires a Sponsor's solicitation to address what a contractor must submit on proposed DBE participation. The language of A12.3.1 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's revised language must fully satisfy these requirements. The Sponsor may require the contractor's submittal on proposed DBE participation either at bid opening as a matter of responsiveness or within five days of bid opening as a matter of responsibility.
2. *Solicitations Relying on Race/Gender Neutral Means* – No mandatory language provided. The language of A12.3.2 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor's revised language must fully satisfy requirements for a Sponsor that is not applying a project specific contract goal but is covered by a DBE program on file with the FAA.
3. *Assurance for Contracts Covered by DBE Program* – **MANDATORY TEXT PROVIDED.** Sponsors must incorporate this language if they have a DBE program on file with the FAA. This includes projects where DBE participation is obtained through race/gender neutral means (i.e., no DBE contract goal). Section 26.13 of 49 CFR establishes mandatory language for contractor assurance. The Sponsor must not modify the language. Part 26 of 49 CFR requires Sponsors ensure this clause also flows down into subcontracts (i.e., must be included verbatim in subcontracts).



4. *Prompt Payment for Contracts Covered by DBE Program* – No mandatory language provided. Section 26.29 of 49 CFR requires Sponsors to include a contract clause requiring prompt payment to subcontractors no later than thirty (30) days after the prime contractor receives payment from the Sponsor. The requirement applies to all subcontractors, not just DBEs. The prompt payment language of A12.3.3 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, such as a specific clause identified in the Sponsor's approved DBE program plan, the Sponsor's revised language must fully satisfy these requirements.
5. *Termination of DBE Subcontractors on Contracts with a DBE Contract Goal* - No mandatory language provided. Section 26.53 of 49 CFR prohibits unauthorized removal or replacement of DBE firms listed in response to a solicitation that had a DBE contract goal and sets forth the specific enforcement mechanism recipients must include in prime contracts. The language of A12.3.3 is acceptable to the FAA in meeting the intent of this requirement.
6. Sponsors that are not required to have a DBE program on file with the FAA are not required to include DBE provisions and clauses.

### **A12.3 REQUIRED PROVISIONS**

#### **A12.3.1 Solicitation Language (Solicitations that include a Contract Goal)**

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

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

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

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



**Bid Information submitted as a matter of responsibility:**

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

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

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

**A12.3.2 Solicitation Language (Race/Gender Neutral Means)**

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the [Insert Name of Owner] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

**A12.3.3 Prime Contracts (Contracts Covered by a DBE Program)**

**Contract Assurance (49 CFR § 26.13; mandatory text provided) –**

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

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

**Prompt Payment (49 CFR § 26.29; acceptable/sample text provided) –**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number of days, not to exceed 30] days from the receipt of each payment the prime contractor receives from [Name of recipient]. The prime contractor agrees further to return retainage payments to each subcontractor within [specify number of days, not to exceed 30] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the [Name of Recipient]. This clause applies to both DBE and non-DBE subcontractors.

**Termination of DBE Subcontracts (49 CFR § 26.53(f); acceptable/sample text provided) –**

The prime contractor must not terminate a DBE subcontractor listed in response to [include Solicitation paragraph number where paragraph 12.3.1, Solicitation Language appears] (or an approved substitute DBE firm) without prior written consent of [Name of Recipient]. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent [Name of Recipient]. Unless [Name of Recipient] consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

[Name of Recipient] may provide such written consent only if [Name of Recipient] agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to [Name of Recipient] its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to [Name of Recipient], of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise [Name of Recipient] and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why [Name of Recipient] should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), [Name of Recipient] may provide a response period shorter than five days.

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

## **A13 DISTRACTED DRIVING**

### **A13.1 SOURCE**

Executive Order 13513

DOT Order 3902.10

### **A13.2 APPLICABILITY**

The FAA 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.

**Contract Types** – Sponsors must insert this provision in all AIP funded contracts that exceed the micro-purchase threshold of 2 CFR § 200.320 (currently set at \$10,000).

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy these requirements.

### **A13.3 MODEL CONTRACT CLAUSE**

#### **TEXTING WHEN DRIVING**

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

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

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

### **A14.1 SOURCE**

2 CFR § 200, Appendix II(K)

2 CFR § 200.216

### **A14.2 APPLICABILITY**

Sponsors and subgrant recipients are prohibited from using AIP grant funds to:

- a) Procure or obtain,
- b) Extend or renew a contract to procure or obtain, or
- c) Enter into a contract to procure or obtain certain covered telecommunications equipment.

These restrictions apply to telecommunication equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system. Covered telecommunications equipment is equipment produced or provided by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of either).

**Contract Types** – The Sponsor must include this provision in all AIP funded contracts and lower-tier contracts.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy these requirements. Sponsor may substitute “Contractor and subcontractor” with “Consultant and sub-consultant” for professional service agreements.

### **A14.3 MODEL CERTIFICATION CLAUSE**

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

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

## **A15 DRUG FREE WORKPLACE REQUIREMENTS**

### **A15.1 SOURCE**

49 CFR Part 32

Drug-Free Workplace Act of 1988 (41 USC § 8101-8106, as amended)

### **A15.2 APPLICABILITY**

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

**Contract Types** – This provision applies to all AIP funded projects, but not to the contracts between the grantee (the Sponsor) and a contractor, subcontractors, suppliers, or subgrantees.

**Use of Provision** – No mandatory or recommended text provided because the requirements do not extend beyond the Sponsor level.

### **A15.3 CONTRACT CLAUSE**

None.

## A16 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

### A16.1 SOURCE

2 CFR Part 200, Appendix II(C)

41 CFR § 60-1.4

41 CFR § 60-4.3

Executive Order 11246

### A16.2 APPLICABILITY

The purpose of this provision is to provide equal opportunity for all persons, without regard to race, color, religion, sex, or national origin who are employed or seeking employment with contractors performing under a federally-assisted construction contract. There are two provisions — a construction clause and a specification clause.

The equal opportunity contract clause must be included in any contract or subcontract when the amount exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract or subcontract must include the clause for the remainder of the year, regardless of the amount or the contract.

#### **Contract Types –**

*Construction* – The Sponsor must incorporate contract and specification language in all construction contracts and subcontracts as required above.

*Equipment* – The Sponsor must incorporate contract and specification language into all equipment contracts as required above that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g., ARFF and SRE vehicles).

*Professional Services* – The Sponsor must include contract and specification language into all professional service agreements as required above.

*Property* – The Sponsor must include contract and specification language into all land acquisition projects that include work that qualifies as construction work as defined by 41 CFR part 60 as required above. An example is installation of boundary fencing.

**Use of Provision – MANDATORY TEXT.** 41 CFR § 60-1.4 provides the mandatory ***contract*** language. 41 CFR § 60-4.3 provides the mandatory ***specification*** language. The Sponsor must incorporate these clauses without modification.

## **A16.3 MANDATORY CONTRACT CLAUSE**

### **A16.3.1 EEO Contract Clause**

#### **EQUAL OPPORTUNITY CLAUSE**

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

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

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

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

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in

whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

### **A16.3.2 EEO Specification**

#### **STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
  - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.



3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other

training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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

### **A17.1 SOURCE**

29 USC § 201, et seq

2 CFR § 200.430

### **A17.2 APPLICABILITY**

The U.S. Department of Labor (DOL) Wage and Hour Division administers the Fair Labor Standards Act (FLSA). This act prescribes federal standards for basic minimum wage, overtime pay, record keeping, and child labor standards.

**Contract Types** – Per the Department of Labor, all employees of certain enterprises having workers engaged in interstate commerce; producing goods for interstate commerce; or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the FLSA.

All consultants, sub-consultants, contractors, and subcontractors employed under this federally assisted project must comply with the FLSA.

*Professional Services* – 29 CFR § 213 exempts employees in a bona fide executive, administrative or professional capacity. Because professional firms employ individuals that are not covered by this exemption, the Sponsor's agreement with a professional services firm must include the FLSA provision.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 29 USC § 201, et seq. The Sponsor must select *contractor* or *consultant*, as appropriate for the contract.

### **A17.3 MODEL SOLICITATION CLAUSE**

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

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

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

### **A18.1 SOURCE**

31 USC § 1352 – Byrd Anti-Lobbying Amendment

2 CFR Part 200, Appendix II(I)

49 CFR Part 20, Appendix A

### **A18.2 APPLICABILITY**

Consultants and contractors that apply or bid for an award of \$100,000 or more must certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or another award covered by 31 USC § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

**Contract Types** – The Sponsor must incorporate this provision into all contracts exceeding \$100,000.

**Use of Provision – MANDATORY TEXT.** Appendix A to 49 CFR Part 20 prescribes language the Sponsor must use. The Sponsor must incorporate this provision without modification.

### **A18.3 MANDATORY CERTIFICATION CLAUSE**

#### **CERTIFICATION REGARDING LOBBYING**

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under

grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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



## **A19 PROHIBITION OF SEGREGATED FACILITIES**

### **A19.1 SOURCE**

2 CFR Part 200, Appendix II(C)

41 CFR Part 60-1

### **A19.2 APPLICABILITY**

The contractor must comply with the requirements of the EEO clause by ensuring that facilities they provide for employees are free of segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. This clause must be included in all contracts that include the equal opportunity clause, regardless of the amount of the contract.

**Contract Types** – AIP Sponsors must incorporate the Prohibition of Segregated Facilities clause (41 CFR § 60-1.8) in any contract containing the Equal Employment Opportunity clause of 41 CFR § 60-1.4. This obligation flows down to subcontract and sub-tier purchase orders containing the Equal Employment Opportunity clause.

*Construction* – Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

*Equipment* – On site installation of equipment such as airfield lighting control equipment meets the definition of construction and thus this provision would apply. This provision does not apply to equipment projects involving manufacture of the item at a vendor's manufacturing plant. An example would be the manufacture of a SRE or ARFF vehicle.

*Professional Services* – Professional services that include tasks that qualify as construction work as defined by 41 CFR part 60-1. Examples include the installation of noise monitoring equipment.

*Property/Land* – Land acquisition contracts that include tasks that qualify as construction work as defined by 41 CFR part 60-1. Examples include demolition of structures or installation of boundary fencing.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 41 CFR Part 60-1.

### **A19.3 MODEL CONTRACT CLAUSE**

#### **PROHIBITION OF SEGREGATED FACILITIES**

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The



Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

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

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

## **A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

### **A20.1 SOURCE**

29 CFR Part 1910

### **A20.2 APPLICABILITY**

**Contract Types** – All contracts and subcontracts must comply with the Occupational Safety and Health Act of 1970 (OSH). The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) oversees the workplace health and safety standards wage provisions from OSH.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 29 CFR Part 1910.

### **A20.3 MODEL CONTRACT CLAUSE**

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

## **A21 PROCUREMENT OF RECOVERED MATERIALS**

### **A21.1 SOURCE**

2 CFR § 200.323

2 CFR Part 200, Appendix II(J)

40 CFR Part 247

42 USC § 6901, et seq (Resource Conservation and Recovery Act (RCRA))

### **A21.2 APPLICABILITY**

Sponsors of AIP funded development and equipment projects must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 emphasizes maximizing energy and resource recovery through use of affirmative procurement actions for recovered materials identified in the Environmental Protection Agency (EPA) guidelines codified at 40 CFR part 247. When acquiring items designated in the guidelines, the Sponsor must procure items that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

**Contract Types** – This provision applies to any contracts that include procurement of products designated in subpart B of 40 CFR part 247 where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.

*Construction and Equipment* – Include this provision in all construction and equipment projects.

*Professional Services and Property* – Include this provision if the agreement includes procurement of a product that exceeds \$10,000.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 2 CFR Part 200.

### **A21.3 MODEL CONTRACT CLAUSE**

#### **PROCUREMENT OF RECOVERED MATERIALS**

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

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

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

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

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

## **A22 RIGHT TO INVENTIONS**

### **A22.1 SOURCE**

2 CFR Part 200, Appendix II(F)

37 CFR Part 401

### **A22.2 APPLICABILITY**

**Contract Types** – This provision applies to all contracts and subcontracts with small business firms or nonprofit organizations that include performance of *experimental, developmental, or research work*. This clause is not applicable to construction, equipment, or professional service contracts unless the contract includes *experimental, developmental, or research work*.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR Part 200, Appendix II.

### **A22.3 MODEL CONTRACT CLAUSE**

#### **RIGHTS TO INVENTIONS**

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

## **A23 SEISMIC SAFETY**

### **A23.1 SOURCE**

49 CFR Part 41

### **A23.2 APPLICABILITY**

**Contract Types** – This provision applies to construction of new buildings and additions to existing buildings financed in whole or in part through the Airport Improvement Program.

*Professional Services*– Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

*Construction* – Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

*Equipment* – Sponsor must include the construction provision if the project involves construction or structural addition to a building such as an electrical vault project to accommodate or install equipment.

*Land* – This provision will not typically apply to a property/land project.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 49 CFR part 41.

### **A23.3 MODEL CONTRACT CLAUSE**

#### **A23.3.1 Professional Service Agreements for Design**

##### **SEISMIC SAFETY**

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

#### **A23.3.2 Construction Contracts**

##### **SEISMIC SAFETY**

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.

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

### **A24.1 SOURCE**

Section 8113 of the Consolidated Appropriations Act, 2022 (Public Law 117-103) and similar provisions in subsequent appropriations acts.

DOT Order 4200.6 – Appropriations Act Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

### **A24.2 APPLICABILITY**

The Sponsor must ensure that no funding goes to any contractor who:

- Has been convicted of a Federal felony within the last 24 months; or
- Has any outstanding tax liability for which all judicial and administrative remedies have lapsed or been exhausted.

**Contract Types** – This provision applies to all contracts funded in whole or part with AIP.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of DOT Order 4200.6.

### **A24.3 MODEL CERTIFICATION CLAUSE**

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

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

#### **Certifications**

- 1) The applicant represents that it is ( ☐ ) is not ( ☐ ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is ( ☐ ) is not ( ☐ ) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

#### **Note**

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



the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

### **Term Definitions**

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

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

## **A25 TERMINATION OF CONTRACT**

### **A25.1 SOURCE**

2 CFR Part 200, Appendix II(B)

FAA Advisory Circular 150/5370-10, Section 80-09

### **A25.2 APPLICABILITY**

**Contract Types** – All contracts and subcontracts in excess of \$10,000 must address *termination for cause* and *termination for convenience* by the Sponsor. The provision must address the manner (i.e., notice, opportunity to cure, and effective date) by which the Sponsor’s contract will be affected and the basis for settlement (e.g., incurred expenses, completed work, profit, etc.).

#### **Use of Provision –**

*Termination for Convenience* – No mandatory text provided. The Sponsor must include a clause for termination for convenience. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR § 200.

*Termination for Cause* – No mandatory text provided. The Sponsor must include a clause for termination for cause (includes default). The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR Part 200, Appendix II.

*Equipment, Professional Services, and Property* – No mandatory text provided. The Sponsor may use their established clause language provided that it adequately addresses the intent of 2 CFR Part 200 Appendix II(B), which addresses termination for cause and for convenience.

### **A25.3 MODEL CONTRACT CLAUSES**

#### **A25.3.1 Termination for Convenience**

##### **TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)**

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.

4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

1. Completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
2. Documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
3. Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4. Reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

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

#### **TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)**

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

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

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

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

#### **A25.3.2 Termination for Default**

##### **TERMINATION FOR CAUSE (CONSTRUCTION)**

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

### **TERMINATION FOR CAUSE (EQUIPMENT)**

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

1. Fails to begin the Work under the Contract within the time specified in the Notice- to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

### **TERMINATION FOR CAUSE (PROFESSIONAL SERVICES)**

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

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) **Termination by Owner:** The Owner may terminate this Agreement for cause in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
  2. Make adequate progress so as to endanger satisfactory performance of the Project; or
  3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

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

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

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

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

- b) **Termination by Consultant:** The Consultant may terminate this Agreement for cause in whole or in part, if the Owner:
1. Defaults on its obligations under this Agreement;
  2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
  3. Suspends the project for more than [180] days due to reasons beyond the control of the Consultant.

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

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

## **A26 TRADE RESTRICTION CERTIFICATION**

### **A26.1 SOURCE**

49 USC § 50104

49 CFR Part 30

### **A26.2 APPLICABILITY**

Unless waived by the Secretary of Transportation, Sponsors may not use AIP funds on a product or service from a foreign country included in the current list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR).

**Contract Types** – The trade restriction certification and clause apply to all AIP funded projects.

**Use of Provision – MANDATORY TEXT.** 49 CFR Part 30 prescribes the language for this model clause. The Sponsor must include this certification language in all contracts and subcontracts without modification.

### **A26.3 MANDATORY SOLICITATION CLAUSE**

#### **TRADE RESTRICTION CERTIFICATION**

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

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

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

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

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

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

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

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

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

## **A27 VETERAN'S PREFERENCE**

### **A27.1 SOURCE**

49 USC § 47112(c)

### **A27.2 APPLICABILITY**

**Contract Types** – This provision applies to all AIP funded projects that involve labor to carry out the project. This preference, which excludes executive, administrative, and supervisory positions, applies to covered veterans [as defined under § 47112(c)] only when they are readily available and qualified to accomplish the work required by the project.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 49 USC § 47112.

### **A27.3 MODEL CONTRACT CLAUSE**

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

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



## **A28 DOMESTIC PREFERENCES FOR PROCUREMENTS**

### **A28.1 SOURCE**

2 CFR § 200.322

2 CFR Part 200, Appendix II(L)

### **A28.2 APPLICABILITY**

To the greatest extent “practicable,” Sponsors must provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the U.S., including, but not limited to iron, aluminum, steel, cement, or other manufactured products.

**Contract Types** – Must be included in all subawards, including all contracts and purchase orders for work or products under the grant.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR § 200.322.

### **A28.3 MODEL CERTIFICATION CLAUSE**

#### **CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS**

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

# STATE OF MAINE



## ***MaineDOT***

### Department of Transportation

# **Standard Specifications**

March 2020

## DIVISION 100 - GENERAL CONDITIONS

100.1 Replacement of Former Standard Specifications and Standard Details This 2020 edition of the Maine Department of Transportation's Standard Specifications and Standard Details for Construction ("Standard Specifications") was drafted and adopted by the Department pursuant to the authority granted to it by 23 MRSA § 4243. These Standard Specifications replace and supersede all previous Standard Specifications and Standard Details. The Standard Specifications are Contract provisions issued by the Department that govern the relationship between the Department and the Department's Contractors. By virtue of submitting a Bid on a project, each Bidder is bound by the terms of these Standard Specifications.

### SECTION 101 - CONTRACT INTERPRETATION

Scope of Section This Section consists of abbreviations, definitions, and general rules of interpretation.

101.1 Abbreviations Abbreviations are defined in the following list. Abbreviations not defined in this Section or otherwise in the Contract shall have the meaning that is commonly accepted in the engineering and construction industry.

AAN	American Association of Nurserymen, Incorporated
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADA	Americans with Disabilities Act
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
ANLA	American Nursery & Landscape Association
ANSI	American National Standards Institute
ARA	American Railway Association
AREMA	American Railway Engineering and Maintenance-of-way Association
ARTBA	American Road & Transportation Builders Association
ASCE	American Society of Civil Engineers
ASD	Allowable Stress Design
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATSSA	American Traffic Safety Services Association
AWWA	American Water Works Association
AWPA	American Wood Protection Association
AWS	American Welding Society

BMP	The Department's "Best Management Practices for Erosion and Sediment Control"
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
DREW	Daily Reports of Extra Work
DRB	Dispute Review Board
EIA	Electronic Industries Association
EEO	Equal Employment Opportunity
EMS	Emergency Medical Service
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
FSS	Federal Specifications and Standards, General Services Administration
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
ISEE	International Society of Explosives Engineers
ISO	Insurance Services Office
ITE	Institute of Transportation Engineers
LFD	Load Factor Design
LRFD	Load and Resistance Factor Design
LUPC	Land Use Planning Commission - Maine
MCTCB	Maine Concrete Technician Certification Board
MDEP	Maine Department of Environmental Protection
MaineDOT	Maine Department of Transportation
MIL	Military Specifications
MRSA	Maine Revised Statutes Annotated
MUTCD	Manual on Uniform Traffic Control Devices
NBS	National Bureau of Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NEPCOAT	Northeast Protective Coating Committee
NESC	National Electric Safety Code
NETTCP	New England Transportation Technician Certification Program
NHS	National Highway System
NICET	National Institute for Certification in Engineering Technologies
OJT	On-The-Job Training
OSHA	Occupational Safety and Health Administration
PCI	Precast/Prestressed Concrete Institute
PIN	Project Identification Numbers
QA	Quality Assurance
QC	Quality Control
QCP	Quality Control Plan
QPL	Qualified Products List
RFI	Request for Information
SAE	Society of Automotive Engineers

SEWPCP	Soil Erosion and Water Pollution Control Plan
SHA	State Highway Agency (as used by FHWA, referring to the Department)
SPCCP	Spill Prevention Control and Countermeasure Plan
SSPC	The Society for Protective Coatings
TAPPI	Technical Association of Pulp and Paper Industry
TCP	Traffic Control Plan
USC	United States Code
USDA	United States Department of Agriculture
UL	Underwriter's Laboratory
VECP	Value Engineering Change Proposal

101.2 Definitions Certain words, terms, and phrases are defined below. Capitalized words in this Standard Specifications book are defined under this Section. Words, terms, or phrases that are not defined in this Section 101.2 or otherwise in the Contract shall have the meaning commonly accepted in the engineering and construction industry.

Acceptable Work Work that Conforms or Substantially Conforms to the Contract and is satisfactory to the Department.

Acceptance Consideration of operations, inspections, samples, tests, certifications, proper QCP implementation, and end product properties to determine whether the product will be accepted for payment, including any adjustments to compensation as provided in the Contract.

Acceptance Test Test utilized by the Department to evaluate the quality of a Material or product.

Actual Costs Direct, Project-specific, costs actually incurred by the Contractor in the performance of Work. Actual Costs consist of labor, Material, Equipment, and administrative overhead. For related provisions, see Section 109.7, Equitable Adjustments to Compensation and Time and Section 109.7.2 – Basis of Payment.

Addendum See Bid Amendment.

Aggregate Inert Material such as sand, gravel, broken stone, crushed stone, or a combination of any of these Materials.

Agreement Agreement means Contract Agreement.

Apparent Low Bidder A Bidder that submits the lowest apparently responsive Bid. The Apparent Low Bidder may not be Awarded the Contract if a) the Bid is later found to be non-responsive in accordance with Section 102.11, b) the Bidder is found to be not responsible, c) the Bidder fails to comply with all applicable pre-Award Conditions or other pre-execution requirements of the Contract, or d) the Department chooses not to Award a Contract.

Apparent Successful Bidder The Bidder with the lowest responsive Bid as determined by the Department. A responsive responsible Bidder, usually the Apparent Low Bidder, that is Awarded the Contract. The Department may not execute the Contract with the Apparent Successful Bidder if a) the Apparent Successful Bidder fails to comply with all applicable pre-Award conditions or other pre-execution requirements of the Contract or b) if the Department chooses not to Award a Contract.

Award The execution of the Contract by the Department, conditioned upon the Successful Bidder's performance of all pre-execution requirements of the Bid Documents.

Award Conditions Pre-Award or pre-execution requirements that the Contractor must meet before Contract Execution, including bonding and insurance. For a related provision, see Section 103.5 - Award Conditions.

Best Value Procurement Process Using a Request for Proposals A process for procuring contractual services in which price is only one of several factors used in determining the successful Proposer. See Proposer, Request for Proposals, and Design-Build Contract.

Bid The offer by a Bidder on forms prescribed by the Department to perform the Work in Conformity with all provisions of the Bid Documents for the price(s) set forth.

Bid Amendment A written change to the Bid Documents issued by the Department after advertisement and before the Bid Opening.

Bid Bond A bond furnished with a Bid by a Bidder and its Surety in the amount set forth in the Notice to Contractors or elsewhere in the Bid Documents. The Bid Bond is forfeited if the Apparent Low Bidder refuses to enter into a Contract with the Department.

Bid Contact Person The person identified in the advertised Notice to Contractors, usually the Project Manager, as the person to whom the Bidder must refer technical or Engineering questions from the time of advertisement through Contract Execution, said person being duly authorized by the Commissioner. The Contracts Engineer may be contacted regarding Bidding and contracting procedures. If no one is so identified, the Bidder must refer questions to the Contracts Engineer. All technical or project specific questions must be submitted as described in the Notice to Contractors.

Bidder An individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship, or other entity that submits a Bid. Upon Contract Execution, the successful Bidder becomes the Contractor.

Bid Documents Documents issued by the Department to solicit Bids from Contractors. Bid Documents generally include the Project Specific Bid Book, Notice to Contractors, Plans and Specifications (including these Standard Specifications), Standard Details, Special Provisions, Bidding instructions, and any Bid Amendments issued by the Department. Documents attached to or referenced in the Bid Documents are part of the Bid Documents.

Contrast “Bid Documents” with “Bid Escrow Documentation” as may be defined by Special Provision.

Bid Escrow Documentation All writings, working papers, computer printouts, charts, schedules of prices, and data compilation that contain or reflect information, quantities, unit costs, data, or calculations used by the Bidder to determine the Bid price, or technical and price proposal in the case of a Design-Build or Best Value Procurement type of Contract, shall be submitted, including but not limited to material relating to the determination and application of:

- Design Costs
- Equipment rates
- Overhead rates and related time schedules
- Labor rates
- Arithmetic extensions
- Subcontractor and Material Supplier Quotations

Any manuals standard to the industry used by the Bidder in determining the Bid are also considered Bid Escrow Documentation. These manuals may be included in the Bid Escrow Documentation by reference and shall show the name and date of the publication and the publisher. Bid Escrow Documentation need not include Bid Documents provided by the Department to all Bidders.

Bid Guaranty A bond or other acceptable security specified in the Notice to Contractors or elsewhere in the Bid Documents that is forfeited if the Apparent Low Bidder refuses to enter into a Contract with the Department. For a related provision, see Section 102.6 - Bid Guaranty.

Bid Opening The date and precise time by which the Bidder must Deliver its Bid to be publicly opened and read as specified in the Notice to Contractors or any applicable Bid Amendment. For related provisions, see Sections 102.7 - Delivery of Bids and 102.9 - Bid Opening.

Blue Book The edition of publications entitled “Rental Rate Blue Book for Construction Equipment” or “Rental Rate Blue Book for Older Construction Equipment,” as applicable, published by Primedia Information Inc., that was current when the Work being priced was performed.

Bridge A structure that is erected over a depression or an obstruction, such as water, a highway or a railway, and has an opening measured along the centerline of the Roadway of more than 20 feet between: the faces of abutments; spring line of arches; extreme ends of openings of box culverts, pipes or pipe arches; or the extreme ends of openings for multiple box culverts, pipes, or pipe arches.

A. Length The length of a Bridge structure is the overall length measured along the construction centerline back to back of backwalls of abutments, if present; otherwise end to end of the Bridge floor; but in no case less than the total opening of the structure.

B. Roadway Width The width measured at right angles to the longitudinal centerline of the Bridge between the bottom of curbs or guard timbers or in case of multiple heights of curbs, between the bottoms of the lower risers.

Business Day Every Calendar Day other than Saturdays, Sundays, and Holidays.

Calendar Day Every day shown on the calendar, beginning at 12:01 a.m. and ending at midnight.

Change Order See Contract Modification

Chief Engineer The Chief Engineer of the Department.

Closeout Documentation All documentation required by the Department to finish the Project in accordance with State, federal, and other requirements. These documents include:

- Letter “All Bills Paid” on Contractor’s letterhead
- Request for Final Payment on Contractor’s letterhead
- “Buy America” Statement
- Certificate of Materials
- DBE Goal Attainment Verification Form
- Agreement with Final Quantities on Contractor’s letterhead
- Testing Compliance Letter

The Department reserves the right to amend this list of required Closeout Documentation

Commissioner The Commissioner of Transportation established by 23 MRSA § 4205.

Compensable Delay See Section 109.5.1 - Definitions - Types of Delays.

Completion Completion occurs when the Contractor has finished all Work pursuant to the Contract, including Delivery of all Closeout Documentation. Completion does not mean substantial Completion. Unless the context indicates otherwise, Completion also does not mean Completion of Physical Work.

Completion of Physical Work Completion of Physical Work occurs when the Work is complete and has undergone a successful final inspection.

Conduit A pipe used for receiving and protecting wires or cable.



Conform or Conformity The performance of an item of Work in strict compliance with all applicable provisions of the Contract. For a related definition, see Substantially Conform.

Construction Easement A right acquired by the Department to use or control property, outside of the established Right-of-Way.

Construction Limit Line A line, usually outside of the Right-of-Way, within which the Contractor may Work and outside of which Work may not be performed without authorization by the Department.

Contract All documents affecting the respective rights and responsibilities of the Department and the Contractor. These documents include, but are not limited to, the Contract Agreement, Project Specific Bid Book, the Notice to Contractors, Plans, the Department's Standard Specifications and Standard Details, Special Provisions, Bid Amendments, Contract Modifications, Geotechnical Information, Permits, Bid Escrow Documentation (if any), the Contractor's Bid prices (as corrected mathematically pursuant to Section 103.1.1 - Unit Prices Govern, if necessary), and all documents incorporated by reference.

Contract Bonds The forms of security approved by the Department, executed by the Contractor and its Surety or Sureties, guaranteeing performance of the Work, and the payment of all obligations pertaining to the Work. For related provisions, see the definitions of Bid Guaranty, Performance Bond, and Payment Bond.

Contract Completion Time Length of time allowed under the Contract to complete the Work pursuant to the terms of the Contract.

Contract Completion Date The required completion date of all Work pursuant to the Contract, except the landscape establishment period and warranty work. The Contract Completion Date is usually included in Special Provision 107 and on the Contract Agreement, Offer, & Award form.

Contract Documents Contract Documents are all documents, whether physically attached or incorporated by reference, which make up the Contract.

Contract Execution Execution of the Contract by the Commissioner or his or her authorized agent by signing the Contract Agreement, Offer, & Award form, which action, upon written notification to the Contractor, forms a Contract as provided in Section 103.8 - Execution of Contract by Department.

Contract Modification A general term describing a formal change to a Contract. Types of Contract Modifications include; change orders, extra work orders, resident work orders, and supplemental agreements. For a related provision, see Section 109.8 - Contract Modification

Contract Time See Contract Completion Time and Section 107.1 - Contract Time and Completion Date.

Contractor After the Department has executed the Contract by cosigning the Contract Agreement, Offer, & Award form provided in the Bid Documents, previously signed by the successful bidder, the Successful Bidder in a low Bid process or the successful Proposer in a best value type of Contract becomes the Contractor. The Contractor will be the single point of responsibility for all Contract obligations to the Department. The Contractor shall be an independent Contractor with respect to the Department and shall not be an employee, agent, or representative of the Department. Alternatively, “contractor,” with a lower case “c,” may mean a firm engaged in construction Work.

Critical Path The sequence of activities from the Project start to its Completion having the greatest cumulative elapsed time, thereby determining the minimum time duration of the entire Project. The Critical Path is identified by the sequence of those activities with the least float.

Critical Rock Slopes Critical rock slopes shall be rock slopes higher than 6 feet with an overburden slope steeper than 3H:1V and all rock slopes greater than 10 feet high.

Culvert Any structure not defined as a Large Culvert, Bridge, or Minor Span that provides a Drainage opening less than 5 feet, under the Roadway or approaches to the Roadway.

Days Calendar Days.

Default See Section 112.1 - Default.

Defects or Defective Work Work that is unsatisfactory, faulty, or deficient in that it is not in Conformity with the Contract or with prevailing industry standards applicable to the Work at the time of submission of the Bid as determined by the Department or its agents. For related provisions, see the definition of Acceptable Work and Section - 101.3.1 Meaning of “Approved,” Etc.

Delay To cause to be late. See Section 109.5 - Adjustments for Delay.

Deliver To cause Receipt by a means set forth in the definition of Received or Receipt.

Department The Department of Transportation of the State of Maine, as established by 23 MRSA § 4205, et seq., for the administration of Highway, Bridge, and other public Works, acting through the Commissioner and his/her duly authorized representatives. For related provisions, see definitions of Project Manager and Resident.

Design-Build Contract A contract in which the Contractor is responsible for both design and construction requirements under the contract. In a Design-Build Contract, the Contractor maybe procured through a Best-Value Procurement process using a Request for

Proposals and evaluation of submitted Proposals using price as one of several evaluation factors as outlined in 23 MRSA § 4244.

Differing Site Conditions See Section 109.4 - Differing Site Conditions.

Disadvantaged Business Enterprise A business that is at least 51% owned and controlled by a woman, minority, or economically disadvantaged person and certified as such by the Department.

Disputes Disagreements, claims, counterclaims, matters in question, and differences of opinion between the Department and the Contractor and those Working for or through the Contractor regarding matters related to the Work that arise after Contract Execution. These include, but are not limited to, interpretation of the Contract, compensation and costs, time for performance, and quality.

Drainage The system of pipes, Drainage ways, ditches, and Structures by which surface or subsurface waters are collected and conducted from the Highway area.

Drawings See Plans.

Dredge Material (Dredge Spoils) Sand, silt, mud, gravel, rock or other sediment or material removed from beneath any surface water. The term, “beneath any surface water,” has been interpreted by the MDEP to mean that area that falls beneath the plane bounded by the normal high water line of any stream, river, brook, pond, lake, vernal pool, etc. Note that the entire area of Dredge Material removal could be dry at the time of excavation.

Environmental Information Hazardous waste assessments, dredge material test results, boring logs, geophysical studies, and other records and reports of the environmental conditions. For a related provision, see Section 104.3.14 - Interpretation and Interpolation.

Equipment All machinery, supplies for repair and maintenance of such machinery, tools, and other apparatus necessary or appropriate for Completion of the Work in Conformity with the Contract.

Equitable Adjustment An adjustment to compensation and time due to a change in the nature or scope of the Work made a part of a Contract by a formal Contract Modification. For a related provision, see Section 109.7 - Equitable Adjustments to Compensation and Time.

Excusable Delay See Section 109.5.1 - Definitions - Types of Delays.

Extra Work Work that is outside the scope of the Contract and that the Department determines is necessary.

Extra Work Order See Contract Modification.

Fabrication Engineer The Department's representative responsible for Quality Assurance of pre-fabricated products that are produced off-site.

Federal Contract Provisions Supplement Appendix A of the Standard Specifications and the Project Specific Bid Book, which sets forth additional provisions that apply to federally funded Contracts.

Final Acceptance Acceptance by the Department for all Work and responsibility for the Project from the Contractor, except for any Contractor warranty obligations.

Force Account Work Prescribed Work paid on the basis of Actual Costs and additives as set forth in Section 109.7.5 - Force Account Work.

Geometrics The physical location (horizontally and vertically) and shape of the object under consideration.

Geotechnical Information Boring logs, soil reports, geotechnical design reports, ground penetrating radar evaluations, seismic refraction studies, and other records of subsurface conditions. For a related provision, see Section 104.3.14 - Interpretation and Interpolation.

Haul Road A private way leading to a public way that is used by the Contractor to move Equipment and Materials related to the Work.

Hearing Unless otherwise specified by the Department in writing, a Hearing is a review of a decision that includes a review of existing documentation on file with the Department and any additional documentation, including written arguments and supporting exhibits that may be submitted by any interested party. Unless the context clearly indicates otherwise, a Hearing need not include an evidentiary Hearing for the oral presentation of evidence if such an evidentiary Hearing is not requested or if the Department reasonably determines that such an evidentiary Hearing is not necessary to adequately review the matter at issue. Unless the context clearly indicates otherwise, a Hearing shall not be construed as an adjudicatory proceeding within the meaning of the Maine Administrative Procedure Act.

Highway A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way.

Holidays New Years Day, Martin Luther King Day, Presidents Day, Patriots Day, Memorial Day, Independence Day, Labor Day, Indigenous Peoples Day, Veterans Day, Thanksgiving Day, the Friday after Thanksgiving Day, and Christmas Day. For a related provision, see Section 107.3.3 - Sundays and Holidays.

Incentive/Disincentive Payment An adjustment to the contract price of a predetermined amount for each day the Work is completed ahead of or behind the Contract Time, Contract Completion Date, or some specified intermediary milestone. A disincentive is not a penalty, but an estimate of user and other costs incurred by the people of the State of Maine.

Incidentals The terms “Incidentals” and “Incidental to the Contract” mean items that are accessory to or incorporated into the Work and that have no separate Pay Item. Unless otherwise provided in the Contract, the cost of Incidentals shall be included in the Contractor’s prices for the Pay Items. There will be no separate payment for Incidentals.

Incomplete Not complete, as defined above by Completion.

Independent Assurance (IA) Independent assessment of the reliability of test results obtained from Acceptance Testing.

Inexcusable Delay See Section 109.5.1 - Definitions - Types of Delays.

Inspector An authorized representative of the Resident assigned to make detailed inspections of the Work to determine compliance with the Contract.

In Stream Work Any activities conducted in the water (see permits in individual contract documents.)

Laboratory Unless the context indicates otherwise, the testing laboratory of the Department or its designee.

Landscape Establishment Period The period of time commencing at initial Acceptance of each planting and extending for two years, unless otherwise provided in the Contract. For a related provision, see Section 621 - Landscaping.

Landscape Establishment Period Obligations The obligations of the Landscape Subcontractor during the Landscape Establishment Period. Unless otherwise provided in the Contract, these obligations consist of monthly inspection and reporting from March through November of the condition of all plants installed and replacing plants that are not in a healthy, vigorous growing condition. For a related provision, see Section 621 - Landscaping.

Landscape Items Items starting with the number “621” in the Schedule of Items.

Landscape Subcontractor The individual or firm performing Landscape Items, generally a Subcontractor.

Lane A strip of Roadway intended to accommodate a single line of vehicles.

Large Culvert Any structure not defined as a Culvert or Bridge that provides a drainage or non-drainage opening under the Roadway or Approaches to the Roadway, with an opening that is at least 5 feet but less than 10 feet.

Liquidated Damages An amount due and payable to the Department by the Contractor, normally realized through a reduction of amounts to be paid to the Contractor. Liquidated Damages are calculated by multiplying a daily amount set forth in the Contract by the

number of Days the Work remains Incomplete after the Contract Completion Time has expired.

Major Item An individual Pay Item that constitutes 10% or more of the amount of the Awarded Contract, calculated using the Contractor's Bid prices and the estimated quantities contained in the Bid Documents.

Material Any substance specified for use in the construction of the Project and related approaches.

Minor Item All Pay Items that are not Major Items.

Minor Span Same definition as Bridge, except having an opening of between 10 feet and 20 feet, inclusive.

Modification See Contract Modification.

National Highway System (NHS) A system of Interstate Highways and major collectors specifically designated by the Federal Highway Administration. It includes the Interstate System, other urban and rural principal arterials, highways that provide motor vehicle access between the NHS and major intermodal transportation facilities, the defense strategic highway network, and strategic highway network connectors.

Non-conforming Work All Defective, Unauthorized, or Uninspected Work.

Notice of Award A written notice to the Contractor stating that the Contract has been executed.

Notice of Intent to Award A written notice to the Successful Bidder stating that the Department has conditionally accepted its offer and upon receipt of a payment bond, performance bond, insurance certificate and the fulfillment of any other pre-award conditions, the contract will be signed (executed) by the Department. For a related provision, see Section 103.4 - Notice of Award.

Notice to Contractors The advertisement or invitation for Bids published in accordance with Maine law, including electronic advertising, applicable to the Department.

Offer A response to a solicitation that, if accepted, would bind the offeror to perform the resultant Contract. Submission of a Bid constitutes an Offer by the Bidder.

Order A directive from the Department requiring compliance by the Contractor.

Owner The legal or record Owner of the building or Premises on which the Project is to be constructed, generally the State of Maine acting by and through the Department.

Partnering See Section 104.4.1 - Partnering.

