

CITY OF NEW BRAUNFELS



REQUEST FOR COMPETITIVE SEALED PROPOSALS for

New Braunfels National Airport Security Fencing

Solicitation # CSP 25-023

TXDOT Project No.: 2415NWBRF

Date Issued:

March 12, 2025

**RESPONSES MUST BE RECEIVED NO LATER THAN:
3:00 P.M. CST APRIL 8, 2025**

Proposal Bond: 5%	Performance Bond: 100%	Payment Bond: 100%
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Location: New Braunfels City Hall, 550 Landa Street, New Braunfels, TX 78130

New Braunfels Purchasing Department:

Barbara Coleman
Phone: 830-221-4398
Email: bcoleman@newbraunfels.gov

CSP 25-023 City of New Braunfels Airport Security Fence Project

ADVERTISEMENT

City of New Braunfels – CSP 25-023 Airport Security Fence Project
TXDOT Project No.: 2415NWBRF

Bid Notice

Competitive Sealed Proposals will be received by the City of New Braunfels until 3:00 p.m. (CDT) April 8, 2025 for “CSP 25-023 Airport Security Fence Project”. Responses will be opened and read aloud virtually on April 8, 2025 at 3:30 after bids are due.

Responses received after the exact time and date set for submission will not be accepted.

Solicitation documents may be obtained from Purchasing at the New Braunfels City Hall, 550 Landa Street, New Braunfels, Texas 78130 or go to:

- <https://www.bidnetdirect.com/texas/city-of-new-braunfels> or
- <https://www.newbraunfels.gov/2694/Solicitations>.

A non-mandatory Pre-bid Conference will be hosted virtually on March 26, 2025 at 10 am. Questions will be accepted until close of the day March 27, 2025 at 5:00 pm. Refer to the solicitation documents for all virtual links.

A Bid guarantee of 5% is required with response.

Electronic Bids are accepted as per solicitation instructions. Physical Bids may be submitted to:

To: City of New Braunfels, City Secretary, Attn: Purchasing 550 Landa Street, New Braunfels, TX 78130

Address and mark envelope:

“CSP 25-023 “Airport Security Fence Project”

Due: 3:00 p.m. (CST) April 8, 2025

The City of New Braunfels reserves the right to reject any and all bids or to accept those deemed most advantageous.

To Be Published:

- March 12, 2024
- March 19, 2024



SOLICITATION AND OFFER

City of New Braunfels
Purchasing
550 Landa Street
New Braunfels, Texas 78130

Solicitation Number: CSP 25-023
Airport Security Fence Project

Invitation for Bid (IFB)
 Competitive Sealed Proposal (CSP)

Date Issued: March 12, 2025

SOLICITATION

A non-mandatory Pre-Proposal Conference will be hosted remotely on **March 26, 2025** at 10AM (CST).

Questions may be submitted until close of business day on **March 27, 2025 by 5:00 P.M. (Central Time)**

Proposers must submit proposals electronically or manually. Manual responses require in a signed original and one electronic format (USB).

Proposals will be **received by 3:00 P.M. (CST) April 08. 2025. Responses must be received manually at the New Braunfels City Hall, City Secretary Office at the address shown above or electronically as provided in the instructions.**

Responses will be read aloud virtually at **3:30 P.M. (CST), April 08, 2025.**

Responses received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact: (NO collect calls, Telegraphic, Email, On-Line or Fax offers accepted)	<u>Purchasing Representative</u> Barbara Coleman <u>Purchasing Manager</u>	Email : BColeman@newbraunfels.gov Phone : (830) 221-4389 Fax: (830) 608-2112
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5% Proposal Bond Required: YES NO (If YES, refer to information in Section 5.)

100% Payment Bond Required: YES NO (If YES, refer to information in Section 5.)

100% Performance Bond Required: YES NO (If YES, refer to information in Section 5.)

OFFER

(This portion must be fully completed by Proposer.)

In compliance with the solicitation documents, the undersigned in compliance with the Solicitation and Instructions to proposers and having examined the Project Manual, Drawings, Addenda and being familiar with the character of work included in these solicitation documents, proposes to furnish all pertinent labor, permits, machinery, tools, supplies and equipment necessary and to perform all work required to complete the Project for the unit prices for work in place for the items and quantities identified in the attached Solicitation Schedule.

The Owner reserves the right to reject any and all bids and may reject a bid if a bidder does not acknowledge receipt of all addenda issued by the Owner.

CONTRACT AWARD SHALL INCLUDE ALL ASSOCIATED SOLICITATION DOCUMENTS, ATTACHMENTS, AND ADDENDA.
SIGNATURE IS MANDATORY; MANUALLY SIGN ORIGINAL DOCUMENT AND ALL REQUESTED COPIES SUBMITTED.