Pavement Structure The combination of subbase, base course, and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

A. Base Course One or more layers of specified Material thickness placed on a subbase or a subgrade to support a surface course.

B. Subbase Layers of specified Material thickness placed on a subgrade to support a base course.

C. Surface Course The top layer(s) of a Pavement Structure designed to accommodate the traffic load, resist skidding, traffic abrasion, and the disintegrating effects of climate. This layer is sometimes called the “Wearing Course.”

Pay Item An item of Work set forth in the Schedule of Items for which the Contractor must provide a price.

Payment Bond The security furnished by the Contractor and its Surety to guarantee payment of all obligations incurred by the Contractor related to the Contract. For a related provision, see Section 110.2.1 - Bonds.

Performance Bond The security furnished by the Contractor and its Surety to guarantee performance of the Work in Conformity with the Contract. For a related provision, see Section 110.2.1 - Bonds.

Permits Permits granted to the Department for the Project. Permits often required include (a) environmental Permits, including Natural Resources Protection Act (NRPA) Permits from MDEP and the Army Corps of Engineers and (b) a U.S. Coast Guard Permit.

Physical Work All Work specified in the Contract that affects the physical environment, including all Work within the Project Limits, final cleaning up and finishing, and Completion of Punch List Items as provided in Section 107.9 - Project Closeout, and removal of traffic control devices.

Plans When the context so indicates, “Plans” mean applicable construction drawings, including plan, profile, typical cross sections, Working Drawings, Standard Details, Supplemental Standard Details, and supplemental Drawings or exact reproductions thereof or electronically displayed equivalents, that show the location, character, dimensions, and details of the Work. Where the context so indicates, “Plan” may also mean a detailed process, program, or method worked out beforehand for the accomplishment of an objective. Examples include QCP, the SEWPCP, the TCP, Safety Plan, and Project specific emergency planning.

Premises Land of the Owner on which the building or buildings now stand or to which they are to be moved.



Prequalification Application The Contractor's Prequalification Application form submitted by the Contractor, which is to be used to request prequalification and provide information that the Department will rely upon to determine the responsibility and qualifications of a Contractor. Said form is available through the Department's Contracts Section and the Departmental webpage.

Prequalification Procedure The current procedure and requirements contained in the Contractor's Prequalification Procedure first adopted by the Department in April 1998 and administered through the Department's Contracts Section.

Process Control Test Test performed at the source of supply of Material to determine whether the Material meets the Specification prior to Delivery.

Profile Grade The trace of a vertical plane intersecting the top of the wearing surface, usually along the longitudinal centerline of the roadbed. Profile Grade means either elevation or gradient of such trace, according to the context.

Program The specific working unit within the Department's Bureaus of Project Development and Maintenance & Operations within which a particular Department project is developed, designed, constructed and administered. Such Programs include the Highway Program, Bridge Program, Multimodal Program and other similar Units.

Progress Meeting See Section 104.4.3 - Progress Meetings.

Project The Bridge, Highway, railroad, pier, airport, building, bike path, pedestrian path, or other infrastructure improvement being constructed, rehabilitated, or repaired, together with all appurtenances and Incidentals.

Project Limits Areas within the Right-of-Way or Construction Limit Lines shown on the Plans or otherwise indicated in the Contract. If no Project Limits are indicated in the Contract, the Project Limits shall be the area actually occupied by the Bridge, Highway, or other infrastructure before construction extending to and including (A) the area outside the Shoulders and ditch lines and within any landmarks or historic features such as fences, fence posts, tree rows, stone walls, corner stones, or other monuments indicating the boundary line, or (B) in the absence of any landmarks or historic features, Sidewalks, Shoulders, and ditch lines to the top of cuts or toe of fills. For a related Maine statute, see 23 MRSA § 653.

Project Manager The Department's duly authorized representative for overall coordination of the Project.

Project Records Records or data of any type on any media, including those produced by the Contractor or its consultants, Subcontractors, suppliers, or manufacturers that are related to the Project. Project Records include, but are not limited to, Plans, Working Drawings, Specifications, manufacturer's recommendations, catalog cuts, daily time reports, records of Force Account Work, schedules and scheduled updates or revisions, quality control Plans and related documentation, inspectors' reports, traffic control Plans and log, safety program and incident reports, soil erosion and water pollution control Plans and log, employment



records, payrolls, internal accounting records, equal opportunity and affirmative action records, on-the-job and Disadvantaged Business Enterprise reports, preconstruction conference records, Progress Meeting records, Partnering records, correspondence, e-mails, and any other documents related to the Work.

Proposal The response to a Request for Proposals. Proposals will normally be requested for anticipated Best Value procurements. See Design-Build, Request for Proposal and Best Value Procurement. In another context, sometimes the Department's solicitation for bids is called a Bid Proposal.

Proposer The entity submitting a Proposal.

Punch List See Sections 107.9.2 - Notice/Inspection/Punch List and 107.9.3 - Notices/Final Inspections / Physical Work Completion.

Quality Assurance (QA) All planned and systematic operations to ensure that the operation, material, and/or end product meets Specifications. Quality Assurance includes (A) approval and oversight of the Contractor's Quality Control Plan, (B) review of inspector, sampler, tester, and Laboratory qualifications, (C) inspection for Conformity with Contract requirements, (D) Contractor Quality Control, (E) Acceptance Testing, and (F) Independent Assurance.

Quality Control (QC) Planned and specified actions or operations necessary to produce an end product that Conforms to the quality requirements of the Contract. Unless otherwise specified, QC includes inspection and testing for process control to the extent determined necessary by the Contractor. Quality Control is also referred to as Process Control.

Quality Control Plan (QCP) The program and documentation of that program, approved by the Department, which specify the actions, inspection, sampling, and testing necessary to keep production and placement operations within Specifications, including provisions to quickly determine when an operation becomes out of control and those actions that the Contractor will take to restore compliance.

Receipted Bill Written Evidence provided by the Contractor that the cost of materials has actually been paid by the Contractor. This could take the form of a copy of a cancelled check, a copy of an invoice with written verification from the Subcontractor that the bill has been paid, or a written declaration from the Subcontractor, on its letterhead, that the bill has been paid.

Received or Receipt When considering documents, unless the context indicates otherwise, Receipt by regular US mail, overnight courier, service in hand, or by fax or electronic transmission with confirmation of Receipt originating from the recipient (which may be a telephone confirmation). If Delivered by regular US mail, notices that are properly addressed will be deemed Received three Days after mailing, unless the recipient admits earlier Receipt, in which case Receipt will be the date admitted.

Reference Stake A stake set beyond the proposed grading areas for use as a control for the new construction.

Related Entities All general partners, joint venturers, parent firms, subsidiaries, or sister firms that are owned or controlled by the Bidder or other entity under consideration.

Request for Proposal The Department's solicitation in a Best Value Procurement Process for Proposals, such as when soliciting for an anticipated Design-Build Contract. See Proposal and Best Value Procurement Process.

Resident The Department's on-site representative.

Resident Work Order See Contract Modification.

Right-of-Way A general term denoting land, property, or interest therein, usually in the form of a strip, acquired for or devoted to the Project or other purposes.

Road A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way.

Roadbed The graded portion of a Highway within top and side slopes, prepared as a foundation for the Pavement Structure and Shoulders.

Roadside A general term denoting the area adjoining the outer edge of the Roadway. Extensive areas between the Roadways of a divided Highway may also be considered Roadside.

Roadside Development Those items necessary to complete the Highway that provide for the preservation of landscape Materials and features; the rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching, and the placing of other ground covers; and such suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the Highway.

Roadway The portion of a Highway, including Shoulders, for vehicular use. A divided Highway has two or more Roadways.

Schedule of Items A document containing the list of items of Work provided in the Bid Documents on which the Contractor provides prices. The Schedule of Items is a Special Provision.

Schedule of Work A written Work schedule submitted and maintained by the Contractor by which the Contractor Plans and prosecutes the Work. The Schedule of Work contains dates of commencement and Completion of various items of Work within the Contract Time and all authorized extensions. For a related provision, see Section 107.4.2 - Schedule of Work Required.

Shop Drawings See Working Drawings.

Shoulder The portion of the Road or Roadway that is contiguous with the traveled Way and that is provided for accommodation of stopped vehicles, emergency use, and lateral support of base and surface courses.

Sidewalk A way constructed primarily for the use of pedestrians.

Skew or Skew Angle The acute angle formed by the intersection of the line normal to the centerline of the Roadway or the Working line of the Superstructure with a line parallel to the face of the Substructure or, in the case of structural plate units and Culverts, with the centerline of the structural plate units and Culverts.

Special Provision Revisions to the Standard and/or Supplemental Specifications applicable to an individual Project or Contract.

Specifications A written or electronic textual compilation of provisions and requirements for the performance of the Work, including incorporations by reference.

Standard Details Detailed Drawings published and approved by the Department for general application and repetitive use.

Standard Specifications Maine Department of Transportation Standard Specifications and Standard Details for Construction Revision of 2020, which were published and approved by the Department pursuant to 23 MRSA § 4243 for general application and repetitive use on Projects.

State The State of Maine acting through its authorized agencies and representatives.

Street A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way.

Structures Bridges, Culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, services pipes, underdrains, foundation drains, and other manufactured features.

Strut See Large Culvert.

Subcontractor An individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship, or any other entity to whom the Contractor subcontracts a portion of the Work. A subcontracting arrangement shall be considered to exist when a person or firm assumes obligation through a written contract with the Contractor for performing part of the Work using its own Equipment and workers, procuring its own Materials and supplies, and furnishing its own supervision with only general overall supervision being exercised by the Contractor or higher tier Subcontractors. Unless the

context indicates otherwise, Subcontractors include suppliers, vendors, fabricators, and any other entities with which the Contractor contracts to perform any portion of the Work.

Subgrade The top surface of a Roadbed upon which the Pavement Structure, Shoulders, and curbs are constructed.

Subgrade Treatment Modification of Roadbed Material by stabilization.

Substantially Conform or Substantial Conformity Substantially Conform or Substantial Conformity means that the Work at issue, though not in strict accordance with the Plans, Specifications, or other Contract requirements, Conforms sufficiently to the applicable standard such that it may be acceptable to the Department (possibly with a credit to the Department) and not require removal, as determined by the Department. For a related definition, see Conformity. For a related provision, see Section 106.8.1 - Substantially Conforming Work.

Substructure All of that part of the Structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with the backwalls, parapets, and wingwalls of abutments.

Successful Bidder The low, responsive, responsible bidder to whom the Department intends to award the Contract. This status is evidenced by a “Notice of Intent to Award” Letter sent to the Successful Bidder.

Superintendent The Contractor’s authorized on-site representative who is in charge of and responsible for the Work.

Superstructure Excluding backwalls, wingwalls, and wing protection railing, the portion of the Structure above the bearings of simple and continuous spans, the skewbacks of arches, and the top of footings of rigid frames.

Supplemental Liquidated Damages Liquidated Damages for additional costs resulting from Contractor’s failure to complete a specific Work item, phase, or milestone within the time specified in the Contract for that item. Supplemental Liquidated Damages are in addition to and separate and distinct from Liquidated Damages.

Supplemental Specifications Approved additions or modifications to the Standard Specifications.

Supplemental Standard Details Approved additions or modifications to the Standard Details.

Surety The corporation, limited liability company, partnership, or individual, or other entity, other than the Contractor, that executes or is obligated under a Contract Bond or Bid Bond.

Traveled Way The portion of the Roadway that is intended for the movement of vehicles, exclusive of Shoulders and auxiliary Lanes.

Unacceptable Work All Work that does not Substantially Conform to the Contract as determined by the Department.

Unauthorized Work Work performed without providing the Resident with reasonable notice of the date and time that the Work is to be performed, Work performed contrary to the instructions of the Department, or any Extra Work performed without written Contract Modification or Agreement. For a related provision, see Section 106.8.3 - Unauthorized Work.

Uncontrollable Events Events or acts that were unforeseeable at the time of Bid submission and that were beyond the Contractor's control in that the risk of the event or act could not have been prevented or managed by the Contractor with proper planning, coordination, Subcontractor management, insurance, bonding, maintenance, erosion control, traffic control, security precautions, workers or Equipment. Uncontrollable Events are of two types: (A) severe weather events that meet the requirements of the first sentence of this definition and/or (B) non-weather events that meet the requirements of the first sentence of this definition which might include acts by foreign enemy, quarantine restrictions, strikes not involving the Contractor, action or inaction by governmental authorities, action or inaction by Utility Companies or other third parties (not Subcontractors) working on Project related Work within the Project Limits, and freight embargoes. Uncontrollable Events specifically do not include: fires (unless caused by a weather event described in this definition above), acts by other third parties, including vandals and members of the traveling public, non-performance of Subcontractors (except in cases of unforeseeable, permanent, and complete cessation of all operations by the Subcontractor for reasons unrelated to the Contractor), and difficult, but foreseeable weather for the location and time of the Work, including but not limited to cold, snow, and ice in the winter, flooding caused by snow melt and rain in the spring, rain in the fall, and thunderstorms in the summer.

Uninspected Work Work that was performed without inspection by the Department.

Unit Price The price for one unit of Work submitted by the Bidder in its Bid.

Utility Companies All persons or entities set forth in 35-A MRSA § 2501(2).

Utility Facilities All Structures, facilities, Equipment, and all appurtenances thereto used by Utility Companies, including, but not limited to, poles, wires, support poles, guys, anchors, water pipelines, sewer pipelines, gas pipelines, all other pipelines, fire alarms, service connections, meter boxes, valve boxes, light standards, cableways, Conduits, signals, and manholes.

Value Engineering Change Proposal See Section 109.6 - Value Engineering.

Wetlands Areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Winter Suspensions See Section 107.5.1 - Winter Suspensions.

Work All labor, services, personnel, Materials, Equipment, tools, supplies, and Incidentals required or indicated by the Contract in Conformity with the same. For a related provision, see Section 105.1 - Intent of the Contract.

Working Day:

Weather Event Any precipitation, such as rain, sleet, snow, or fog that causes wet pavement that prevents the contractor from completing work within the Construction Limits as determined by the Department. This excludes ambient air temperatures below Specification.

Weather Dependent Activities Contractor scheduled work that cannot be completed should a Weather Event occur. Paving or other activities as determined by the Department will be considered Weather Dependent Activities.

Working Day Any Calendar Day except:

- Identified non-work days in the Contract Special Provision 107
- Saturdays, Sundays and Holidays – as outlined in Section 107.3.3
- The period from November 15<sup>th</sup> to April 15<sup>th</sup>, inclusive
- Any day a Weather Event prevents the Contractor from performing at least seven hours of weather dependent activities, as determined by the Department. Up to a three-hour hold prior to the start of work may be required if weather conditions are uncertain.

The Contractor may request, in writing, a non-working day due to a Weather Event up to 16 hours in advance of the normal start time. The Department may approve this request depending on the certainty of the forecast.

If the Contractor elects to work a Saturday, an allowable holiday, or receives approval to work Sunday, the same process will be utilized to determine if it is a Working Day.

If the Contractor requests approval to work Saturday and does not cancel their request by Thursday at the end of shift, that Saturday will be considered a Working Day regardless of the actual weather conditions and whether work occurred.

Working Drawings Plans, sketches, or Drawings provided by the Contractor, or its Subcontractors, vendors, or fabricators for the purpose of supplementing the Plans provided in the Bid Documents and being necessary to demonstrate that the Work will comply with the Contract and meet the intent of the Contract. Working Drawings shall be of sufficient

detail to meet the purpose set forth in the preceding sentence. Examples include Shop drawings, erection Plans, falsework Plans, cofferdam Plans, and bending diagrams for reinforcing steel.

Work Order See Contract Modification.

### 101.3 General Rules of Interpretation

101.3.1 Meaning of “Approved,” Etc. Unless the Contract clearly indicates otherwise, whenever anything is to be done or is not to be done unless “approved,” “accepted,” “authorized,” “ordered,” “required,” “determined,” “directed,” “specified,” “designated,” “established,” “suitable,” “satisfactory,” “sufficient,” “unacceptable,” or a similar word or phrase, the word or phrase shall be interpreted as if it were followed by the words “by the Department” or “to the Department” as applicable.

101.3.2 Referenced Publications The Contractor is responsible for obtaining all manuals, Specifications, reference guides, or other publications referenced or indicated by the Contract and performing the Work in Conformity with the same. Unless a specific date or version is specified, the Contractor shall use the most recent version of such publication that existed at the time the Bid was submitted.

101.3.3 Cross References Cross-references are sometimes provided in the Contract. (Example: “For a related provision, see Section \_\_\_”). These cross-references are provided for convenience only and are not a comprehensive listing of related Sections. The lack of a cross- reference or an incorrect reference shall not be interpreted as indicating that there are no related provisions and does not relieve the parties of the obligation to read the Contract as a whole.

101.3.4 Headings and Tables of Contents All headings, indices, titles, and tables of contents are for convenience only. They do not control interpretation and do not relieve the parties of the obligation to read the Bid Documents or Contract as a whole.

101.3.5 Calculated Dimensions Control In the case of discrepancy between calculated dimensions and scaled dimensions, calculated dimensions shall control.

101.3.6 Priority of Conflicting Contract Documents If the Contractor discovers any ambiguity, error, omission, conflict, or discrepancy (“ambiguity, etc.”) related to the Contract Documents that may significantly affect the cost, quality, Conformity, or timeliness of the Work, The Contractor must comply with Section 104.3.3 - Duty to Notify Department If Ambiguities Discovered. In the case of ambiguity, etc., the following components of the Contract Documents shall control in the following descending order of priority:

- Bid Amendments (most recent to least recent)
- Project Specific Permit Requirements
- Special Provisions
- Notes on Plans



Plans  
Supplemental Specifications  
Supplemental Standard Details  
Standard Specifications  
Standard Details

101.3.7 Multiple Pay Items When there is more than one Pay Item for similar Work governed by one Specification, the item number in the Specification may be appended with additional digits to differentiate such multiple Pay Items. For example, Specification item 900.06 also covers Pay Items 900.061, 900.062, 900.0601, and 900.0602, etc. unless the context clearly indicates otherwise.

## SECTION 102 - BIDDING

Scope of Section This Section includes requirements related to eligibility to Bid and the Bidding process from advertisement for Bids, through Bid Opening, to the analysis of Bids.

### 102.1 Eligibility to Bid

102.1.1 Basic Requirements To be eligible to Bid, prospective Bidders must (A) not have been debarred or suspended from Bidding, and (B) not be in Default with respect to any outstanding Contract with the Department, unless the Department grants written permission to Bid despite such Default. For related provisions, see Sections 102.9 - Bid Opening and 103.3 - Post-Bid Qualification.

102.1.2 Suspension From Bidding The Department may suspend the right of a Contractor to submit Bids as the general Contractor on construction Projects being developed by the Department's Bureau of Project Development for up to two years pursuant to Department's "Rules Regarding Suspension From Bidding."

102.1.3 Debarment The Department may debar a Contractor from Bidding, subcontracting, or being employed in any capacity regarding any Project administered by the Department pursuant to "Rules Regarding Debarment of Contractors," Department Register 17-229, Chapter 102 (October 2, 1985).

102.2 Advertisement - Notice to Contractors A Notice to Contractors will provide a solicitation or an invitation to bid and be advertised in printed or electronic media pursuant to Maine law. Such Notice will contain a brief and general description of the nature and location of the Work and information about how to Bid and how to provide any prequalification requirements.

102.3 Examinations of Documents, Site and Other Information Before submitting a Bid, the Bidder is responsible for: (A) obtaining and examining the Plans, Specifications, all Bid Amendments, and all other Bid Documents; (B) examining the Geotechnical Information and all other information provided or referenced in the Bid Documents; (C)



examining the site(s) of Work and making other examinations and investigations that are needed to Make the Bidder fully aware of the conditions that would be encountered in performing the Work, and (D) communicating with the Department as provided in Section 102.5 - Communication Before Bid Opening. For a related provision, see Section 102.7.2 - Effects of Signing and Delivery of Bid.

102.3.1 Geotechnical Information Bidders and Contractors are obligated to examine and, if necessary, obtain any additional available geotechnical information. If one is available, the project geotechnical report may be accessed at the Department's web site.

The Department shall not be responsible for the Bidders' and Contractors' interpretations of or estimates or conclusions drawn from the Geotechnical Information. Data provided may not be representative of the subsurface conditions between the boring locations.

This section does not diminish the duties imposed upon parties in Section 102 or in any other sections.

102.4 Estimated Quantities Quantities shown in the Bid Documents are estimates, only to be used for the preparation and comparison of Bids. For related provisions, see Sections 109.1- Changes in Quantities and 109.2 - Elimination of Items.

#### 102.5 Communication Before Bid Opening

102.5.1 Questions From Bidders Bidders shall direct all technical or engineering questions, including requests for explanations or interpretation, in writing to the Bid Contact Person noted in the Notice to Contractors, typically the Project Manager. All questions must be transmitted as described in the Notice to Contractors and must be received by the Department at least 48 hours before Bid Opening. General questions relating to the Bidding process may be referred to the Department's Contracts Section. For a related provision, see Section 102.5.3 - Bid Amendments.

102.5.2 Bidder's Duty To Notify Department If Ambiguities Discovered Bidders shall not take advantage of any ambiguity, error, omission, conflict, or discrepancy ("ambiguity, etc.") relating to the Bid Documents, Geotechnical Information, site conditions, or any other information that may significantly affect the cost, quality, Conformity, or timeliness of the Work. If a Bidder discovers any such ambiguity, etc., it must notify the Bid Contact Person immediately in writing. Failure to provide such notice constitutes a waiver of any claim for entitlement for additional compensation or time related to such ambiguity, etc.

102.5.3 Bid Amendment The Department will interpret or modify the Bid Documents only by written Bid Amendment or other writing issued by the Department's Contracts Section. The Department is not bound by any other oral or written representations, including information exchanged verbally at pre-Bid meetings. The Department will issue written Bid Amendment in response to questions from Bidders when

the answers: (A) relate to ambiguous, incorrect, or missing information in the Bid Documents; (B) are not apparent to Contractors experienced in the type of Work covered by the potential Contract; and (C) could have a significant impact on the cost, quality, Conformity or timeliness of the Work. For a related provision, see Section 102.5.1 - Questions From Bidders.

102.6 Bid Guaranty Bids must be accompanied by a Bid Guaranty that complies with all the requirements of this Section, unless noted otherwise in the Notice to Contractors and the Bid Documents.

The Bid Guaranty must be: (A) in the amount specified in the Notice to Contractors and the Bid Documents; (B) made payable to the “Treasurer - State of Maine”; and (C) one of the following types: a Bid Bond Conforming to the next paragraph, a cashier's check, a certified check, or a United States Postal money order.

Bid Bonds must be: (A) issued by an insurance company licensed or approved by the State of Maine, Department of Business Regulation, Bureau of Insurance, to do business in the State of Maine; (B) properly signed by the Bidder (as Principal) and a duly authorized representative of the insurance company referenced above, and (C) on the Department’s Bid Bond form (or an exact copy thereof) OR must not contain any significant variations from said form as determined in the sole discretion of the Department.

Bid Bonds for electronic Bids must be delivered, received, or faxed to the number in the Notice to Contractors before the Bid Opening time. Original Bid Bonds must be received within 72 hours for faxed submittals. Electronic Bid Bonds that accompany electronic Bids are acceptable.

### 102.7 Delivery of Bids

102.7.1 Location and Time The Bidder must Deliver its Bid and Bid Guaranty in a sealed envelope to the exact location and before the precise time (as determined by the Department) specified in the Notice to Contractors or any applicable Bid Amendment. The Bid and Bid Guaranty must be signed by duly authorized individuals. The sealed envelope must be labeled with the Bidder's name, the Project location, WIN, and the words “Bid Enclosed.” As a minimum, the Bidder will submit a Bid Package consisting of the Notice to Contractors, the completed Acknowledgement of Bid Amendments form, the completed Schedule of Items, 2 copies of the completed Agreement, Offer, & Award form, a Bid Bond or Bid Guarantee, and any other Certifications or Bid Requirements listed in the Project Specific Bid Book. For a related provision, see Section 102.11 – “Bid Responsiveness.”

Electronic Bids must be submitted to the appropriate electronic bid system before the precise time (as determined by the Department) specified in the Notice to Contractors or any applicable Bid Amendment.

### 102.7.2 Effects of Signing and Delivery of Bids

A. Offer and Agreement to Pre-execution Terms The signing and Delivery of a Bid represents: (1) an offer by the Bidder to perform the Work for the price(s) submitted within the time(s) specified and in Conformity with all provisions of the Bid Documents; and (2) the Bidder's Agreement to all the provisions of the Bid Documents governing requirements and procedures applicable before Contract Execution. The Bidder's offer shall be irrevocable until the expiration of the time for Contract Execution by the Department set forth in Section 103.8, except as provided in Sections 102.8 and 102.10 regarding withdrawal of Bids.

B. Bidder Representations By signing and Delivering a Bid, the Bidder represents that: (1) the Bidder has performed the examinations required by Section 102.3 - Examinations of Documents, Site and Other Information; (2) the Bidder has given the Department written notice of all ambiguities, etc. discovered by the Bidder as required by Section 102.5.2 - Bidder's Duty to Notify Department if Ambiguities Discovered; and (3) the Bidder has sufficient knowledge of the Bid Documents, Geotechnical Information, the site, and other conditions to properly price, schedule, plan, and perform the Work.

C. Certifications By signing and Delivering a Bid on federally funded or partially federally funded Contract, the Bidder certifies as provided in all federal certifications set forth in the Project Specific Bid Book, including those set forth in Section 1 thereof. By signing and Delivering a Bid, the Bidder further certifies as provided in Section 105.10.2(F) - Certification of Continuing EEO Efforts.

102.8 Withdrawal of Bids Before the Time Specified for Bid Opening A Bidder may withdraw a Bid after Delivery, provided the request for such withdrawal is made in writing or in person before the time set for Bid Opening in the Notice to Contractors. The Bidder may revise and resubmit a Bid so withdrawn before the time specified for Bid Opening.

102.9 Bid Opening Bids will be opened and publicly read at the time and place specified in the Notice to Contractors or any applicable Bid Amendments. The Department will normally read publicly only the total Bid Price of each Bid. Unit and lump sum prices are available for inspection by the Bidders immediately after the Bid Opening process.

The public reading of a Bid does not constitute a determination by the Department of whether the Bid is responsive or of whether the Bidder is responsible, though the Department may refuse to read Bids that are obviously non-responsive. Accordingly, the Department may reject a Bid as non-responsive and/or determine a Bidder is not responsible or ineligible to Bid even if that Bidder's Bid is read at Bid Opening.

102.10 Withdrawal of Bids in Multiple Bid Context Bids may not be withdrawn after the time of Bid Opening, except under the limited circumstance set forth in this Section 102.10.

If a Bidder has submitted Bids on multiple Projects that have the same Bid Opening time, and if after the reading of Bids the Bidder has submitted the apparent low Bid on one Project, then the Bidder may withdraw any Bids on other Projects for which no Bids have

yet been read. Such a request for withdrawal must be made in person or in writing. Bids withdrawn will not be considered. The Bidder assumes sole responsibility for the risk that the Bidder's apparent low Bid is rejected as non-responsive or that the Bidder is determined to be not responsible.

#### 102.11 Bid Responsiveness

102.11.1 Non-curable Bid Defects The Department **WILL REJECT** Bids as non-responsive if ANY ONE of the following occurs:

The Bid and Bid Guaranty are not Delivered to the precise location and by the precise time set forth in the Notice to Contractors or any applicable Bid Amendment.

The Bidder is not eligible to Bid as set forth in Section 102.1 - Eligibility to Bid.

The Bid is not signed by a duly authorized representative of the Bidder.

A Bid Guaranty Conforming to Section 102.6 - Bid Guaranty is not submitted.

The unit price and bid amount is not provided or a lump sum price is not provided or is illegible as determined by the Department.

The Bidder fails to indicate the Bidder's choice where the Bid Documents clearly require a choice.

The Bid contains any conditional or alternate Bidding language, including the right to accept or reject an Award of the Contract.

The Bidder submits more than one Bid for the same Contract, or the Bidder and any Related Entity each submit a Bid for the same Contract.

The Department has substantial evidence of collusion by the Bidder.

The Bidder fails to comply with any provision in the Bid Documents that expressly indicates that such non-compliance will cause Bid rejection.

When A plus B bidding is specified, the bid does not contain the number of Calendar Days bid to complete the work

The Bid is not submitted on the most current forms provided by the Department or identical copies thereof.

The Bidder will have no opportunity to cure the above Non-curable Bid Defects.

102.11.2 Curable Bid Defects Unless the Department waives a curable Bid defect, the Bidder must cure, within the time stated in the written notice by the Department, but not

less than 24 hours, all other Bid Defects not listed in Section 102.11.1 - Non-curable Bid Defects that are identified by the Department. Failure to cure such Defects within said time may result in forfeiture of the Bidder's Bid Guaranty. Upon such failure, the Department may take any action in the best interests of the Department, including those set forth in Section 103.6 - Failure to Fulfill Award Conditions.

Such curable Bid Defects include, but are not limited to, the following.

The Bidder signs only one of the Contract Agreement Offer & Award forms.

Missing total sum of the items provided in the Schedule of Items.

The prices or signatures on the Bid or Bid Guaranty are not in ink or other non-erasable substance.

Failure to acknowledge Receipt and consideration of all Bid Amendments.

All other Defects that do not create a significant question as to the Bidder's total Bid amount or the Bidder's ability to complete the Work within the Contract Time or by the Contract Completion Date as determined by the Department.

Materially unbalanced Bids may create a significant question as to the Bidder's ability or will to complete the Work within the Contract Time in accordance with the requirements of the Contract; see Section 103.1.2 - Unbalanced Bids.

Contractors prequalified for the general category stated in the Notice to Contractors may be determined non-responsive by the Department based on recent or new data provided since the last determination of prequalification for that Contractor.

## SECTION 103 - AWARD AND CONTRACTING

Scope of Section This Section includes requirements related to the final determination of Bid responsiveness and Award and execution of the Contract.

### 103.1 Analysis of Bids

103.1a Tie Bids - In the case where two responsive bids from responsible bidders are equal monetarily, the Department shall determine the apparent low bidder by flipping a coin. The coin shall have sides clearly marked as heads and tails. The contractor whose first letter in its official company name that comes first in the alphabet shall be heads.

If there are three bids, each bidder will flip the coin and the bidder with the odd toss will be the winner. (i.e. if the results are two heads and a tails, the bidder who had tails is the winner). For a three way tie, bidders may flip their own coin or have the Contracts Engineer flip for them.

The coin flip will occur at the next bid opening by the Contracts and Specifications Engineer or a designee. The tied bidders may attend the coin flip in person or watch on the internet as they choose.

103.1.1 Unit Prices Govern After Bid Opening, the Department will review the mathematics of all apparently responsive Bids. In the event of a discrepancy between (A) unit and lump prices and (B) extensions and/or the total Bid Price, the unit and lumps sum prices shall govern and the total Bid Price will be adjusted accordingly.

#### 103.1.2 Unbalanced Bids

A. Definitions An Unbalanced Bid is a Bid that is Mathematically Unbalanced and that may also be Materially Unbalanced. Mathematically Unbalanced means a Bid containing lump sum or Unit Prices that do not reflect reasonable direct costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs. Materially Unbalanced means a Mathematically Unbalanced Bid that generates a reasonable doubt that said Bid will represent the lowest ultimate cost to the Department.

B. Comparison and Possible Bid Rejection The Department will compare the price of items contained in the Bid of the Apparent Successful Bidder with the estimate prepared by the Department. If the Bid is Mathematically Unbalanced, the Department may, in its discretion, notify the Apparent Successful Bidder and request an explanation. There shall be no negotiation or changes in prices. If the Bidder fails to provide a reasonable explanation, and if the Department finds the Bid is Materially Unbalanced, the Department may reject the Bid as non-responsive and may take any action that is in the best interests of the Department, including those set forth in Section 103.6 - Failure to Fulfill Award Conditions.

103.1.3 Waiver of Defects and Technicalities; Right to Reject Bids The Department reserves the right to reject any or all Bids and to advertise for new Bids if doing so is in the best interest of the Department. The Department reserves the right to waive curable Bid Defects and other technicalities without notice to any party. Refer to section 102.11.2 for Curable Bid Defects.

103.2 Return of Bid Guaranty Bid Bonds will not be returned unless so requested. Bid Guaranties other than bonds will be returned within 7 Days following Bid Opening, except that the Bid Guaranties from two lowest responsive Bids from responsible Bidders will be retained until Contract Execution or rejection of all Bids.

#### 103.3 Post-Bid Qualification

103.3.1 Pre-Qualification Requirement for Award If the Notice to Contractors lists a Pre-Qualification requirement, the Apparent Successful Bidder must successfully complete the prequalification process as a condition of Award.

103.3.1.1 Notice and Information Gathering After Bid Opening and as a condition for Award of a Contract, the Department may require an Apparent Successful Bidder to demonstrate to the Department's satisfaction that the Bidder is responsible and qualified to perform the Work.

If such qualification is required, the Department will provide the Bidder with written notice to that effect. Such notice will include a brief description of the reasons why such qualifications is required, and may require the Bidder to provide any information requested in the "Contractor's Prequalification Application" form adopted by the Department.

If requested by the Bidder, the Department shall provide an opportunity for the Bidder to present evidence of qualifications at a reasonable time and place.

103.3.2 Notice of Determination After the Bidder's presentation of evidence of qualifications (if required), the Department will notify the Bidder of its determination in writing. If a determination of "Not Qualified" is rendered, the Department's Chief Engineer will send the notice, which will set forth the specific reasons therefore to the extent practical. Such reasons include the following.

- (A) Default(s) or termination(s) on past or current Contracts.
- (B) Failure on past or current Contracts to pay or settle all bills for labor, Materials or services; to comply with directives of the Department, to fulfill warranty obligations, or to provide Closeout Documentation.
- (C) "Below Standard" performance as determined from the Department's Contractor's Performance Rating process.
- (D) Insufficient bonding capability or Inability of the Contractor to obtain or retain Performance or Payment Bonds meeting Department requirements, or a pattern of unsupported Claims.
- (E) Failure to accept an Award of a Contract made by the Department.
- (F) Failure to provide information requested by the Department in a timely manner.
- (G) Debarment, suspension or a denial of prequalification or "award of contract" by any federal, State, or local governmental procurement agency or the Contractor's Agreement to refrain from Bidding as part of the settlement with any such agencies or any of the reasons contained in Section 102.02 of the "Rules Regarding Debarment of Contractors," Maine Department of Transportation Register 17-229, Chapter 102 (October 2, 1985).
- (H) Failure to demonstrate ability to do work to the satisfaction and at the sole discretion of the Department.



- (I) Number of personnel working directly for the Contractor with applicable knowledge and experience is significantly below industry standards.
- (J) Safety Record, Environmental Record, Civil Rights, or Equal Opportunity Record significantly below industry standards.
- (K) Serious misconduct that the Department reasonably determines will substantially and adversely affect the cost, quality, or timeliness of Work, or the safety of workers or the public, any deceptive, evasive, or fraudulent statements or omissions contained in the Application, made or omitted at any interview or hearing, or otherwise made to or omitted from the Department; or any other substantial deficiencies in experience or conduct that are clearly below industry standards and that clearly demonstrate in the sole discretion of the Department that the Contractor is “Not Qualified.”

103.3.3 Appeal To appeal a “Not Qualified” determination, the Bidder must Deliver a written “Request for Appeal of Qualification Determination” to the Commissioner within 48 hours of Receipt of such determination. The Commissioner or the Commissioner's designee will grant such Requests for Appeal unless the Department reasonably determines that Delay of Award pending appeal is likely to cause substantial harm to the interests of the Department. If the Request for Appeal is denied, the determination of “Not Qualified” is upheld and the Award process will proceed without the unqualified Bidder.

If the Request for Appeal is granted, the Bidder and the Chief Engineer must Deliver to the Commissioner or the Commissioner’s designee any information or arguments that the parties want considered within 14 Days of Receipt of a “Not Qualified” determination.

Within 14 Days of Receipt of such information and arguments, the Commissioner or the Commissioner’s designee will notify the Bidder in writing as to whether: (A) the determination of “Not Qualified” is upheld, modified or reversed; or (B) the Commissioner or the Commissioner’s designee elects to submit the issue to binding or non-binding alternative Dispute resolution.

After a final determination of “Not Qualified,” the Bidder’s Bid Guaranty will be returned and the Bidder will be ineligible for Award of future Department Contracts until the Bidder is prequalified pursuant to the Department’s Prequalification Procedure.

103.4 Notice of Intent to Award The Department has 30 Days following Bid Opening to Deliver a written Notice of Intent to Award and request a Payment Bond, Performance Bond, insurance bond, special certifications, and other information from the Apparent Low Bidder. If a notice of Intent to Award is not sent within 30 days of receipt of the Bid Opening, the Apparent Successful Bidder may withdraw its Bid without forfeiture of its Bid Guaranty or Bidding eligibility. If the Department and the Apparent Successful Bidder agree, an extension beyond the 30 days of the Bid and Bid prices may occur and the Bid remains viable. For a related provision, see Section 103.5 - Award Conditions.



103.5 Award Conditions The Apparent Successful Bidder must provide and/or perform all of the items listed in this Section 103.5 within 14 Days of Receipt of the Notice of Intent to Award. Unless indicated otherwise, all items must be Delivered to the Department's Contracts Engineer.

103.5.1 Performance and Payment Bonds Performance and Payment Bonds complying with Section 110.2.1 - Bonds.

103.5.2 Insurance Certificates Certificates of Insurance complying with Section 110.3 - Insurance.

#### 103.5.3 Non-Resident Contractor Requirements

A. Definition A Non-Resident Contractor is defined as a Contractor that is: (A) any individual who is not a resident of the State of Maine, or (B) any firm, corporation, limited liability company, partnership, joint venture, sole proprietorship, or other entity that (i) is not licensed to do business within the State of Maine, or (ii) does not have a principal place of business within the State of Maine.

B. Requirements If a Non-Resident Contractor, the Apparent Successful Bidder must file with the Department a copy of a written appointment of an attorney admitted to practice in the State of Maine having a place of business within the State. The appointment must: (A) set forth the attorney's business and personal addresses, and business telephone and fax numbers, (B) name said attorney to be the true and lawful attorney of the Non-Resident Contractor, (C) set forth that the Contractor agrees that any lawful process that is served on said attorney shall have the same legal force and validity as if served on the Contractor, (D) set forth that the appointment shall continue in force as long as any potential liability in any way related to the Work or the Contract remains or until the Department receives written notice of a change of appointment Conforming to this paragraph, (E) provide that service of such process may be made by leaving a copy of the process in the hands or in the office of the Resident attorney and that such service will be effective upon the Non-Resident Contractor, as if service were made in accordance with Rule 4 of the Maine Rules of Civil Procedure, and (F) provide that the Contractor expressly waives any and all defenses regarding service of process under Rule 12 of said Civil Rules or otherwise. The appointment shall be filed in the office of the Maine Secretary of State.

103.5.4 Execution of Contract By Bidder The properly completed and signed Contract Agreement, Offer, & Award form provided with the Bid constitutes the Bidder's offer. Once the Department has received the bonds, insurance, and any other pre-award items required, the Department will sign the Contract Agreement, Offer, & Award form and execute the Contract. The point of Contract execution is when the Contractor receives the written Notice of Award.

103.5.5 Bid Escrow If required by Special Provision, the Apparent Successful Bidder must provide a legible copy of Bid Escrow Documentation and a related Affidavit Conforming to said Special Provision. Failure to provide Conforming Bid Escrow

Documentation or the Affidavit constitutes a refusal to enter into the Contract and will result in the Bidder's forfeiture of its Bid Guaranty.

103.5.6 Other Conditions The Apparent Successful Bidder must comply with all other conditions set forth or referenced in the Notice of Intent to Award.

103.6 Failure to Fulfill Award Conditions Failure of the Apparent Successful Bidder to fulfill all conditions of Award within the time provided or to otherwise accept Award will result in forfeiture of the Award to the Apparent Successful Bidder and the forfeiture of the Bid Guaranty. Such Bidder will be prohibited from submitting a Bid for the Work in the event that the Work is re-advertised. Further, the Department may refuse to accept any Bid from the Bidder on any Project for a period of two years from the date of such refusal.

The Department may then take any action that the Department determines is in the best interest of the Department, including Awarding the Contract to the responsible Bidder with the next lowest responsive Bid, rejecting all Bids, and/or re-advertising the Work.

103.7 Forfeiture of Award The Department reserves the right to stop the Award of any Contract at any time before the Contract Execution without liability if doing so is in the best interest of the Department. Any costs incurred by the Bidder before Contract Execution shall be the sole responsibility of the Bidder.

103.8 Award of Contract by Department Once the Contractor has met the requirements of the Notice of Intent to Award letter, the Department has 14 days to execute the Contract and notify the Contractor of the award with a written Notice of Award. If a Notice of Award is not sent within 14 days, the Apparent Successful Bidder may withdraw its Bid without forfeiture of its Bid Guaranty or Bidding eligibility. For a related provision, see Section 107.2 - Commencement of Contract Time.

103.9 Computation and Extension of Time In the event that a time period provided in this Section 103 concludes on a Holiday, Saturday, or Sunday, said time period shall be extended to the next Business Day.

The Department and Apparent Successful Bidder may extend the time for the Award process, fulfillment of Award Conditions, or execution of the Contract by mutual Agreement. Unless specifically and mutually agreed to in writing, such extensions shall not extend the Contract Time or the Contract Completion Date.

## SECTION 104 - GENERAL RIGHTS AND RESPONSIBILITIES

Scope of Section This Section sets forth certain rights and responsibilities of the Department and the Contractor that are generally applicable to all Contracts. This Section is not all inclusive, and additional rights and responsibilities are set forth elsewhere in the Contract.

### 104.1 General

104.1.1 Basic Roles of the Parties The Contractor has the authority and responsibility to perform all Work in Conformity with the Contract. The Department has the authority and responsibility to assure that the Contractor does so.

104.1.2 Joint Covenants of Good Faith and Fairness This Contract imposes an obligation of good faith and fair dealing on both parties in the execution, performance, interpretation, and enforcement of the Contract. With a positive commitment to honesty and integrity, the Contractor and the Department agree to do the following: function within all applicable laws, statutes, regulations, and Contract provisions; avoid hindering each other's performance; fulfill all Contract obligations diligently; and cooperate in achievement of the terms of the Contract. Nothing in this subsection nullifies or supersedes the express provisions of the Contract and the Standard Specifications.

#### 104.2 Department's General Authority and Responsibilities

104.2.1 Furnishing of Right-of-Way The Department will secure all necessary rights to real property within the Project Limits shown on the Right-of-Way Plans that are provided with the Bid Documents. For related provisions, see Sections 104.3.2 - Furnishing of Other Property Rights, Licenses and Permits and 105.4.5 - Special Detours.

104.2.2 Furnishing of Permits Except as provided otherwise in the Contract, the Department will furnish Permits required to perform the Work within the Project Limits. For related provisions, see Sections 101.2, Definition of Permits, 104.3.2 - Furnishing of Other Property Rights, Licenses, and Permits and 105.8.2 - Permit Requirements.

104.2.3 Authority of the Resident After Contract Execution, the Resident has the authority to take all actions needed to assure that the Contractor is performing the Work in Conformity with the Contract. Except as provided elsewhere in the Contract, the Resident will decide all questions regarding the quality and acceptability of Materials furnished, Work performed, suspension of Work, and the interpretation of the Contract. The Resident has the authority to reject Unacceptable or Unauthorized Work and refuse to approve Progress and Final Payments until the Unacceptable or Unauthorized Work is corrected. For related provisions, see Sections 106.8 - Non-conforming Work and 109.8 - Contract Modification.

104.2.4 Authority of Residents and Inspectors Residents, inspectors, and other Departmental employees or representatives working for the Department have the authority to make initial determinations regarding the Conformity of the Work. Unless authorized by the Program Manager, Residents or inspectors are not authorized to alter or waive the provisions of the Contract or to issue instructions contrary to the Contract. They may not act as a supervisor for the Contractor.

104.2.5 Right to Inspect Work The Department has the authority to inspect all Materials and every detail of the Work. For a related provision, see Section 104.3.5 - Duties Regarding Inspection of Work.

104.2.6 Right to Suspend Work The Department has the right to suspend any or all Work at any time for any reason. For related provisions, see Sections 105.4.4 - Maintenance During Suspension of Work and 107.5 - Suspension of Work.

104.2.7 Damage to Project Caused by Uncontrollable Events All repairs or temporary Structures that are required because of property damage that is directly caused by an Uncontrollable Event may entitle the Contractor to an Equitable Adjustment if the Contractor complies with the notification, documentation and procedural requirements set forth in the Contract. Delays resulting from an Uncontrollable Event will be analyzed in accordance with Section 109.5 - Adjustments for Delay. For related provisions, see Sections 101.2 - Definition of Uncontrollable Event, 104.3.10 - Responsibility for Damage to Work, 109.3 - Extra Work, 109.5 - Adjustments for Delay, 109.7 - Equitable Adjustments to Compensation and Time, and 109.8 - Contract Modification.

104.2.8 No Personal Liability The Department's employees and other representatives act solely as representatives of the Department when conducting and exercising authority granted to them under the Contract. Such persons have no liability to the Contractor or any Subcontractor either personally or as Department employees.

#### 104.3 Contractor's General Authority and Responsibilities

104.3.1 General Duty to Cooperate The Contractor shall cooperate with the Departmental personnel, Utility Companies, railroad personnel, marine traffic personnel, regulating agencies with jurisdiction, other Contractors, municipalities, and the public in every reasonable way possible. For a related provision, see Section 104.4 - Communication and Coordination.

104.3.2 Furnishing of Other Property Rights, Licenses, and Permits The Contractor shall acquire, at its sole expense, all property rights outside the Project Limits needed for construction staging, yarding, construction, waste disposal, or other Project-related purpose. The Contractor shall also acquire, at its sole expense, all licenses and Permits necessary to perform the Work that are not furnished by the Department. For related provisions, see Sections 104.2.1 - Furnishing of Right-of-Way, 104.2.2 - Furnishing of Permits, 104.3.11 - Responsibility for Property of Others, and 105.8.2(B) - Permit Requirements, All Other Permits.

104.3.3 Duty to Notify Department If Ambiguities Discovered The Contractor shall not take advantage of any ambiguity, error, omission, conflict, or discrepancy contained in the Contract. If the Contractor discovers any such ambiguity, etc. for which the Contractor may seek adjustments to compensation, time, or other Contract requirements, the Contractor shall provide a written notice within 48 hours and before performing any Work related to the ambiguity, etc., as provided in Section 104.4.5 - Early Negotiation. Failure to provide such notice in compliance with the Contract shall constitute a waiver of all claims related to the ambiguity, etc.

104.3.4 Workers and Equipment The Contractor shall at all times provide all superintendents, forepersons, laborers, inspectors, Subcontractors, subconsultants, Equipment, Materials, and Incidentals needed to perform the Work in Conformance with the Contractor's Schedule of Work and within the Contract Time.

Any person employed by the Contractor or by any Subcontractor or any officer or representative or agent of the Subcontractor, who, in the opinion of the Resident, is intemperate or disorderly, shall be removed immediately by the Contractor or Subcontractor employing such person. The employee shall not be employed again in any portion of the Work without prior approval from the Resident.

Should the Contractor fail to remove such person or persons as required above or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Resident may suspend the Work by written notice until such orders are complied with.

During all hours of on-site activity, the Contractor shall provide an on-site, competent, English-speaking Superintendent experienced in the type of Work being performed. The Superintendent shall be capable of reading and understanding the Plans and Specifications, providing and receiving communications, and scheduling and coordinating the Work. The Superintendent shall have full authority to manage the Work in accordance with the Contract. Such superintendence must be provided regardless of the amount of Work being done by the Contractor or any of its Subcontractors.

All persons employed by or through the Contractor, except for registered trainees, shall have sufficient skill and experience to perform the Work properly. The Department may require that the Contractor discharge any such person who the Department determines jeopardizes the safety of any person or the Project, without cost or liability to the Department. If the Department determines that such person's performance jeopardizes the intent of the Contract otherwise, the Department may, but is not required, to notify the Contractor of such a determination. Such notice, or lack thereof, does not affect the Contractor's duties regarding workers. Upon receipt of such notice, the Contractor shall take any action it determines necessary to fulfill its obligations under the Contract. For related provisions, see Sections 104.5.4 - Discharge of Subcontractors, 105.1 - Intent of the Contract, and 105.2 Health and Safety.

#### 104.3.5 Duties Regarding Inspection of Work

A. Safe Access The Contractor shall provide the Department with safe access to all portions of the Work in Conformity with all applicable OSHA requirements. The Contractor shall furnish the Department with all information and assistance required to make a detailed inspection. For a related provision, see Section 104.2.5 - Right to Inspect Work.

B. Inspection By Others If any other governmental entity, Utility Company, or railroad is to pay for a portion of the Work or is otherwise authorized to inspect Work, then the Contractor must provide its representatives with safe access that Conforms to this Section 104.3.5.

104.3.6 Project Records Upon request by the Department, the Contractor or any other person Working for the Contractor possessing Project Records must provide the Department with copies of Project Records at all reasonable times without cost or liability to the Department. Unless the context clearly indicates otherwise, Project Records are the property of the Department. The Contractor must retain Project Records for at least three years after Final Acceptance or for any applicable warrantee period, whichever is longer. For related provisions, see Sections 101.2 - Definition of Project Records and 111.1.6 - Contractor's Obligation to Keep Records.

104.3.7 Laws To Be Observed The Contractor shall keep itself informed of and comply with all applicable laws, rules, regulations, orders, and decrees ("Law") affecting the Work, including all environmental, wage, labor, equal opportunity, safety, patent, copyright, or trademark laws. The Contractor agrees to indemnify, defend, and hold harmless the Department against any and all claims or liabilities arising from or based upon the violation or alleged violation of any such Law caused directly or indirectly by or through the Contractor.

#### 104.3.8 Wage Rates and Labor Laws

A. Federal Wage Rates and Labor Laws Federal wage rates apply, unless expressly stated otherwise by Special Provision. The classification of construction type and related wage rates by the U.S. Department of Labor will be provided by Special Provision. If not provided, the Contractor must contact the Department before Bidding to determine the applicable wage rates in accordance with Section 102.5.2 - Bidder's Duty to Notify Department if Ambiguities Discovered. The Contractor must pay according to said rates and must otherwise comply with all applicable federal and State labor laws, rules, and regulations. Persons registered with the Department as trainees must be paid at least at the prevailing wage for laborer, and upon completion of their program, trainees shall be paid the prevailing wage for the skill and classification trained.

B. State Wage Rates and Labor Laws Maine State wage rates apply only if provided expressly by Special Provision. If so provided, the classification of construction type and related wage rates established by the Maine Department of Labor will be set forth by Special Provision. If not so set forth, the Contractor shall contact the Department before Bidding to determine the applicable wage rates in accordance with Section 102.5.2 - Bidder's Duty to Notify Department if Ambiguities Discovered. The Contractor shall pay according to said rates and shall otherwise comply with all applicable federal and State labor laws, rules, and regulations. Title 26 MRSA § 1303 set forth various requirements about preference to Maine workers that apply to State funded Contracts. However, if a Contract is Federally funded or partially Federally funded, Federal law governs and Title 26 MRSA § 1303 does not apply. For a related provision, see 23 CFR § 635.117.

104.3.8.1 Electronic Payroll Submission On federally funded Projects the Contractor, all Subcontractors, and lower-tier Subcontractors will submit their certified payrolls electronically utilizing the Elations system. There is no charge to the contracting



community for the use of this service. The submission of paper payrolls will not be allowed or accepted. Additional information can be found at <http://www.maine.gov/mainedot/contractors/> under the “Bidder Info” go to “Electronic Payroll System.”

104.3.8.2 Payment Tracking On federally funded projects the Contractor and all Subcontractors and lower-tier Subcontractors will track and confirm the delivery and receipt of all payments through the Elation System

104.3.9 Patents and Copyrights The Contractor must provide proof of a legal Agreement with the holder of any patent, trademark, or copyright, or the Owner, if necessary, for use of any of the following: design(s), process(es), device(s), trademark(s), Material(s), and copyright(s). The Contractor agrees to indemnify, defend, and hold harmless the Department and any affected third party or political subdivision from all claims of infringement that arise from use of any item listed in this paragraph.

104.3.10 Responsibility for Damage to Work Except as provided in Section 104.2.7 - Damage to Project Caused by Uncontrollable Events, the Contractor shall bear all risk of loss relating to the Work until Final Acceptance, regardless of cause, including completed Work, temporary Structures, and all other items or Materials not yet incorporated into the Work. For a related provision, see Section 110.3.6 - Builders Risk.

The Contractor shall, at its sole expense, rebuild, repair, restore, or replace such damaged Work or otherwise make good any losses that arise from such damage (“rebuilding, etc.”). If the Contractor fails to promptly commence and continue such rebuilding, etc., the Department may, upon 48 hours advance written notice, commence rebuilding, etc. of the damaged property without liability to the Department with its own forces or with Contracted forces and all costs will be deducted from amounts otherwise due the Contractor. For the Contractor’s responsibilities for the Work after Final Acceptance, see Section 106.9 - Warranty Provisions.

104.3.11 Responsibility for Property of Others The Contractor and its Subcontractors shall not enter private property outside the Project Limits without first obtaining permission from the Owners.

The Contractor shall be responsible for all damage to public or private property of any kind resulting from any act, omission, neglect, or misconduct of the Contractor and its Subcontractors. The preceding sentence includes damage to vehicles passing through the Work area.

The Contractor shall, at its sole expense, rebuild, repair, restore, or replace such damaged property and otherwise make good any losses that arise from such damage. If the Contractor fails to completely remedy the damage in a timely manner, the Department may, upon 48 hours advance written notice, rebuild, repair, restore or replace the damaged property without liability to the Department with its own forces or with contracted forces. All costs will be deducted from amounts otherwise due the Contractor.

104.3.12 Forest Protection and Laws The Contractor shall obey all laws and regulations that govern Work within or adjacent to State or National Forests, keep the Project site orderly and clean, obtain all required Permits, prevent and assist with the suppression of forest fires, and cooperate with authorized forestry officials.

Pursuant to State law, the sale of harvested forest products must be reported to the Maine Forest Service at the end of each year. The Contractor is hereby designated as the Department's agent for reporting of any such harvesting.

104.3.13 Materials and Items Found On the Project With the Department's approval, the Contractor may use suitable excavated Material in the Work and be paid for both the excavation and the placement of such Materials at the corresponding Contract Unit Prices. Except for Material used for riprap, stone ditch protection, and loam, the Contractor shall replace such excavated Material with other approved Material and properly compact it at no cost to the Department. The Contractor shall obtain written permission from the Department before performing any excavation outside the Project Limits.

Unless expressly provided otherwise, the Contractor shall remove and assume Ownership of all Incidental Structures and Materials to be removed such as guardrail, drainage pipe, culverts, curbing, bridges, and other manufactured Materials. Utility Facilities, traffic control devices, and lights, together with all supporting Structures, are excluded from the provisions of this Section 104.3.13. The cost of removal of such Structures and Materials is Incidental to the Contract unless expressly provided otherwise.

104.3.14 Interpretation and Interpolation The Contractor is responsible for all interpretations and interpolations made from information provided in the Bid Documents and Contract, including data and test results related to location, survey, hydrology, hydraulics, soils, ledge quality, existing Structures, Environmental Information, and Geotechnical Information. For related provisions, see Sections 102.3 - Examination of Documents, Site, and Other Information; 102.5.2 - Bidder's Duty To Notify Department If Ambiguities Discovered; 104.3.3 - Duty to Notify Department If Ambiguities Discovered; and 105.6 - Construction Surveying.

#### 104.4 Communication and Coordination

##### 104.4.1 Partnering

A. Definition, Purpose, and Applicability Partnering is a process of voluntary structured communication between the Department, the Contractor, its principal Subcontractors and suppliers, and other Project stakeholders for the purpose of improving efficiency and minimizing Disputes. Partnering, including the establishment of a partnership charter, does not in any way waive, alter, or otherwise affect any provision of the Contract. For a related provision, see Section 111.1.3 - Relationship to Partnering.



Participation in Partnering is voluntary; either party may elect to not participate in Partnering for any reason. The associated costs of Partnering will be agreed to mutually and shared equally.

B. Initial Partnering Workshop If the Contractor and the Department elect to participate in Partnering, representatives of both parties will arrange a facilitated initial Partnering Workshop, which should be held before the start of on-site construction. The Project Manager, Resident or both and the superintendent will determine Workshop attendees, the facilitator, agenda, duration, and location. Key Project level supervisory personnel, corporate/State level management personnel, and key Project personnel of the Contractor's principal Subcontractors and suppliers should attend. Project design Engineers, FHWA, local government representatives, environmental regulators, emergency service personnel, Utility Companies, impacted business and/or landowners, and other stakeholders may also be invited to attend. The product of the initial Partnering Workshop will be a partnership charter. This charter will include mutually agreed upon Project goals and communication escalation procedures.

C. Follow-Up Workshops The Contractor and the Department may agree to hold follow-up Partnering Workshops periodically throughout the duration of the Contract.

#### 104.4.2 Preconstruction Meeting

After the Contract has been executed and before the start of on-site construction by the Contractor, the Resident will schedule a Preconstruction Meeting that must be attended by the Contractor's Project Manager and Superintendent. Notification of the meeting shall be sent to the following personnel, agencies, and organizations as required by the Contract and deemed essential to the Work outlined in the Contract.

Project Manager, Program Manager, and Area Construction Manager  
Engineer of Record and Project Designer Engineers  
Utility Coordinator and Utility Companies  
Property Officer, Town Representatives, and Major Stakeholders  
Environmental Officer and Agencies  
Safety Officer, Fire Department, and Police Department  
Civil Rights Officer  
Communications Representative  
FHWA Representative  
Regional Office including Manager, Engineer, and Maintenance

The agenda of the Preconstruction Meeting, at a minimum, shall include the following items that pertain to the Contract.

Attendee List with contact information  
Project Description  
Contract

- Bid Amendments
- Project Specific Permit Requirements
- Review of Special Provisions
- Contractor's General Authority and Responsibilities – 104.3
- Utility Coordination – 104.4.6
- Road/Bridge Closure/Restriction Notifications – 104.4.10
- Traffic Management – 105.3
- Environmental Requirements – 105.8
- Time – 107
- Additional Special Provisions as required by the Contract
- Review of Plans
- Review of Submittals
- Review of Requirements prior to Start of Work
- Communications

The Resident will prepare minutes of the Preconstruction Meeting and distribute them to all attendees and invitees. Any requests to revise the minutes must be made to the preparer within 7 Days of Receipt. These minutes will constitute the final record of the Preconstruction Meeting.

The Resident will prepare minutes of the Preconstruction Meeting and distribute them to all attendees and invitees. Any requests to revise the minutes must be made to the preparer within 7 Days of Receipt. These minutes will constitute the final record of the Preconstruction Meeting.

For related provisions, see Sections 104.4.6(A) - Preconstruction Utility Meeting; 652 - Implementation of Traffic Control Plan, Preconstruction Field Review (if required); 656.4.1 - Temporary Soil Erosion and Water Pollution Control, Preconstruction Field Review; and 106.4 - Quality Control.

#### 104.4.3 Progress Meetings

Except as provided otherwise in this Section 104.4.3 - Progress Meetings shall be held at regular intervals, but at least monthly, throughout the duration of the Contract. All personnel of the Department and the Contractor who have significant information relevant to agenda items shall attend. Additional personnel, as included in the invitee list of the Preconstruction Meeting and as merited, may be invited to attend.

The agenda for each Progress Meeting at a minimum, shall include the following items that pertain to the Contract:

- Review and Approval of Previous Progress Meeting Minutes
- Review of Action Items from Previous Meeting
- Review of Progress from Last Progress Meeting
- Review of Work Planned to Prior to Next Progress Meeting
- Contractor's Schedule of Work
- Material Testing and Work Inspection Schedule

Progress Payments  
Civil Rights  
Contractor's Quality Control  
Contractor's Safety Practices  
Contractor's Environmental Control  
Contractor's Traffic Control  
Onsite Utility Coordination  
Review of Outstanding Submittals and Long Lead Items  
Request for Information  
Contract Modifications  
Material and Equipment Deliveries  
Issues, Disputes, Claims, and Resolutions  
Review of New Action Items

The Resident will prepare minutes of these meetings and distribute them to all attendees. Any requests to revise the minutes must be made to the Resident within 7 Days of Receipt. These minutes will constitute the final record of the Progress Meeting.

In lieu of a Progress Meeting, the Resident and the Superintendent may exchange written communication before or on the scheduled Progress Meeting date that indicates there is no need for the meeting because the Work is on schedule, compensation is current, communication is ongoing, and there are no significant outstanding or anticipated issues, Disputes or claims. The Superintendent's written communication shall also contain a description of (A) progress of the Project since the last Progress Meeting or communication in lieu thereof and (B) expected activities before the next scheduled Progress Meeting. All invitees to the Progress Meeting must be notified of canceled or postponed meetings.

104.4.4 Requests for Information Either the Department or the Contractor may request that the other party provide information that the requesting party needs to fulfill its Contract obligations by Delivering a written Request for Information (RFI). The Department may require that RFIs be on forms and media approved by the Department. The request must (A) be of reasonable scope, (B) explain why such information is necessary to fulfill Contract obligations, and (C) provide a requested response time, which must be reasonable in relation to its scope (at least 72 hours). The party receiving an RFI shall use its best effort to respond to the RFI within the time requested. The response shall be in writing. The status of outstanding RFIs shall be discussed at each Progress Meeting.

#### 104.4.5 Early Negotiation

A. Notice Required When the Contractor becomes aware of facts or circumstances that may cause the Contractor to seek additional compensation, time, or any other change in Contract requirements ("Issue"), then the Contractor shall notify the Resident within 48 hours and before commencing any part of the Work relating to the Issue. The notice must describe the basic nature and extent of the Issue.

Such notice may be verbal only if confirmed in writing in one of the two following ways: (A) if a Progress Meeting is held within 14 Days of the date that the Issue became known, such Notice may be confirmed with an entry in the Progress Meeting minutes. Such entry must describe the basic nature and extent of the Issue. (B) Otherwise, the Contractor shall confirm a verbal notice by Delivering to the Resident, within 14 Days of the date the Issue arose, a written notice that describes the basic nature and extent of the Issue.

The written notice or confirmation will be known as a “Notice of Issue for Consideration.” The Contractor will not be entitled to any additional compensation, time, or any other change to Contract requirements without a timely Notice of Issue for Consideration.

B. Negotiation When the Resident receives the Notice of an Issue for Consideration Conforming to Section 104.4.5(A) - Notice Required, the Resident and the Contractor will negotiate to attempt to resolve the Issue. Any resolution will be noted in the Progress Meeting minutes or confirmed otherwise in writing by the Department. Any changes to the Contract that affect compensation, time, quality, or other Contract requirements shall be by written Contract Modification as provided by Section 109.8 - Contract Modifications.

For related provisions, see Sections 109.5 - Adjustments for Delay and 109.7 - Equitable Adjustments to Compensation and Time.

C. Additional Consideration If negotiation fails to resolve the Issue within 45 Days of the date the Resident receives the Notice of Issue for Consideration, and if the Contractor desires additional consideration by the Department, then the Contractor must comply with Section 111.2 - Detailed Notice of Dispute and all other requirements of Section 111 - Resolution of Disputes.

#### 104.4.6 Utility Coordination

A. Pre-construction Utility Meeting A Pre-construction Utility Meeting will be held to coordinate the Work of the Contractor and the Work of affected Utility Companies. Usually this meeting will be held on the same day as and immediately before the Pre-construction Meeting provided by Section 104.4.2 - Pre-construction Meeting but, in any event, will be held before the start of on-site construction by the Contractor that affects Utility Facilities. The Department’s Utility Coordinator, the Project Manager, Resident, the Contractor’s Superintendent, and a representative of each affected Utility Company will attend. The Department’s Utility Coordinator will prepare minutes of the Pre-construction Utility meeting and distribute them to all attendees. Any requests to revise the minutes must be made to the Department’s Utility Coordinator within 7 Days of distribution. These minutes will constitute the final record of the meeting. For a related provision, see Section 104.4.2 - Pre-construction Meeting(s).

B. Utilities Within Right-of-Way Except as provided otherwise in the Contract, including subsection E - Temporary Relocations below, all Utility Facilities of all Utility Companies within the Right-of-Way will be relocated and adjusted as provided in the

Contract by and at the expense of the affected Utility Company, provided, however, that the Contractor is responsible for scheduling its Work in accordance with the time allowed for utility relocation as provided in the Contract. Utility relocation Work may not proceed without authorization from the Department.

### C. Contractor's Responsibilities

1) Utility Coordination - The Contractor has primary responsibility for coordinating its work with utilities after contract award. The Contractor shall communicate directly with the utilities regarding any utility work necessary to maintain the Contractor's schedule and prevent project construction delays. The Contractor shall notify the Resident of any issues. The Contractor shall plan and conduct its work accordingly.

2) The Contractor must exercise every reasonable precaution to prevent damage to Utility Facilities or interruption to utility services known to or discovered by the Contractor, whether or not shown on the Plans. Such precautions must include notice to Utility Companies before undertaking Work that could damage Utility Facilities. The Contractor must provide each Utility Company with notice at least three Business Days before the date a Utility Company will have to support any pole.

3) The Contractor must take all reasonable precautions to determine the presence of underground Utility Facilities before commencing any excavation Work and must provide all affected Utility Companies with at least 72-hour prior notice of the proposed excavation. The Contractor must comply with 23 MRSA § 3360-A, entitled "Protection of Underground Facilities," Maine's "Dig Safe" statute, and also contact the non-member underground facility operators in the Maine Public Utilities Commission's "**OK-TO-DIG**" directory.

4) The Contractor must maintain initial markings (spray paint, stakes, etc.) made by the authorized representative of a Utility Company to indicate the location of underground Utility Facilities and otherwise comply with 23 MRSA § 3360-A(4).

5) The Contractor must cooperate with Utility Companies in its relocation or operations so that these operations proceed in a logical sequence, minimize duplication of Work, and avoid unnecessary interruptions to utility service.

6) If utility services are interrupted as a result of the Contractor's Work, the Contractor must promptly notify the appropriate Utility Company and must cooperate fully in the restoration of service. If service is interrupted, repair Work will be continuous until the service is restored. No Work can be undertaken around fire hydrants until the local fire authority has approved provisions for continued services.

7) The Contractor must schedule its Work so as to provide for all Utility Company Work and to complete the Work within the Contract Time. The estimated number of workdays required by each Utility Company to perform its relocation Work contained in the Contract is provided by the Utility Companies and are estimates only. Such Utility Facility relocation times assume normal Working times (Monday through Friday, 8 hours per day), and are dependent upon normal weather, normal Working conditions, and freedom from emergencies. The Department is not responsible for the accuracy of these estimates. If a Utility Company fails to perform its Work within the time frames set forth in the Contract or in the minutes of the Pre-construction Utility Meeting, and such failure affects the Contractor's Critical Path, the Contractor may request a suspension of Work pursuant to

Section 107.5.2 and such Delay will be analyzed in accordance with Section 109.5 - Adjustments for Delay.

8) Any clearing and tree removal that is a part of the Contract and that must be done in areas where Utility Companies are involved must be completed by the Contractor before the Utility Company can relocate its Utility Facilities. Any clearing, cutting of single trees, or limbing required for the temporary or permanent Utility Facility location must be approved by the Department. The Contractor must provide the Department with prior notice of at least 4 Days before removing or trimming any trees or other vegetation.

9) If blasting occurs on the Project, the Contractor must provide each Utility Company having Utility Facilities that could be damaged by the blast with at least 24-hour prior notice that includes the anticipated time of the initial blast.

10) If the Contractor observes a Utility Company Working within the Project Limits in a manner that (A) violates the MUTCD, the Contractor's Traffic Control Plan, or an applicable OSHA requirement or commonly accepted safety practices, and (B) represents a clear and immediate risk of significant bodily injury to any person within the Project Limits, then the Contractor must notify the Resident and the Utility Company immediately.

11) The Contractor agrees to indemnify, defend, and hold harmless the Department from and against any and all claims or causes of action arising from any act or omission of the Contractor, the Subcontractors, or their respective agents, representatives, or employees for failure to comply with this Section 104.4.6.

D. Temporary Relocations The Contractor may request temporary changes of location of Utility Facilities for the Contractor's convenience. The Contractor must satisfy the Department that the proposed temporary change will not interfere with the Work, the Work of Utility Companies, or the Work of other Contractors and will not impede the free and safe flow of traffic. If acceptable to the Department, the Contractor may make its own request to the Utility Company or other party affected by such temporary changes. The expense and risk of temporary changes will be borne solely by the Contractor; no changes to compensation or time will be made.

E. Unforeseeable Utility Relocations The Department may order utility adjustments in accordance with Section 109.4 - Differing Site Conditions.

F. Cost The cost of all Work related to utility coordination is Incidental to the Contract.

104.4.7 Cooperation with Other Contractors The Department reserves the right to Contract for, perform, or allow other Work to be performed within or near the Project Limits. The Contractor must take all reasonable steps to avoid interfering or hindering such other Work. The Contractor must cooperate with Contractors or others performing such other Work as directed by the Department.

If the basic nature and scope of such other Work are provided or referenced in the Bid Documents or are otherwise known or foreseeable to the Contractor, then the Contractor assumes all risks and liability associated with such other Work and agrees to indemnify, defend, and hold harmless the Department from all claims related to such other Work that arise from the Contractor's acts or omissions.



104.4.8 Coordination with Railroads The Contractor shall (A) perform Work within a railroad Right-of-Way without interfering with trains or railroad company traffic and (B) coordinate all Work crews and the Contractor's Schedule of Work to accommodate the railroad company Work. If the Bid Documents show that Materials must be hauled across railroad tracks, the Department will make preliminary arrangements with the railroad to permit such hauling. The Contractor shall, at its expense, negotiate and enter into any other Agreements with the railroad.

Special Provision will provide any additional conditions or requirements regarding railroad coordination.

104.4.9 Coordination with Marine Traffic The Contractor shall not interfere with free and safe navigation of navigable waters except as provided by permit issued by the US Coast Guard and other applicable regulatory agencies. All Work must comply with all US Coast Guard permit conditions and all applicable Federal regulations affecting navigation.

When the basic nature and scope of marine traffic requirements are provided or referenced in the Bid Documents or are otherwise known or foreseeable to the Contractor, then the Contractor assumes all risks and liability associated with said requirements, and the Contractor shall indemnify, defend, and hold harmless the Department from all claims related to the maintenance or obstruction of marine traffic that arise from the Contractor's acts or omissions.

104.4.10 Coordination of Road Closure/Bridge Closure/Bridge Width Restriction Notification When a road closure, bridge closure, or width restriction is allowed by the Contract, prior to a closure or a width restriction to a single lane of less than 15 ft., the Contractor shall notify affected public officials, agencies, other entities, and the public of the date on which the closure/width restriction will begin and the anticipated duration of the closure/restriction, as indicated below.

The closure shall be announced on a minimum of two portable/changeable message signs, placed in approved locations, beginning at least ten Days prior to the closure. A public notice shall also be published in a local newspaper ten Days prior to the closure.

Advance warning signs shall be placed so the traveling public is aware of the restrictions in place. They shall be placed at enough distance from the restriction so vehicular traffic can be rerouted to an alternate route.

The Contractor shall notify the following public officials, agencies, and organizations ten Days prior to, and again the Day before, the date that the closure/restriction begins and the anticipated length of the closure/restriction. When the road/bridge is reopened/unrestricted to traffic, the following list will again be notified. The Contractor shall provide the Department with documentation that the listed public officials, agencies, and organizations received the notification at least 10 Days prior to the

closure/restriction or with proof that the notification was mailed 15 Days prior to the closure/restriction.

Town Officials (Manager or First Selectperson)  
Representative or County Commissioners (If Unorganized Townships)  
County Sheriff's Department  
Fire Department  
Police Department  
State Police  
Emergency Service  
School Department  
Post Office  
Chamber of Commerce  
Any Large Employers  
Mobile Home Movers, Manufacturers and Dealers  
Bureau of Maine Vehicles – Over Size/Over Weight Permits  
MaineDOT Radio Room

Maine DOT Regional Office

All notifications will be subject to the approval of the Resident. All costs not covered by Pay Items will be considered incidental to the Contract.

#### 104.5 Subcontracting

104.5.1 Limits on Subcontracting The Contractor shall perform at least 30% of the value of the Work with its own Work force, excluding any specialty items as designated in the contract documents by the Department.

The Contractor shall not carry the workers of another recognized Contractor or firm on its payroll or a Subcontractor's payroll. The Contractor shall not use any Subcontractors that are debarred from Bidding by the Federal Government or any agency of the State of Maine.

104.5.2 Contractor's Duties Regarding Subcontractors Subcontractors are solely the responsibility of the Contractor. The Contractor is responsible for assuring that its Subcontractors have sufficient skill and experience to perform the Work properly and for coordinating and managing its Subcontractors to achieve the intent of the Contract. The Contractor agrees to indemnify, defend, and hold harmless the Department from and against all claims and causes of action arising out of any act or omission of Subcontractors, their agents, representatives, and employees. The Contractor agrees to indemnify, defend, and hold harmless the Department from any claims asserted by its Subcontractors, including any claims to recover losses allegedly suffered by a Subcontractor. Subcontracting does not alter or diminish the Contractor's obligations under the Contract. For a related provision, see Section 105.1 - Intent of the Contract.



104.5.3 Documentation Regarding Subcontracting Before any Work is performed by a Subcontractor, the Contractor shall provide the Department a Subcontract approval package which shall include:

A list of all Subcontractors that the Contractor anticipates will be providing Work within the Project Limits. .

If requested by the Department, the Contractor shall provide the Department with copies of any subcontract or other document that establishes the relationship of the Contractor and any Subcontractors.

104.5.4 Discharge of Subcontractors The Department, upon written notice to the Contractor, may require that the Contractor discharge any Subcontractor without cost or liability to the Department. If the Department determines that a Subcontractor's performance jeopardizes the intent of the Contract otherwise, the Department may, but is not required, to notify the Contractor of such a determination. Such notice, or lack thereof, does not affect the Contractor's duties regarding Subcontractors. Upon Receipt of such notice, the Contractor shall take any action it determines is necessary to fulfill its obligations under the Contract. For related provisions, see Sections 104.3.4 - Workers and Equipment, 104.5.2 - Contractor's Duties Regarding Subcontractors, 105.1 - Intent of the Contract, and 105.2 - Health and Safety.

Prompt Payment of Subcontractors

Pay When Paid The Contractor shall pay Subcontractors in full for all Work satisfactorily performed and Invoiced by the Subcontractor no later than 30 Days from the date the Contractor receives payment from the Department for such Subcontractor's Work. Contractor will insure that its Subcontractors pay all Sub-Subcontractors, including suppliers and materialmen, no later than 30 days from the date that they receive payment from the Contractor.

Retainage The Contractor shall return to the Subcontractor all retainage withheld from the Subcontractor within 30 Days after the date the Subcontractor's Work is satisfactorily completed. If there is a Delay in such return of retainage, the Subcontractor may pursue all rights it may have under the claims procedure referenced in Section 104.5.6 - Subcontractor Claims for Payment.

Payment Tracking Federal Projects On federally funded projects, the Contractor, Subcontractors, and lower-tier Subcontractors will track and confirm the delivery and receipt of all payments through the Elation System. They will be responsible for entering all payments to all Subcontractors and lower-tier Subcontractors. The Department will run a query monthly to ensure that Contractors are complying and generate an e-mail to Contractors who have not responded to confirm receipt of Department payment or Contractor payment to Subcontractors and lower-tier Subcontractors.

104.5.6 Subcontractor Claims for Payment The Contractor agrees to notify all Subcontractors of the claim filing procedure of Payment and Performance Bonds required by 110.2.1. The Department may use retainage and other remaining project funds to pay outstanding claims for Accepted Work.

104.5.7 Flow Down All subcontracts of the Contractor, and all lower tier subcontracts, shall contain or reference all applicable provisions of the Contract, including all safety, wage, Prompt payment, labor, environmental, and equal opportunity provisions. The Contractor shall indemnify, defend, and hold harmless the Department against any and all claims or liabilities arising from the failure to include such flow down provisions and agrees that any such claims and liabilities may be paid by the Department using retainage on other Project funds.

104.5.8 No Third Party Beneficiaries The Contractor and the Department agree that this Contract is not intended to create any third-party beneficiaries or to authorize anyone not a party to the Contract to maintain an action under Contract provisions.

104.5.10 Warranty and Maintenance Bonds Warranty and Maintenance Bonds may be required of the Contractor or the Subcontractor for specified items that the Department deems appropriate. Specific requirements will be given via Special Provision. These bonds may be for specified items in the Contract Schedule of Items. The Bond must name the “Treasurer-State of Maine” as an obligee. The Contractor shall provide a copy of said bond to the Department before the performance of any affected on-site Work. Should the subcontractor be required by special provision to provide a Warranty or Maintenance Bond, the Contractor hereby authorizes the Department to directly contact the Landscape Subcontractor and/or its Surety in the event of a failure of the bonded item to perform as specified.

## SECTION 105 - GENERAL SCOPE OF WORK

Scope of Section This Section contains Work requirements that are generally within the scope of all Projects. These include provisions related to health and safety, traffic control, maintenance of Work, hauling of Materials and Equipment, construction surveying, Working Drawings, the environment, historic and archeological considerations, equal opportunity and civil rights, and other federal requirements. This Section is not all-inclusive. The scope of these items is often described more specifically and fully elsewhere in the Contract and in other specific items that appear elsewhere.

This Contract is federally funded, unless expressly provided otherwise in the Bid Documents. As a federally funded Contract, it includes all federal requirements set forth in the Project Specific Bid Book.

105.1 Intent of the Contract The intent of the Contract is to provide for the construction and Completion of a functionally complete Project in Conformity with the Contract. The Contractor shall furnish all Work to achieve this intent, including all Work

that may be reasonably inferred to be required from the Contract or from prevailing industry or trade custom, whether or not specifically called for.

## 105.2 Health and Safety

105.2.1 Safety Responsibility The Contractor has the overall authority and responsibility to maintain safety of its employees and of all other persons in the work area or on the worksite. The Contractor shall provide all safeguards, safety devices, and protective Equipment and take all other action that is necessary to continuously and effectively protect the safety and health of all persons from hazards related to the Work. Such safeguards include providing a sufficient number of security guards.

105.2.2 Health and Safety Plan A copy of the Contractor's Health and Safety Plan must be on file with the Contracts Section of the Department as a condition of Prequalification to be awarded a Construction Contract. A copy of the Safety Plan will be provided to the Department's Contracts Section in an electronic media format prior to Contract award. The Contractor shall designate which portions such submissions it considers confidential business information. If such program is revised during the Contract Time, the Contractor shall provide the updated program to the Department. The Contractor shall comply with its safety program and this Section 105.2 - Health and Safety. The Contractor shall be responsible for all claims or damages arising from failure to so comply and to indemnify, defend, and hold harmless the Department from all claims and damages arising from such non-compliance.

105.2.3 Project Specific Emergency Planning Unless the Contract provides for closure of an existing facility, the Contractor shall ensure that essential police, fire, rescue, and ambulance services have reasonable and timely access to and through the Project Limits. The Contractor shall contact all emergency service providers in the area, discuss potential impacts on emergency operations (including water supply for fire suppression), and minimize any negative impacts. Fire hydrants within or adjacent to the Project Limits shall be kept accessible to fire apparatus at all times, unless the fire department agrees otherwise in writing. For a related provision, see Section 104.3.12 - Forest Protection and Laws.