Name and Address of Proposer:	Name and Title of Person Authorized to Sign Offer: E-Mail Address: Telephone Number: Fax Number:
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Signature:	Date:
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Name, Address, E-mail Address, and
Telephone Number of Person authorized to
conduct negotiations on behalf of Proposer.

(Applies to Request for Proposal only.)

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Advertisement

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PROJECT MANUAL

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TECHNICAL SPECIFICATIONS

The Construction Specifications for this Project are included in the contract documents. In the event a specification is not provided in the CONB plans and specifications, the current version of the *City of San Antonio Standard Specifications for Construction* (as amended and revised), and *TxDOT Standard Specifications 2014* will apply for this project where applicable.

**STANDARD DETAILS & TECHNICAL
SPECIFICATIONS:**

The Standard Details for this Project are included in the construction drawings. In the event a standard detail is not shown, the current version of the *City of San Antonio Standard Details for Construction*, TxDOT Standard Details will apply for this project where applicable.

INSTRUCTIONS FOR RESPONSE**03.01 AVAILABLE DOCUMENTS**

Airport Security Fence Project - Proposals are due April 08, 2025 at 3:00 P.M. (Central Time) at the City of New Braunfels - City Secretary's Office at 550 Landa Street, New Braunfels, Texas 78130. Solicitation documents may be obtained from:

- Purchasing staff at the New Braunfels City Hall
- the BidNet Direct website, <http://www.bidnetdirect.com/texas>
- the City of New Braunfels' website, <https://newbraunfels.gov/2694/Solicitations>

03.02 PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference will be hosted virtually at **10:00 a.m. (CST) on March 26, 2025**. Remote access via Microsoft Teams instructions are:

Join the meeting now

Meeting ID: 275 478 244 917

Passcode: qj3oe7G8

Attendance is not mandatory but due to the complexity of the project, it is strongly recommended. Proposers are encouraged to attend and participate in the conference. The City will transmit to all prospective Proposers of record such Addenda as the City considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

Pre-Proposal conference minutes and any addendum may be downloaded at The BidNet Direct website <https://www.bidnetdirect.com/texas/city-of-new-braunfels> and the City of New Braunfels' website, <https://newbraunfels.gov/2694/Solicitations>.

03.03 QUESTIONS

Questions may be submitted until close of business day on March 27, 2025 at 5:00 pm. Question may be submitted via Bidnet or manually to Barbara Coleman at BColeman@newbraunfels.gov. All answers to questions will be provided in an addendum.

03.04 SUBMISSION OF PROPOSAL

(a) Electronic Bidding. The City of New Braunfels has partnered with its third-party vendor, Texas Purchasing Group (BidNet Direct) as its e-procurement site. For this Request for Proposal, electronic bid submission is another option available to Proposers. The link to BidNet Direct website: <https://www.bidnetdirect.com/texas/city-of-new-braunfels>.

You must register on their site prior to your electronic submission. If you have any problems completing your vendor registration or submitting your electronic bid, please contact BidNet at (800) 835-4603, Option 2, to speak with live customer support.

If submitting an electronic bid through BidNet, an original hardcopy and USB will not be required.

(b) Deliver your Proposal, or changes to your Proposal, in SEALED ENVELOPES OR

PACKAGES identified on outside as a Request for Proposal to Owner, with Respondent's name and address, and solicitation name. Failure to submit Proposal in this manner may subject Respondent to disqualification. **Proposal may be delivered in person to the New Braunfels City Hall, or by Express Mail or delivery service to:**

City of New Braunfels
City Secretary's Office/Front Lobby
ATTN: Purchasing
550 Landa Street
New Braunfels, TX 78130

The outside of the Proposal envelope or package must state:

CSP 25-023 – Airport Security Fence Project
Due: April 08, 2025

(c) It is the sole responsibility of the respondent to ensure timely delivery of the Proposal. Owner will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service chosen by the respondent. **PROPOSALS RECEIVED AFTER THE CLOSING DATE AND TIME WILL NOT BE ACCEPTED OR CONSIDERED.**

(d) **Responses will be read out loud on April 8, 2025 at 3:30pm virtually via Teams:**

Join the meeting now

Meeting ID: 211 723 847 771
Passcode: UC7cD25k

(e) The statements which follow request information that the Evaluation Committee will utilize to evaluate the proposal. Each statement should be specifically addressed. Failure to respond to a statement may result in a proposal being deemed non-responsive and therefore not considered in the selection Process.

(f) An authorized official of the firm must print or type their name and **SIGN THE ORIGINAL PROPOSAL, AND USB COPY MUST REFLECT THE SAME SIGNATURE.**

(g) Proposals may not be withdrawn after the time set for the closing, unless approved by the City.