If the nature of the Work involves deep trenching, confined spaces, toxic chemicals, or any other unusual hazards that could require specialized rescue, the Contractor shall inform and cooperate with the appropriate fire department, rescue service, or EMS.

The Contractor shall provide the Resident with, and post and maintain in conspicuous places within the Project Limits, a list containing (A) emergency response numbers with the names and telephone numbers (including cellular phone and pager numbers, if applicable) of local ambulance, police, fire, rescue, and hospitals, (B) emergency response numbers for hazardous Materials spills as required by Section 656.3.4(f) - Spill Prevention, (C) the Contractor's personnel with phone numbers who may be reached in case of emergency, and (D) the Department's personnel with phone numbers who may be reached in case of emergency.

105.2.4 Unsafe Conditions The Contractor will immediately eliminate all unsafe conditions brought to the Contractor's attention by the Department Resident or any other Department staff. If the Contractor or the Department actually observes any person(s) performing Work in a manner that (A) the observing party actually knows is not in compliance with the MUTCD, the Contractor's TCP, an applicable OSHA requirement, or commonly accepted safety practices, and (B) creates a clear and immediate risk of significant bodily injury to any person, then the observing party shall immediately notify such person(s) Working in an unsafe manner and the other party to the Contract. The Contractor and the Department agree to cooperate in eliminating all such unsafe conditions. For related provisions, see Sections 104.3.4 - Workers and Equipment, 104.4.6 - Utility Coordination, 105.3 - Traffic Control and Management, and 105.4 - Maintenance of Work.

105.2.5 Compliance with Health and Safety Laws The Contractor has the authority and responsibility to ensure compliance with all applicable federal, State, and local laws governing safety, health, and sanitation, including all applicable laws and regulations of OSHA. The Contractor shall comply with these laws and regulations and ensure compliance by its subcontractors. The Contractor is responsible for correcting any health and safety violations.

For related provisions, see Sections 105.2.3 – Project Specific Emergency Planning, 105.3 – Traffic Control and Management and 105.4 – Maintenance of work.

105.2.6 Convenience of the Public At all times the Contractor shall perform the Work to minimize obstructions to pedestrian, vehicular, railroad, and marine traffic. All temporary and permanent pedestrian access ways must comply with the Americans with Disabilities Act (ADA). Footways, gutters, sewers, inlets, and portions of the Highway adjacent to the Work must not be obstructed unless allowed by the Contract.

If the Contractor receives notice from the Department that the Contractor has failed to comply with the provisions of this Section 105.2 - Health and Safety, the Contractor shall remedy such non-compliance immediately. If the Contractor fails to do so, the Department may remedy such non-compliance by any means and deduct the cost of the remedy from amounts otherwise due the Contractor.

#### 105.2.7 Use of Explosives

A. Standards When using explosives, the Contractor shall use the utmost care to protect life and property. Explosives must be transported, stored, and used in compliance with this Contract, in compliance with all applicable federal, State, and local laws, rules and regulations, and in accordance with all applicable provisions of the latest version of the Blasters' Handbook published by the International Society of Explosives Engineers (ISEE) of Cleveland, Ohio. In any case, the Contractor shall comply with the recommendations contained in Chapter 13 - "Blasting Safety" of said Blasters' Handbook, unless a qualified person conducting the blasting operations for the Contractor certifies to the Department in

writing that certain provisions of said Chapter 13 are not necessary to protect life and property.

B. Blasting Zone - Signage and Flaggers The Contractor shall define a blasting zone. When using electric detonators, the blasting zone must allow safe distances from radio transmitters based upon their power output frequency. The blasting zone must include all areas within which people could be injured or property could be damaged by the blast. The Contractor shall mark Highways conspicuously at the perimeter of the blasting zone with signs in accordance with MUTCD. If applicable, the Contractor shall place signage along railroads and appropriate notice shall be provided to marine traffic. The Contractor shall provide a sufficient number of flaggers stationed outside the blasting zone to stop all approaching traffic during blasting operations.

C. Other Requirements The Contractor shall provide to the Department general liability insurance coverage covering use of explosives in accordance with Section 110.3.2 - Commercial General Liability. Immediately after the blast, the Contractor shall remove any debris that is obstructing Highway, pedestrian, railroad, or marine traffic flow. . The Contractor shall not use perchlorate in its blasting operations. For related provisions, see Sections 104.4.6(C)(9) - Blasting Notice, 104.3.11 - Responsibility for Property of Others, and 110.1 – Indemnification , 110.3.2- Commercial General Liability and Spec 203.042 Rock Excavation and Blasting.

105.3 Traffic Control and Management The Contractor shall provide continuous and effective traffic control in compliance with Section 652 - Maintenance of Traffic.

105.3.1 Notices Required The Contractor shall plan paving operations so that the Resident will have sufficient advance notification to provide the necessary inspection and testing. Sufficient notification will be considered 48 hours. In the event that paving is suspended, the 48-hour advance notification shall be required again before restarting the paving operations unless otherwise agreed by the Resident. A verbal warning will be given before starting the offense process for paving notification.

The Contractor shall plan granular material operations so that the Resident will have sufficient advance notification to provide a proctor for the material to be placed. Sufficient notification will be considered 7 days. Changes in source will also require this notification.

Failure to provide the above notifications will result in the following actions:

First offense – verbal warning

Second offense - written warning

Third and subsequent offense - liquidated damages will be charged for one Calendar day

#### 105.4 Maintenance of Work

105.4.1 Maintenance During Construction The Contractor shall maintain the Project and all related Work in a safe and satisfactory condition until Final Acceptance. Such maintenance requires continuous and effective Work conducted daily.

Trenches Where existing pavement carries traffic and is removed, the pavement shall be replaced daily with a temporary pavement consisting of a minimum of three inches of acceptable hot or cold bituminous mixture. Cold bituminous mixture shall contain Aggregates, asphalt cutbacks, liquefiers and wetting agents. No separate payment will be made for furnishing, placing, maintaining, and removing temporary pavement, and all cost of such work will be considered Incidental to the Contract.

Before placing any permanent pavement over backfilled trenches, the edge of the adjoining existing pavement shall be cut even and vertical, and coated with tack coat to form a tight joint between the new and the existing pavements. The permanent pavement depth and type (HMA or PCC) will match the existing roadway structure. No separate payment will be made for cutting and tack coating the joint.

If the Contractor fails to meet the conditions of Section 105.4.1, the Department will notify the Contractor of such failure. The Contractor shall remedy such failure within 4 hours after receiving such notice. If the Contractor fails to do so, this may be considered a traffic control violation in accordance with Section 652 and the Department may remedy the situation with its own or Contracted forces without liability to the Department and all costs will be deducted from amounts otherwise due the Contractor. When the Contract involves placing material on, or use of previously constructed subgrade, base course, pavement, or structure, the Contractor shall maintain such previously constructed Work in a safe and satisfactory condition until Final Acceptance.

Except as expressly provided otherwise in the Contract, the cost of complying with this Section 105.4.1 is Incidental to the Contract.

105.4.2 Use of Granular Materials The Department may authorize and pay for granular Materials that are capable of supporting traffic and necessary to maintain the specified traffic Lane widths upon the following conditions.

A. The Contractor must prepare the area where the granular Materials are to be used by eliminating objectionable Material and providing adequate temporary Drainage before the granular Material is placed.

B. Quantities of granular Materials will be determined by the most appropriate method of measurement that applies at the time the Material is placed and that is in accordance with the Specifications for the particular type of granular Material authorized for use. For a related provision, see Section 108.1 - Measurement of Quantities for Payment.

C. Payment for granular Material will be made at the Unit Price for the Material authorized for use.



D. Payment as Common Excavation will be made when Material for maintenance of traffic is removed.

105.4.3 Maintenance During Winter Construction Except as provided in the following paragraph, when the Contractor performs Work during winter weather conditions, the Contractor shall plow snow from the portions of a Project that carry vehicular or pedestrian traffic, including all Bridges and Sidewalks, so as to allow the free and safe flow of such traffic. The State or local governmental agency that would otherwise be responsible for winter maintenance will sand and salt such portions of a Project.

The State or local governmental agency responsible for winter maintenance will plow, sand, and salt such portions of a Project that (A) have been untouched or left by the Contractor in a suitable condition to carry traffic as determined by the Department and (B) are unaffected by the construction operations.

105.4.4 Maintenance During Suspension of Work

A. Work Responsibilities Prior to suspension, the Contractor must make the Project suitable for the free and safe flow of traffic as determined by the Department, including covering or removal of signs. To provide space for snow removal, all areas to be used by traffic must be clear for the entire usable Roadway, including Shoulders, or curb-to-curb, including Sidewalks.

During an approved suspension, the Department will maintain the temporary Roads and Project sections by plowing snow, controlling ice, and patching or retreating the surface. During suspension, the Contractor must (1) take precautions necessary to prevent damage to the Work and to allow the Department to provide such maintenance (such precautions include providing Drainage and erecting any necessary Structures, signs, or other facilities); (2) maintain all temporary Structures and traffic control devices; and (3) continuously maintain, in an acceptable growing condition, all living plant Material, including newly established seedings and soddings furnished under the Contract and take precautions to protect vegetative growth from damage.

After suspension, the Contractor must clean up all evidence of the snow and ice control at its expense, including removing excess sand and debris from the Roadway and replacing all base or subbase Material that was lost as a result of maintenance activity.

If a Work suspension is not approved, the Contractor will remain responsible for maintaining the Project, including plowing snow, controlling ice, and patching or retreating the surface.

B. Cost Responsibility All costs related to suspending and resuming Work related to approved suspensions will be considered Incidental to the Contract. For related provisions, see Sections 104.2.6 - Right to Suspend Work and 107.5 - Suspension of Work.

105.4.5 Maintenance of Existing Structures When a new Bridge or Minor Span is being installed on a new alignment and the existing structure is to remain in service, the Department will maintain the existing structure and the portions of the roadway required for maintaining traffic until such time that the new structure is opened to traffic and the existing structure is taken out of service. A similar situation exists when a new Bridge or Minor Span is being installed on the same alignment as the existing structure, requiring a temporary detour to be installed by the Contractor per Section 510 - Special Detours, prior to removal of the existing structure. In this case, the Department will maintain the existing structure and the portions of the existing roadway required for maintaining traffic until such time that either the temporary detour is opened to traffic or the Contractor begins any work on the existing structure, including, but not limited to, repairs, modifications, moving, demolition, or removal. In either case, once the new structure or temporary detour is opened to traffic, or the Contractor begins any work on the existing structure, the Contractor shall be solely responsible for all maintenance of the existing structure and the portions of the existing approaches that lie outside the new roadway or the temporary detour, respectively. This specification is not intended to supersede Standard Specification Section 104.3.11 - Responsibility for Property of Others.

#### 105.5 Hauling of Materials and Equipment

105.5.1 General Requirements Except as provided otherwise and limited in this Contract, the Contractor may use any public Road or Bridge for the hauling of Materials and Equipment in legally registered vehicles that are carrying legal loads and operating otherwise in accordance with all applicable State or federal laws. If the Contractor violates such laws or the terms of this Contract relating to hauling, the Contractor shall, at its expense, repair damage to any Road or Bridge that the Department determines was caused by the Contractor to the satisfaction of the governmental entity that maintains the Road or Bridge.

The Contractor must abate any dust nuisances caused by such hauling. For a related provision, see Section 637 - Dust Control and Section 656 - Temporary Soil Erosion and Water Pollution Control.

105.5.2 Bond for Use of Municipal Roads If the Contractor wants to use Roads maintained by a municipality for hauling, the municipality may require the Contractor to purchase a bond for each mile of traveled length. The face value for such bond shall not exceed \$50,000/mile. The cost of said bond shall be Incidental to the Contract.

105.5.3 Posted Roads or Bridges The Contractor must comply with all restrictions set forth pursuant to 29-A MRSA § 2395, including springtime posting of load restrictions. An overlimit movement permit pursuant to 29-A MRSA § 2382 will not relieve the Contractor of its obligation to repair damage to such posted Roads or Bridges. For a related provision, see Section 104.3.2 - Furnishing of Other Property Rights, Licenses, and Permits.

105.5.4 Narrow Roads The Contractor shall not haul on Roads having a bituminous surface width of less than 20 feet unless there is no practical alternative.



#### 105.5.5 Overlimit Loads

A. Within Project Limits Within the Project Limits, the Contractor shall not haul over the base courses, surface course, or accepted subgrades with loads that exceed legal limits, except for Equipment used in grading operations, including the preparation of the subgrade.

B. Outside Project Limits Outside the Project Limits, the Contractor must comply with 29-A MRSA § 2382 - Overlimit Movement Permits before moving vehicles or hauling loads in excess of legal limits. The Contractor is responsible for all damage caused by the movement of loads in excess of legal limits whether under permit or not.

105.5.6 Restrictions on Movement and Storage of Heavy Loads and Equipment on Bridges The Contractor shall comply with legal load restrictions and with special restrictions required by the Contract when hauling or storing materials, including demolition debris, and moving or storing equipment on Bridges within the Project Limits that are under construction or completed but not yet open to traffic.

The Contractor shall not operate equipment mounted on crawler tracks or steel-tired wheels on or across concrete or bituminous surfaces, unless otherwise approved by the Resident. The Contract requirements may impose special restrictions on speed, load distribution, surface protection, or other precautions.

When construction operations require crossing an existing Bridge with otherwise prohibited equipment or loads, the Contractor shall use Department approved methods of load distribution or bridging, at no additional cost to the Department.

The Contractor will not be relieved of liability for damages resulting from the operation and movement of construction equipment because it has been issued a special permit, or it has adhered to any other restrictions imposed.

Unless otherwise allowed by the Contract or approved by the Department, the Contractor shall temporarily store construction materials, including demolition debris, or park equipment on a Bridge deck during construction in accordance with the following limits, which have been established to reflect typical design live loads:

Stockpiles shall not weigh more than 65,000 pounds per 1,000 square feet,

Individual stockpiles of Materials (including pallets of products, reinforcing steel bundles and Aggregate stockpiles) shall not weigh more than 25,000 pounds per 100 square feet, or

No single vehicle or piece of Equipment shall weigh more than 80,000 pounds and no combination of vehicles, Materials, and other Equipment shall weigh more than 200,000 pounds per span, for span lengths greater than 40 feet.

The Contractor may submit alternate loadings with calculations stamped by a licensed Professional Engineer, within 30 Days prior to placement of the load(s).

## 105.6 Construction Surveying

105.6.1 Department Provided Services The Department will provide the Contractor with the descriptions and coordinates of a sufficient number of vertical and horizontal control points, set by the Department, throughout the Project, for full construction Projects and other Projects where survey control is necessary. For Projects of 1,000 feet in length or less, the Department will provide a minimum of three points. For Projects between 1,000 and 5,000 feet in length, the Department will provide a minimum of five points. For Projects in excess of 5,000 feet in length, the Department will provide at a minimum, one set of two points at each end of the Project, plus one additional set of two points for each mile of Project length. For non-full construction Projects and other Projects where survey control is not necessary, the Department will not set any control points and, therefore, will not provide descriptions and coordinates of any control points. Upon request, the Department will provide its Survey Manual to the Contractor, or its survey Subcontractor.

105.6.2 Contractor Provided Services Using the survey information and points provided by the Department, described in Subsection 105.6.1 - Department Provided Services, the Contractor shall provide all additional survey layout necessary to complete the Work. This may include, but not be limited to, re-establishing all points provided by the Department, establishing additional control points, running axis lines, providing layout and maintenance of all other lines, grades, or points, and survey quality control to ensure conformance with the Contract. The Contractor is also responsible for providing construction centerline, or close reference points, for all Utility Facilities relocations and adjustments as necessary to complete the Work. When the Work is to connect with existing Structures, the Contractor shall verify all dimensions before proceeding with the Work. The Contractor shall employ or retain competent engineering and/or surveying personnel to fulfill these responsibilities.

The Contractor must notify the Department of any errors or inconsistencies regarding the data and layout provided by the Department as provided by Section 104.3.3 - Duty to Notify Department If Ambiguities Discovered.

105.6.2.1 Survey Quality Control and Construction Layout The Contractor is responsible for all construction survey quality control. Construction survey quality control is generally defined as, first, performing initial field survey layout of the Work and, second, performing an independent check of the initial layout using independent survey data to assure the accuracy of the initial layout; additional iterations of checks may be required if significant discrepancies are discovered in this process. Construction survey layout quality control also requires written documentation of the layout process such that the process can be followed and repeated, if necessary, by an independent survey crew.

105.6.2.2 Electronic Design Data and Digital Terrain Model (DTM) If provided by the Department, at the request of the Contractor, any electronic project design data will not be deemed a part of the contract, and is supplied as a courtesy by the Department. The Contractor shall not take advantage of any ambiguity or error contained in said data, and upon discovery of any ambiguity or error shall notify the Department before proceeding. The Contractor may convert any electronic data provided by the Department into a format

required by the Contractor's system and equipment at the Contractor's expense. Any Digital Terrain Model (DTM) to be used for construction shall be submitted to the Department in InRoads DTM or LandXML format at least 14 days prior to the pre-construction meeting; any other format shall be preapproved by the Department prior to submittal. No changes shall be made to the electronic model after submittal without prior written consent by the Project Resident. The Department will review and provide comments to the Contractor within 14 days of receipt of the DTM submittal

105.6.2.3 Survey Work Plan The Contractor shall provide a Survey Work Plan to the Department prior to, or at, the preconstruction meeting.

The Survey Work Plan shall include:

- A. Make and model of equipment and software used for project layout.
- B. Make and model of equipment and software used for machine guidance and control.
- C. Manufacturer-stated specifications for vertical and horizontal accuracy attainable by the equipment.
- D. Equipment calibration procedures and date of last calibration.
- E. Narrative of methodology used to establish any additional horizontal or vertical project control points. Field notes for new vertical control shall be submitted to the Department.
- F. Site Calibration (Localization) and control verification procedures, including a timetable and tolerances. A Site Calibration report shall be submitted to the Department, including the values of calculated residuals of each point used in the calibration.
- G. Type and locations of base stations to be used, including methodology for establishing on-site base broadcast positions and localization procedures used for off-site bases.
- H. Describe methodology used to overcome Real Time Kinematic (RTK) signal losses in a portion or portions of the project, and methodology to ensure signals for both inspection operation areas and construction operation areas (i.e. multiple bases operating simultaneously)
- I. Describe procedures used to integrate vertical refinement equipment (i.e. laser); including the process of determining and verifying transmitter set-up location and communicating any necessary adjustments to the machine control equipment.
- J. Name(s) and qualifications of the Contractor's designated on-site surveyor(s) or engineer(s) responsible for performing the project layout.
- K. Design software and version used to develop the Digital Terrain Model (DTM).

The Department will review and provide comments to the Contractor within 7 days of receipt of the Survey Work Plan.

105.6.2.4 Department Verification The Contractor shall furnish a Global Navigation Satellite System (GNSS) or Global Positioning System (GPS) Rover and/or Robotic Total Station (RTS) equipment to the Department with the same capabilities as those used by the Contractor or other approved method, such as reference staking, to allow the Department to independently verify the accuracy of the work, as approved by the Department.

This equipment referred to above shall be compatible with the system(s) used by the Contractor and be provided to the Project Resident prior to the Contractor commences Work using electronic layout methods. This equipment shall stay in the possession of the Department for the duration of the project and shall be returned, in good condition, to the Contractor upon final acceptance of the field work. Any augmented features (such as laser refinement) used by the Contractor shall be included in the features available on the equipment provided to the Department.

The Contractor shall provide manufacturer-certified training on the use of the GNSS, GPS, and/or RTS equipment and the Contractor's systems to Department project personnel prior to beginning any Work. This training is for the purpose of providing Department project personnel with an understanding of the equipment, software, and electronic data being used by the Contractor.

105.6.2.5 Field Layout Specifications All Work accomplished through electronic layout methods and/or machine control must meet the same accuracy requirements as the conventional grading construction standards detailed in the Standard Specifications. The contractor shall not use GNSS, GPS, or RTS equipment for a construction activity that requires a greater precision than the machine's capability as per the manufacturer's recommendation.

105.6.2.6 Basis of Payment No payment shall be made by the Department for the Contractor's elected use of electronic methods of project location layout and control. Any delays arising from the operation of GNSS, GPS, or RTS layout or machine control systems will not result in adjustment to the bid price or quantity of any construction items or be justification for granting any type of contract extension. Any costs incurred through incorrect use of GNSS, GPS, or RTS layout or machine control systems or re-work necessary through their use are the sole responsibility of the Contractor. Training of Department project personnel in the use of GNSS, GPS, or RTS will be paid on a reimbursable basis based on submitted invoices, without Contractor markup.

105.6.3 Survey Quality Assurance It is the Department's prerogative to perform construction survey quality assurance. Construction survey quality assurance is generally defined as an independent check of the Contractor's construction survey quality control. The construction survey quality assurance process may involve physically checking the Contractor's construction survey layout using independent survey data, or may involve reviewing the construction survey quality control written documentation. If the Department elects to physically check the Contractor's survey layout, the Contractor's designated surveyor may be required to be present. The Department will provide a minimum notice of 48 hours to the Contractor, whenever possible, if the Contractor's designated surveyor's presence is required. Any errors discovered through the quality assurance process shall be corrected by the Contractor, at no additional cost to the Department.

105.6.4 Boundary Markers The Contractor shall preserve and protect from damage all monuments or other points that mark the boundaries of the Right-of-Way or abutting parcels

that are outside the area that must be disturbed to perform the Work. The Contractor shall indemnify, defend, and hold harmless the Department from all claims to re-establish the former location of all such monuments or points, including claims arising from 14 MRSA § 7554-A. For a related provision, see Section 104.3.11 - Responsibility for Property of Others.

### 105.7 Working Drawings

105.7.1 General The Contractor shall provide all necessary Working Drawings to the Department for review. The Contractor shall not allow final assembly or fabrication of structural units before the Department completes its review of the applicable Working Drawings and comments on them. The Contract price shall include the cost of furnishing and revising all Working Drawings.

The Department's review of and comment on Working Drawings may be limited to basic Contract requirements relating to design compliance and Material type(s). Such review shall not relieve the Contractor of responsibility under the Contract, including the overall correctness of Working Drawings, including Engineering and mathematical computations, shop fits, and field connections.

105.7.2 Review Times The Contractor's Schedule of Work shall allow the Department the following review and comment times prior to the start of production. For a related provision, see Section 107.4 - Scheduling of Work.

First Submission: 21 Days or 1 day per drawing, whichever is greater.

Second Submission: 10 Days or 1/2 day per drawing, whichever is greater.

Each subsequent submission: 10 Days or 1/2 day per drawing, whichever is greater.

The above review times shall be doubled for submittals that include design computations.

The Department may combine separate submissions of analytically common elements of Work and require the per-drawing review times set forth above when it determines that the Contractor has divided Working Drawings into separate submissions for the purpose of avoiding said per-drawing review times.

Delay caused by exceeding the time periods listed above will be analyzed in accordance with Section 109.5 - Adjustments for Delay.

105.7.3 Cost of Review The Department will review the first and second submission at no cost to the Contractor. For subsequent submissions, the Department will charge the

Contractor a rate of \$75 per person-hour of review. Such costs will be deducted from amounts otherwise due the Contractor.

105.7.4 Submittal Requirements The Contractor shall indicate the order of preference for review and return of Working Drawings and organize all Drawings in the order of their importance.

The Contractor shall submit 3 sets of Drawings or electronic copy to the Resident.

All submittals shall use the same system of units as that used in the Department's Plans.

105.7.5 Review Standards and Procedures If the first submission does not meet accepted industry standards for Working Drawings or Engineering design Drawings and Specifications, as determined by the Department, the entire submission will be returned without review and will be recorded as the first submission. When resubmitted, the review time requirements shall be those applicable to a first submission.

One set of reviewed Working Drawings will be marked with comments and returned to the Contractor. The Contractor shall then revise its Working Drawings accordingly. Except as provided otherwise in the Contract, the Contractor shall furnish the Department with 2 reproducible copies of the final Working Drawings before construction of the element(s) depicted in the Working Drawing(s).

#### 105.8 Environmental Requirements

105.8.1 Temporary Soil Erosion and Water Pollution Control The Contractor shall provide continuous and effective soil erosion and water pollution control in compliance with Section 656 - Temporary Soil Erosion and Water Pollution Control.

#### 105.8.2 Permit Requirements

A. Permits Granted To Department Permits are to be included in or incorporated by reference into the Bid Documents. If Permits are not so included and the Contractor is aware the Work will affect a regulated resource such as water bodies or wetland, the Contractor shall notify the Department before Bidding. For a related provision, see Section 102.5.2 - Bidder's Duty to Notify Department If Ambiguities Discovered.

The Contractor is responsible for complying with all Permit conditions. If the Contractor desires to modify or seek interpretation of any permit granted to the Department, it must coordinate any such requests through the Department.

B. All Other Permits Except as expressly provided otherwise in the Contract, the Contractor, at its expense, shall procure all other environmental or land use Permits, licenses, or other permissions that are necessary or appropriate to perform the Work. At the time of application, the Contractor shall provide the Department with notice of all



applications for such Permits, licenses, or other permissions, and upon request, a copy of all such applications. For a related provision, see Section 104.3.2 - Furnishing of Other Property Rights, Licenses, and Permits.

### 105.8.3 Wetland and Waterbody Impacts

A. General Prohibition Except as specifically allowed by the Contract, there shall be no permanent or temporary impacts to water bodies or wetlands identified on the Plans or otherwise known to the Contractor. For a related provision, see Section 656.3.4 – “Water Pollution Control Requirements.”

B. Wetlands Outside Project Limits If the Contractor desires to conduct an activity that can disturb the soil in an area that is outside the Project Limits, but is contiguous or in close proximity to such Limits, the area first must be examined and analyzed by a qualified wetlands specialist in order to determine whether wetlands exist, and if so, to delineate them. The Contractor must notify the Department of all such examinations and analyses and the results thereof. Wetlands so delineated must not be impacted unless properly permitted.

Any fill Material generated from this Project shall not be placed, stored, or disposed of in a wetland at an off-site location unless the Contractor provides the Department with written evidence that all Permits necessary for such use have been obtained. Such evidence must be signed by the Owner of such site and otherwise acceptable to the Department.

C. Temporary Structures Temporary or permanent impacts to wetlands are prohibited without proper permitting or modification to existing Permits. Temporary Structures in a waterbody must comply with any Contract provisions regarding Instream Work.

105.8.4 Hazardous Materials If the Contractor encounters any condition that indicates the presence of uncontrolled petroleum or hazardous Materials, the Contractor shall immediately stop Work, notify the Department, treat any such conditions with extreme caution, and secure the area of potential hazard to minimize health risks to workers and the public, and to prevent additional releases of contaminants into the environment. Such conditions include the presence of barrels, tanks, unexpected odors, discoloration of soil or water, an oily sheen on soil or water, excessively hot earth, smoke, or any other condition indicating uncontrolled petroleum or hazardous Materials. The Contractor shall continue Work in other areas of the Project unless otherwise directed by the Department. The Contractor shall utilize approved vendors and comply with all federal, State, and local laws concerning the handling, storage, treatment, and disposal of uncontrolled petroleum or hazardous Material. If the condition meets the definition of a Differing Site Condition under Section 109.4.1, the Contractor may be eligible for an Equitable Adjustment.

105.8.5 Dredge Spoils (Dredge Materials) Unless otherwise provided in the Contract, dredge spoils may not be used as fill within the Project Limits. Any use or disposal of dredge spoils must be in accordance with all applicable federal and State laws.

#### 105.8.6 Pit or Quarry Requirements

General Pits or quarries that are sources of Material for the Project, including loam fields, shall meet the requirements of this Section 105.8.6. The Contractor must procure an Agreement from the Owners of such sources stating that the Owners will comply with these requirements. If requested by the Department, the Contractor will provide the Department with a copy of such Agreement. The Contractor shall provide the Resident with the center of the source GPS coordinate pairs (latitude and longitude) in decimal degrees (DD.DDDDDD), name, and town in which the source is located.

Excavation Requirements Surface Material stripped from the pit shall be stored to allow for restoration of the pit. The Contractor shall not excavate from pit faces that are vertical or have an overhang. The Contractor must stop excavating within a 2 horizontal to 1 vertical slope 10 feet inside of a property line of a deposit, even though the Material within the pit may have a steeper angle of repose, except when an additional Agreement is reached with an adjacent property Owner to allow the extension of a pit onto the adjacent property Owner's land. The Contractor must insure that hazards such as steep pit faces and ponds are protected by flattening slopes or by erecting suitable fencing.Rehabilitation If the pit is licensed by MDEP or LURC, the Contractor shall follow the rehabilitation provisions of said license. In the absence of such license requirements, the Contractor shall follow local Municipal Land Use Ordinances pursuant to Gravel Pit Operations. In the absence of such Ordinances, or if the Ordinances do not address rehabilitation of pits, the Contractor and Landowner shall agree, in writing, to the scope of rehabilitation of the pit. This agreement shall be signed by both parties. A copy of the agreement shall be submitted to the Resident.

105.8.7 Environmental Non-compliance - Remedies and Costs The Contractor shall be in non-compliance if it, or Subcontractors at any tier, fail to comply with the terms of this Contract or, pursuant to Section 104.3.7 - Laws To Be Observed, any applicable environmental or land use law or regulation, including Project specific permit conditions.

If the Contractor is in non-compliance, the Department may, at its discretion:

- A. Withhold all Progress Payments, or any portion thereof, during the period the Contractor is in non-compliance;
- B. Remedy such non-compliance using State forces or another Contractor and deduct all costs incurred by the Department from Progress Payments. Such costs include direct costs, Project Engineering costs, and Contractor costs from amounts otherwise due the Contractor, and/or



C. Suspend the Work for cause and without cost or liability to the Department. Said suspension shall continue until the Contractor has addressed all non-compliance issues as directed by the Department.

The Contractor shall be responsible for any fines and penalties assessed by environmental or land use regulatory agencies due to such non-compliance. Such penalties may be withheld from amounts otherwise due the Contractor. For related provisions, see Sections 108.5 - Right to Withhold Payments and 108.9.3 - Amounts Due the Department.

105.9 Historic and Archaeological Considerations Unless otherwise provided in the contract, the Contractor is approved to construct the project in accordance with the contract plans. This in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. § 470 f), the Regulation (36 CFR Part 800), and the 2004 Section 106 Maine Programmatic Agreement.

Changes during construction that vary from the project contract plans must be approved by the Department. These changes could have adverse effects to Historic Resources, as well as jeopardize federal funding.

If the Contractor or any subcontractor discovers any object of potential historic archaeological or other historic interest, all Work that could disturb the object will immediately cease and will not resume until investigation of the object and related deposits have been completed, and if necessary recovered. The Contractor will notify the Department immediately if any such object is discovered. (The first indications of such an object may be burial grounds or campsites of Native Americans that reveal the bones of the dead and implements. Also the exposure of marine fossils or shells found mainly in clay deposits, as well as, exposure of dumps in landfill areas, abandoned campfire sites, and building foundations.)

Any Delay of the Contractor's operations resulting from the above discoveries will be analyzed in accordance with the Department Standard Specification Section 109.5 – Adjustment for Delay, except that in no event will such Delay be a Compensable Delay.

The Contractor is notified of 27 MRSA § 371, which provides that the State owns all artifacts, specimens, and material that are found on, in, or beneath State-controlled lands.

#### 105.10 Equal Opportunity and Civil Rights

105.10.1.1 Disadvantaged Business Enterprises Program The Department has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the United States Department of Transportation (USDOT), 49 CFR Part 26. The Department receives federal financial assistance from USDOT, and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26. The Department is responsible for determining the eligibility of and certifying DBE firms in Maine.

A DBE is defined as a for-profit business that is owned and controlled by one or more socially and economically disadvantaged person(s). For the purpose of this definition:

1. “Socially and economically disadvantaged person” means an individual who is a citizen or lawful permanent resident of the United States and who is Black, Hispanic, Native American, Asian, Female; or a member of another group or an individual found to be disadvantaged by the Small Business Administration pursuant to Section 3 of the Small Business Act.
2. “Owned and controlled” means a business that is:
  - a. A sole proprietorship legitimately owned and controlled by an individual who is a disadvantaged person.
  - b. A partnership or limited liability company in which at least 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).
  - c. A corporation or other entity in which at least 51% of the voting interest and 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).

The disadvantaged group owner(s) or stockholder(s) must possess control over management, interest in capital, and interest in earnings commensurate with the percentage of ownership. If the disadvantaged group ownership interests are real, substantial, and continuing and not created solely to meet the requirements of this program, a firm is considered a bona fide DBE.

105.10.1.2 Commercially Useful Function The Department will count expenditures of a DBE contractor toward the DBE Goal only if the DBE is performing a commercially useful function (“CUF”) on that Contract. A DBE performs a CUF when it is responsible for execution of the Work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Credit will be given only when the DBE meets all conditions for a CUF. Credit for labor will be given in accordance with the responsibilities outlined in the Contract. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the DBE firm is to be paid under the Contract is commensurate with the work it is actually performing and DBE credit claimed for its performance of the work, and other relevant factors.

If, while the DBE is performing under the Contract, the DBE purchases supplies or rents equipment from the Contractor, the costs of such supplies or rentals do not count toward the DBE goal as defined in Section 105.10.1.3.

A current listing of certified DBEs that may wish to participate in the highway construction program and the scope of work for which they are certified can be found at <http://www.maine.gov/mainedot/civilrights/dbe.htm>. Credit will be given for the value described by a DBE performing as:

- A. A Contractor; 100% of actual value of work performed by own workforces.
- B. An approved subcontractor; 100% of work performed by own workforces.
- C. An owner-operator of construction equipment; 100% of expenditures committed.
- D. A manufacturer; 100% of expenditures committed. The manufacturer must be a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor. Brokers and packagers shall not be regarded as manufacturers.
- E. A regular dealer; 60% of expenditures committed. A regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public. For purposes of this provision a “Broker” is a DBE that has entered into a legally binding relationship to provide goods or services delivered or performed by a third party. Brokers and packagers shall not be regarded as regular dealers.
- F. A bona fide service provider; 100% of reasonable fees or commissions. Eligible services include professional, technical, consultant, or managerial, services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for the performance of the contract. Eligible services also include services provided by agencies providing bonding and insurance specifically required for the performance of the contract.
- G. A trucking, hauling, or delivery operation. 100% of expenditures committed when trucks are owned, operated, licensed, and insured by the DBE and used on the contract and, if applicable, includes the cost of the self-supplied materials and supplies. 100% of expenditures committed when the DBE leases trucks from another DBE firm, including an owner-operator. 100% of reasonable fees or commissions the DBE receives as a result of a lease arrangement for trucks from a non-DBE, including an owner-operator.
- H. Any combination of A through G.

105.10.1.3 Race-neutral Goals The Department is required to set an annual goal (approved on a three year basis) for DBE participation in Federal-aid projects (the “DBE Goal”) pursuant to 49 CFR 26.53. In order to fulfill that goal, bidders are encouraged to utilize DBE businesses certified by the Department. The Department seeks to meet the established DBE goal solely through race-neutral means. *Race-neutral* DBE participation occurs when a DBE is awarded a prime contract through customary competitive procurement procedures, is awarded a subcontract on a contract that does not carry a DBE contract goal, or wins a subcontract from a Contractor that did not consider its DBE status in making the award. A DBE/subcontractor Utilization Proposed Form is required to be included in bid documents.

The Department will analyze each project and create a Project Availability Target (PAT), based on a number of factors, including project scope, available DBE firms, and firms certified in particular project work. Each bid will request that the contractor attempt to meet the PAT. This PAT is developed to assist contractors to better understand what the Department expectations are for a specific project. The PAT is not a mandate but an

assessment of what each project can bear for DBE participation. The Department anticipates that each contractor will make the best effort to reach or exceed this PAT for the project.

105.10.1.4 Race-conscious Project Goals If it is determined by the Department that the annual DBE goal will not be met through *race-neutral* means, the Department may implement *race-conscious contract goals* on some projects. Race-conscious contract goals are goals that are enforceable by the Department and require that the Contractor use good faith effort as defined in 49 CFR 26.53 (“Good Faith Efforts”) to achieve the goal set by the Department for that particular project. If race-conscious means are implemented on a project, the Contractor must comply with the requirements of 49 CFR 26.51 and 26.53.

At the time of the bid opening, all Bidders shall submit with their bid a Disadvantaged Business Enterprise (DBE) Commitment Form provided by the Department. This form will list the DBE and non-DBE firms that are proposed to be used during the execution of the Work. The list shall show the name of the firm, the item/material/type of work involved, and the dollar amount of work to be performed. The dollar total of each commitment shall be totaled and a percentage determined.

If the project goal is not met, acceptable documentation showing all Good Faith Efforts (“GFE”) made to obtain participation may be required in order to award the project. Failure to provide the required listing with the dollar participation total or acceptable documentation of GFE to obtain DBE participation within 3 Days after the bid opening date will be considered a lack of responsiveness on the part of the low bidder. Rejection of the low bid under these circumstances will require the low bidder to surrender the Proposal Guaranty to the Department. The submission and approval of the above forms does not constitute a formal subcontract.

If for any reason during the progress of the Work the Contractor finds that DBEs included on the list are unable to perform the proposed work, the Contractor, with written release by the committed DBE or approval of the Department, may substitute other DBE firms for those named on the list. If the Contractor is able to clearly document its inability to find qualified substitute firms to meet the project goal, the Contractor may request in writing approval to substitute the DBE with a non-DBE firm. If at any time during the life of the Contract the Department determines that the Contractor is not fulfilling the goal or commitment(s) and is not making a GFE to fulfill the DBE requirement, the Department may withhold progress payments. Fulfillment of the goal percentage shall be determined by dividing the dollars committed to the DBEs by the actual contract dollars. These requirements are in addition to all other Equal Employment Opportunity requirements on Federal-aid contracts.

105.10.1.5 Certification of DBE attainment on Contracts The Department must certify that it has conducted post-award monitoring of all contracts to ensure that DBEs have done the work for which credit was claimed. The Department will certify these contracts through review of CUF forms, Elations sub-contract payment tracking as well as occasional

on-site reviews of projects and through the project's final closeout documentation provided by our Contracts Section.

105.10.1.6 Bidders' List Survey Pursuant to 49 CFR § 26.11 the Department is required to "create and maintain" a bidders list and gather bidder information on our construction/consultant projects. Contractors are required to maintain information on all subcontract bids submitted by DBE and Non-DBE firms and provide that information to the Department. The following information is required:

Firm name  
Firm address  
Firm status (DBE or non-DBE)  
Age of firm (years)  
Annual gross receipts amount as indicated by defined brackets on the survey form, i.e., \$500,000 to \$800,000

This information critical in determining the availability of DBE businesses relative to other businesses that do similar work. In addition, FHWA requires that the Department obtain this information.

105.10.2 Requirements Applicable to All Contracts Unless expressly provided otherwise in the Bid Documents, the provisions contained in this Section 105.10.1 apply to this Contract.

A. Maine Code of Fair Practices and Affirmative Action The Contractor must comply with the provisions of Maine's Code of Fair Practices and Affirmative Action, 5 MRSA § 781, et seq., and all regulations promulgated thereunder. This Code, found at 5 MRSA § 784(2), reads as follows.

"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, religious creed, sex, national origin, ancestry, age, sexual orientation, physical and/or mental disability. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, State that all qualified applicants will receive consideration for employment without regard to race, color, sexual orientation, religious creed, sex, national origin, ancestry, age, physical handicap, or mental handicap.

3) The Contractor will send to each labor union or representative of the workers with which he has a collective or bargaining Agreement, or other Contract or understanding, whereby he is furnished with labor for the performances of [sic] his Contract, a notice, to be

provided by the Contracting Department or agency, advising the said labor union or workers' representative of the Contractor's commitment under this Section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment.

4) The Contractor will cause the foregoing provisions to be inserted in all Contracts for any Work covered by this Agreement so that such provisions will be binding upon each Subcontractor.

5) Contractors and subcontractors with contracts in excess of \$50,000 will also pursue in good faith affirmative action programs."

B. Maine Human Rights Act The Contractor must comply with the provisions of Maine's Human Rights Act, 5 MRSA § 4551, et seq., and all regulations promulgated thereunder. This Act provides, among other things, that it is unlawful discrimination for any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, physical or mental disability, religion, age, ancestry or national origin, or sexual orientation except when based on a bona fide occupational qualification.

C. EEO Notice to Labor Sources Contractors and Subcontractors that are required by Maine's Code of Fair Practices and Affirmative Action or by federal law to notify a labor union or a representative of workers with whom the Contractor or the Subcontractor has a collective bargaining agreement, contract, or understanding through which labor is furnished must provide notice on the letter shown on this page below. The letter must be written on the Contractor's or Subcontractor's letterhead stationery. A list of Maine Department of Labor Career Center Job Service Centers follows the form below.

To: \_\_\_\_\_  
(Union, employment agency or employee's representative)

\_\_\_\_\_  
(Address)

Subject: Equal Employment Opportunities on

State Project No.: \_\_\_\_\_

Federal Aid Project No.: \_\_\_\_\_

Location: \_\_\_\_\_

Description of Work: \_\_\_\_\_

For Work related to the construction of the above listed Project to be performed under State Contract No.: \_\_\_\_\_, I have pledged to provide equal employment opportunities without regard to race, color, religion, sex, national origin, sexual orientation, or disability. This pledge applies to all employees and applicants for employment in connection with:

- Hiring, Placement, Upgrading, Transfer or Demotion
- Recruitment, Advertising or Solicitation for Employment
- Treatment During Employment
- Rates of Pay or Other Forms of Compensation
- Selection for Training, Including Apprenticeship
- Layoff or Termination

Inquiries and complaints should be addressed to:

President's Committee on Equal Employment Opportunity  
Washington, D.C. 20425

Signed: \_\_\_\_\_

\_\_\_\_\_  
(Title)

For: \_\_\_\_\_

\_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Dated)



**Maine Department of Labor  
Career Centers & Job Service Centers**

Augusta Career Center

21 Enterprise Drive, Suite 2  
109 State House Station  
Augusta, ME 04333-0109  
Toll Free Phone: 1-800-760-1573  
Local Phone: (207) 624-5120  
Fax No: (207) 287-6236  
TTY Users Call Maine Relay 711  
Email: [augusta.careercenter@maine.gov](mailto:augusta.careercenter@maine.gov)

Bangor Career Center

45 Oak Street, Suite 3  
Bangor, ME 04401-7902  
Toll Free Phone: 1-888-828-0568  
Local Phone: (207) 561-4050  
Fax No: (207) 561-4066  
TTY Users Call Maine Relay 711  
Email: [bangor.careercenter@maine.gov](mailto:bangor.careercenter@maine.gov)

Calais Career Center

1 College Drive  
Calais, ME 04619-0415  
Toll Free Phone: 1-800-543-0303  
Local Phone: (207) 454-7551  
Fax No: (207) 454-0349  
TTY Users Call Maine Relay 711  
Email: [calais.careercenter@maine.gov](mailto:calais.careercenter@maine.gov)

Lewiston Career Center

5 Mollison Way  
Lewiston, ME 04240-5805  
Toll Free Phone: 1-800-741-2991  
Local Phone: (207) 753-9001  
Fax No: (207) 783-5301  
TTY Users Call Maine Relay 711  
Email: [lewiston.careercenter@maine.gov](mailto:lewiston.careercenter@maine.gov)

Presque Isle Career Center

66 Spruce Street, Suite 1  
Presque Isle, Maine 04769-3222  
Toll Free Phone: 1-800-760-1572  
Local: (207) 474-4914  
Fax (207) 760-6350  
TTY Users Call Maine Relay 711  
Email: [presqueisle.careercenter@maine.gov](mailto:presqueisle.careercenter@maine.gov)

Skowhegan Career Center

98 North Ave  
Skowhegan, ME 04976-1923  
Toll Free Phone: 1-800-760-1572  
Local Phone: (207) 474-4950  
Fax No: (207) 474-4914  
TTY Users Call Maine Relay 711  
Email: [skowhegan.careercenter@maine.gov](mailto:skowhegan.careercenter@maine.gov)

Springvale Career Center

9 Bodwell Court  
Springvale, ME 04083  
Toll Free: 1-800-343-0151  
Local: (207) 324-5460  
Fax: (207) 324-7069  
TTY Users Call Maine Relay 711  
Email: [springvale.careercenter@maine.gov](mailto:springvale.careercenter@maine.gov)

Wilton Career Center

865 US Route 2E  
Wilton, ME 04294-6649  
Toll Free Phone: 1-800-982-4311  
Fax No: (207) 645-2093  
TTY Users Call Maine Relay 711  
Email: [wilton.careercenter@maine.gov](mailto:wilton.careercenter@maine.gov)



D. Prevention of Sexual Harassment It is the policy of the Department that all parties have a right to Work in an environment free from harassment, including sexual harassment. Maine State Law and the Department prohibit any and all forms of sexual harassment in the Workplace, on the job site, or that may have an effect on the Work environment.

THEREFORE:

The Contractor hereby agrees to the following requirements in order to provide and promote a non-discriminatory Workplace free of sexual harassment.

1. No Contractor, supervisor, or employee shall allow repeated, objectionable, or unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks that cause discomfort, humiliation, or are in any way offensive to the recipient, or that interfere with the quality of any employee's Work environment in any way. Furthermore, no one on any job shall threaten or insinuate either explicitly or implicitly that any employee's submission to or rejection of sexual advances will have any effect on that person's employment, job assignment, training, evaluation, promotion, wages, or any other term or condition of employment or future job opportunity. Under Maine State Law, Contractors are responsible for ensuring and maintaining a Work environment that is free from sexual harassment.

2. Any Contractor whose employee sexually harasses another employee shall be subject to disciplinary action. Contractors that fail to adequately and expeditiously investigate sexual harassment claims will be subject to enforcement proceedings and such sanctions as are authorized by law. Contractors are required to provide detailed written reports to the Department when so requested that shall describe the investigation and corrective actions taken by Contractors in all instances of sexual harassment allegations.

Contractors shall also be responsible for ensuring that no retaliation, reprisal, or intimidation be directed against any complainant or other employee who provides information to any person or agency investigating an allegation or complaint of sexual harassment.

E. Certification of Continuing EEO Efforts The Contractor must certify, to the best of its knowledge and belief, that the Contractor has made and will continue to make a good-faith effort to comply with all applicable State requirements on equal employment opportunity, non-discrimination, and affirmative action, including employment of women, minorities, and disadvantaged as journeyed trade workers. Contractors not having achieved company-wide trade employment goals of 6.9% for females and 0.5% for minorities will, where indicated by Contract and to the maximum extent practical, comply with Section 660 - On-the-Job Training.

105.11 Other Federal Requirements Prior to payment by the Department, the Contractor shall provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of the Buy America provisions of 23 CFR § 635.410, as amended. Such certification shall also include (1) a statement that the iron or steel product or component was produced entirely within the United States, or (2) a statement that the iron or steel product or component was produced within the United States, except for minimal quantities of foreign steel and iron valued at \$ (actual value).

All manufacturing processes must take place within the United States. Manufacturing begins with the initial melting and mixing, and continues through the coating stage. Any process that modifies the chemical content, the physical size and shape, or the final finish is considered a manufacturing process, including rolling, extruding, machining, bending, grinding, drilling, and coating. “Coating” includes epoxy coating, galvanizing, painting, or any other coating that protects or enhances the value of the material.

A “Buy America” Certification is required from each manufacturer, fabricator, supplier, subcontractor that engages in “manufacturing” as defined above.

“Buy America” does not apply to raw materials (iron ore and alloys), scrap, pig iron, or processed, pelletized, and reduced iron ore.

## SECTION 106 - QUALITY

Scope of Section This section contains general provisions related to the Quality of Work, including roles, standards, Materials, Quality Control, Acceptance, Non-conforming Work, and warranties. When specified in the contract, the Department will use the quality level analysis in this Section to determine quality-based pay adjustments.

### 106.1 Roles Regarding Quality

106.1.1 Cooperation The Contractor and the Department shall work cooperatively within their respective Quality Assurance (QA) responsibilities to produce and document a high quality project, meeting or exceeding the quality requirements of the Contract.

106.1.2 Role of the Contractor The Contractor is responsible for all aspects of the quality of construction, including labor, equipment, materials, incidentals, processes, construction methods, and QC. When required by the Contract, the Contractor shall develop, submit for approval, implement, and adjust if necessary a QCP for the Work specified.

106.1.3 Role of the Department The Department is responsible for providing a quality design, approving the QCP, and assuring that the Contractor is following the QCP. The Department will perform acceptance sampling, testing, and inspection for any element of the

Work to ensure compliance with the QCP and contract requirements. The Department may also perform IA and Verification sampling and testing at any time.

## 106.2 Quality Standards

106.2.1 Conformity with Contract The Contractor shall comply with all Contract requirements in performance of the Work. Any required plans such as QCP, the TCP, and the SEWPCP, as approved by the Department, are binding upon the Contractor as Contract requirements.

106.2.2 Conformity with Other Standards Unless otherwise provided in the Contract, all Work shall conform to the following standards, as applicable.

- A. Department
- B. AASHTO
- C. ASTM
- D. AREMA
- E. Standard conditions and special conditions contained in any permit
- F. MUTCD
- G. American with Disabilities Act (ADA)

106.2.3 Industry Standards If there is no applicable standard set forth in this Contract for a particular item of Work, then the Contractor shall perform that item of Work in accordance with industry standards prevailing at the time of the Bid.

## 106.3 Material Quality

106.3.1 General Materials and manufactured products incorporated into the Work shall be new unless otherwise specified, free from defect, and in conformity with the Contract.

When Material is fabricated or treated with another Material or where any combination of Materials is assembled to form a finished product, any or all of which are covered by specifications, the Department may reject the finished product if any of the components do not comply with the specifications.

Title to all hot mix asphalt to be furnished by the Contractor shall pass to the Department immediately before installation. The preceding sentence shall not in any way affect any right or remedy the Department has relating to the quality of the material, installation, or workmanship.

106.3.2 Quality Requirements Materials shall meet the requirements of the Contract at the time they are incorporated into the work. The Contractor shall sample and test proposed sources of materials, using accepted procedures and equipment no more than 60 Days prior to use. Materials shall not be used in the Work until passing results are obtained and provided to the Department. The Contractor shall provide the Resident with a copy of the passing test results, including the source of the Material as identified in Section 105.8.6.

The Contractor shall perform QC inspection, sampling, testing, and documentation in accordance with the Contract requirements. For work without specific QC requirements, the Contractor shall perform inspection, sampling, and testing as the Contractor deems necessary to ensure adequate process control and end product quality.

The Contractor shall provide all facilities, Equipment, and Material samples required by the Department to conduct Acceptance, Verification, and IA sampling and testing.

The Contractor shall supply Materials and perform work using methods and Equipment in a manner that will not degrade the quality of the Materials. Materials with prior approval that become unfit for use or fall outside the specification limits will result in the affected product being declared Non-conforming Work. For a related provision, see Section 106.8 - Non-conforming Work.

The cost of the Contractor's QC activities and its costs for furnishing facilities, testing Equipment, and samples for the Department's Acceptance and IA activities are incidental to the related Pay Items.

#### 106.3.3 Sources

A. General The Contractor shall furnish all materials and products required to complete the work, except as otherwise provided in the Contract. Unless otherwise specified in the Contract, the Contractor shall use only those products contained on the Department's Qualified Products List (available on the Department internet site) if a list is established for that type of product or Material. For any material on the Department qualified products list that is being considered for incorporation into the Work, it shall be the Contractor's responsibility to verify that the Material is appropriate for the use being considered.

B. Department Furnished Materials The Contract may specify that the Department will furnish certain Materials. If the Contractor reasonably believes that the Department-furnished Material is deficient in any way, the Contractor shall immediately notify the Department before accepting delivery. After acceptance of delivery, the Contractor is responsible for all risk of loss of Department-furnished Material. The cost of inspecting, handling, and storing Department-furnished Materials after delivery is incidental to the Contract. The Department may deduct from amounts otherwise due the Contractor all costs necessary to make good any shortage, damage, or deficiencies discovered after the Contractor accepts delivery, including any demurrage or car hire charges.

106.3.4 Storage The Contractor shall store Materials to preserve their quality and fitness for the work. Materials shall not be stored under or in close proximity to Highway Structures unless the Contractor receives written permission from the Resident. If Materials fail to meet the requirements of the Contract, the Materials will be rejected. The Department may inspect stored materials at any time. The Contractor shall locate stored Materials to facilitate their prompt inspection. The Department may approve portions of land within the

Right-of-Way for storage purposes and for the placing of the Contractor's equipment, but the Contractor shall provide any additional land required without cost to the Department. The Contractor shall not use private property for storage purposes without written permission of the owner, with copies of the written permission furnished to the Department upon request. The Contractor shall restore all storage sites, whether within the Right-of-Way or on private property, to original condition at the completion of the project, without cost to the Department.

106.3.5 Handling The Contractor shall handle all Materials in a manner that preserves their quality and fitness for the work. The Contractor shall transport Aggregates in tight vehicles to avoid loss or segregation of Materials after loading and measuring.

106.3.6 Unacceptable Materials The Department may reject Materials not conforming to the Specifications at any time, and the Contractor shall remove them immediately from the project site unless otherwise instructed by the Department. The Contractor shall not store or use rejected materials on any Department project.

106.3.7 Sampling and Testing Qualified Departmental personnel may take samples of Materials for Acceptance Testing. Work in which Material is used without the Department's approval will be at the Contractor's sole risk and the work will be considered Non-conforming Work. Unless otherwise designated, the Department's testing costs will be at the expense of the Department. Materials being used are subject to inspection, testing, or rejection at any time. The Department will furnish copies of test reports to the Contractor upon request.

The Contractor is responsible for the quality of construction and materials incorporated into the work. The Contractor shall perform all necessary QC inspection, sampling, and testing in accordance with the approved QCP. If a QCP is not required, the Contractor is still responsible for all QC necessary for a high quality project. The Contractor shall not rely on the results of the Department's Acceptance Testing being available for process QC.

The Contractor may observe the Department's sampling and testing activities. If the Contractor observes a deviation from the specified sampling or testing procedures, then the Contractor shall describe the deviation to the Department immediately and document the deviation in writing within 24 hours to preserve its ability to dispute the sample.

The Department will randomly sample and test items designated for Acceptance in accordance with the procedure specified for that item. The Department may also sample and test at any time if the Material appears defective or when the Department determines that a change in the process or product has occurred. Acceptance Tests will govern in all cases for determination of pay factors without regard to QC tests, unless otherwise specified in the Contract.

When directed by the Department, the Contractor shall sample and test any Material that appears inconsistent with similar Material being sampled, unless such Material is

voluntarily removed and replaced or corrected by the Contractor. All sampling shall be in accordance with Department, AASHTO, or ASTM procedures as specified for the material being sampled.

#### 106.4 Quality Control

106.4.1 General When required elsewhere in the Contract, the Contractor shall develop, submit, and implement a Quality Control Plan (QCP), approved by the Department, for those items of work specified that will result in work that meets or exceeds the quality requirements of this Contract. Regardless of whether a QCP is required, Quality Control for all work is the Contractor's responsibility.

A. Submittal Within 21 Days of Contract Execution or at least 30 Days before any related work is to be performed, the Contractor shall submit three copies of its QCP to the Department.

B. Approval Within 14 Days of Receipt, the Department will determine if the QCP is in accordance with the requirements of this Section 106.4 and (1) notify the Contractor that its QCP is approved or (2) return it for any needed revisions. If returned for revision, the Contractor shall resubmit three copies of its revised QCP as provided above within 7 Days and the Department will have 7 Days from receipt of the revised plan to notify the Contractor whether its QCP is approved or again requires revision. Additional iterations will occur in a like manner until the Department approves the Contractor's QCP. Failure to submit an approvable QCP shall not be cause for any adjustment to compensation or time.

C. Standard QC Plans For items included in Section 400 – Pavements, the Contractor may choose to submit a standard QCP that includes any items common to all of its plants and paving operations. Standard plans shall be submitted to the Quality Assurance Engineer by March 1 of . The standard plan will apply to all projects constructed by the Contractor until a new standard plan is approved the following year. In addition to the standard plan, the Contractor must submit a supplemental QCP for each project that includes any required items and project specific details not covered by the standard plan. Approval of both standard and Project-specific QCPs shall be as done outlined in paragraph B above, with the exception that the initial 14-Day review period for standard plans will begin on March 1, and that the supplemental Project-specific QCP shall be submitted a minimum of 14 Days prior to any related work being performed with an initial review period of 7 Days.

Upon final approval of the QCP, the Contractor shall provide 5 bound copies or an electronic version to the Department. All Contractor QC personnel shall also be issued their own copy of the approved QCP. The Contractor shall communicate the applicable contents of the approved QCP to all Contractor and Subcontractor personnel involved in completing the work items covered by the QCP.

The Contractor's QCP shall consist of plans, procedures, responsibilities, authority, and an organizational structure that demonstrates that an effective level of QC will exist and



that the finished products will comply with all Contract requirements. The Contractor shall provide all necessary QC inspection, sampling, and testing to implement the QCP. The QCP shall include an organizational structure and reporting requirements that demonstrate that QC personnel have sufficient independence to allow them to be primarily concerned with quality, as opposed to schedule and budget.

The individual administering the QCP shall be a full-time employee of or a consultant engaged by the Contractor. The individual shall have full authority to institute any and all actions necessary for the successful implementation of the QCP.

The Department will not sample or test for process control or assist in controlling the Contractor's production operations. The Contractor shall provide QC personnel and testing Equipment capable of providing a quality product that meets or exceeds the Contract requirements. Continued production of Non-conforming Work for a reduced price, instead of making adjustments to the production operations to bring work into conformance, is not allowed.

106.4.2 Quality Control Plan Requirements The QCP shall include, at a minimum, the following:

- Construction items covered by the QCP, as specified in the Contract
- Sampling location and techniques
- Tests and test methods
- Testing frequencies
- Inspection frequencies
- Detailed description of production and placement Equipment and methods
- Documentation procedures, including:
  - Inspection and test records
  - Temperature measurements
  - Accuracy, calibration, or recalibration checks performed on production or testing Equipment

The QCP shall identify the Contractor's QC personnel, including the company official ultimately responsible for the quality of the Work. The Department's QCP approval process may include inspection of testing Equipment and a sampling and testing demonstration by the Contractor's QC inspector(s) to assure an acceptable level of performance.

106.4.3 Testing Qualified technicians in laboratories approved by the Department shall perform all QC testing covered by the QCP. Technician qualifications shall be as described in the Contract for the corresponding item of Work.

Laboratory facilities shall be clean, and all equipment shall be maintained in proper working condition. The Department shall be permitted unrestricted access to inspect the Contractor's laboratory facility. The Department will advise the Contractor in writing of any noted deficiencies concerning the laboratory facility, equipment, supplies, or testing

personnel and procedures. Deficiencies shall be grounds for the Department to order an immediate stop to incorporating materials into the work until deficiencies are corrected. Work already in place affected by QC deficiencies is Non-conforming Work.

The Contractor shall maintain original documentation of all inspections, tests (including all associated data such as measurements, weights, dial readings, etc. used in the completion of the test), and calculations used to generate reports. The records shall indicate the nature, number, and type of deficiencies found, the quantities approved and rejected, and the nature of corrective actions taken. The Contractor shall maintain standard testing Equipment and qualified personnel as required by the Contract.

The QCP shall include the testing and record keeping requirements for each item as contained in the Contract. The number preceding each item refers to the item and specification number in the Standard Specifications. When testing requirements are not specified, the Contractor shall perform all testing and record keeping as recommended by the manufacturer, vendor, or supplier.

If an item is required to be in the QCP but the Contract does not specify testing requirements, the Contractor shall propose testing requirements in the QCP.

The Contractor shall maintain Control Charts in a manner and location acceptable to the Department. At a minimum, the Control Charts shall identify the project number, the Pay Item number, each test parameter, the upper and lower control limits applicable to each test parameter, and the running average of the last three Contractor test results. The Contractor shall use the Control Charts as part of a process control system for identifying production and Equipment problems and for identifying potential quality reductions before they occur. Acceptable Control Charts are part of the approved QCP.

After final records review, the Contractor will certify in writing to the Department that the project has been constructed and inspected, and all materials have been tested in accordance with the Contract. All Paving certs shall be submitted on the Paving Company's Letterhead.

106.4.4 QC Inspector Qualifications When a QCP is required, the Contractor's QC Inspectors shall hold all certifications from MCTCB or NETTCP that apply to the items included in the QCP. The Department may require the Contractor to remove Inspectors from the project who are not certified as required or who are otherwise unqualified or unable to fulfill their duties in a good and workmanlike manner.

106.4.5 Inspection Requirements The QCP shall cover all construction operations on the site and at off-site production facilities, keyed to the proposed construction materials, sequence and schedule. The QCP shall also identify QC personnel (including qualifications), procedures, controls, tests, records, and forms to be used.

The Contractor shall provide a copy of each completed QC report to the Department by 1:00 PM on the Day following each construction activity, unless other arrangements are



made with the Resident. Failure to provide this report will constitute non-compliance with the QCP and the Contract.

If an item is required to be in the QCP but QC Inspection requirements are not specified in the Contract, the Contractor shall propose inspection and record keeping requirements for such items in the QCP.

106.4.6 QCP Non-Compliance The Contractor shall comply with the approved QCP and shall take all other steps necessary to assure a high quality project.

Failure by the Contractor to comply with the approved Quality Control Plan will result in a letter describing the violation, a mandatory work suspension, and a reduction in payment as shown in Table 106.4A below. The Contractor shall submit a letter to the Department that details the corrective action made to address the violation(s) in its Quality Control Plan. Work may resume when the Department is satisfied the corrective action will result in adherence to the Quality Control Plan.

Table 106.4 A - Quality Control Pay Reduction

Quality Control Plan Value*		Pay Reduction		
From More Than	To and Including	1st	2nd	3rd & Subsequent
\$0	\$500,000	\$1,000	\$2,000	\$4,000
\$500,000	\$1,000,000	\$2,000	\$4,000	\$8,000
\$1,000,000	\$3,000,000	\$5,000	\$10,000	\$20,000
\$3,000,000	and more	\$10,000	\$20,000	\$40,000

\* The Quality Control Plan Value is the total Bid value of all items covered by a Quality Control Plan, as detailed in the applicable specification or Special Provision.

During all periods of the Contractor's failure to follow the approved QCP, no positive pay incentives will be calculated or paid if the Department accepts the Material.

Pay reductions for failure to comply with the approved QCP are cumulative, and the Department will deduct any pay reductions due from amounts otherwise due the Contractor. These pay reductions are intended to encourage the Contractor to comply with its approved QCP, and are not necessarily related to the quality of the material provided.

106.5 Quality Assurance The Department will conduct Quality Assurance by:

- Review of QC Reports provided by the Contractor.
- Monitoring Contractor compliance with the QCP.
- Random inspection of production, placement, and workmanship
- Randomly accompanying the Contractor's inspector during QC Inspections/Testing.
- Acceptance Verification and IA sampling and testing of Materials or completed Work.

The Department's objective is a high quality project through a cooperative effort with the Contractor. Items that are to be buried, covered, are of high cost, or affect the long-term durability of the Work will receive extra attention in the QA effort.

Unacceptable Work found by the Department's Inspector will be brought to the attention of the Resident, who will determine what corrective action the Contractor will need to take. The Contractor shall schedule the corrective work with the Resident, and both the QC and Department's Inspectors will witness the corrective action. Failure of the Contractor to correct unacceptable Work in a timely manner, as determined by the Department, may result in the withholding of progress payment(s) or suspension of the Work, or both. The Contractor will not be eligible for either additional monetary compensation or a time extension should they fail to correct. If necessary for protection of the Work or for public convenience, the Department may accomplish corrective Work by other means and deduct the cost from any monies due the Contractor.

The Department may review and obtain copies of all QC test reports (including original test data), inspections reports, and control charts at all reasonable times without cost to the Department.

If the Department decides to inspect the Materials or operations at the plant, then the following conditions shall be met:

- A. The Department shall have the cooperation and assistance of the Contractor and the producer with whom the Contractor has arranged for the Materials.
- B. The Department shall have full access at all times to the parts of the plant(s) that are involved with the manufacture and production of the Materials being furnished.
- C. If required, the Contractor shall arrange for an approved testing laboratory building for the sole use of the Department. The building shall be located near the plant and conform to the requirements of Section 639 - Engineering Facilities.
- D. The Contractor shall provide any needed equipment for safe access to plant stockpiles, equipment, and operations.

106.6 Acceptance The Department is responsible for determining the acceptability of the Work. Acceptance of the Material is based on the visual inspection of the construction, monitoring of the Contractor's QCP, and Acceptance Test results. Acceptance sampling and testing is the responsibility of the Department (unless alternate procedures are specified) except for furnishing facilities, testing equipment, transportation, and Material samples as required.

Acceptance of Hot Mix Asphalt Pavement will be based on Method A, B, or C Statistical Acceptance, or Method D (Small Quantity - Product Verification) as specified. The method of acceptance for each item is defined in Special Provision, Section 403, Hot Mix Asphalt Pavement. When items of Hot Mix Asphalt Pavement are not so designated,

Method A will be utilized whenever there are more than 1000 tons per Hot Mix Asphalt Pavement item, and Method B will be utilized when there are less than or equal to 1000 tons per Hot Mix Asphalt Pavement item.

Acceptance of structural concrete will be based on Method A or B Statistical Acceptance, or Method C Verification. Items to be accepted under Method A, Method B, or Method C are defined in Special Provision, Section 502, Structural Concrete Acceptance Methods. When items of cast-in-place concrete are not so designated, Method B will be used when there are more than 10 cubic yards and Method C will be used when there are 10 cubic yards or less.

The Department may reject Material that appears to be defective based on visual inspection. No payment will be made for the Materials rejected by the Department.

Prior to Contractor's knowledge of the sample location, the Contractor may remove and replace defective Material at no cost to the Department. The Department will sample, test, and evaluate new Material for acceptance.

A. Statistical Acceptance methods utilize the Quality Level Analysis and Pay Factor Specifications described in Section 106.7 - Quality Level Analysis and in Tables 106.7 A, along with specific information contained in the Divisions 400 and 500 Specifications, including Section 401 - Hot Mix Asphalt, Section 402 - Pavement Smoothness, and Section 502 - Structural Concrete.

Pay Items specified to be sampled and tested under Statistical Acceptance methods will be evaluated for acceptance in accordance with the guidelines specified for that Pay Item. All Acceptance Test results for a lot as defined in the Specification will be analyzed collectively and statistically by the Quality Level Analysis - Standard Deviation (Specification Conformance Analysis) Method using the procedures listed to determine the total estimated percent of the lot that is within specification limits. Quality Level Analysis (Specification Conformance Analysis) is a statistical procedure for estimating the percent compliance with a specification and is affected by shifts in the arithmetic mean ( $\bar{x}$ ) and by the sample standard deviation ( $s$ ). Analysis of test results will be based on an Acceptance Quality Level (AQL) of 90.0, unless otherwise specified. AQL may be viewed as the lowest percent within the specification limits of a material that is acceptable as a process average and receive 100% pay. The Department will exclude test results on Material not incorporated in the Work from the Quality Level Analysis.

For items evaluated using Quality Level, and in the Department's sole discretion, a lot with a Quality Level of less than 50 percent within limits will be either (1) removed and replaced with acceptable Material at the Contractor's expense, or (2) accepted and paid for at a Pay Factor determined by the Department. The Department may also reject Material with a Quality Level at or above this level, but such Material will be removed and replaced by the Contractor at the Department's expense.

B. Items not designated for Statistical Acceptance will utilize Product Verification testing to validate the quality of the material incorporated into the Project. The Contractor shall provide the Department with a Certification Letter that indicates that the material supplied complies with the Specifications. Test results representative of the certified material shall be attached to the letter.

The Department will randomly sample and test the certified Material for properties noted in Table 1 of Section 502 - Structural Concrete or Table 8 of Section 401.20 - Acceptance. Material will be subject to rejection as noted in Structural Concrete Section 502.195 - Quality Assurance Method C Concrete or Hot Mix Asphalt, Section 401.204 - Quality Assurance Method D.

### 106.7 Quality Level Analysis

106.7.1 Standard Deviation Method Standard Deviation Method procedures are as follows:

A. Determine the arithmetic mean ( $\bar{x}$ ) of the test results:

$$\bar{x} = \frac{\sum x_i}{n}$$

Where  $\sum$  = summation of

$x_i$  = individual test value

$n$  = total number of test values

B. Compute the sample standard deviation (s):

$$s = \text{Square root of } \frac{\sum (x_i - \bar{x})^2}{n-1}$$

Where  $\sum$  = summation of

$x_i$  = individual test values

$\bar{x}$  = mean test value

$n$  = total number of test values

C. Compute the upper quality index ( $Q_U$ ):

$$Q_U = \frac{USL - \bar{X}}{s}$$

Where USL = upper specification limit.

D. Compute the lower quality index ( $Q_L$ ):

$$Q_L = \frac{\bar{X} - LSL}{s}$$

Where LSL = lower specification limit.

E. Determine  $P_U$  (percent within the upper Specification limit which corresponds to a given  $Q_U$ ) from Table 106.7 A.

Note: If a USL is not specified,  $P_U$  will be 100. If the mean test value is equal to the USL, then  $P_U$  will be 50 regardless of the computed value of  $s$ .

F. Determine  $P_L$  (percent within the lower Specification limit which corresponds to a given  $Q_L$ ) from Table 106.7 A.

If the mean test value is equal to the USL, then  $P_U$  will be 50 regardless of the computed value of  $s$ .

Note: If a LSL is not specified,  $P_L$  will be 100.

G. Determine the Quality Level (total percent within Specification limits).

$$\text{Quality Level} = (P_U + P_L) - 100$$

H. Determine the Pay Factor (PF) for the lot using the Quality Level from Step G.  
For items included in Sections 401 – Hot Mix Asphalt:

$$\begin{aligned} \text{Method A: } & PF = [55 + (\text{Quality Level} * 0.5)] * 0.01 \\ \text{Method B: } & PF = [70 + (\text{Quality Level} * 0.33)] * 0.01 \\ \text{Method C: } & PF = [55 + (\text{Quality Level} * 0.5)] * 0.01 \end{aligned}$$

For items included in Section 402 – Pavement Smoothness:

$$PF = [55 + (\text{Quality Level} * 0.5)] * 0.01$$

For items included in Section 502 – Structural Concrete:

$$\begin{aligned} \text{Method A: } & PF = [55 + (\text{Quality Level} * 0.5)] * 0.01 \\ \text{Method B: } & PF = [70 + (\text{Quality Level} * 0.33)] * 0.01 \end{aligned}$$

I. Determine the Composite Pay Factor (CPF) for each lot.

$$CPF = \frac{[f_1(PF_1) + f_2(PF_2) + \dots + f_j(PF_j)]}{\sum f}$$

Where  $f_j$  = price adjustment factor listed in the specifications for the applicable property.

$PF_j$  = Pay Factor for the applicable property.

$\Sigma f$  = Sum of the “f” (price adjustment) factors.

Note: Numbers used in the above calculations shall be carried to significant figures and rounded according to AASHTO Standard Recommended Practice R-11.

106.7.2 Statistical Outliers This procedure specifies how outlying observations in sample test results will be evaluated for their statistical significance. The Department will use this procedure for only those items that are specified to be checked for outlying observations.

An outlying observation or “outlier” is one that appears to deviate markedly from other sample test values in the lot.

When specified, the procedure will determine whether any value is a statistical outlier. If a test result is found to be an outlier, the QA Engineer will investigate the outlying value to determine if it should be retained or discarded. The investigation will include but not be limited to an examination of all available test data and inspection reports relating to the questionable test result, possible additional testing, and discussions with appropriate Contractor and Department personnel. If the investigation concludes that an assignable cause cannot be determined for the outlying value, it will be discarded; otherwise, it will be retained for pay factor determination.

#### Procedure

- A. Calculate the sample average ( $\bar{x}$ ) and standard deviation(s) of all the values in the lot.
- B. Find the value “t” from Table 106.7 B corresponding to the sample size for the lot.
- C. Determine D (the total allowable deviation from the average) by multiplying t by s.
- D. Establish values for MAX and MIN by the following:

$$\text{MAX} = \bar{x} + D \quad \text{MIN} = \bar{x} - D$$

- E. Any value greater than MAX or less than MIN is an outlier. The Department will investigate any outlying values before determining the Pay Factor for that lot.

Table 106.7 A - Quality Level Analysis by the Standard Deviation Method

PU Or PL %*	Upper Quality Index QU or Lower Quality Index QL														
	n = 3	n = 4	n = 5	n = 6	n = 7	n = 8	n = 9	n = 10 to n = 11	n = 12 to n = 14	n = 15 to n = 18	n = 19 to n = 25	n = 26 to n = 37	n = 38 to n = 69	n = 70 to n = 200	n = 201 to n = x
100	1.16	1.50	1.79	2.03	2.23	2.39	2.53	2.65	2.83	3.03	3.20	3.38	3.54	3.70	3.83
99		1.47	1.67	1.80	1.89	1.95	2.00	2.04	2.09	2.14	2.18	2.22	2.26	2.29	2.31
98	1.15	1.44	1.60	1.70	1.76	1.81	1.84	1.86	1.91	1.93	1.96	1.99	2.01	2.03	2.05
97		1.41	1.54	1.62	1.67	1.70	1.72	1.74	1.77	1.79	1.81	1.83	1.85	1.86	1.87
96	1.14	1.38	1.49	1.55	1.59	1.61	1.63	1.65	1.67	1.68	1.70	1.71	1.73	1.74	1.75
95		1.35	1.44	1.49	1.52	1.54	1.55	1.56	1.58	1.59	1.61	1.62	1.63	1.63	1.64
94	1.13	1.32	1.39	1.43	1.46	1.47	1.48	1.49	1.50	1.51	1.52	1.53	1.54	1.55	1.55
93		1.29	1.35	1.38	1.40	1.41	1.42	1.43	1.44	1.44	1.45	1.46	1.46	1.47	1.47
92	1.12	1.26	1.31	1.33	1.35	1.36	1.36	1.37	1.37	1.38	1.39	1.39	1.40	1.40	1.40
91	1.11	1.23	1.27	1.29	1.30	1.30	1.31	1.31	1.32	1.32	1.33	1.33	1.33	1.34	1.34
90	1.10	1.20	1.23	1.24	1.25	1.25	1.26	1.26	1.26	1.27	1.27	1.27	1.28	1.28	1.28
89	1.09	1.17	1.19	1.20	1.20	1.21	1.21	1.21	1.21	1.22	1.22	1.22	1.22	1.22	1.23
88	1.07	1.14	1.15	1.16	1.16	1.16	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17
87	1.06	1.11	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.13	1.13
86	1.04	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08
85	1.03	1.05	1.05	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04
84	1.01	1.02	1.01	1.01	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	0.99	0.99	0.99
83	1.00	0.99	0.98	0.97	0.97	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.95	0.95	0.95
82	0.97	0.96	0.95	0.94	0.93	0.93	0.93	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
81	0.96	0.93	0.91	0.90	0.90	0.89	0.89	0.89	0.89	0.88	0.88	0.88	0.88	0.88	0.88
80	0.93	0.90	0.88	0.87	0.86	0.86	0.86	0.85	0.85	0.85	0.85	0.84	0.84	0.84	0.84
79	0.91	0.87	0.85	0.84	0.83	0.82	0.82	0.82	0.82	0.81	0.81	0.81	0.81	0.81	0.81
78	0.89	0.84	0.82	0.80	0.80	0.79	0.79	0.79	0.78	0.78	0.78	0.78	0.77	0.77	0.77
77	0.87	0.81	0.78	0.77	0.76	0.76	0.76	0.75	0.75	0.75	0.75	0.74	0.74	0.74	0.74
76	0.84	0.78	0.75	0.74	0.73	0.73	0.72	0.72	0.72	0.71	0.71	0.71	0.71	0.71	0.71
75	0.82	0.75	0.72	0.71	0.70	0.70	0.69	0.69	0.69	0.68	0.68	0.68	0.68	0.68	0.67
74	0.79	0.72	0.69	0.68	0.67	0.66	0.66	0.66	0.66	0.65	0.65	0.65	0.65	0.64	0.64
73	0.76	0.69	0.66	0.65	0.64	0.63	0.63	0.63	0.62	0.62	0.62	0.62	0.62	0.61	0.61
72	0.74	0.66	0.63	0.62	0.61	0.60	0.60	0.60	0.59	0.59	0.59	0.59	0.59	0.58	0.58
71	0.71	0.63	0.60	0.59	0.58	0.57	0.57	0.57	0.57	0.56	0.56	0.56	0.56	0.55	0.55
70	0.68	0.60	0.57	0.56	0.55	0.55	0.54	0.54	0.54	0.53	0.53	0.53	0.53	0.53	0.52
69	0.65	0.57	0.54	0.53	0.52	0.52	0.51	0.51	0.51	0.50	0.50	0.50	0.50	0.50	0.50
68	0.62	0.54	0.51	0.50	0.49	0.49	0.48	0.48	0.48	0.48	0.47	0.47	0.47	0.47	0.47
67	0.59	0.51	0.47	0.47	0.46	0.46	0.46	0.45	0.45	0.45	0.45	0.44	0.44	0.44	0.44
66	0.56	0.48	0.45	0.44	0.44	0.43	0.43	0.43	0.42	0.42	0.42	0.42	0.41	0.41	0.41
65	0.52	0.45	0.43	0.41	0.41	0.40	0.40	0.40	0.40	0.39	0.39	0.39	0.39	0.39	0.39
64	0.49	0.42	0.40	0.39	0.38	0.38	0.37	0.37	0.37	0.37	0.36	0.36	0.36	0.36	0.36
63	0.46	0.39	0.37	0.36	0.35	0.35	0.35	0.34	0.34	0.34	0.34	0.34	0.33	0.33	0.33
62	0.43	0.36	0.34	0.33	0.32	0.32	0.32	0.32	0.31	0.31	0.31	0.31	0.31	0.31	0.31
61	0.39	0.33	0.31	0.30	0.30	0.29	0.29	0.29	0.29	0.29	0.28	0.28	0.28	0.28	0.28
60	0.36	0.30	0.28	0.27	0.27	0.27	0.26	0.26	0.26	0.26	0.26	0.26	0.26	0.25	0.25
59	0.32	0.27	0.25	0.25	0.24	0.24	0.24	0.24	0.23	0.23	0.23	0.23	0.23	0.23	0.23
58	0.29	0.24	0.23	0.22	0.21	0.21	0.21	0.21	0.21	0.21	0.20	0.20	0.20	0.20	0.20
57	0.25	0.21	0.20	0.19	0.19	0.19	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18
56	0.22	0.18	0.17	0.16	0.16	0.16	0.16	0.16	0.16	0.15	0.15	0.15	0.15	0.15	0.15
55	0.18	0.15	0.14	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
54	0.14	0.12	0.11	0.11	0.11	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10
53	0.11	0.09	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08
52	0.07	0.06	0.06	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
51	0.04	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.02
50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Note: For negative values of QU or QL, PU or PL is equal to 100 minus the table value for PU or PL. If the value of QU or QL does not correspond exactly to a figure in the table, use the next higher figure.