(h) Your offer or a modification to your offer is LATE if received after the time set for Proposal opening and will not be considered.

(i) To achieve a uniform review process and to obtain a maximum degree of comparability, the City of New Braunfels requires that Proposals be submitted with **one (1) original master (marked 'original'), and one USB electronic copy of all documents listed below.** If submitting an electronic bid through BidNet, an original hardcopy and USB will not be

(j) required.

(k) Each Proposal completed and signed by person(s) authorized to bind individual,

(I) **partnership, firm, corporation, or any other legal entity, will include the following in one envelope/package:**

TAB 1 – Solicitation and Offer Form; completed and signed.

TAB 1 – Acknowledgment of Addenda, if applicable.

TAB 2 – Cover Letter: Name and address of the Proposer, as well as a brief description of the firm and its history.

TAB 3 – Executive Summary: A brief summary highlighting the most important points of the proposal.

TAB 4 – Cost Proposal Form (Exhibit 1)

TAB 5 – Qualifications of Proposer – as required in Section 04.11.C.

Also include Vendor Certifications (Exhibit 4)

TAB 6 – Federal Certifications – sign and return the following Exhibits:

Exhibit 6 Special Federal Provisions

Exhibit 7 Debarment

Exhibit 8 Disadvantage Business

Exhibit 9 Lobbying

Exhibit 10 Child Support

Exhibit 11 Buy America Preference

Exhibit 12 Form 1295 and as referenced in Section 4.19.11.

Exhibit 13 CIQ and as referenced in Section 4.19.12.

TAB 6 – Plan and Schedule as required in Exhibit 4, Qualifications of Proposer, Section 4.11.C.3.

TAB 7 – Acceptable Documentation

- Proposal Guaranty/Bid Bond in an amount no less than five percent (5%) of price proposal (Section 4.13 and Exhibit 2).
- One copy of Certificate of Insurance completed and signed (Section 4.18).

TAB 8 – Required information indicated in Drawings, if applicable.

Required after contract award – Performance and Payment Bonds (Section 4.15 and Exhibit 2). The city will guide the recommended vendor for awarded through any federal contract requirements.

03.05 PROPOSALS AND COMPLIANCE PLANS RECEIVED AFTER THE DUE DATE AND TIME STATED ABOVE WILL NOT BE ACCEPTED FOR EVALUATION.

An abstract of the amounts of the base Proposals and alternatives will be made available to Proposers after the awarding of Proposals.

03.06 AUTHORIZED CONTACT PERSONS

The persons listed below may be contacted for information regarding the Invitation for Proposals. If the Proposer contacts any other City employee, including Council Members and members of

Boards and Commissions, the Proposer may be found in violation regarding Anti-Lobbying and Procurement.

PROJECT MANAGER:	Jeremy Hodson	830-221-4644
CONTRACT PROCUREMENT REPRESENTATIVE:	Barbara Coleman	830-221-4389

END OF SECTION

GENERAL INFORMATION**04.01 THE PROJECT:**

The City has been awarded a Federal Aviation Administration grant for the construction of a perimeter fence and access control gates at the New Braunfels National Airport. Construction of the perimeter fence will improve operational safety by increasing airfield security from vehicle/pedestrian deviations and provide wildlife game resistance.

This project is contingent based on subsidized federal aviation funds. The CONTRACTOR must have a full understanding of the documents required by Federal Aviation Administration (FAA), Exhibit 5-Special Provisions and supporting Exhibits 7-16, as condition to receiving these funds. Applicable Federal Aviation guidelines are provided in Exhibit 16.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

04.02 WORK

The City of New Braunfels seeks a bid for the facilities included with the Airport Security Fence Project.

All proposals shall follow the format provided by the City of New Braunfels.

The City is seeking a construction company with quality experience in fence and security installation. Contractor shall complete all Work as specified or indicated in the Plans, Specifications and Contract Documents. The Work is generally described as follows.

Statement of Work:

- The project includes a property boundary survey by a Texas RPLS and the installation of approximately 23,000 linear feet of chain link fence and 16,400 linear feet of game fence along with fence removal, new gates, and associated improvements.

The above list is intended to enhance the statement of work and is not intended to limit the respondent's description of the project's process or services provided.

This project shall require expertise in the following construction areas:

- Surveying and fence installation

04.03 ESTIMATED PROJECT COST

The estimated construction cost is approximately \$1,970,000. This amount includes all incidental and contingent expenses associated with the construction of the Project.