\* Within limits for positive values

Table 106.7 B - Values of t

<b>n</b>	<b>t</b>
3	1.155
4	1.481
5	1.715
6	1.887
7	2.020
8	2.126
9	2.215
10	2.290
11	2.355
12	2.412
13	2.462
14	2.507
15	2.549
16	2.585
17	2.620
18	2.651
19	2.681
20	2.709
21	2.733
22	2.758
23	2.781
24	2.802
25	2.822
26	2.841
27	2.859
28	2.876
29	2.893
30	2.908

106.7.3 Early Termination of Lots In the event a lot in progress is terminated prematurely before the Department is able to take the number of acceptance samples required by the test method specified in the Contract, the following will apply as applicable unless otherwise detailed in the specifications for the item:

A. If three or more samples have been taken, then payfactors will be generated using the available samples results for the lot.

B. If the termination was requested by the Contractor and approved by the Department prior to three samples being taken, then each property's payfactor will be set to 0.80.

C. If the termination was initiated by the Department prior to three samples being taken, then each property's payfactor will be set to 1.00 for each property.

#### 106.8 Non-conforming Work



106.8.1 Substantially Conforming Work If the Department determines the Work substantially conforms to the Contract, the Department may accept the Non-conforming Work and may require a credit to the Department to be deducted from amounts otherwise due the Contractor. If the Department and Contractor cannot agree to the amount of the credit, the work shall be Unacceptable Work.

106.8.2 Unacceptable Work The Contractor shall remove, replace, or otherwise correct all Unacceptable Work as directed by the Department at the expense of the Contractor, without cost or liability to the Department.

106.8.3 Unauthorized Work Prior to Final Acceptance and upon written order by the Department, the Contractor shall remove or uncover Unauthorized Work. After examination, the Contractor shall rebuild the Unauthorized Work to a condition conforming to the Contract at the expense of the Contractor and without cost or liability to the Department. Any Delay arising from Unauthorized Work shall be an Inexcusable Delay.

106.8.4 Uninspected Work Prior to Final Acceptance and upon written order by the Department, the Contractor shall uncover Uninspected Work. After examination, the Contractor shall rebuild the Uninspected Work to a condition conforming to the Contract. If the Department determines that the Uninspected Work is acceptable, the uncovering, removing, and rebuilding will be paid as Extra Work, and any resulting Delay shall be an Excusable Delay. If the Department reasonably determines that the Uninspected Work is unacceptable, the uncovering, removing, and rebuilding shall be at the Contractor's expense and any resulting Delay shall be an Inexcusable Delay.

## 106.9 Warranty Provisions

106.9.1 Warranty By Contractor The Contractor unconditionally warrants and guarantees that the project will be free from Warranty Defects for one year from the date of Physical Work Complete. For a related provision, see Section 107.9.3 – Notices / Final Inspection / Physical Work Completion.

If the Department discovers any Warranty Defects during the warranty period, the Contractor agrees to promptly perform all remedial Work at no additional cost or liability to the Department.

For a related provision regarding obligations regarding plantings, see Section 621.0036 - Establishment Period.

106.9.2 Warranty Definitions Notwithstanding any other provision of the Contract, the following words or phrases have the following definitions for the purposes of the Contractor's warranty obligation under this Contract.

Warranty Defects Warranty Defects are conditions that result from Material, manufacture, or workmanship and that are not in conformity with the Contract or with industry standards applicable to the Work prevailing at the time of submission of the Bid.

Warranty Defects do not include (A) normal wear and tear, (B) conditions caused by occurrences clearly beyond the Contractor's control and not attributable to material, manufacture, or workmanship, and (C) Defects in landscape items that are the subject of Landscape Establishment Period Obligations. Examples of such excepted occurrences might be fires, floods, abnormally poor weather for the site of work, accidents, improper use, improper maintenance, vandalism, or acts of God.

Emergency "Emergency" means necessary for public safety or convenience, as determined by the Department.

Promptly Unless there is an Emergency, "Promptly" means in the first construction season after the Contractor has been notified of the defect(s), but always within one year of Receipt of such notice. In case of an Emergency, Promptly means within 48 hours.

Remedial Work "Remedial Work" means all Work necessary to make the item in like new condition as reasonably determined by the Department and performed in accordance with the Contract and in a good and skillful manner. Remedial Work includes all design, permitting, project management, supervision, materials, and labor, including erosion control and traffic control.

106.9.3 Remedial Work Procedure and Requirements Within 30 Days of being notified of any Warranty Defects, the Contractor shall submit to the Department for approval a Remedial Work Plan, including the scope of Work, conceptual Work methods, schedule, construction phasing, and other significant aspects of the corrective Work (the "Work Plan"). Unless otherwise provided by the Department in writing, any Work commenced prior to Department's approval of the Work Plan will be at the Contractor's sole risk. Before starting any on-site Work, the Contractor shall deliver to the Department certificates of insurance complying with Section 110.3 - Insurance. If the estimated cost of Remedial Work exceeds \$100,000, the Contractor shall provide Performance and Payment Bonds complying with Section 110.2 - Performance and Payment Bonds.

If (A) the Contractor fails to submit a Remedial Work Plan, (B) the Contractor does not comply otherwise with written instructions from the Department, or (C) a State of emergency exists in which Delay would cause serious risk of loss or damage, then the Department may perform or contract for such remedial work and the Contractor will be responsible for all claims, costs, damages, losses, and expenses arising out of such work, including fees and charges of engineers, consultants, attorneys, dispute resolution professionals, and court costs.

Upon a final inspection satisfactory to the Department, the Department will issue a written acceptance of the Remedial Work. The Contractor warrants and guarantees all Remedial Work to be free from Warranty Defects for one year after such acceptance.

106.9.4 Other Warranty Provisions The Contractor hereby assigns to the Department the right to enforce all manufacturer's warranties or guarantees on all Materials,

Equipment, or products purchased for the Work that exceed the nature or duration of the warranty obligations assumed by the Contractor under this Contract.

The Performance Bond and/or Warranty Bond required by Section 110.2.1 - Bonds shall cover all warranty obligations of the Contractor provided by this Contract. Final Acceptance by the Department does not relieve the Contractor of any warranty obligations provided by this Contract.

The Contractor agrees that the warranty obligations provided by this Contract shall be reported as an outstanding obligation in the event of bankruptcy, dissolution, or the sale, merger, or cessation of operations of the Contractor.

## SECTION 107 - TIME

Scope of Section This Section contains general time-related provisions of the Contract, including the Contract Time, allowable Work times, schedule requirements, Liquidated Damages, and Project Closeout.

107.1 Contract Time and Contract Completion Date All Work must be Complete by the Contract Completion Date and within the Contract Time. Unless expressly provided otherwise by the Department in writing, the Contract Time shall be all time between the Contract Execution and the Completion date specified in the Contract, and any authorized extensions.

107.2 Commencement of Contract Time and Work Unless provided elsewhere in this Contract or in writing from the Department, the Contract Time will commence on the date of Contract Execution. For related provisions, see Sections 101.2 - Definitions of Contract Execution and 103.8 - Execution of Contract by the Department.

Unless specified otherwise, Work may commence upon Contract Execution, unless the Contractor has not secured and provided the Performance and Payment Bonds and Insurance Certificates required by Sections 103.5 - Award Conditions, 110.2 - Bonding, and 110.3 - Insurance. Any Work performed before the requirements of these sections are met is Unauthorized Work and is at the sole risk of the Contractor. Pursuant to Section 110.1 - Indemnification, the Contractor and Surety shall indemnify and hold harmless the Department from any claims arising from Work.

### 107.3 Allowable Work Times

107.3.1 General Work can be performed at any time except Sundays and Holidays, unless expressly specified otherwise in this Contract, including any applicable Permit conditions. If a Holiday occurs on a Sunday, the following Monday shall be considered a Holiday. Sunday or Holiday Work must be approved by the Department, except that the Contractor may work on Martin Luther King Day, President's Day, Patriot's Day, the Friday after Thanksgiving, and Indigenous Peoples Day without the Department's approval.

107.3.2 Night Work If the Contractor performs Work during periods of darkness, the Contractor shall comply with Contract requirements governing night Work. If the Contractor elects to perform Work during periods of darkness on its own initiative and without direction from the Department, then the Contractor shall also comply with all municipal ordinances affecting such Work, including noise ordinances. When pricing and scheduling the Work, the Contractor shall not assume that such non-directed night Work will be allowed. Accordingly, the Contractor shall not be entitled to any adjustment to either compensation or time due to its inability to secure any required municipal approvals.

107.3.3 Sundays and Holidays The Contractor shall not carry on construction operations on Sundays or Holidays unless (A) expressly specified otherwise in this Contract, (B) expressly authorized by the Department, or (C) necessary to avoid or eliminate a clear and immediate risk of significant bodily injury to any person.

107.3.4 Seasonal Work Restrictions The Contractor shall meet all seasonal restrictions on time of Work contained in the Contract, including all Permits.

#### 107.4 Scheduling of Work

107.4.1 General Duty of Contractor The Contractor is solely responsible for the planning and execution of Work in order to complete the Work within the Contract Time.

107.4.2 Schedule of Work Required At least 3 days before the pre-construction meeting and before beginning any on-site activities, the Contractor shall provide the Department with its Schedule of Work in a Critical Path Method (CPM) in the form of an activity on node (AON) diagram. This CPM schedule will become the basis for claims involving Delay. The Department will waive this CPM requirement for appropriate Contracts through a special provision. The Contractor shall plan the Work, including the activity of Subcontractors, vendors, and suppliers, such that all Work will be performed in Substantial Conformity with its Schedule of Work. The Schedule must include sufficient time for the Department to perform its functions as indicated in this Contract, including QA inspection and testing, approval of the Contractor's TCP, SEWPCP, and QCP, and review of Working Drawings.

At a minimum, the Schedule of Work shall show the major Work activities, milestones, durations, submittals and approvals, and a timeline. Milestones to be included in the schedule include (A) start of Work, (B) beginning and ending of planned Work suspensions, (C) Completion of Physical Work, and (D) Completion. If the Contractor plans to complete the Work before the specified Completion date, the Schedule of Work shall so indicate.

Any restrictions that affect the Schedule of Work such as paving restrictions or In-Stream Work windows must be charted with the related activities to demonstrate that the Schedule of Work complies with the Contract.

The Department will review the Schedule of Work and provide comments to the Contractor within 20 days of receipt of the Schedule of Work. The Contractor will make the requested changes and issue the finalized version to the Department.

107.4.3 Projected Payment Schedule The Contractor shall provide the Department with a Quarterly Projected Payment Schedule that estimates the value of the Work as scheduled, including requests for payment of Delivered Materials. The Projected Payment Schedule must be in accordance with the Contractor's Schedule of Work and prices submitted by the Contractor's Bid. The Contractor shall submit the Projected Payment Schedule as a condition of Award.

107.4.4 Schedule Revisions The progress of the Work shall be compared against the Schedule of Work at each Progress Meeting. If the Department determines that the Contractor's actual progress is not in Substantial Conformity with the Schedule of Work, then the Contractor shall either increase Project resources to get back on schedule or submit a revised Schedule of Work and Projected Payment Schedule to the Department for its review.

107.4.5 No Separate Payment Unless expressly provided otherwise, the costs for providing a Schedule of Work, a Projected Payment Schedule, and all revisions and updates are Incidental to the Contract.

#### 107.5 Suspension of Work

##### 107.5.1 Winter Suspensions

A. Start of Winter Suspension The Contractor may request in writing that the Department approve a Winter Suspension. If the Department determines that winter weather conditions make it impossible to perform all or specified portions of the Work, the Department will approve the Contractor's request with respect to such portions and set the start date of the Winter Suspension.

B. Monitoring and Communications During the Winter Suspension, the Contractor is responsible for monitoring weather conditions and requesting approval from the Department to resume Work as soon as possible. In any case, the Contractor shall notify the Project Manager or Resident 14 Days before the end date of the Winter Suspension specified in Section 107.5.1(C), being April 15th or May 1st, as applicable.

C. End of Winter Suspension Upon request by the Contractor or upon its own initiative, the Department may determine the end date of the Winter Suspension and the Contractor is responsible for resuming Work immediately after said end date. If the end date is not determined by the Department in writing, Winter Suspensions shall end on May 1st for Zone 1 and April 15th for Zone 2. For the purposes of the preceding sentence, Zone 1 means all areas north of Route 2 from Gilead to Bangor and Route 9 from Bangor to Calais and Zone 2 means all areas south of Zone 1, including Routes 2 and 9.

D. Impact on Liquidated Damages Liquidated Damages will not be assessed for any portion of a Winter Suspension that occurs after expiration of the Contract Time. Winter Suspensions will not otherwise affect the assessment of Liquidated Damages. For a related provision, see Section 107.7 - Liquidated Damages.

107.5.2 Suspensions Due To Uncontrollable Events Upon request of the Contractor or upon its own initiative, the Department may suspend the Work due to Uncontrollable Events. Any Delay related to such a suspension will be analyzed in accordance with Section 109.5 - Adjustments for Delay. For a related provision, see Section 101.2 - Definition of Uncontrollable Event.

107.5.3 Suspensions for Cause The Department may suspend the Work if the Contractor violates any provision of the Contract that may affect the quality, cost, timeliness or Conformity of the Work. Any Delay related to such a suspension will be an Inexcusable Delay. For a related provision, see Section 109.5 - Adjustments for Delay.

107.5.4 Suspensions for Convenience The Department may suspend the Work for any other reason it determines is in the best interest of the Department. Any Delay related to such a suspension will be analyzed in accordance with Section 109.5 - Adjustments for Delay.

107.5.5 Pre-Suspension Work If Work is to be suspended for an extended period of time, the Contractor shall store all Materials in a manner that does not obstruct the free and safe flow of vehicular, pedestrian, railroad, or marine traffic and that protects the Materials from damage. The Department may direct the Contractor to install guardrail or other traffic control devices necessary to protect the traveling public. The Contractor shall take all precautions to prevent damage or deterioration of the Work already performed, provide suitable Drainage of the Roadway by opening ditches and Shoulder drains, erecting temporary Structures, and providing temporary erosion control where necessary. The cost of such pre-suspension Work will be analyzed in accordance with Section 109.5 - Adjustments for Delay.

For related provisions, see Sections 104.2.6 - Right to Suspend Work, 105.4.4 - Maintenance During Suspension of Work, 107.7 - Liquidated Damages, and 109.5 - Adjustments for Delay.

107.6 Completion Incentives and Disincentives When provided in the Contract, financial incentives for early Completion and disincentives for late Completion will be added to or deducted from amounts otherwise due the Contractor. Incentives/Disincentives are separate and distinct from Liquidated Damages and Supplemental Liquidated Damages.

#### 107.7 Liquidated Damages

107.7.1 General The Department and the Contractor acknowledge that time is an essential element of the Contract, and that Delay in completing the Work beyond the designated completion date will result in damages, including but not limited to damages to



the State of Maine due to public inconvenience, obstruction to traffic, interference with business, as well as increased engineering, inspection, and administrative costs to the Department. The Department and the Contractor acknowledge the difficulty of making a precise determination of such damages and, as a result, they have agreed to a sum of money in the amount stipulated in the Contract that will be charged against the Contractor for each Calendar Day that the Work remains uncompleted after the expiration of the designated Completion date, not as a penalty but as Liquidated and Supplemental Liquidated Damages.

Except as expressly provided otherwise in this Contract, the Contractor or, in case of default, its Surety, shall owe the Department the per diem amount specified in Section 107.7.2 - Schedule of Liquidated Damages, as well as any per diem amount of Supplemental Liquidated Damages as specified in the Supplement Specifications, for each Calendar Day that any portion of the Work remains incomplete after the Contract Time has expired. Should the Contractor or its Surety fail to complete the Work by the Completion date, a deduction of the amount stipulated in the Contract as Liquidated and Supplemental Liquidated Damages will be made for each and every Calendar Day that such Work remains uncompleted. This amount will be deducted from any money due the Contractor or its Surety under the Contract, and the Contractor and its Surety will be liable for any Liquidated and Supplemental Liquidated Damages in excess of the amount due.

The Contractor acknowledges that the specified amounts per diem of Liquidated and Supplemental Liquidated Damages in the Standard Specifications and Supplemental Specifications, respectively (if applicable) are reasonable, and agrees to stipulate to their reasonableness in any suit for the collection of or involving the assessment of said damages. The damages referred to herein are intended to be and are cumulative, and will be in addition to every other remedy now or hereafter enforceable at law, in equity, by statute, or under the contract.

Permitting the Contractor to continue and finish the work or any part thereof after the expiration of the completion date shall in no way operate as a waiver on the part of the Department of its rights to assess and recover Liquidated and Supplemental Liquidated Damages, or any other rights, under the Contract.

For related provisions, see Sections 107.1 - Contract Time, 107.5.1(D) - Winter Suspensions - Impact on Liquidated Damages, and 109.5 - Adjustments for Delay.

107.7.2 Schedule of Liquidated Damages The specific per diem rates for Liquidated Damages are set forth below. By executing the Contract, the Contractor acknowledges that such an amount is not a penalty and that the daily amount set forth in the Contract is a reasonable per diem forecast of damages incurred by the Department due to the Contractor's failure to Complete the Work within the Contract Time.

Original Contract Amount		Per Diem Amount of Liquidated Damages
From	To and	Calendar
More Than	Including	Day

\$ 0	to	\$ 100,000.00	\$250.00
\$ 100,000.00	to	\$ 250,000.00	\$500.00
\$ 250,000.00	to	\$ 500,000.00	\$650.00
\$ 500,000.00	to	\$1,000,000.00	\$800.00
\$1,000,000.00	to	\$2,000,000.00	\$1,000.00
\$2,000,000.00	to	\$4,000,000.00	\$1,200.00
\$4,000,000.00	and	More	\$2,100.00

107.8 Supplemental Liquidated Damages Supplemental Liquidated Damages, if any, will be specified by Special Provision and are separate and distinct from Liquidated Damages. Supplemental Liquidated Damages will be deducted from amounts otherwise due the Contractor.

#### 107.9 Project Closeout

107.9.1 Final Cleanup and Finishing To prepare for Final Acceptance, the Contractor shall clean the Project and all ground, lawns, streams, Structures, and other areas adjacent to the Project of all rubbish, excess Material, temporary Structures, and Equipment. The ground shall be backfilled with Material that is generally the same as the surrounding Material, graded to drain properly, and finished such that the surface matches the surrounding surface (examples - loam and seed, compacted gravel, pavement). The Contractor must leave all areas impacted by the Work in a condition that is reasonably acceptable to the Department.

107.9.2 Notice / Inspection / Punch List The Contractor shall notify the Department in writing that it considers the Project complete. As soon as practicable thereafter, the Department will inspect the Work. If incomplete or unsatisfactory Work is noted, the Department will prepare a written list of all items that must be completed or corrected before the Physical Work is Complete ("Punch List"). The Contractor shall immediately take such measures as are necessary to complete all Punch List items.

107.9.3 Notices / Final Inspections / Physical Work Completion The Contractor shall notify the Department in writing that all Punch List items have been completed and/or corrected and that the Contractor considers the Project Complete. As soon as practicable thereafter, the Department will make another inspection of the Work. The Department and the Contractor will attend this inspection jointly. If incomplete or unsatisfactory Work is noted, the Department will prepare a revised Punch List (which may include items not on previous Punch List(s)) and the Contractor shall immediately take such measures as are necessary to complete the revised Punch List items. Additional iterations will occur in a like manner until the Department finds that the Physical Work is Complete and in Conformity with the Contract. If the Contractor has not already done so, the Contractor will Promptly remove all temporary traffic control devices.

107.9.4 Closeout Documentation The Department will notify the Contractor in writing that the Physical Work is Complete and in Conformity with the Contract and that the



Project will be Finally Accepted when the 106 Memo, Buy America Certification, Materials Certification and DBE Signoff, and any other documentation as requested in the Physical Work Complete letter are received from the Contractor. The Contractor shall deliver the Closeout documentation as requested in the Physical Work Complete letter to the Department within 30 Days of the date of the notification that the Physical Work is Complete. Liquidated Damages will cease to accrue upon the Completion of Physical Work. For a related provision, see Section 101.2 - Definition of Closeout Documentation.

107.9.5 Final Acceptance Within 75 Days of Final Acceptance by the Department, the Department will advise the Contractor in writing of the Final Quantities and any damages to be assessed for the Project. The Contractor shall resolve any Project issues that remain and provide the All Bills Paid and Request for Final Payment Letters to the Department within 30 Days. The Department will make Final Payment, including the release of all remaining retainage, and release any escrowed bid documents within 20 Days of receipt of the above letters, which complete the Closeout Documentation. For a related provision, see Section 108.8 - Final Quantity Voucher.

If the Contractor fails to resolve issues and deliver Closeout Documentation within the 30 Days provided in Section 107.9.5, the Department may provide a final notice informing the Contractor in writing that unless the Contractor Delivers all Closeout Documentation within 30 Days of the date of Receipt of final notice, the Contractor shall be in Default under the Contract. The Contractor shall become ineligible to Bid on any Department Contracts. The Department may then pursue all remedies provided by the Contract or by law, including withholding Final Payment. For a related provision, see Section 102.1.1 - Eligibility to Bid - Basic Requirements.

107.9.6 No Waiver of Legal Rights Final Acceptance does not preclude the Department from correcting any measure, estimate, or certificate made. The Department may recover from the Contractor or its Surety, or both, overpayments made due to failure to fulfill Contract obligations.

A waiver on the part of the Department of any breach of any part of the Contract is not a waiver of any other or subsequent breach.

The Contractor retains liability for latent Defects, fraud (or such gross mistakes as may amount to fraud), and warranty obligations.

## SECTION 108 - PAYMENT

Scope of Section This Section contains general provisions related to payment, including measurement of quantities, progress payment, retainage, the right to withhold payment, and other payment-related terms.

### 108.1 Measurement of Quantities for Payment

108.1.1 Use of Plan Quantities Payment for all items labeled in the Bid Documents as “Plan Quantity” will be based upon the estimated quantity for the Work described in the Bid Documents. The Contractor shall accept such payment as full and complete compensation for that item without physical measurement. Quantities included in the Plan Quantity amount but not accomplished will be calculated by the Department using standard estimating procedures and deducted from the plan quantity. Areas not included in the Plan Quantity amount but completed will be measured and added to the Plan Quantity. Upon mutual written Agreement by the Department and the Contractor through a Contract Modification, the estimated quantity of any item of Work may be used as the final quantity for that item without physical measurement.

108.1.2 General Measurement Provisions The Department will use the U.S. Customary system for all measurements unless the Contract utilizes the International System of Units (SI). Measurement of Bid Items shall include all resources necessary to complete the Pay Item of Work under the Contract. The Department will measure items for payment in accordance with the “Method of Measurement” provisions of the applicable Specification. For all items of Work, other than those paid for by lump sum, the Department shall determine the quantities accepted as the basis for Final Payment after the Physical Work is Completed.

108.1.3 Provisions Relating to Certain Measurements Unless expressly provided otherwise, the Department and the Contractor shall use the following general measurement provisions.

Lump Sum or Each “Lump Sum” payment is total reimbursement for all resources necessary to complete the item of Work. Quantities provided for items measured and paid by Lump Sum are estimated quantities and are provided for informational purposes only. There will be no additional payment made by the Department or reduction in payment to the Contractor if the actual, final quantities for items measured and paid by Lump Sum are different than the quantities estimated by the Department. The only exception to this rule is when an item is eliminated, in which case Standard Specification Section 109.2 - Elimination of Items would take precedence.

“Each” payment is payment per complete unit.

Length “Length” is defined as linear measurement parallel to the item base or foundation. A station is 100 feet.

Area “Area” refers to the length, as defined above, multiplied by the width, which is defined as the linear measurement perpendicular to the item base or foundation. When calculating area for payment, use horizontal, longitudinal, and plan (neat) transverse measurements for surface area computations. Make no deductions for individual fixtures having an area of 1 square yard or less. For purposes of the preceding sentence, “fixtures” means small subareas that do not receive Material(s) or on which no Work is performed.

Volume Measure Structures using plan (neat) or approved Contract Modification dimensions. Use the average end area method to compute excavation volumes. Use hauling vehicles approved by the Department when transporting Materials measured by volume. Measure materials at the point of delivery. Ensure the body shape allows contents to be accurately measured. Load and level vehicles to the lesser of their water level or legal capacity. Obtain the Department's approval to convert Materials specified for measure by mass to volume. Use specified conversion factors.

Measure water to the nearest gallon with calibrated tanks, distributors, certified scale weights, or water meters.

Measure bituminous materials by the gallon or ton.

Use net certified scale weights or certified rail car volumes. Correct for bituminous Material lost, wasted, or otherwise not incorporated in the Work. Correct net certified bituminous Material weights or volumes for loss or foaming when shipped by truck or transport.

Measure timber by the board foot. Base measurement on nominal widths and thicknesses and individual maximum lengths.

Mass One ton is 2,000 pounds. Use certified scales to determine mass (weight). Accept certified "car weights" for Material shipped by rail, except for Material to be subsequently processed in mixing plants. Obtain certified haul truck tares as specified. Each haul truck shall display a legible identification mark.

Measure cement by the pound or ton.

Accept nominal mass or dimensions for standard manufactured items unless otherwise specified.

Accept industry-established manufacturing tolerances, unless otherwise specified.

Measure Aggregate mass in the saturated surface dry condition.

The Contractor shall furnish and maintain weigh systems tested and certified by the State or use certified permanently installed commercial scales. The Contractor shall provide certifications after each set-up and before use or as requested by the Department. The weigh system shall be scaled after certification and display a certification stamp. Only mechanical or electronic scales shall be used.

The beams, dials, platforms, and other scale Equipment shall be arranged for safe and convenient viewing by the operator and inspector. Scales shall be tested for accuracy before use at a new site. Platform scales shall be level and with rigid bulkheads at each end. The Department will adjust quantities of Materials received on scales found to be outside of

specified tolerances, using a correction based on the last documented test within specified tolerances.

All materials that are measured or proportioned by weight shall be weighed on approved weighing systems. When a delivery slip is required for payment of Materials measured by weight, weighing, except for automatic ticket printer systems, shall be performed on approved platform truck scales by a Licensed Public Weighmaster furnished by the Contractor, in accordance with the following requirements.

(A) Licensed Public Weighmaster A Licensed Public Weighmaster shall be any person satisfying the requirements of the State Sealer of Weights and Measures and granted a license as a Public Weighmaster. Each Licensed Public Weighmaster shall provide him/her with an impression seal as required by the State Sealer and shall impress this seal upon delivery slips issued by him/her. When completed by a Licensed Public Weighmaster, delivery slips shall be considered as the Weight Certificates required by the Maine Weights and Measures Law, MRSA Title 10. The Weighmaster shall perform all duties required of him/her by law and the specifications.

(B) Weighing Trucks Tare weights of trucks hauling stone, bituminous mixes, and similar items shall be determined twice daily, once during the forenoon and once during the afternoon. The tare weight thus found shall be used to determine the net load until the next tare weighing of the empty truck. Tare weights of trucks hauling liquid and bituminous cement materials or other items not generally hauled on a repeat basis shall be determined immediately before being loaded and the weight thus found shall be used for that load only. The tare weight of a truck shall be defined as the weight of the empty vehicle, including the driver, but with no passengers.

(C) Platform Truck Weighing Systems An approved platform truck scale meeting the following requirements shall be provided, installed and maintained, when required, by the Contractor or be available to the Contractor at an approved nearby location:

- 1) The weighing system shall conform to the specifications, tolerances, and regulations for commercial weighing devices of the National Institute of Standards and Technology and shall be accurate within maximum tolerances of plus or minus 2 pounds for every 1000 pounds of load.

- 2) No auxiliary indicators, in combination with the beams or dial of the weighing system shall be used to increase the maximum allowable load above 105 percent of the manufacturer's rated capacity, as stated in the National Institute of Standards and Technology Handbook 44 S.1.7.

- 3) The platform of the weighing system shall be of sufficient size to accommodate the entire vehicle or combination of vehicles. If a combination of vehicles must be divided into separate units in order to be weighed, each unit shall be entirely disconnected before weighing and a separate weight certificate, delivery slip, or ticket shall be issued for each separate unit.

4) The value of the minimum graduation on the indicator of the scale shall not be greater than 20 pounds. All weighing shall be read and recorded to the nearest 20 pounds or one-hundredth ton.

5) The weighing system shall be set on concrete or other approved foundation. The recording mechanism of the scale shall be suitably housed or protected from weather.

6) The Contractor shall have the weighing system inspected and approved by the State Sealer of Weights and Measures or by a Repairman registered and approved by the State Sealer within a period of 12 months preceding the date of any weighing and again after each change of location.

(D) Check Weighing for Platform Truck Weighing System Check weighing shall be made on the weights and on the weighing in scales during production in the following manner:

1) At least twice during 5 days of production, in the presence of a State Inspector, a loaded truck that has been weighed and issued a weigh slip shall be turned and a new weighing made of the truck and load with the truck heading in reverse direction and at the opposite end of the weighing system platform from the first weighing. The new weight will be recorded. If the variation from the first weight is 0.2 percent or less, the fact will be so noted in the project records. However, if the variation exceeds 0.2 percent, the scales may not be used until rechecked and resealed by the State Sealer of Weights and Measures.

2) At least twice during 5 days of production a loaded truck that has moved off the weighing system will be intercepted, directed back to the scales, and reweighed under the supervision of a State Inspector.

3) At least twice during 5 days of production, in the presence of a State Inspector, a truck that has been emptied will be directed to the weighing system before being loaded at a time other than the normal tare weighing and weighed again for a check on the tare weight.

4) Check weighing will be on a plant basis and, although a plant may produce material for more than one project or Contract, check weighing will not be required for each project or Contract.

At least twice during 5 days of production, additional checks will be made occasionally at the discretion of the Engineer.

Claims by the Contractor for delays or inconvenience due to check weighing will not be considered.

(E) Reciprocal Agreements Weighing of materials on weighing systems located outside the State of Maine will be permitted for materials produced or stored outside the State when requested by the Contractor and approved by the Department. In order to be

approved, out-of-State weighing must be performed by a Licensed Public Weighmaster or a person of equal authority in that state, on scales accepted in that state and meeting the requirements of this Section.

(F) Delivery Slips Serially pre-numbered delivery slips of acceptable size and format for stating the following minimum information shall be furnished by the Contractor, in as many copies as may be necessary. One copy shall be retained by the Resident or Inspector upon accepting delivery of the material.

- 1) Vehicle identification
- 2) Date loaded
- 3) Work identification number & location
- 4) Identification of Material:
  - a) Item number
  - b) Source location of supplier
  - c) Type and grade
  - d) Tank number from which loaded, if liquid
- 5) Quality information as necessary for bituminous liquids
  - a) Specific gravity at 60°F
  - b) Serial number of the Certificate of Analysis as furnished according to Division 700, General Statement
  - c) The Certificate Statement as required in Division 700, General Statement
  - d) Viscosity of the Material: if asphalt cement, in poises at 140°F and in centistokes at 275°F; if other bituminous liquid, the specified viscosity according to the type and grade shown in Section 702
- 6) Quantity information as necessary: gross, tare and net weights, volume of load if not material requiring weighing, net gallons at 60°F if bituminous liquids
- 7) Signatures (legible initials acceptable) of: Weighmaster (if weight measured material), Contractor's representative (if volume measured material), and Resident (Cover Slips).

If Materials are 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 Materials 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 directed. Each truck shall bear a legible identification mark.

Rail shipments of bituminous liquid shall be measured directly by volume. Correction shall be made when liquid bituminous Material has been lost from the car, wasted, or otherwise not incorporated in the work. Other shipments of bituminous liquids will be measured by the gallon or ton. Volumes will be measured at 60°F or will be corrected to the volume at 60°F using the tables in ASTM D1250.

When bituminous liquids are shipped by truck or transport, net certified weights or volume subject to correction for loss or foaming may be used for computing quantities. Net certified weight shall be determined upon loading for all bituminous liquids when shipped



by truck or transport. The net weight of each load shall be converted to net gallons at 60°F by a conversion factor expressed in pounds per gallon.

(G) Time Measure Equipment by hours in accordance with Section 631 - Equipment Rental.

#### 108.2 Progress Payments

108.2.1 Generation of Progress Payment Estimates The Department will estimate the amount of Work performed at least monthly and make payment based upon such estimates. Estimates may be paid once every two weeks if, in the opinion of the Resident, the amount of Work performed is sufficient to warrant such payment. No such estimates or payment will be made if, in the judgment of the Resident, the Work is not proceeding in accordance with the provisions of the Contract, or when the total value of the Work performed since the last estimate amounts to less than \$5,000. The Contractor agrees to waive all claims related to the timing and amount of such estimates.

If the Contract requires, the Contractor will submit an application for progress payment with a detailed written explanation of the payments requested, on forms and media approved by the Department, to the Resident for approval. The Resident may request that the Contractor submit backup documentation, including copies of receipts, invoices, and itemized payments to Subcontractors.

108.2.2 Payment The Department will make payment within 15 Days if the Contractor agrees to accept electronic transfer of payments in a manner approved by the Department, except as otherwise provided in the Contract. In other cases, the Department will make payment within 30 days, except as otherwise provided in the Contract. These payment obligations shall not apply in the event of unforeseeable circumstances such as insufficient legislative appropriations, information systems failure, and other Uncontrollable Events. All payments made are subject to correction in subsequent Progress Payments and the Final Payment. For related provisions, see Sections 108.8 - Final Payment, and 108.9.2 - No Inflation Adjustments/ Interest.

108.2.3 Mobilization Payments “Mobilization” includes the mobilization and demobilization of all resources as many times as necessary during the Work.

Upon approval of all pre-construction submittals required for approval by this Contract, including those listed in Section 104.4.2 - Preconstruction Conference, the Contractor will receive payment of 50% of the Lump Sum price for Mobilization, not to exceed 5% of the Bid less the amount bid for Mobilization. After the Department determines that the Work is 50% complete, the Contractor will receive the other 50% of the Lump Sum price for Mobilization, not to exceed 5% of the Bid less the amount bid for Mobilization. Any remaining Mobilization Payments will be paid upon Final Acceptance.

108.3 Retainage The Department will pay 100% of each approved Progress Payment until the Work is approximately 50% complete. Thereafter, the Department will

deduct 5% of the amount of each Progress Payment as retainage. In the event that the Department believes that the retainage will be insufficient to cover the Contractor's obligations under this Contract, the Department may withhold a greater percentage of the money to cover Contractor obligations.

The Department may hold, temporarily or permanently, retainage as needed to assure timely Completion of the Work and payment of all Subcontractors and Suppliers in Conformity with the Contract. The Department may also disburse retainage to Subcontractors as set forth in Section 104.5.6 - Subcontractor Claims for Payment.

Upon Final Acceptance, the Contractor may request that the Department reduce retainage. The Department may grant or deny such request as it deems desirable and prudent. Otherwise, retainage will be held until the receipt of all Closeout Documentation

108.4 Payment for Materials Obtained and Stored Acting upon a request from the Contractor and accompanied by bills or Receipted Bills, the Department will pay for all or part of the value of acceptable, non-perishable Materials that are to be incorporated in the Work, including Materials that are to be incorporated into the Work, not delivered on the Work site, and stored at places acceptable to the Department. Examples of such Materials include steel piles, stone masonry, curbing, timber and lumber, metal Culverts, stone and sand, gravel, and other Materials. The Department will not make payment on living or perishable Materials until acceptably planted in their final locations.

If payment for Materials is made to the Contractor based on bills, only, then the Contractor must provide Receipted Bills to the Department for these Materials within 14 days of the date the Contractor receives payment for the Materials. Failure of the Contractor to provide Receipted Bills for these Materials within 14 days of the date the Contractor receives payment will result in the paid amount being withheld from the subsequent progress payment, or payments, until such time the Receipted Bills are received by the Department.

Materials paid for by the Department are the property of the Department, but the risk of loss shall remain with the Contractor until the materials are installed and accepted. Payment for Materials does not constitute Acceptance of the Material. If Materials for which the Department has paid are later found to be unacceptable, then the Department may withhold amounts reflecting such unacceptable Materials from payments otherwise due the Contractor.

In the event of Default, the Department may use or cause to be used all paid-for Materials in any manner that is in the best interest of the Department.

108.4.1 Price Adjustment for Hot Mix Asphalt: For all Contracts with hot mix asphalt in excess of 500 tons total, a price adjustment for performance graded binder will be made for the following pay items:

Item 403.102      Hot Mix Asphalt – Special Areas



Item 403.206	Hot Mix Asphalt - 25 mm
Item 403.207	Hot Mix Asphalt - 19 mm
Item 403.2071	Hot Mix Asphalt - 19 mm (Polymer Modified)
Item 403.2072	Hot Mix Asphalt - 19 mm (Asphalt Rich Base)
Item 403.208	Hot Mix Asphalt - 12.5 mm
Item 403.2081	Hot Mix Asphalt - 12.5 mm (Polymer Modified)
Item 403.209	Hot Mix Asphalt - 9.5 mm (sidewalks, drives, & incidentals)
Item 403.210	Hot Mix Asphalt - 9.5 mm
Item 403.2101	Hot Mix Asphalt - 9.5 mm (Polymer Modified)
Item 403.2102	Hot Mix Asphalt - 9.5 mm (Asphalt Rich Base)
Item 403.2104	Hot Mix Asphalt - 9.5 mm (Thin Lift Surface Treatment)
Item 403.21041	Hot Mix Asphalt - 9.5 mm (Polymer Modified Thin Lift Surface Treatment)
Item 403.211	Hot Mix Asphalt – Shim
Item 403.2111	Hot Mix Asphalt – Shim (Polymer Modified)
Item 403.212	Hot Mix Asphalt - 4.75 mm (Shim)
Item 403.213	Hot Mix Asphalt - 12.5 mm (base and intermediate course)
Item 403.2131	Hot Mix Asphalt - 12.5 mm (base and intermediate course Polymer Modified)
Item 403.2132	Hot Mix Asphalt - 12.5 mm (Asphalt Rich Base and intermediate course)
Item 403.214	Hot Mix Asphalt - 4.75 mm (Surface)
Item 403.235	Hot Mix Asphalt (High Performance Rubberized HMA)
Item 403.301	Hot Mix Asphalt (Asphalt Rubber Gap-Graded)
Item 404.70	Colored Hot Mix Asphalt – 9.5mm (Surface)
Item 404.72	Colored Hot Mix Asphalt – 9.5mm (Islands, sidewalks, & incidentals)
Item 461.13	Light Capital Pavement
Item 461.210	9.5 mm HMA - Paver Placed Surface
Item 462.30	Ultra-Thin Bonded Wearing Course
Item 462.301	Polymer Modified Ultra-Thin Bonded Wearing Course

Price adjustments will be based on the variance in costs for the performance graded binder component of hot mix asphalt. They will be determined as follows:

The quantity of hot mix asphalt for each pay item will be multiplied by the performance graded binder percentages given in the table below times the difference in price between the base price and the period price of asphalt cement. Adjustments will be made upward or downward, as prices increase or decrease.

Item 403.102	–6.2%
Item 403.206	–4.8%
Item 403.207	–5.2%
Item 403.2071	–5.2%
Item 403.2072	–5.8%
Item 403.208	–5.6%
Item 403.2081	–5.6%

Item 403.209–6.2%  
Item 403.210–6.2%  
Item 403.2101–6.2%  
Item 403.2102–6.8%  
Item 403.2104–6.2%  
Item 403.21041–6.2%  
Item 403.211–6.2%  
Item 403.2111–6.2%  
Item 403.212–6.8%  
Item 403.213–5.6%  
Item 403.2131–5.6%  
Item 403.2132–6.2%  
Item 403.214–6.8%  
Item 403.235–5.5%  
Item 403.301–6.2%  
Item 404.70–6.2%  
Item 404.72–6.2%  
Item 461.13–6.7%  
Item 461.210 – 6.4%  
Item 462.30–0.0021 tons/SY  
Item 462.301–0.0021 tons/SY

Hot Mix Asphalt: The quantity of hot mix asphalt will be determined from the quantity shown on the progress estimate for each pay period.

Base Price: The base price of performance graded binder to be used is the price per standard ton current with the bid opening date. This price is determined by using the average New England Selling Price (Excluding the Connecticut market area), as listed in the Asphalt Weekly Monitor.

Period Price: The period price of performance graded binder will be determined by the Department by using the average New England Selling Price (Excluding the Connecticut market area), listed in the Asphalt Weekly Monitor current with the paving date. The maximum Period Price for paving after the adjusted Contract Completion Date will be the Period Price on the adjusted Contract Completion Date.

108.5 Right to Withhold Payments The Department may withhold payments claimed by the Contractor on account of:

- A. Defective Work,
- B. Damages for Non-conforming Work,
- C. Failure to provide the Department the opportunity to inspect the Work,
- D. Damage to a third party,
- E. Claims filed or reasonable evidence indicating probable filing of claims,
- F. Failure of the Contractor to make payments to Subcontractors or for Materials or labor, or failure of Subcontractors to make payments to Sub-Subcontractors or for Materials or labor,

- G. Substantial evidence that the Project cannot be completed for the unpaid balance,
- H. Substantial evidence that the amount due the Department will exceed the unpaid balance,
- I. Regulatory non-compliance or enforcement,
- J. Failure to submit Closeout Documentation,
- K. All other causes that the Department reasonably determines negatively affect the State's interest.

108.6 Taxes, Fees, Allowances, and Notices The Contractor shall pay all taxes, charges, fees, and allowances and give all notices necessary and incidental to the due and lawful prosecution of the Work. Except as expressly provided otherwise in this Contract, all such taxes, charges, fees, and allowances are Incidental to the Contract.

Certain items of tangible personal property purchased by the Contractor for use in the Contract may be exempt from Maine sales tax. *See* 36 MRSA §§ 1760(2) & (61).

108.7 Damages for Non-Conforming Work If the Contractor performs Non-conforming Work that causes the Department to incur costs, including environmental costs or penalties, failure of FHWA to share in certain costs, Departmental staff time related to the non-Conformity, penalties, or other damages of any nature whatsoever ("Damages"), then the Contractor shall be liable to the Department for such Damages. The Department, at its option, and without liability, may deduct such Damages from amounts otherwise due the Contractor and/or postpone disbursement of Progress Payments until the Non-conforming Work is corrected.

108.8 Final Quantity Voucher The Department will prepare a final quantity voucher reflecting final quantities of the items of Work performed. The Department may require the Contractor to provide information necessary to substantiate Pay Items, including Statements itemizing Force Account Work.

#### 108.9 General Payment Provisions

108.9.1 Full Compensation Payments to the Contractor shall be full compensation for furnishing all labor, Equipment, Materials, services, and Incidentals used to perform all Work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of any kind arising from the nature or prosecution of the Work.

108.9.2 No Inflation Adjustments / Interest No payments due the Contractor will be adjusted for inflation. No interest shall be due and payable on any payment due the Contractor, except that the Department will pay statutory interest on uncontested Final Payments for any period of time that extends beyond 60 Days of the date of Receipt of all Conforming Closeout Documentation. The preceding exception expressly does not include payments regarding pending Issues, a Dispute, or a claim.

108.9.3 Amounts Due the Department Unless expressly provided otherwise in this Contract, in cases where the Department may deduct sums from amounts otherwise due the

Contractor and where the sums to be deducted are more than the funds otherwise due the Contractor, the Contractor shall remit all amounts due the Department within 30 Days of receiving an Invoice from the Department. After such 30 Days, the Contractor shall be in Default of this Contract and shall not be entitled to any additional cure period. Statutory interest shall accrue after 60 Days of Receipt of the Invoice.

## SECTION 109 - CHANGES

Scope of Section This Section contains general provisions related to changes in quantities, scope, time, and payment.

### 109.1 Changes in Quantities

109.1.1 Changes Permitted The Department may increase or decrease Pay Item quantities from the estimated quantities shown in the Bid Documents, and such increase or decrease shall not be considered Extra Work. Except as expressly provided otherwise in this Contract, the Contractor shall be paid for actual quantities in place and accepted at the Unit Prices contained in the Contractor's Bid. The Contractor accepts such payment as full and complete compensation. There will be no adjustment to Contract Time due to an increase or decrease in quantities compared to those estimated, except as addressed through Contract Modification(s).

109.1.2 Substantial Changes to Major Items If quantities of Major Items vary from the estimated quantities contained in the Bid Documents by more than 25%, then the Department may increase or decrease the Unit Price of such item using the extra work process. For related provisions, see Section 109.3 - Extra Work and Section 109.8 - Contract Modification. If an adjustment to the Unit Price is made, it will apply only to that portion of the actual quantity that is less than 75% of the estimated quantity or more than 125% of the estimated quantity.

109.2 Elimination of Items Upon written notification to the Contractor, the Department may entirely eliminate item(s) of Work for any reason. Upon notification, the Department is entitled to a credit. For Minor Items, the credit shall be the Contractor's Bid price for the eliminated item(s). For Major Items, the amount of the credit shall be the Contractor's Bid price for the eliminated item(s), less (A) direct costs actually incurred by the Contractor after Award, including mobilization, shipping, and restocking expenses that the Contractor cannot recoup on other Projects as reasonably determined by the Department, and (B) 10% for overhead and profit. The Department may withhold said credit from amounts otherwise due the Contractor.

109.3 Extra Work The Department reserves the right to revise the Contract by adding Extra Work. Such revisions neither invalidate the Contract nor release the Surety. The Contractor and/or its Surety agree to perform all such Extra Work. The Department will compensate for Extra Work by written Contract Modification in accordance with Section 109.7.1 - General and Section 109.7.2 - Basis of Payment. Any Delay related to

Extra Work will be analyzed in accordance with Section 109.5 - Adjustments for Delay. For a related provision, see Section 109.8 - Contract Modification.

#### 109.4 Differing Site Conditions

109.4.1 Definition “Differing Site Conditions” are subsurface or latent physical conditions that, at the time of Bid submittal, were:

- (A) Materially different from conditions indicated in the Bid Documents,
- (B) Not discoverable from a reasonable site investigation prior to Bid,
- (C) Materially different from conditions ordinarily encountered and generally recognized as inherent in Work like that specified by the Contract by Contractors experienced in such Work, and
- (D) Actually unknown to the party seeking relief due to such conditions, which in the case of the Contractor includes its Subcontractors.

109.4.2 Risk of Other Conditions All costs, Work, Delays, or other damages related to or arising from site conditions that are not Differing Site Conditions are the sole risk and responsibility of the Contractor.

109.4.3 Notice and Procedural Requirements If the Contractor discovers what it considers Differing Site Conditions that may cause adjustments to compensation, time, or other Contract requirements, the Contractor shall provide “Notice of Issue for Consideration” within 48 hours of discovery and before doing any Work relating to such conditions as provided in Section 104.4.5 - Early Negotiation. The Contractor shall then comply with all other requirements of Section 104.4.5 - Early Negotiation, and Section 111 - Resolution of Disputes. The Contractor will not be entitled to any change to compensation, time, or Work requirements without proper notice as specified in this Section 109.4. Failure to provide such notice or to otherwise comply with this Section 109.4 will constitute a waiver of all claims related to such conditions.

If the Department discovers what it considers Differing Site Conditions that may cause adjustments to compensation, time, or other Contract requirements, then the Department will provide the Contractor with written notice within 48 hours of discovery. If the Contractor disagrees with the Department’s finding of Differing Site Conditions or the related adjustments, then the Contractor shall provide “Notice of Issue for Consideration” within 48 hours of receipt of the Department’s written notice and comply with the requirements of Section 104.4.5 - Early Negotiation and Section 111 - Resolution of Disputes.

109.4.4 Investigation / Adjustment Upon notification by the Contractor or upon the Department’s own initiative, the Department will investigate the conditions. If the Department determines that Differing Site Conditions exist and that the Differing Site Conditions have caused an increase in the cost or time required for the performance of the Work, then the Contractor is entitled to an Equitable Adjustment for the additional costs in accordance with Section 109.7, Equitable Adjustments to Compensation and Time - Basis of

Payment that are caused directly by the Differing Site Conditions. If the Department determines that Differing Site Conditions exist and that the Differing Site Conditions have caused a decrease in the cost or time required for the performance of the Work, then the Department is entitled to a credit in the amount of savings to compensable items in accordance with Section 109.7, Equitable Adjustments to Compensation and Time, that are caused directly by the Differing Site Conditions. Delays caused by Differing Site Conditions will be considered in accordance with Section 109.5 - Adjustments for Delay.

#### 109.5 Adjustments for Delay

109.5.1 Definitions - Types of Delays Delays are defined as follows and may be divided into more than one type depending upon cause.

A. Excusable Delay Except as expressly provided otherwise by this Contract, an “Excusable Delay” is a Delay to the Critical Path that is directly and solely caused by (1) a weather-related Event of such an unusually severe nature that a Federal Emergency Disaster is declared. The Contractor will be entitled to an adjustment of time under this Section only if the Project falls within the geographic boundaries prescribed under the disaster declaration. or (2) a flooding event at the affected location of the Project that results in a Q25 headwater elevation, or greater, but less than a Q50 headwater elevation. Theoretical headwater elevations will be determined by the Department; actual headwater elevations will be determined by the Contractor and verified by the Department or (3) An Uncontrollable Event

B. Compensable Delay A “Compensable Delay” is a Delay to the Critical Path that is directly and solely caused by: (1) a weather-related Uncontrollable Event of such an unusually severe nature that a Federal Emergency Disaster is declared. The Contractor will be entitled to an Equitable Adjustment under this Section only if the Project falls within the geographic boundaries prescribed under the disaster declaration and receives project-specific emergency funds, and the Contractor can show proof that the Work was delayed by this weather event, (2) an Uncontrollable Event caused by a Utility Company for which the Utility Company reimburses the Department, (3) an Uncontrollable Event caused by other third party (not Subcontractors) Working on Project-related Work within the Project Limits if, and only if, the such other third party offers the Department reimbursement for such Delay, or (4) acts by the Department that are in violation of applicable laws or the Contract, or (5) a flooding event at the affected location of the Project that results in a Q50 headwater elevation, or greater. Theoretical Q50 headwater elevations will be determined by the Department; actual headwater elevations will be determined by the Contractor and verified by the Department.

C. Inexcusable Delay “Inexcusable Delays” are all Delays that are not Excusable Delays or Compensable Delays.

For a related provision, see Section 101.2 - Definition of Uncontrollable Event.



### 109.5.2 Entitlement to Adjustments

A. Types of Adjustments Provided the Contractor meets the requirements of Section 109.5.2(B) below and complies with the notification, documentation, and procedural requirements set forth in the Contract, the Contractor is entitled to certain adjustments to the Contract depending upon the type of Delay.

1. For an Excusable Delay, the Contractor is entitled to an extension of time, but no additional compensation.
2. For a Compensable Delay, the Contractor is entitled to an extension of time and an Equitable Adjustment as set forth in Section 109.7 - Equitable Adjustments to Compensation and Time.
3. For an Inexcusable Delay, the Contractor is entitled to neither an extension of time nor additional compensation.

For related provisions, see Sections 104.2.7 - Damage to Project Caused By Uncontrollable Events and 104.3.10 - Responsibility for the Damage to Work.

B. Requirements for Entitlement To be entitled to any adjustments for an Excusable Delay or a Compensable Delay, the Contractor must demonstrate all of the following:

1. The Contractor consistently utilized its Schedule of Work to schedule, coordinate, and manage the Work, as evidenced by documentation created as the Work progressed, including Progress Meeting minutes;
2. The Delay affected the Critical Path of the Schedule of Work; and
3. There are no concurrent Inexcusable Delays.

C. Concurrent Delays The Contractor is not entitled to a time extension for the period of time when Excusable and Inexcusable Delays are concurrent. The Contractor also is not entitled to either a time extension or an Equitable Adjustment for the period of time when Compensable and Inexcusable Delays are concurrent. In the event Compensable and Excusable Delays are concurrent, the Contractor is entitled only to a time extension, not an Equitable Adjustment, for the period of time such Delays are concurrent.

109.5.3 Early Completion Date Delay Claims For the purposes of this Section 109.5.3, a "Contractor's Early Completion Date" means a Project Completion date shown on the Contractor's initial Schedule of Work submitted in accordance with Section 107.4.2 - Schedule of Work Required that is earlier than the Contract's specified Completion date. The Department will not be liable for any claims or expenses related to the period of time between the Contractor's Early Completion Date and the Contract's specified Completion date, unless the Contractor demonstrates, by clear and convincing evidence that: (A) all requirements of Section 109.5.2(B) - Requirements for Entitlement are met, and (B) that the Contractor's Early Completion Date was reasonable at the time of Bid in light of the surrounding facts and circumstances, including the Contractor's available resources, and the requirements of the Work.

109.5.4 Notice and Procedural Requirements If the Contractor becomes aware of facts or circumstances that may cause a Delay for which the Contractor may seek adjustments to compensation, time, or other Contract requirements, the Contractor must notify the Resident of such “Issue” within 48 hours and before doing any Work relating to such facts or circumstances as provided in Section 104.4.5 - Early Negotiation. Except as otherwise provided in this Section 109.5, the Contractor shall then comply with all other requirements of Section 111 – “Resolution of Disputes.” The Contractor will not be entitled to any change to compensation, time, or Work requirements without proper and timely notice. Failure to provide such notice constitutes a waiver of all claims related to such conditions.

#### 109.5.5 Documenting the Delay and Request for Adjustments

A. Weekly Reports During Delay To be entitled to any adjustments for Delay, the Contractor must keep records as provided in Section 111.1.6 – Contractor’s Obligation to Keep Records. Further, the Contractor must submit weekly written reports containing the following information.

1. Number of Days of impact to the Critical Path.
2. A summary of all operations that have been Delayed, or will be Delayed on the impact of the Contractor's Critical Path.
3. A narrative describing how the cause of the Delay meets the definition of “Excusable Delay” or “Compensable Delay” contained in Section 109.5.1(A) or (B).
4. Itemization of all extra costs being incurred, including (A) how the extra costs relate to the Delay, (B) the identification of all non-salaried Project employees for whom costs are being compiled, and (c) a summary of time charges for Equipment, identified by the manufacturer’s number for which costs are being compiled.

B. Request and Report After Completion Within 14 Days of Completion of the phase of Work that the Contractor claims has been Delayed, the Contractor shall submit a written report to the Department that contains the following information:

1. A description of the operations that were Delayed and the documentation and narrative of how the cause for the Delay meets the definition of “Excusable Delay” or “Compensable Delay” contained in Sections 109.5.1(A) or (B), including all reports prepared for the Contractor by consultants, if used;
2. An as-built chart showing when Work operations were actually performed;
3. A graphic depiction of how the operations were Delayed and the impact on the Critical Path; and
4. An item-by-item request for additional time and compensation for items allowed under Section 109.7.5 – Force Account Work, including measurement and explanation.

The Department may require that all costs shown in the report be certified by an accountant, and that the Contractor provide all other information described in Section 111.2.2 - Detailed Notice of Dispute.



109.5.6 Decision by Program Manager Within 30 Days of receiving all information described in Section 109.5.5(B) - Request and Report After Completion, the Program Manager will Deliver a written decision on the request made to the Contractor. Failure to provide a decision within said 30-day period shall be considered a denial of the Contractor's request, unless the parties mutually agree to an extension of time for such decision.

109.5.7 Additional Consideration By Department If the Contractor wants additional consideration, the Contractor shall Deliver a "Notice of Unresolved Dispute" to the Department's appropriate Bureau Director within 14 Days of Receipt of the Program Manager's decision. Such Notice shall comply with Section 111.3.1 - Notice of Unresolved Dispute. The parties must then comply with all other Dispute resolution provisions of this Contract, beginning with Section 111.3 - Negotiation By Management.

## 109.6 Value Engineering

109.6.1 Overview - General Requirements A Value Engineering Change Proposal (VECP) is a proposal made by the Contractor after Contract Execution that is intended to produce cost savings without impairing essential characteristics of the Project, including function, serviceability, safety, durability, maintainability, and aesthetics, all as determined by the Department.

A VECP shall contain proven features that have been used under similar conditions. A proposal is not a VECP if equivalent options are already provided in the Contract.

A VECP must be approved by the Department. Unless otherwise agreed in writing, the Contractor and the Department will equally share the Net Savings generated by the VECP as provided in Section 109.6.4(C) - Contract Modification - Amount of Payment.

Unless mutually agreed otherwise, the VECP approval process will occur in three steps: (A) Conceptual VECP submission and review, (B) Detailed VECP submission and evaluation, and if approved, (C) Contract Modification, including the amount of payment due to the Contractor and credit due to the Department. When the nature and scope of a VECP warrants, the parties may agree to truncate the VECP approval process.

## 109.6.2 Conceptual VECP

A. Submittal To propose a VECP, the Contractor must submit a written "Conceptual VECP" to the Resident. The Conceptual VECP is not a formal and complete submittal based upon detailed technical analysis, but instead relays a conceptual idea based upon the Contractor's knowledge and experience. The Conceptual VECP should include the following information:

1. General Description A narrative that describes the proposed change in concept and includes the basic differences between the existing Contract and the proposed change.

2. Advantages and Disadvantages A listing and brief description of the comparative advantages and disadvantages of the VECP, including effects on function, serviceability, safety, durability, maintainability, aesthetics, and any other factors significantly altered by the VECP.
3. Estimate of Net Savings An estimate of the Net Savings as defined in Section 109.6.4(C) - Contract Modification - Amount of Payment.
4. Savings and Schedule Impacts An estimate of the time necessary for the Contractor to submit a Detailed VECP. Such estimate must specify the date by which the Department must approve the VECP to obtain the maximum cost reduction, and the latest date by which the Department must approve the VECP for the Contractor to avoid significant impacts on the estimated Net Savings or the Contractor's Schedule of Work. If the Department determines that the time for response is insufficient for review, the Contractor will be so notified.

B. Conceptual Review and Response The Department will use its best efforts to review a Conforming Conceptual VECP and respond to the Contractor within 14 Days of Receipt. The Department may, at its sole discretion, (1) invite the Contractor to submit a Detailed VECP, (2) reject the Conceptual VECP for reasons that will be described briefly, or (3) request additional information. The Department may also, in its sole discretion, agree to partially reimburse the Contractor for the costs to develop and submit a Detailed VECP.

### 109.6.3 Detailed VECP

A. Submittal If the Department invites the Contractor to submit a Detailed VECP, it shall contain the following information that is sufficient in detail to clearly define and explain the proposed change(s):

1. Updated and more complete information regarding items included in the Conceptual VECP, including the general description of the VECP, advantages and disadvantages, use, or testing performed, elsewhere, a detailed computation of the estimated Net Savings generated in accordance with Section 109.6.4(C) - Contract Modification - Amount of Payment, actual VECP development costs to date, and estimated savings and schedule impacts, including approval date(s) required. If the Department determines that the time for response is insufficient for review, the Contractor will be notified promptly.
2. A complete set of Plans and Specifications showing the proposed revisions relative to the original Contract features and requirements. All VECPs that require engineering design, computations, or analysis shall be prepared under the responsible charge of, and sealed by, a Professional Engineer licensed in the State of Maine.

### B. Evaluation

1. Additional Information The Department may request any additional information that it determines is necessary to properly evaluate the VECP. Where design changes are proposed, such additional information may include results of field investigations and surveys, design computations, specifications, and field change sheets. The Contractor will promptly provide any such requested information.
2. Cost Verification The Department may require the Contractor to provide additional information to verify the Contractor's cost analyses.

C. Response The Department will evaluate a Conforming Detailed VECP and provide the Contractor with a written response within 14 Days of Receipt of all of the information it has determined is necessary to properly evaluate the VECP. Such response will include a brief description of the Department's reason(s) for its decision. The Department, at its sole discretion, will either approve the Detailed VECP, approve it with conditions, or reject it. The Department may base its decision on any reason that is in the best interest of the Department, including: (1) unacceptable impact on the function, serviceability, safety, durability, maintainability, or aesthetics of the Project, (2) insufficient testing or use of the VECP concepts elsewhere, (3) insufficient justification of cost savings, (4) unacceptable schedule impacts, (5) insufficient review time, or (6) differing engineering judgment. The Contractor may request that the Department reconsider certain portions of the decision. If requested, the Department will reconsider its decision and then issue a final decision, which is not subject to review or appeal.

D. Termination of VECP Process If the Department rejects the VECP or the Contractor does not desire to proceed with the VECP as approved by the Department, the VECP process will terminate and the Department will reimburse the Contractor for 100 percent of all VECP development costs incurred by the Contractor to date.

109.6.4 Contract Modification - Amount of Payment If the VECP is approved, or if it is approved with conditions, and the Contractor wants to proceed, a Contract Modification will be executed by the parties. In addition to the requirements of Section 109.8 - Contract Modifications, the VECP will set forth the net savings generated by the VECP, which shall be split equally between the Contractor and the Department, per the following formula:

$$NS = EGS - CDC - DVEC$$

Where:

NS = Net Savings generated by the VECP, as determined by the Department.

EGS = Estimated Gross Savings, which is the difference between the cost of performing the Work as originally specified in the Contract and the cost of performing the Work as revised by the VECP, at agreed upon or lump sum prices.

CDC = Contractor's Development Costs related to the preparation of the Detailed VECP, including costs of the Contractor's design subconsultants and Subcontractors. The Department shall reimburse the Contractor for these costs.

DVEC = Department's VE Costs related to review, approval, and implementation of the VECP, including design costs, field inspection, and the value of any Department provided property.

Once the Contract Modification is executed, the Contractor may be paid for its actual Development Costs. The Contractor's share of the Net Savings shall not be disbursed until the Work is complete and the actual Net Savings is known.

The Contract Modification shall also set forth any adjustments to Contract Time related to the Work as revised by the VECP, if any.

109.6.5 Subsequent Payment Adjustments Upon Completion of the portion of the Work revised by the VECP, the Department, on its own initiative or upon request by the Contractor, may review the actual net savings realized by the VECP. The Contractor will be afforded an opportunity to review and comment on such a review. If the actual net savings was greater than set forth in the Contract Modification, the increased savings will be shared equally by the parties. If the net savings was less than set forth in the Contract Modification, the reduction in savings will be borne equally by the parties.

#### 109.6.6 General Conditions Regarding VECPs

- A. VECPs will remain the property of the Contractor, provided that the Department will have the unrestricted right to use any approved VECP, or any VECP in which the Department has reimbursed the Contractor for any portion of the development costs, on other Department Projects without notice, cost, or liability to the Contractor.
- B. Only the Contractor may submit VECPs. The Contractor shall review, be responsible for, and submit all proposals initiated by the Contractor's Subcontractors.
- C. The Contractor shall not anticipate Departmental approval of a VECP when Bidding or otherwise before approval of a Detailed VECP. The Contractor is responsible for all Delays caused by the VECP that were not negotiated in the Contract Modification.
- D. If a VECP is rejected, the Contractor shall perform the Work in accordance with the Contract.
- E. Except as otherwise provided in this Section 109.6, the Contractor shall have no claim against the Department for additional compensation or time resulting from the Delayed review or rejection of a VECP, including, but not limited to, development costs, loss of anticipated profits, and increased Material or labor costs.
- F. Cost sharing applies only to the Contract for which the VECP was submitted.
- G. Because the Department has no obligation to change the terms of the original Contract, all VECP decisions by the Department are final and are not subject to the Dispute resolution provisions provided in this Contract or otherwise available at law.

### 109.7 Equitable Adjustments to Compensation and Time

109.7.1 General Equitable Adjustment means an adjustment to compensation due to a change in the nature or scope of Work as defined in this Section 109.

This Section 109.7 applies to all changes to the nature or scope of the Work excepting (A) changes in quantities, which are governed by Section 109.1, (B) elimination of items of Work which is governed by Section 109.2, and (C) payment for Value Engineering Change Proposals, which is governed by Section 109.6.

109.7.2 Basis of Payment Adjustments will be established by mutual Agreement based upon Unit or Lump Sum Prices that include labor, materials, equipment, mark-up, overhead, profit, and time. These agreed upon Unit or Lump Sum prices will be full compensation and no additional overhead, profit, mark-ups, or fees are allowed. If Agreement on Equitable Adjustments cannot be reached, the Contractor shall accept payment on a Force Account basis as provided in Section 109.7.5 - Force Account Work, as full and complete compensation for all Work relating to the Equitable Adjustment.

#### 109.7.3 Reserved

109.7.4 Non-Compensable Items The Contractor is not entitled to compensation or reimbursement for any of the following items:

- A. Lost profits or lost opportunity costs,
- B. Labor inefficiencies,
- C. Consequential damages, including but not limited to loss of bonding capacity, loss of Bidding opportunities, and insolvency,
- D. Indirect costs or expenses of any nature,
- E. Dispute resolution costs of any nature, including attorney's fees, claims consultant fees, expert witness fees, claims preparation expenses, and costs related to DRB proceedings, mediation, arbitration, or litigation, and
- F. Interest.

109.7.5 Force Account Work Compensation for Force Account Work will be computed according to this Section.

A. Labor The Contractor will receive the actual hourly wages paid to workers actually engaged in the changed Work and the foreperson in direct charge of the changed Work as determined from certified payrolls, plus 90 percent of the sum thereof for all fringe benefits, payroll taxes, overhead, and profit.

B. Materials For Materials incorporated in the permanent Work, the Contractor will receive the Actual Cost of Materials, including freight and Delivery charges (but excluding any sale or use tax) plus a single 15 percent markup. For all Materials not incorporated in the permanent Work, the Contractor will receive the difference of actual value of such Material at the time of its use less the fair salvage value of Material when released, plus 15 percent of said difference. There shall be no markup on markups.

C. Equipment For all authorized usage of power-operated machinery, trucks, or other Equipment, the Contractor will receive the rental rates for the actual time to the nearest ¼ hour that such Equipment is in operation on the Work. Time spent moving Equipment within the Project Limits and any approved idle time may be measured for payment when authorized. Time spent servicing, maintaining, and changing attachments will not be paid for. The rental rates shall include the cost of all fuel oil, lubrication, supplies, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, small tools, and all other Incidentals.

The maximum Hourly Equipment rental rates (R) will be determined using the most current Blue Book rates and the following formula:

$$R = A \times B \times E + C + D$$

Where:

A = Blue Book monthly rate divided by 176

B = Blue Book regional adjustment factor for Maine

C = Blue Book estimated operating costs per hour

D = Operator's hourly payroll rate plus 90 percent

E = Factor from the Rate Adjustment Table for the year the machine was made

When the Contractor's Equipment is ordered to be available for Force Account Work, but is idle for reasons not the fault of the Contractor, standby time will be paid at 70% of the hourly Equipment rental rate excluding all operating costs.

For each piece of Equipment, the Contractor shall provide the following information: the manufacturer's name, Equipment type, year of manufacture, model number, type of fuel used, horsepower rating, attachments required, together with its size or capacity and any further information necessary to ascertain the proper rate. The Contractor shall also provide a photocopy of the appropriate pages from the Blue Book that were used to arrive at the rates and prepare a chart that fully shows all the details of the Equipment costs.

Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications will be used to classify Equipment for the determination of applicable rental rates. A unit of at least the minimum rating recommended by the manufacturer shall power equipment that has no direct power unit.

If the Department specifies Equipment not listed in the above publication, the Department will establish a reasonable rate for such Equipment. If requested by the



Department, the Contractor will produce cost data to assist the Department in the establishment of such rental rate, including all records that are relevant to the Actual Costs including rental Receipts, acquisition costs, financing documents, lease Agreements, and maintenance and operational cost records.

Equipment leased by the Contractor for Force Account Work and actually used on the Project will be paid for at the actual invoice amount plus 10% markup for administrative costs.

D. Superintendence No part of the salary or expense of anyone connected with the Contractor above the grade of foreman or having general supervision of the Work will be included in the labor items as specified above, except when the Contractor's entire on-site Workforce is occupied with Force Account Work, in which case, the salaries of the Superintendent may be included in the labor item specified above when the nature of the Work is such that their services are required, as determined by the Department.

E. Documentation Requirements All Statements shall be accompanied and supported by Receipted Invoices for all Materials used and transportation charges. If Materials used on the Force Account Work are not specifically purchased for such Work but are taken from the Contractor's stock, then instead of Invoices, the Statements shall contain or be accompanied by an affidavit of the Contractor certifying that such Materials were taken from stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the Actual Cost to the Contractor, excluding storage costs.

No payment will be made for Work performed on a Force Account basis until the Contractor has furnished duplicate itemized Statements of the cost of such Force Account Work detailed to the following:

- 1) Name, classification, date, daily hours, total hours, rate, and amount for each foreman and laborer.
- 2) Designation, dates, daily hours, total hours, rental rate, and amount for each unit of Equipment.
- 3) Quantities of Materials, prices, and amounts.
- 4) Transportation charges on Materials.

F. Subcontractor Quoted Work When accomplishing Force Account Work that utilizes Subcontractors, the Contractor will be allowed a maximum markup of 5% for profit and overhead on the Subcontractor's portion of the Force Account Work. If the Department does not accept the Subcontractor quote, then the Subcontractor work will be subject to the Force Account provisions with a 5% markup for profit & overhead.

109.8 Contract Modification Excepting changes to quantities as provided in Section 109.1.1 - Changes Permitted, all changes to the Contract that affect compensation, time, or quality must be made by written Contract Modification. The Contract Modification will describe the underlying issue that resulted in the Contract Modification and will specify adjustments to compensation, time, or other Work requirements, as applicable. If

adjustments to compensation or time are not shown on the face of the Contract Modification, then there are no such adjustments.

All Contract Modifications must be signed by the Project Manager or Resident. By signing a Contract Modification, the Contractor agrees to all the terms thereof and waives any and all claims for additional compensation, time, or other Work requirement adjustments relating to the issue that is the subject of the Contract Modification. All Contract Modifications are to be noted in Progress Meeting minutes.

## SECTION 110 - INDEMNIFICATION, BONDING, AND INSURANCE

Scope of Section This Section contains general requirements for indemnification, bonding, and insurance by the Contractor.

110.1 Indemnification The Contractor agrees to indemnify, defend, and hold harmless the Department and its officers, directors, employees, agents, and consultants from and against all claims, actions, torts, costs, losses, and damages for bodily injury (including sickness, disease, or death) and property damage arising out of or relating to this Contract or the performance of Work by the Contractor, its Subcontractors, subconsultants, engineers, suppliers, any individuals or entities directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, excepting only claims directly and solely caused by the negligence of the Department. Damages covered include, but are not limited to, all Dispute resolution costs, including court costs, attorney's fees, and the fees of engineers and consultants, arbitrators, and other professionals related to Dispute defense and preparation.

This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor, subconsultant, engineer, supplier, or other individual or entity under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

### 110.2 Bonding

110.2.1 Bonds The Contractor shall provide signed, valid, and enforceable Performance and Payment Bonds complying with the Contract. The Department may also require Warranty and Maintenance Bonds for specific items using a Contract specific special provision. For a related provision, see Section 103.5 - Award Conditions.

The Contractor shall procure bonds from a company organized and operating in the United States, licensed or approved to do business in the State of Maine by the State of Maine Department of Professional and Financial Regulation, Bureau of Insurance, and listed on the latest Federal Department of the Treasury listing for "Companies Holding Certificates



of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.”

The bonds shall each be in the full Contract amount, payable to the “Treasurer - State of Maine,” and on the Department’s forms, on exact copies thereof, or on forms that do not contain any significant variations from the Department’s forms as solely determined by the Department.

By issuing a bond, the Surety agrees to be bound by all terms of the Contract, including those related to payment, time of performance, quality, warranties, and the Department’s self-help remedy provided in Section 112.1 - Default to the same extent as if all terms of the Contract are contained in the bond(s).

Regarding claims related to any obligations covered by these bonds, the Surety shall provide, within 60 Days of Receipt of written notice thereof, full payment of the entire claim or written notice of all bases upon which it is denying or contesting payment. Failure of the Surety to provide such notice within the 60-Day period constitutes the Surety’s waiver of any right to deny or contest payment and the Surety’s acknowledgment that the claim is valid and undisputed.

If the Surety becomes financially insolvent, ceases to be licensed or approved to do business in the State of Maine, or stops operating in the United States, the Contractor shall file new bonds complying with this Section within 10 Days of the date the Contractor is notified or becomes aware of such change.

For a related provision, see Section 106.9.4 - Other Warranty Provisions.

110.2.2 Bond for Use of Municipal Roads A bond for use of municipal Roads may be required as provided in Section 105.5 - Hauling of Materials and Equipment.

110.2.3 Bonding for Landscape Maintenance Period The Contractor shall provide a signed, valid, and enforceable Landscape Warranty Bond when specified in Special Provision 621. The Landscape Warranty Bond shall be presented to the Resident at the time of Physical Work Complete. Payment for the Landscape Warranty Bond shall be incidental to the Landscape Items. The bond shall be in the full amount for all Pay Items for work pursuant to Section 621 - Landscape, payable to the “Treasurer - State of Maine,” and on the Department’s forms, on exact copies thereof, or on forms that do not contain any significant variations from the Department’s forms as solely determined by the Department.

The Contractor shall pay all premiums and take all other actions necessary to keep said bond in effect for the duration of the Landscape Establishment Period described in Special Provision 621.0036 - Maintenance Period. If the Surety becomes financially insolvent, ceases to be licensed or approved to do business in the State of Maine, or stops operating in the United States, the Contractor shall file new bonds complying with this Section within 10 Days of the date the Contractor is notified or becomes aware of such change.

All Bonds shall be procured from a company organized and operating in the United States, licensed or approved to do business in the State of Maine by the State of Maine Department of Business Regulation, Bureau of Insurance, and listed on the latest Federal Department of the Treasury listing for “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.”

By issuing a bond, the Surety agrees to be bound by all terms of the Contract, including those related to payment, time for performance, quality, warranties, and the Department’s self-help remedy provided in Section 112.1 - Default to the same extent as if all terms of the Contract are contained in the bond(s).

Regarding claims related to any obligations covered by the bond, the Surety shall provide, within 60 Days of Receipt of written notice thereof, full payment of the entire claim or written notice of all bases upon which it is denying or contesting payment. Failure of the Surety to provide such notice within the 60-Day period constitutes the Surety’s waiver of any right to deny or contest payment and the Surety’s acknowledgment that the claim is valid and undisputed.

110.3 Insurance The Contractor shall provide signed, valid, and enforceable certificate(s) of insurance complying with this Section. All insurance must be procured from insurance companies licensed or approved to do business in the State of Maine by the State of Maine, Department of Business Regulation, Bureau of Insurance. The Contractor shall pay all premiums and take all other actions necessary to keep required insurances in effect for the duration of the Contract obligations, excluding warranty obligations.

110.3.1 Workers' Compensation For all operations performed by the Contractor and any Subcontractor, the Contractor and each Subcontractor shall carry Workers’ Compensation Insurance or shall qualify as a self-insurer with the State of Maine Workers’ Compensation Board in accordance with the requirements of the laws of the State of Maine. If maritime exposures exist, coverage shall include United States Long Shore and Harbor Workers coverage.

110.3.2 Commercial General Liability With respect to all operations performed by the Contractor and any Subcontractors, the Contractor and any Subcontractors shall carry commercial general liability insurance in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. The coverage must include products, completed operations, and Contractual liability coverages, and Insurance Services Office (ISO) form #CG25031185 or equivalent. The Contractual liability insurance shall cover the Contractor’s obligations to indemnify the Department as provided in this Contract, including Section 110.1 - Indemnification. The coverage shall also include protection against damage claims due to use of explosives, collapse, and underground coverage if the Work involves such exposures.

When the work to be performed entails the use of barges, tug boats, work boats, supply boats, or other watercraft, Protection and Indemnity coverage for such work shall be provided at the limits called for under Commercial General Liability insurance.

110.3.3 Automobile Liability The Contractor shall carry Automobile Liability Insurance covering the operation of all motor vehicles, including any that are rented, leased, borrowed, or otherwise used in connection with the Project. The minimum limit of liability under this Section shall be \$1,000,000.00 per occurrence.

110.3.4 Professional Liability Contractors and Subcontractor(s) who engage in design Work, preliminary engineering Work, and environmental consulting Work for the Department shall maintain a Professional Liability policy for errors and omissions that provides a minimum liability of \$1,000,000 per claim and annual aggregate. “Design Work” includes the design of temporary Structures and all other Work that requires design computations. This policy shall cover “Wrongful Acts,” meaning negligent acts, errors, or omissions by the Contractor, or any entity for whom the Contractor is legally liable, arising out of the performance of, or failure to perform, professional services. The Department reserves the right to adjust liability coverage on a project-by project basis as it deems appropriate.

110.3.5 Owners and Contractors Protective Liability If required by Special Provision, the Contractor shall carry an Owners and Contractors Protective (OCP) Policy covering all operations performed by the Contractor and any Subcontractor in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, naming the Department as the sole insured party under the policy.

110.3.6 Builders Risk Unless required by Special Provision, the Department does not require the Contractor to carry Builders Risk Insurance. However, the Contractor is advised of its risks for damage to the Work as provided in Section 104.3.10 - Responsibility for Damage to the Work. The Contractor is responsible for managing and insuring these risks as it deems appropriate.

110.3.7 Pollution Liability If required by Special Provision, the Contractor shall carry Pollution Liability insurance to cover the risk of sudden or accidental discharge of pollutants during the prosecution of the Work. The limits of liability for this coverage shall be in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. Regardless of whether such insurance is carried by the Contractor, the Contractor is responsible for managing these risks as it deems appropriate.

110.3.8 Railroad Protective Liability When working adjacent to a railroad, the Contractor and Subcontractors shall carry Railroad Protective Liability Insurance as required by the Railroad.

#### 110.3.9 Administrative & General Provisions

A. Additional Insured Each insurance policy, with the exception of Workers' Compensation and Professional Liability insurance, shall list the Department of Transportation as an additional insured.

B. Defense of Claims Each insurance policy shall include a provision requiring the carrier to investigate, defend, indemnify, and hold harmless all named insureds against any and all claims for death, bodily injury, or property damage, even if groundless. The Contractor's insurer shall name the Department as a released party ("Releasee") on any release or settlement agreement for settled claims.

C. Primary Insurance The insurance coverage provided by the Contractor shall be primary insurance with respect to the State, its officers, agents, and employees. Any insurance or self-insurance maintained by the State for its officers, agents, and employees is in excess of the Agent's insurance and shall not contribute with it.

D. Reporting Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the State, its officers, agents, and employees.

E. Separate Application The insurance provided by the Contractor shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Nothing in this document constitutes a waiver of any defense, immunity or limitation of liability that may be available to the Department or its officers, agents, or employees under the Maine Tort Claims Act (14 M.R.S.A. § 8101, et seq.), and shall not constitute a waiver of other privileges or immunities that may be available to the Department.

## SECTION 111 - RESOLUTION OF DISPUTES

Scope of Section This Section contains provisions for resolving Disputes early, efficiently, fairly, and as close to the Project level as possible. For related provision, see Section 104.4 - Communication and Coordination.

### 111.1 General

111.1.1 Definitions "Dispute" is defined in Section 101.2 - Definitions. "Issue" is defined in Section 104.4.5 – Early Negotiation. Additionally, an "Issue" as used in Sections 111.1 through 111.3 below, is a matter that may give rise to a Dispute.

111.1.2 Escalation Process To resolve Issues or Disputes, the Contractor and the Department may mutually agree in writing at any time to any form of Dispute resolution, including mediation, facilitated negotiation, neutral case evaluation, arbitration, or litigation.

In the absence of such written Agreement, the parties must pursue resolution of Issues or Disputes that arise after Contract Execution as follows: (A) first through negotiation at the Project level as provided in Sections 104.4.5 - Early Negotiation and 111.2 - Project Level

Negotiation, (B) next through negotiation by management as provided in Section 111.3 - Negotiation by Management, and (C) next through the Commissioner as set forth in Section 111.5 - Appeal to Commissioner. If the Dispute remains unresolved after final agency action by the Commissioner, then, and only then, may a party seek judicial review of a Dispute as provided in Section 111.6 - Judicial Review.