04.04 DESIGN ENGINEER

KSA Engineers, Inc.
4833 Spicewood Springs Road, Suite 204

Austin, TX 78759

www.ksaeng.com

04.05 CONTRACT TIMES

04.05.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

B. **Days to Achieve Substantial Completion and Final Payment**

The Work will be substantially completed within **150** calendar days after the date when the Contract Times commence to run as provided in Section 6 of the Project Manual, Article 2.03 of the General Conditions and completed and ready for final payment in accordance with Section 6 of the Project Manual Article 14.07 of the General Conditions within **180** calendar days after the date when the Contract Times commence to run. The substantial completion schedule will be further defined with the final contract.

04.05.02 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.04.01 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **\$1200** for each calendar day that expires after the time specified in Paragraph 4.04.01 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$1200** for each calendar day that expires after the time specified in Paragraph 4.04.01 for completion and readiness for final payment until the Work is completed and ready for final payment.

B. The liquidated damages are defined in Exhibit 15.

04.06 CONTRACT PRICE

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 04.05.01.A below:

A. For all Work, at the unit prices stated in Contractor's Proposal.

04.07 PAYMENT PROCEDURES**04.07.01 Submittal and Processing of Payments**

Contractor shall submit Applications for Payment in accordance with the General Conditions and Exhibit 5, "Supplemental Conditions."

04.07.02 Progress Payments; Retainage

Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided herein.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:
 - a. 95% (percent) of Work completed (5% retained).
 - b. 95% (percent) of cost of materials and equipment not incorporated in the Work (5% retained).

04.07.03 Final Payment

Upon final completion and acceptance of the Work in accordance with Section 6 of the Project Manual, Article 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

04.08 DEVIATION FROM SPECIFICATION/ REQUIREMENTS

Please read the requirements thoroughly and be sure that your response complies with all requirements/specifications noted. Any variation from the solicitation requirements/specifications must be clearly indicated by letter, on a point-by-point basis, attached to and made a part of your response. If no exceptions are noted, and you are the successful respondent, the City will require that the good/service(s) be provided as specified.

04.09 CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into the awarded contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the contract documents and the other related data identified in the bidding documents.
- B. Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the work.

- D. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the site which may affect cost, progress, or performance of the work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the bidding documents, and safety precautions and programs incident thereto.
- E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the work at the contract price, within the contract times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the work as indicated in the Contract Documents.
- G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. Contractor has given the Purchasing Representative written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by the City of New Braunfels is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

04.10 CONTRACT DOCUMENTS

Contractor shall complete all Work as specified or indicated in the Contract Documents as listed in Section 4 of the Project Manual, Article 2 – Work.

The Contractor shall comply with the provisions of Exhibit 6, “Special Provision Contractor Contractual Requirements and Title VI Assurances” and Exhibit 16 FAA Guidelines, which are made a part of this Agreement.

04.11 COMPETITIVE SEALED PROPOSALS

This request for competitive sealed proposal is presented in accordance with Section 2269.151 Texas Government Code and City requirements.

- A. The City of New Braunfels will evaluate proposals according to the process and criteria listed below. The City of New Braunfels reserves the right to consider all other pertinent factors in addition to the proposal in making its final decision. Each of the criteria has been assigned an appropriate weight by the City of New Braunfels. Following an analysis and valuation of the Proposals, ranking of the Proponents will

be made based upon the evaluation criteria. In the event of a tie in the rankings, the City of New Braunfels will break the tie based upon the City of New Braunfels's determination of which Proposal will provide the best value to the City of New Braunfels. Subjective judgment on the part of the City of New Braunfels is implicit in the criteria evaluation process. After opening and ranking, award may be made on the basis of the original proposal as is, without discussion, clarification or modification, or the City of New Braunfels may discuss with the selected Proponent, offers for cost adjustment and other elements of the Proposal.

- B. Any Proposal may be considered unacceptable if the City of New Braunfels determines it fails to provide adequate technical and price information as specified in this Instruction to Proponents.
- C. **Evaluation Criteria:** The proposals submitted in response to this competitive sealed proposal (CSP) will be reviewed by a committee assembled by the City of New Braunfels.

The following criteria will be used by the evaluation committee to evaluate and rank the proposals:

Points	Description
70	Cost Proposal Price
20	Experience and Qualifications
10	Proposed Project Timelines

1. Cost Proposal Form: (70 Points)

- a) The Owner will consider the total contract cost as part of its evaluation.

2. Relevant Experience and Other Considerations: (20 Points)

Refer to Exhibit 4, "Qualifications of Proposer"

- a) Experience as a general contractor with specific experience in Fence and Security Installation.
 - Minimum experience is indicated in this section and Exhibit 4. Consideration will be given to the number of years of the Proposer has been in business.
 - Previous work with the City will be considered.
- b) If you are using a sub for this work provide the sub-contractors specific experience in fence installation, of the same or similar type, size, nature and class as the project being proposed.
- c) Consideration will be given to projects which are:
 - occupied or substantially complete, as a prime Contractor or sub-

Contractor within the last five years.

- at a cost in excess of \$500,000 that your company is presently constructing as a prime Contractor or Sub-Contractor.
- past relationship of the prime Contractor or Sub-Contractor on projects with CONB as the Owner.

d) Other Considerations – such as historical information and facts

3. Plan and Schedule: (10 Points)

Represent a potential plan and schedule for performing the work for the project.

- a) Baseline Schedule: Provide a proposed baseline schedule for this Work defining critical path.
- b) Schedule Strategies: Provide strategies which are included in the proposal to minimize delays and areas for possible time savings.

4. Financial Capacity to perform the work: (Pass/Fail)

This is a Pass or Fail. Any Proposer receiving a score of "Fail" will be automatically disqualified

- a) Provide evidence of financial capability and stability which must be appropriate to the size and scope of this project.
- b) List bank references, including contact name and title, address and phone of contact person.
- c) No History of being Debarred.
- d) Ability to provide the required Bonding capacity.

TOTAL POINTS POSSIBLE: 100

D. **Other Considerations:** The City reserves the right to consider historical information and facts, whether gained from the proposal, references, or any other source, in the evaluation process, including submitter's past working or business relationship with the City, if any. The City further reserves the right to consider a submitter's background, personnel, experience, financial and other references, management practices, exceptions to the CSP or subsequent contract, and any working relationships, past or present, a submitter may have with its other clients.

E. **Presentations/Interviews - (weighted at 10 points):** After an initial review and compilation process, the City may ask for a presentation/interview of services from selected companies or individual to clarify and to develop a comprehensive assessment of the submissions. Only the highest ranked Respondents that are, on the basis of their written proposal, qualified to perform the work will be invited for interviews. If the City chooses to conduct

interviews, selected Proposers will be notified of the time and place for the interview; the interview format and agenda; and individuals from the firm expected to participate in the interview as a minimum standard. Failure to participate in the interview, if requested, may result in disqualification of the proposal. Respondents selected for interview will be scored based on the interview for a maximum score of 10 points. The interview points will be added to the initial proposal score for final total score, on which the final rankings will be based. The City reserves its right to reevaluate or rescore any submission post-interview based on information learned during the interview process that is materially different than the Proposer's original submission.

F. Proposed Project Schedule:

DATE	MILESTONE
March 12, 2025	CSP issued on http://www.bidnetdirect.com/texas and https://newbraunfels.gov/2694/Solicitations
March 26, 2025 At 10:00 A.M.	Preproposal Meeting –
March 27, 2025	Deadline for questions and requests for clarification
April 08, 2025 At 3:00 P.M.	Competitive Sealed Proposal (CSP) submission deadline
May 2025	Anticipated approval, and award of Contract, by City Council
May – June 2025	Project Notice to Proceed

04.12 GENERAL CONTRACTOR REGISTRATION

Ordinance 2008-43 requires all general Contractors and their Subcontractors to be registered with the City of New Braunfels *before commencing work* within city limits. Contractors are not required to be registered to submit a proposal however, the general Contractor is required to be registered before issuance of notice to proceed. Refer to 5.22 - GENERAL CONTRACTOR REGISTRATION for more details.

04.13 PROPOSAL GUARANTY

All Proposals shall be accompanied by an acceptable Proposal guaranty in an amount of not less than five percent (5%) of the total Proposal amount, as specified in Terms and Conditions, Section 5, Article 5.

04.14 CONTRACT SECURITY

The required performance and payment Bonds must be delivered to Owner not later than 10 days after Notice of Award.

04.15 PERFORMANCE AND PAYMENT BONDS

When performance and/or payment bonds are required, each shall be issued in equal to the Contract Amount as security for the faithful performance and/or payment of all Contractors' obligations under the Contract Documents, as specified in Terms and Conditions, Section 5, Article 6.

04.16 WARRANTY BOND

Not Required for this Project.

ARTICLE 17 -**04.17 MINIMUM WAGES AND PREVAILING WAGE RATES**

Minimum wage rates have been established and are specified in Section 5, Articles 23 and 24, "Wage Rates."

Refer to Exhibit 3, "Prevailing Wage Schedule"

04.18 INSURANCE AND LIABILITY COVERAGE

In accordance with the Contract Documents, Contractor shall provide and maintain at its expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall:

- A. Name City of New Braunfels as additional insured/or an insured, as its interests may appear.
- B. Provide City of New Braunfels a waiver of subrogation.
- C. Provide City of New Braunfels with a thirty (30) day advance written notice of cancellation or material change to said insurance.
- D. Provide the Purchasing Representative at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of Notice of Award.