111.1.3 Relationship to Partnering Partnering, including the establishment of a partnership charter, does not in any way waive, alter, or otherwise affect any provision of the Contract, including those requiring notice and all other provisions governing the resolution of Issues or Disputes. For a related provision, see Section 104.4.1 - Partnering.

111.1.4 Mandatory Notice The Contractor shall comply with all notice provisions of this Contract relating to Issues or Disputes, including those contained in Sections 104.3.3 - Duty to Notify If Ambiguities Discovered; 104.4.5(A) - Early Negotiation, Notice Required; 109.4.3 - Differing Site Conditions, Notice and Procedural Requirements; 109.5.4 - Adjustments for Delay, Notice and Procedural Requirements; and 111 - Resolution of Disputes. In order to promote the purposes of this Section 111, all notice provisions are mandatory and are to be strictly construed. Failure to provide conforming notice constitutes waiver by the Contractor of any and all claims to additional compensation, time, or modification of Contract requirements related to the Issue or Dispute.

111.1.5 Work to Proceed Despite Issue or Dispute Regardless of the status or disposition of any Issue or Dispute, the Contractor and the Department must perform their Contractual responsibilities Promptly and diligently. Unless expressly directed otherwise by the Department, the Contractor shall proceed without Delay to perform the Work or to conform to the decision or order of the Department.

111.1.6 Contractor's Obligation to Keep Records Throughout the course of any Issue or Dispute, the Contractor shall keep daily records, including supporting documentation, of extra costs and time related to the Issue or Dispute. Such records shall include all non-salaried labor, Material costs, Equipment expenses, and location for all operations that are affected by the Issue or Dispute. The Contractor will not be entitled to any change to compensation, time, or Work requirements without such records. The Contractor shall permit the Department daily access to and shall provide copies of these and any other records needed for evaluating the Dispute. The Contractor shall retain those records for the duration of the Dispute and as provided in Section 104.3.6 - Project Records.

111.1.7 Dispute Resolution Time Extensions All deadlines provided in this Section 111 may be extended only by mutual written consent signed by both parties.

111.1.8 Commissioner Communications Before Appeal Because the Commissioner may hear an Appeal and render final agency action under Section 111.5 - Appeal to Commissioner, the following persons shall not communicate with the Commissioner regarding the substance of a Dispute, except upon notice and opportunity for all parties to participate: (A) the Contractor or any agent for the Contractor and (B) Department staff, counsel, or consultants who are directly participating in Dispute resolution processes in an

advocate capacity. The preceding sentence does not prohibit the Commissioner from communicating with, or having the aid or advice of all other Department staff, counsel, or consultants. This Section does not apply where the Commissioner has delegated hearing the Appeal to other Department personnel, in which case, this Section shall apply instead to the Commissioner's delegate.

111.1.9 Contract Modification Required All changes to the Contract that regard Issues or Disputes and that affect compensation, time, quality, or other Contract requirements must be made by written Contract Modification as provided by Section 109.8 - Contract Modification.

#### 111.2 Project Level Negotiation

111.2.1 Early Negotiation The parties must first comply with all requirements of Section 104.4.5 - Early Negotiation.

111.2.2 Detailed Notice of Dispute If Early Negotiation fails to resolve the Issue within 45 Days of the date of Receipt of the written Notice of Issue for Consideration Conforming to Section 104.4.5(A) - Early Negotiation, and if the Contractor desires additional consideration by the Department, then the Contractor must Deliver a written Detailed Notice of Dispute to the Program Manager within 14 Days of the expiration of said 45-Day period. At a minimum, the Detailed Notice of Dispute shall include all of the following information in sufficient detail to allow reasoned analysis as determined by the Program Manager:

- A. A description of the background of Dispute, including the date(s) the Issue or Dispute first arose and the date the Contractor provided the Project Manager or Resident with the "Notice of Issue for Consideration" Conforming to Section 104.4.5(A) - Early Negotiation;
- B. All Contract provisions that are relevant to the Dispute;
- C. All facts relevant to the Dispute, including all non-Contract Documents and all non-documentary facts, including identification of all persons with knowledge of relevant facts and a synopsis of their testimony;
- D. The Contractor's position as to why the Contract and facts demonstrate that the Contractor is entitled to additional compensation and/or time;
- E. The estimated dollar cost, if any, of the Disputed Work and how the estimate was determined;
- F. If the Contractor is asserting an Excusable or Compensable Delay occurred, an analysis of the progress schedule showing the impact on the Critical Path; and



G. A specific request for additional compensation or time, or other change to provisions of the Contract.

111.2.3 Decision by Program Manager Within 30 Days of receiving a Detailed Notice of Dispute Conforming to Section 111.2.2 - Detailed Notice of Dispute, the Program Manager will Deliver a written decision to the Contractor on the specific request made.

### 111.3 Negotiation by Management

111.3.1 Notice of Unresolved Dispute If the Contractor desires additional consideration, the Contractor shall Deliver a written “Notice of Unresolved Dispute” to the Department's appropriate Bureau Director (hereafter "Director" in this Section 111 - Resolution of Disputes within 14 Days of receiving the Program Manager’s decision provided for in Section 111.2.3 - Decision by Program Manager.

At a minimum, the Notice of Unresolved Dispute must include the following information in sufficient detail to allow reasoned analysis as determined by the Director or the director's designee(s): (A) all documentation submitted to the Resident for Project-level negotiation, (B) all decisions rendered by the Program Manager or equivalent Bureau level manager, and (C) all additional information the Contractor desires the Department to consider.

111.3.2 Additional Documentation Within 14 Days of the receiving a Notice of Unresolved Dispute Conforming to Section 111.3.1, the Director or the Director’s designee(s) may require the Contractor to provide Additional Documentation. If required, the Contractor shall completely and accurately supply all requested information in writing within 21 Days of receiving said request. Failure to provide all Additional Documentation constitutes a waiver of all claims for additional compensation or time.

Additional Documentation may include the following:

- A. The date(s) on which facts arose which gave rise to the Issue or Dispute.
- B. The dates the Department Received the “Notice of Issue for Consideration” Conforming to Section 104.4.5(A) - Early Negotiations - Notice Required and the “Detailed Notice of Dispute” Conforming to Section 111.2.2.
- C. A list of all Contract provisions that is relevant to the Dispute and a Statement of which specific Contract provisions the Contractor believes controls or is relevant to the outcome of the Dispute.
- D. A narrative setting forth the Contractor’s position regarding additional compensation and time, if any, including all supporting facts, including dates, locations, and items of Work affected by the Dispute, and how the Contract provisions set forth in subparagraph C support the Contractor’s position.

- E. A list of and copies of all documents that are relevant to the Dispute organized chronologically. With respect to each document, the list must include its date, the author(s) (including address and telephone numbers), and the recipient(s).
- F. A list of all persons who are involved in or knowledgeable of the Dispute, including addresses and telephone numbers of such persons. If such person has knowledge of oral statements upon which the Contractor is relying, the list must also include the substance of the oral statements, the date(s) they were made, and all people present at the time the statement was made.
- G. If an extension of time is sought:

- 1. The specific Days or dates for which it is sought, including an explanation of impact on the Critical Path;
- 2. The specific reasons the Contractor believes a time extension should be granted; and
- 3. The specific provisions of the Contract under which it is sought.

H. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the categories provided by Section 109.7- Equitable Adjustments to Compensation and Time.

- I. An oath consisting of the following language:

“ON OATH, and under the penalty of law for perjury or falsification, the undersigned, (Name of person signing oath and title) hereby certifies that the amounts claimed by the Contractor for additional compensation and time (as applicable) set forth in the Notice of Unresolved Dispute and this additional documentation are a true and complete Statement of the Actual Costs incurred and time sought, and are fully documented and supported in accordance with the Contract.”

- J. Date of signature, sworn signature, and acknowledgment by notary.

The Director or the Director’s designee may also retrieve and review the Bid Escrow Documentation, if any, if the Contract required submission of Bid Escrow.

111.3.3 Decision by Director Within 21 Days of receiving a Notice of Unresolved Dispute Conforming to Section 111.3.1 - Notice of Unresolved Dispute or, if requested, all Additional Documentation, whichever is later, the Director or the Director’s designee(s) will Deliver a written decision. The decision will affirm, reverse, revise, or amend the decision of the Program Manager.

#### 111.5 Appeal to Commissioner



111.5.1 Filing of Appeal If the Contractor elects, the Contractor may file an “Appeal of the Director’s Decision.” Such Appeal must be filed within 14 Days of the Contractor’s Receipt of the Director’s Decision. At a minimum, the Appeal must contain:

- A. All Materials submitted to the Director and all decisions by the Director;
- B. The specific findings of the Director that the appealing party claims are contrary to law and/or fact;
- C. Any other pertinent new documentary evidence;
- D. Any written arguments the appealing party wishes the Commissioner to consider;  
and
- E. The specific relief sought.

Unless directed otherwise by the Commissioner, review of the Appeal will be limited to the documentation submitted.

111.5.2 Director’s Response The Director may submit a written response within 14 Days of receiving notice that an Appeal was filed with the Commissioner.

111.5.3 Time and Alternatives for Commissioner Action Within 30 Days of receiving an Appeal Conforming to Section 111.5.1 or, if applicable, the Director’s response, allowed by Section 111.5.2, the Commissioner will:

- A. Affirm the decision of the Director, or
- B. Revise, amend, or reverse the decision of the Director.

111.5.4 Final Agency Action Any affirmation, revision, amendment, or reversal by the Commissioner is final agency action as of the date of Receipt of such action by the Contractor. If the Commissioner takes no action within such 30-Day period, the decision of the Director shall be final agency action upon the expiration of said 30-Day period.

111.6 Judicial Review All Bidders and Contractors hereby agree and acknowledge that with respect to any and all Disputes and/or Issues arising from the Bid and/or the Contract, they must and will comply with all of the Notice and Dispute Resolution provisions of this Contract. For related provisions see Sections 111.1.2 – Escalation Process and 111.1.4 – Mandatory Notice. All Bidders and Contractors hereby agree and acknowledge that they must comply with, and exhaust, the Notice and Dispute Resolutions provisions of this Contract to the point of Final Agency Action prior to seeking judicial review. See Section 111.5.4 - Final Agency Action.

All Bidders and Contractors hereby agree and acknowledge that the sole and exclusive means of judicial review of final agency actions under the Contract is through a

petition for review pursuant to Maine Rule of Civil Procedure 80C and 5 MRSA § 11001, et seq., of the Maine Administrative Procedure Act, to be filed in Maine Superior Court, Kennebec County.

## SECTION 112 - DEFAULT AND TERMINATION

Scope of Section This Section contains general provisions related to Default and termination of the Contract.

### 112.1 Default

112.1.1 Grounds for Default The Contractor and the Surety are in Default of the Contract if the Contractor or the Surety violate any provision of Section 103.3.2 or the following:

- A. Fails to Promptly begin the Work under the Contract after being authorized to proceed,
- B. Fails to perform the Work with sufficient labor, Equipment, or Materials to assure the timely Completion of the Work,
- C. Performs Defective Work, neglects or refuses to uncover, remove or rebuild Unacceptable Work, or neglects or refuses to uncover Unauthorized or Uninspected Work when directed by the Department,
- D. Discontinues the prosecution of the Work without Departmental approval,
- E. Continues to perform Work after the Department directs that Work be stopped,
- F. Fails to resume Work that has been suspended as required by the Contract,
- G. Becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency that could affect the Work in any way,
- H. Allows any final judgment to stand against the Contractor unsatisfied for a period of ten Days,
- I. Makes an assignment for the benefit of creditors without authorization by the Department, or
- J. In any other manner, fails to perform the Work in Substantial Conformity with any material provision of the Contract.

112.1.2 Notice of Default / Cure Except as otherwise provided in this Contract, if Default occurs, the Department may give written Notice of Default to the Contractor and its Surety. Failure to give Notice of Default is in no way a waiver by the Department of any provision of the Contract.

If the Contractor or Surety fails to completely cure such Default within a period of 14 Days after Notice of Default, then the Department may (A) terminate the Contract for cause in accordance with Section 112.2.1 - For Cause, or (B) take prosecution of the Work away from the Contractor without violating the Contract.

112.2 Termination The Department may, by written order to the Contractor, terminate the Contract as provided in this Section 112. Termination of the Contract or

portion thereof shall not relieve the Contractor of its Contractual responsibilities for the Work completed (including warranty obligations), nor shall it relieve the Surety of its obligation for claims arising from the Work or the Contract.

112.2.1 For Cause If the Contractor fails to completely cure all Defects identified in the Notice(s) of Default provided for in Section 112.1.2 within the 14-Day cure period provided, the Department may immediately terminate the Contract for cause by written Notice of Termination For Cause. In this event, the Department may use any or all Materials and Equipment for the Work and may enter into an Agreement with another entity for the Completion of the Work, or use such other methods as in the opinion of the Department are required for the Completion of the intent of the Contract in an acceptable and timely manner.

The Department will pay for all Accepted items of Work as of the date of Termination at agreed upon prices. Items eliminated in their entirety by Termination will be paid for as provided in Section 109.2 - Elimination of Items, except that there will be no reductions in the amount of the credit to the Department. The Contractor shall make all Work records available to the Department upon request regarding payment under this Section. All costs and charges incurred by the Department, together with the cost of completing the Work specified in the Contract, will be deducted from amounts otherwise due the Contractor. If such expenses exceed the sum that would have been payable under the Contract, then the Contractor and the Surety are liable and shall pay to the Department the amount of such excess within 30 Days of the Delivery of a Statement setting forth such expenses to the Contractor and the Surety, as applicable.

If the Contractor files for bankruptcy at any time before expiration of the warranty periods provided by this Contract, then the Contractor and its Surety agree, if requested by the Department and within 30 Days of such request, to take all actions necessary or convenient to reject or accept this Contract under the executory Contract provisions of the federal bankruptcy code.

112.2.2 For Convenience The Department may terminate this Contract for convenience or for any reason that is in the best interest of the Department. Terminations caused without fault of or for reasons beyond the control of the Contractor are Terminations for Convenience. The Department will notify the Contractor of such terminations by sending a Notice of Termination for Convenience.

In case of a Termination for Convenience, the Department will pay for all Accepted items of Work as of the date of termination at agreed upon prices. Items eliminated in their entirety by Termination will be paid for as provided in Section 109.2 - Elimination of Items. The Contractor shall make all Work records available to the Department upon request regarding payment under this Section. Acceptable Materials, obtained by the Contractor for the Work but which have not been incorporated therein, may at the option of the Department be purchased from the Contractor at Actual Costs delivered to a prescribed location or otherwise disposed of as mutually agreed.

After Receipt of Notice of Termination for Convenience from the Department, the Contractor may also submit a claim for additional damages or costs not covered above or elsewhere in this Contract to the Project Manager within 60 Days of the effective Termination date. Such claim may include such cost items as idle Equipment time, Bidding and Project investigative costs, overhead expenses attributable to the Project terminated, legal and accounting charges involved in claim preparation, Subcontractor costs not otherwise paid for, idle labor cost if Work is stopped in advance of termination date, guaranteed payments for private land usage as part of the original Contract, and any other cost or damage item for which the Contractor reasonably believes reimbursement should be made. In no event, however, will loss of anticipated profits be considered as part of any settlement.

The Contractor agrees to make the Bid Escrow, Documentation, if any, and its cost records available to the extent necessary to determine the validity and amount of each item claimed.

The Department will respond in writing to such claim within 60 Days of Receipt. If the Contractor wants additional consideration, the Contractor must Deliver a written "Notice of Unresolved Dispute" to the Director as provided in Section 111.3.1 - Notice of Unresolved Dispute and comply with all other applicable Dispute resolution provisions of Section 111 - Resolution of Disputes.

## APPENDIX A TO DIVISION 100

### SECTION 1 - BIDDING PROVISIONS

A. Federally Required Certifications By signing and delivering a Bid, the Bidder certifies as provided in all certifications set forth in this Appendix A - Federal Contract Provisions Supplement, including:

- Certification Regarding No Kickbacks to Procure Contract as provided on this page 1 below.
- Certification Regarding Non-collusion as provided on page 1 below.
- Certification Regarding Non-segregated Facilities as provided by FHWA Form 1273, section III set forth on page 21 below.
- "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" as provided by FHWA Form 1273, section XI set forth on page 32 below.
- "Certification Regarding Use of Contract Funds for Lobbying" as provided by FHWA Form 1273, section XII set forth on page 35 below.

Unless otherwise provided below, the term "Bidder," for the purposes of these certifications, includes the Bidder, its principals, and the person(s) signing the Bid. Upon execution of the Contract, the Bidder (then called the Contractor) will again make all the certifications indicated in this paragraph above.

CERTIFICATION REGARDING NO KICKBACKS TO PROCURE CONTRACT Except expressly stated by the Bidder on sheets submitted with the Bid (if any), the Bidder hereby certifies, to the best of its knowledge and belief, that it has not:

(A) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract;

(B) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or;

(C) paid, or agreed to pay, to any firm, organization, or person (other than a bona fide employee working solely for me) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract;

By signing and submitting a Bid, the Bidder acknowledges that this certification is to be furnished to the Maine Department of Transportation and the Federal Highway Administration (FHWA), U.S. Department of Transportation in connection with this contract in anticipation of federal aid highway funds and is subject to applicable state and federal laws, both criminal and civil.

CERTIFICATION REGARDING NONCOLLUSION Under penalty of perjury as provided by federal law (28 U.S.C. §1746), the Bidder hereby certifies, to the best of its knowledge and belief, that:

the Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competitive bidding in connection with the Contract.

For related provisions, see Section 102.7.2 (C) of the Standard Specifications - "Effects of Signing and Delivery of Bids" - "Certifications", Section 3 of this Appendix A entitled "Other Federal Requirements" including section XI - "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" and section XII. - "Certification Regarding Use of Contract Funds for Lobbying."

\*\*\*\*\*

B. Bid Rigging Hotline To report bid rigging activities call: **1-800-424-9071**

The U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

\*\*\*\*\*

## SECTION 2 - FEDERAL EEO AND CIVIL RIGHTS REQUIREMENTS

Unless expressly otherwise provided in the Bid Documents, the provisions contained in this Section 2 of this "Federal Contract Provisions Supplement" are hereby incorporated into the Bid Documents and Contract.

A. Nondiscrimination & Civil Rights - Title VI The Contractor and its subcontractors 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 Department deems appropriate. The Contractor and subcontractors shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with all State of Maine and other Federal Civil Rights laws.

For related provisions, see Subsection B - "Nondiscrimination and Affirmative Action - Executive Order 11246" of this Section 2 and Section 3 - Other Federal Requirements of this "Federal Contract Provisions Supplement" including section II - "Nondiscrimination" of the "Required Contract Provisions, Federal Aid Construction Contracts", FHWA-1273.

B. Nondiscrimination and Affirmative Action - Executive Order 11246 Pursuant to Executive Order 11246, which was issued by President Johnson in 1965 and amended in 1967 and 1978, this Contract provides as follows.

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 efforts 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:

Ensure and maintain a working environment free of harassment, intimidations, 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 forepersons, superintendents, and other on-site 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.

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 union have employment opportunities available, and to maintain a record of the organization's responses.

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.

Provide immediate written notification to the Department's Civil Rights Office when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Design-Builder's efforts to meet its obligations.

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 B above.

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 obligation; 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.

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 on-site supervisory personnel such as Superintendents, General Forepersons, 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.

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 Contractor's and Subcontractors with whom the Contractor does or anticipates doing business.

Direct its recruitment efforts, both orally 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, screenings, procedures, and test to be used in the selection process.

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.

Validate all tests and other selection requirements.

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.

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.

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.



Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractor's and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

C. Goals for Employment of Women and Minorities Per Executive Order 11246, craft tradesperson goals are 6.9% women and .5% minorities employed. However, goals may be adjusted upward at the mutual agreement of the Contractor and the Department. Calculation of these percentages shall not include On-the-Job Training Program trainees, and shall not include clerical or field clerk position employees.

For a more complete presentation of requirements for such Goals, see the federally required document "Goals for Employment of Females and Minorities" set forth in the next 6 pages below.

\*\*\*\*\*

Start of GOALS FOR EMPLOYMENT OF FEMALES AND MINORITIES  
Federally Required Contract Document

§60-4.2 Solicitations

- (d) The following notice shall be included in, and shall be part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of this part (see 41 CFR § 60-4.2(a)):

Notice of Requirement for Affirmative Action to Ensure Equal Opportunity (Executive Order 11246)

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

<u>Goals for female participation in each trade</u>	6.9%
---	------

Goals for minority participation for each trade

Maine

001 Bangor, ME	0.8%
----------------	------

Non-SMSA Counties (Aroostook, Hancock, Penobscot, Piscataquis, Waldo, Washington)

002 Portland-Lewiston, ME

SMSA Counties: 4243 Lewiston-Auburn, ME 0.5%  
(Androscoggin)

6403 Portland, ME 0.6%  
(Cumberland, Sagadahoc)

Non-SMSA Counties: 0.5%  
(Franklin, Kennebec, Knox, Lincoln, Oxford, Somerset, York)

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

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

4. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

#### STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

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, United States 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:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) 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
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of the 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 § 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors for 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 7 a. through p. 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 contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals

established for the geographical areas 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 specific.

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 must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as expensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, when possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site 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 organization's 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 sources 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 woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including 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 on-site 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 other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing prior to the date for the acceptance of applications for apprenticeship or 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 site and in other areas of a Contractor's work force.

- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are 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 solicitation to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7 a through p.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7 a through p. 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 and reflected in the Contractor's minority and female work force 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 take on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, specific minority group of women is underutilized.)



10. The Contractor shall not use the goals and timetables or affirmative action even through the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if 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 implementation regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR § 60-4.6.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records 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).

End of GOALS FOR EMPLOYMENT OF FEMALES AND MINORITIES  
SECTION 3 - OTHER FEDERAL REQUIREMENTS

Unless expressly otherwise provided in the Bid Documents, the provisions contained in this Section 3 of this "Federal Contract Provisions Supplement" are hereby incorporated into the Bid Documents and Contract.

#### A. Buy America

If the cost of products purchased for permanent use in this project which are manufactured of steel, iron, or the application of any coating to products of these materials exceeds 0.1 percent of the contract amount, or \$2,500.00, whichever is greater, the products shall have been manufactured and the coating applied in the United States. The coating materials are not subject to this clause, only the application of the coating. In computing that amount, only the cost of the product and coating application cost will be included.

Ore, for the manufacture of steel or iron, may be from outside the United States; however, all other manufacturing processes of steel or iron must be in the United States to qualify as having been manufactured in the United States.

United States includes the 50 United States and any place subject to the jurisdiction thereof.

Products of steel include, but are not limited to, such products as structural steel, piles, guardrail, steel culverts, reinforcing steel, structural plate and steel supports for signs, luminaries and signals.

Products of iron include, but are not limited to, such products as cast iron grates.

Application of coatings include, but are not limited to, such applications as epoxy, galvanized and paint.

To assure compliance with this section, the Contractor shall submit a certification letter on its letterhead to the Department stating the following:

“This is to certify that products made of steel, iron or the application of any coating to products of these materials whose costs are in excess of \$2,500.00 or 0.1 percent of the original contract amount, whichever is greater, were manufactured and the coating, if one was required, was applied in the United States.”

#### B. Materials

##### a. Convict Produced Materials References: 23 U.S.C. 114(b)(2), 23 CFR 635.417

Applicability: FHWA's prohibition against the use of convict material only applies to Federal-aid highways. Materials produced after July 1, 1991, by convict labor may be incorporated in a Federal-aid highway construction project only if: 1) such materials have been produced by convicts who are on parole, supervised release, or probation from a prison; or 2) such material has been produced in a qualified prison facility, e.g., prison industry, with the amount produced during any 12-month period, for use in Federal-aid projects, not exceeding the amount produced, for such use, during the 12-month period ending July 1, 1987.

Materials obtained from prison facilities (e.g., prison industries) are subject to the same requirements for Federal-aid participation that are imposed upon materials acquired from other



sources. Materials manufactured or produced by convict labor will be given no preferential treatment.

The preferred method of obtaining materials for a project is through normal contracting procedures which require the contractor to furnish all materials to be incorporated in the work. The contractor selects the source, public or private, from which the materials are to be obtained (23 CFR § 635.407). Prison industries are prohibited from bidding on projects directly (23 CFR § 635.112e), but may act as material supplier to construction contractors.

Prison materials may also be approved as State-furnished material. However, since public agencies may not bid in competition with private firms, direct acquisition of materials from a prison industry for use as State-furnished material is subject to a public interest finding with the FHWA Division Administrator's concurrence (23 CFR § 635.407d). Selection of materials produced by convict labor as State-furnished materials for mandatory use should be cleared prior to the submittal of the Plans Specifications & Estimates (PS&E).

b. Patented/Proprietary Products References: 23 U.S.C. § 112, 23 CFR § 635.411

FHWA will not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the plans and specifications for a project, unless:

- the item is purchased or obtained through competitive bidding with equally suitable unpatented items,
- the STA certifies either that the proprietary or patented item is essential for synchronization with the existing highway facilities or that no equally suitable alternative exists, or
- the item is used for research or for a special type of construction on relatively short sections of road for experimental purposes. States should follow FHWA's procedures for "Construction Projects Incorporating Experimental Features" ([expermnt.htm](#)) for the submittal of work plans and evaluations.

The primary purpose of the policy is to have competition in selection of materials and allow for development of new materials and products. The policy further permits materials and products that are judged equal may be bid under generic specifications. If only patented or proprietary products are acceptable, they shall be bid as alternatives with all, or at least a reasonable number of, acceptable materials or products listed; and the FHWA Division Administrator may approve a single source if it can be found that its utilization is in the public interest.

Trade names are generally the key to identifying patented or proprietary materials. Trade name examples include 3M, Corten, etc. Generally, products identified by their brand or trade name are not to be specified without an "or equal" phrase, and, if trade names are used, all, or at least a reasonable number of acceptable "equal" materials or products should be listed. The licensing of several suppliers to produce a product does not change the fact that it is a single product and should not be specified to the exclusion of other equally suitable products.

c. State Preference References: 23 U.S.C. § 112, 23 CFR § 635.409

Materials produced within Maine shall not be favored to the exclusion of comparable materials produced outside of Maine. State preference clauses give particular advantage to the designated source and thus restrict competition. Therefore, State preference provisions shall not be used on any Federal-aid construction projects.

This policy also applies to State preference actions against materials of foreign origin, except as otherwise permitted by Federal law. Thus, States cannot give preference to in-State material sources over foreign material sources. Under the Buy America provisions, the States are permitted to expand the Buy America restrictions provided that the STA is legally authorized under State law to impose more stringent requirements.

d. State Owned/Furnished/Designated Materials References: 23 U.S.C. § 112, 23 CFR § 635.407

Current FHWA policy requires that the contractor must furnish all materials to be incorporated in the work, and the contractor shall be permitted to select the sources from which the materials are to be obtained. Exceptions to this requirement may be made when there is a definite finding, by the Department and concurred in by FHWA's Division Administrator, that it is in the public interest to require the contractor to use materials furnished by the Department or from sources designated by the Department. The exception policy can best be understood by separating State-furnished materials into the categories of manufactured materials and local natural materials.

Manufactured Materials When the use of State-furnished manufactured materials is approved based on a public interest finding, such use must be made mandatory. The optional use of State-furnished manufactured materials is in violation of our policy prohibiting public agencies from competing with private firms. Manufactured materials to be furnished by the Department must be acquired through competitive bidding, unless there is a public interest finding for another method, and concurred in by FHWA's Division Administrator.

Local Natural Materials When the Department owns or controls a local natural materials source such as a borrow pit or a stockpile of salvaged pavement material, etc., the materials may be designated for either optional or mandatory use; however, mandatory use will require a public interest finding (PIF) and FHWA's Division Administrator's concurrence.

In order to permit prospective bidders to properly prepare their bids, the location, cost, and any conditions to be met for obtaining materials that are made available to the contractor shall be stated in the bidding documents.

Mandatory Disposal Sites Normally, the disposal site for surplus excavated materials is to be of the contractor's choosing; although, an optional site(s) may be shown in the contract provisions. A mandatory site shall be specified when there is a finding by the Department, with the concurrence of the FHWA Division Administrator, that such placement is the most

economical or that the environment would be substantially enhanced without excessive cost. Discussion of the mandatory use of a disposal site in the environmental document may serve as the basis for the public interest finding.

Summarizing FHWA policy for the mandatory use of borrow or disposal sites:

- mandatory use of either requires a public interest finding and FHWA's Division Administrator's concurrence,
- mandatory use of either may be based on environmental consideration where the environment will be substantially enhanced without excessive additional cost, and
- where the use is based on environmental considerations, the discussion in the environmental document may be used as the basis for the public interest finding.

Factors to justify a public interest finding should include such items as cost effectiveness, system integrity, and local shortages of material.

#### C. Standard FHWA Contract Provisions - FHWA 1273

Unless expressly otherwise provided in the Bid Documents, the following "Required Contract Provisions, Federal Aid Construction Contracts", FHWA-1273, are hereby incorporated into the Bid Documents and Contract.

\*\*\*\*\*

### Start of FHWA 1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS (As revised through May 1, 2012)

FHWA-1273 -- Revised May 1, 2012

## **REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions

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

## ATTACHMENTS

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

### **I. GENERAL**

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

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

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

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

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

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

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

## II. NONDISCRIMINATION

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

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

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

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

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

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. § 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

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

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

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

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

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

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

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such



advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

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

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

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

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

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

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

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

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

**6. Training and Promotion:**

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals



(even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

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

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

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

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

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

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

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

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

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

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

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

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

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### **III. NONSEGREGATED FACILITIES**

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

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

### **IV. Davis-Bacon and Related Act Provisions**

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

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

## 1. Minimum wages

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

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

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve,

modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

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

necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph 3.b.(2) of this section.

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

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and trainees**

##### **a. Apprentices (programs of the USDOL).**

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



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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

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

program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

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

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

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

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 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.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).



- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

## **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

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

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

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

## **VII. SAFETY: ACCIDENT PREVENTION**

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

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

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

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

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and

honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. § 1020 reads as follows:

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

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

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

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

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

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

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

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

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

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

### **1. Instructions for Certification – First Tier Participants:**

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

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

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

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

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

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier

covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

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

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

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

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

\* \* \* \* \*

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

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

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

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local)



transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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

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

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

## **2. Instructions for Certification - Lower Tier Participants:**

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

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

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

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

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

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier

covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

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

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

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*



## **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

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

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

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

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

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

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

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

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

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

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

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

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

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

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

End of FHWA 127

**SUPPLEMENTAL SPECIFICATIONS**  
**(Corrections, Additions, & Revisions to Standard Specifications – March 2020)**

**SECTION 101**  
**CONTRACT INTERPRETATION**

**101.2 Definitions**

**Construction Easement** revise this definition by removing it in its entirety and replace with:  
**“A right acquired by the Department for a specific use of private property outside of the established Right-of-Way. Examples include but are not limited to Drainage Easements, Construction and Maintenance Easements, and Slope Easements. Construction Easement areas, including Temporary Construction Limits and Temporary Road Limits, outside of the Right-of-Way remain private property. No use other than to access and perform the specified work activity is permitted without written permission of the owner.”**

**Construction Limit Line** Remove this definition in its entirety.

**Holidays** Amend this paragraph by adding “**Juneteenth**” between ‘Memorial Day’ and ‘Independence Day’.

**Plans** Revise this paragraph by removing “**Standard Details, Supplemental Standard Details**” from the first sentence.

**Project Limits** Revise this definition by removing it in its entirety and replacing it with:  
**“Areas within the Right-of-Way, Construction Easements, or Temporary Construction Limits shown on the Plans or otherwise indicated in the Contract. If no Project Limits are indicated in the Contract, the Project Limits shall be determined by the Department. For a related Maine statute, see 23 MRSA § 653. “**

**Right-Of-Way** Revise this definition by removing it in its entirety and replacing it with:  
**“The area of land, property, or interest therein, acquired for or devoted to the Project or other purposes. Portions of the Right-of-Way may be used for storage of materials and equipment and the location of engineering facilities, subject to written approval by the Department.”**

Amend this Section by adding the following two definitions (that replace Construction Limit Line);

**Temporary Construction Limits** The area within which the Contractor may access and perform the Physical Work and outside of which Work may not be performed without written authorization by the property owner.

**Temporary Road Limits** The area within which the Contractor may construct and maintain a temporary detour for maintenance of traffic.

## SECTION 102 BIDDING

102.11 Bid Responsiveness Revise the paragraph that states  
“The Bid is not signed by a duly authorized representative of the Bidder.” So that it reads:

“The Bid is not signed by a duly authorized representative of the Bidder.

- Properly submitted electronic bids meet this requirement.
- Paper bids must include at least one signed copy of the Contract Agreement Offer & Award form.”

## SECTION 103 AWARD AND CONTRACTING

103.3.1 Qualification Requirement for Award Revise this subsection so that it reads:

**“103.3.1 Qualification Requirement for Award If the Notice to Contractors lists a Prequalification requirement, the Apparent Successful Bidder must successfully complete the Prequalification process as a condition of Award. The Apparent Successful Bidder who does not already hold an Annual Prequalification shall have 21 days to provide the Department with their Prequal documents or the Department may move on to the next low bidder.”**

## SECTION 104 GENERAL RIGHTS AND RESPONSIBILITIES

104.2.1 Furnishing of Right-of-Way Revise this subsection by removing it in its entirety and replace with the new subsection:

**“104.2.1 Furnishing of Property Rights The Department will secure all necessary rights to real property within the Project Limits shown on the Right-of-Way Plans that are provided with the Bid Documents. For related provisions, see Sections 104.3.2 – Furnishing of Other Property Rights, Licenses and Permits and 105.4.5 - Maintenance of Existing Structures. For related definitions, see Construction Easements and Right-of-Way.”**

104.3.2 Furnishing of Other Property Rights, Licenses and Permits Revise this subsection by replacing “104.2.1 Furnishing of Right-of-Way” with “**104.2.1 Furnishing of Property Rights**”.

## SECTION 105 GENERAL SCOPE OF WORK

105.10.1.4 Race-conscious Project Goals Revise the second paragraph of this section so it reads as follows:

**“At the time of the bid opening, all Bidders shall submit with their bid a Disadvantaged Business Enterprise (DBE) Commitment Form provided by the Department. This form will list the DBE and non-DBE firms that are proposed to be used during the execution of the Work. This form must be filled out in its entirety. The dollar total of each commitment shall be totaled and a percentage determined.”**

105.10.2 Requirements Applicable to All Contracts Under section A, number 2, in the first sentence of the first paragraph, revise this Section by replacing the word “handicap” in two places with the word “disability” so it now reads:

**“2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, State that all qualified applicants will receive consideration for employment without regard to race, color, sexual orientation, religious creed, sex, national origin, ancestry, age, physical disability, or mental disability.”**

## SECTION 106 QUALITY

106.6 Acceptance Revise this Subsection by replacing the paragraph beginning with “Acceptance of Hot Mix Asphalt Pavement will be based” with:

**“Acceptance of Hot Mix Asphalt Pavement will be based on Method A or C Statistical Acceptance, or Method B or D Acceptance as specified. The method of acceptance for each item is defined in Special Provision, Section 403, Hot Mix Asphalt Pavement. When items of Hot Mix Asphalt Pavement are not so designated, Method A will be utilized whenever there are more than 1000 tons per Hot Mix Asphalt Pavement item, and Method B will be utilized when there are less than or equal to 1000 tons per Hot Mix Asphalt Pavement item.”**

Revise Subsection “B” by removing it and replacing it with:

**“B. Items not designated for Statistical Acceptance will utilize Method B or D Acceptance testing to validate the quality of the material incorporated into the Project. For material paid under Item 403.209 – Method D, or designated to be visually accepted, the Contractor shall provide the Department with a Certification Letter that indicates that the material supplied complies with the Specifications. Test results representative of the certified material shall be attached to the letter.**

**The Department will randomly sample and test the certified Material for properties noted in Table 1 of Section 502 - Structural Concrete or Table 14 of Section –401.21**

**Acceptance Method B & D. Material will be subject to rejection as noted in Structural Concrete Section 502.195 - Quality Assurance Method C Concrete or Hot Mix Asphalt, Section 401.2022 Pay Adjustment – Method B & D.”**

106.7.1 Standard Deviation Method Revise 106.7.1, subsection H by removing the following from the first paragraph:

“Method B:  $PF = [70 + (Quality\ Level * 0.33)] * 0.01$ ”

106.9.1 Warranty by Contractor Revise the third paragraph of this section so that it reads:

**“For a related provision regarding obligations regarding plantings, see section 621.36 – Maintenance Period. “**

## SECTION 107 TIME

107.3.1 General Amend this paragraph by adding “**Juneteenth**” between ‘Patriot’s Day’ and ‘the Friday after Thanksgiving’.

## SECTION 108 PAYMENT

108.2.3 Mobilization Payments Replace Standard Specification 108.2.3 – Mobilization Payments with the following:

**“108.2.3 Mobilization Payments “Mobilization” includes the mobilization and demobilization of all resources as many times as necessary during the Work.**

**Percent Mobilization Bid will be determined by taking the amount Bid for Mobilization and dividing by the Total Contract Amount less Mobilization.  $Mob / (Total\ Contract - Mob)$ .**

**Payment will be made at the following intervals:**



**The United States Department of Transportation (USDOT)**

**Standard Title VI/Non-Discrimination Assurances**

**DOT Order No. 1050.2A**

The **Maine Department of Transportation** (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through Federal Highway Administration (herein referred to as "FHWA" is subject to and will comply with the following:

**Statutory/Regulatory Authorities**

- 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 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

**General Assurances**

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

*"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non- discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.



### **Specific Assurances**

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted **FHWA Program**.

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.2(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all **FHWA Programs** and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*"The **Maine Department of Transportation**, 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 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."*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds,

leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
  - A. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, **Maine Department of Transportation** also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the **FHWA's** access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the **FHWA**. You must keep records, reports, and submit the material for review upon request to **FHWA** or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

**Maine Department of Transportation** gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the **FHWA Programs**. This ASSURANCE is binding on the State of Maine, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors, transferees, successors in interest, and any other participants in the **FHWA Programs**. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

**Maine Department of Transportation**  
**Bruce Van Note, Commissioner**  
(Name of Recipient)

By:   
(Signature of Authorized Official)

Dated: 8/30/24



## APPENDIX A

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 Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, **Federal Highway Administration (FHWA)**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** 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 Acts and the Regulations, 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 Acts and the Regulations relative to Non-discrimination 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 Recipient or the **FHWA** to be pertinent to ascertain compliance with such Acts, Regulations, 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 Recipient or the **FHWA** as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **FHWA** 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 Recipient or the FHWA 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 Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.



## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW, THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the **Maine Department of Transportation** will accept title to the lands and maintain the project constructed thereon in accordance with all requirements imposed by Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, part 21, Non-discrimination in Federally-assisted Programs of the Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), the Regulations for the Administration of **Federal Highway Administration (FHWA) Program**, and the policies and procedures prescribed by the **FHWA** of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the **Maine Department of Transportation** all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### (HABENDUM CLAUSE)

**TO HAVE AND TO HOLD** said lands and interests therein unto **Maine Department of Transportation** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the **Maine Department of Transportation**, its successors and assigns.

The **Maine Department of Transportation**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the **Maine Department of Transportation** will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non- discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation

and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

## APPENDIX C

### CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the **Maine Department of Transportation** pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, **Maine Department of Transportation** will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the **Maine Department of Transportation** will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the **Maine Department of Transportation** and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)



## APPENDIX D

### CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by **Maine Department of Transportation** pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, **Maine Department of Transportation** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, **Maine Department of Transportation** will there upon revert to and vest in and become the absolute property of **Maine Department of Transportation** and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX E

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:

### **Pertinent Non-Discrimination Authorities:**

- 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); and 49 CFR Part 21.
- 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);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- 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 USC § 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, 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 Department of Transportation regulations at 49 C.F.R. 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 discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure

compliance with Title VI, you must take reasonable steps to  
-ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- 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).