Submit a certificate of insurance reflecting the following coverages.

<u>TYPE OF INSURANCE</u>	<u>Amount of Insurance</u>
--------------------------	----------------------------

Commercial General Liability**(Public) Liability to include coverage for:****a) Premises/Operations**

Each Occurrence \$1,000,000

General Aggregate \$2,000,000

b) Products/Completed Operations		
c) Independent Contractors		
d) Personal Liability	Umbrella/Excess Liability	
e) Contractual Liability	(follow-form)	2,000,000
Builders' Risk	100% Construction Value (Not Required for Civil Projects)	
Business Auto Liability	<ul style="list-style-type: none"> • \$1,000,000 per occurrence • \$1,000,000 aggregate or; • \$1,000,000 combined single limits 	
Workers' Compensation/Employers Liability <i>Workers' Compensation (required by law for companies with 50+ employees or political subdivision)</i>	Statutory Limits \$1,000,000 each accident	
Professional Liability E & O Coverage Cyber Liability	Professional types of coverage are based upon exposures and should be added during contact formation.	
Employers Liability	Statutory	
Policy Limit by Disease	Each Accident	
Each Employee by Disease	\$1,000,000	
	\$1,000,000	

04.19 - MISCELLANEOUS

04.19.01 Terms

Terms used in this CSP will have the meanings stated in Section 6 of the Project Manual, Article 1 of the General Conditions and Section 9 of the Project Manual, Article 1 and as elsewhere defined throughout the Contract Documents.

04.19.02 Assignment of Contract

No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

04.19.03 Successors and Assigns

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

04.19.04 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

04.19.05 Contractor's Certifications

Contractor certifies in Exhibit 4, "Vendor Certifications", it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph:

- A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
- B. "fraudulent practice" means an intentional misrepresentation of facts made
 - 1. to influence the bidding process or the execution of the Contract to the detriment of Owner,
 - 2. to establish Bid or Contract prices at artificial non-competitive levels, or
 - 3. to deprive Owner of the benefits of free and open competition.
- C. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
- D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

04.19.06 Contracts with Companies that Boycott Energy Companies

Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2276.002 of the Texas Government Code does not apply to the contract.

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2276, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of

debt obligations or the deposit, custody, management, borrowing, or investment of funds.

04.19.07 Contracts with Companies that Discriminate Against Firearm Industry

Contractor verifies that (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract.

If Contractor is a company with 10 or more full time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274 it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

04.19.08 Contracts with Companies Boycotting Israel

Contractor certifies in Exhibit 4, "Vendor Certifications", it has not boycotted Israel currently and will not boycott Israel during the term of the contract, pursuant to Chapter 2271, Texas Government Code.

04.19.09 Anti-Lobbying and Procurement

Lobbying activities or representations by the proposer are prohibited between the date that the solicitation is issued and the date of contract execution.

During a no-contact period, a bidder shall make a representation only through the authorized contact person.

During the no-contact period, a proposer may not make a representation to a City official or to a City employee other than to the authorized contact person. This prohibition also applies to a vendor that makes a representation and then becomes a proposer.

The prohibition of a representation during the no-contact period applies to a representation initiated by a proposer, and to a representation made in response to a communication initiated by a City official or a City employee other than the authorized contact person.

04.19.10 Safeguarding of Information and Data

The Contractor shall safeguard all information and data provided by the City. Further, Contractor shall not sell or make available data or mailing lists compiled from data received from the City without the express written approval of the City Council, through the City's Purchasing Representative, with appropriate remuneration to the City.

04.19.11 Certificate of Interested Parties (Form 1295)

Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission (TEC) found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed **Certificate of Interested Parties (Form 1295)** to the City before the City may enter into a contract with that business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

Standard Filing Process: Form 1295 is accessible at, and must be completed online, at the following web address: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

A business entity must enter the required information as directed on Form 1295 and then print a copy of the completed form after it has been submitted online. It is important to note that the information that is required in 'Certification Number' and 'Date Filed' fields in the 'Certification of Filing' box on the form will not be generated until the form has been submitted, not saved. An authorized agent of the business entity must then complete the information required in the "Unsworn Declaration" field of the form and sign the printed copy of the form, containing the unique Certification Number and filing date. The completed and signed Form 1295 must be filed with the governmental body or state agency with which the business entity is entering into the contract; the governmental body or state agency will subsequently acknowledge the Certificate of Interested Parties (Form 1295) on the TEC website.

Solicitation Document: If a completed Form 1295 is requested in a solicitation document issued by the City, Respondent shall reference the City's solicitation number in Box 3 of the form as a contract number is not generated until the award of a contract by City Council. Respondents must submit the original signed form with their response to the solicitation. The City will subsequently acknowledge the Certificate of Interested Parties (Form 1295) on the TEC website after the contract has been awarded.

04.19.12 Requirement for Disclosure of Conflict of Interest

In accordance with Chapter 176 of the Texas Local Government Code, "Disclosure of Certain Relationships with Local Government Officers," persons, or their agents who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a **Conflict of Interest Questionnaire (Form CIQ)** with the City Secretary if the vendor has a business relationship as defined by Section 176.001(1-a) with the City and the vendor meets requirements under Section 176.006(a).

Form CIQ is available from the Texas Ethics Commission by accessing the following web address: https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm

The Conflict-of-Interest Questionnaire (Form CIQ) is required to be filed within 7 business days of:

- a. Beginning of discussions or negotiations to enter into a contract with the City; or
- b. Submission of an application, response to a request for proposals or bids, correspondence or other writing related to a potential agreement with the City.

If requested in the solicitation document, all respondents are to submit a completed Conflict of Interest Questionnaire (Form CIQ) with their proposal in addition to submitting a completed Form CIQ to the office of the City Secretary located at 550 Landa Street; New Braunfels, Texas 78130.

By law, Form CIQ must be filed with the City Secretary no later than the 7th business day after

the date the vendor becomes aware of facts that require the statement to be filed as per Section 176.006(a-1). A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

04.19.13 **Federal Requirements**

A. CIVIL RIGHTS

The Agent, 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.

B. DBE REQUIREMENTS

The Disadvantage Business Enterprise (DBE) Goal is 0%.

In accordance with 49 CFR Part 26.53 the bidder/offeror must submit an acceptable DBE plan and commitment or good faith effort no later than 5 calendar days after bid opening as a matter of responsibility. For all federally funded construction projects with a DBE goal, bidders shall use the attached DBE participation plan and appropriate commitment agreement form/s and submit these documents to the City of New Braunfels within 5 calendar days after the bid opening via email to bcoleman@newbraunfels.gov.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises and is under and subject to Executive Order 11246 of September 24, 1965 and to the Equal Opportunity Clause contained in the bidding documents. The proposed contract is subject to the Aviation Safety and Capacity Expansion Act of 1990. A pre-bid conference concerning this project will be held at 11 AM on October 30, 2024, 2024 at Dallas Executive Airport 5303 Challenger Drive Dallas, TX 75237.

END OF SECTION

TERMS AND CONDITIONS**05.01 DEFINED TERMS**

Terms used in these Terms and Conditions, which are defined in the General Conditions of the Contract Documents, have the meanings assigned to them in the General Conditions. The term "Proposer" means one who submits a Proposal directly to Owner, as distinct from a sub-Proposer, who submits a proposal to a Proposer. The term "Successful Proposer" means the lowest, qualified, responsible and responsive Proposer to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award. The term "Proposal Documents" includes the Advertisement or Invitation to Proposal, General Terms and Conditions, the Proposal Form, and the Contract Documents (Including all Addenda issued prior to receipt of Proposals).

05.02 COPIES OF PROPOSAL DOCUMENTS

05.02.01 Complete sets of the Proposal Documents in the number and for the sum stated in the Advertisement or Competitive Sealed Proposal may be obtained from Owner. The sum for the Project Documents is not refundable.

05.02.02 Complete sets of Proposal Documents must be used in preparing Proposals; neither Owner nor Design Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Proposal Documents.

05.02.03 Owner, in making copies of Proposal Documents available on the above terms, do so only for the purpose of obtaining Proposals on the Work and do not confer a license or grant for any other use.

05.02.04 Complete sets of Proposal Documents may be downloaded at <http://www.bidnetdirect.com/texas>, unless otherwise notified.

05.03 EXAMINATION OF CONTRACT DOCUMENTS AND SITE

05.03.01 It is the responsibility of each Proposer before submitting a Proposal, to: (a) examine the Contract Documents thoroughly; (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work; (c) consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work; (d) study and carefully correlate Proposer's observations with the Contract Documents; and (e) notify the City of all conflicts, errors or discrepancies in the Contract Documents.

05.03.02 Information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others and Owner does not assume responsibility for the accuracy of completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

05.03.03 On request in advance, Owner will provide each Proposer access to the site to conduct such explorations and tests as each Proposer deems necessary for submission of a Proposal. Proposer shall fill all holes, clean up, and restore the site to its former condition upon

completion of such explorations. The Proposer shall be responsible for the expenses associated with such tests and explorations.

05.03.04 The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. **All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor.** Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

05.03.05 The submission of a Proposal will constitute an incontrovertible representation by Proposer that Proposer has complied with every requirement of this Article, that without exception the Proposal is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

05.04 INTERPRETATIONS AND ADDENDA

05.04.01 All questions about the meaning or intent of the Contract Documents or Proposal Documents are to be directed to Purchasing Representative. Interpretations or clarifications considered necessary by the City in response to such questions will be issued by Addenda emailed, mailed or delivered to all parties recorded by Purchasing Representative as having received the Proposal Documents. Questions received less than ten days prior to the date for opening of Proposals may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

05.04.02 Addenda may also be issued to modify the Proposals Documents as deemed advisable by Owner.

05.05 PROPOSAL GUARANTY

05.05.01 All Proposals shall be accompanied by a proposal guaranty in an amount of not less than five percent (5%) of the total Proposal. If the total Proposal amount is \$100,000 or less, Proposer has the option of providing a cashier's or certified check, made payable to City of New Braunfels, or a proposal bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to Owner. If the total Proposal amount exceeds \$100,000, the only acceptable proposal guaranty will be a proposal bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to Owner.

05.05.02 Proposal guaranty accompanying the Proposal of the apparent low Proposer will be retained until Contract is awarded and successful Proposer executes Contract and furnishes required bonds and insurance, after which proposal guaranty will be returned to the Proposer. Proposal guaranty accompanying the second lowest Proposer will be retained until Contract is awarded. All other proposal guaranties will be returned after Proposal certification.

05.06 PERFORMANCE AND PAYMENT BONDS

When performance or payment bonds are required, each shall be issued in an amount equal to the Contract Amount as security for the faithful performance or payment of all Contractors' obligations under the Contract Documents. Performance and payment bonds shall be issued by a solvent company authorized to do business in the State of Texas and shall meet any other requirements established by law or by Owner pursuant to applicable law.

05.07 WARRANTY BOND

Warranty Bond is not required for this solicitation.

05.08 CONTRACT TIME

The number of days within which, or the dates by which, the Work is to be completed and ready for final payment (the Contract Time) are set forth in the Agreement.

05.09.01 SUBSTITUTE AND "OR-EQUAL" ITEMS

The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or substitute or "or-equal" materials and equipment approved by Owner and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or "or-equal" item. No item of material or equipment will be considered by Owner as a substitute or "or-equal" unless written request for approval has been submitted by Bidder and has been received by Owner at least 7 days prior to the date for receipt of Bids. Each such request shall conform to the requirements of Paragraph 6.5 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Owner's decision of approval or disapproval of a proposed item will be final. If Owner approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

05.10 SUBCONTRACTORS, SUPPLIERS AND OTHERS

05.10.01 If the Contract Documents require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Proposer, and any other Proposer so requested, shall within five days after Proposal opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Proposer to submit a substitute. If the Substitute will cause the cost of the work to increase the Owner will agree to increase the contract price by the corresponding increase.

05.10.02 If apparent Successful Proposer declines to make any such substitution, Owner may award the Contract to the next ranked Proposer that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Proposal security of any Proposer. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner subject to revocation of such acceptance after the Effective Date of the Agreement.

05.11 PREPARATION OF PROPOSAL

The Proposal Form is included with the Proposal Documents.

- A. All blanks on the Proposal Form shall be completed. Erasures or alterations shall be initialed in ink by the person signing the Proposal Form. A Proposal price shall be indicated for each proposal item or unit price listed therein. In the case of optional alternatives, the words "No Proposal," "No Change," or "Not Applicable" may be entered.
- B. All names shall be printed in ink below the signatures.
- C. The Proposal shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Proposal Form.
- D. Postal and e-mail addresses and telephone number for communications regarding the Proposal shall be shown.
- E. The Proposal shall contain evidence of Proposer's authority and qualification to do business in the state where the Project is located, or Proposer shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Proposal. Proposer's state Contractor license number, if any, shall also be shown on the Proposal Form.

05.12 SUBMISSION OF PROPOSAL

Each Proposal, completed and signed by person(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity shall be submitted in accordance with Section 3.03.

05.13 BASIS OF PROPOSAL; COMPARISON OF COSTS

05.13.01 Unit Price

1. Proposers shall submit a Proposal on a unit price basis for each item of Work listed in the Proposal Form.
2. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price.
3. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

05.13.02 Lump Sum Price

1. Proposers shall provide proposal items on a lump sum price for each item of Work listed as such in the Proposal Form.
2. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding lump sum price.
3. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the lump sum prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

05.14 MODIFICATION AND WITHDRAWAL OF PROPOSALS

05.14.01 Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that a Proposal must be executed) and delivered to the place where Proposals are to be submitted at any time prior to the opening of Proposals.

05.14.02 If, within twenty-four hours after Proposals are opened, and Proposer files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Proposal, that Proposer may withdraw its Proposal and the Proposal security will be returned. Thereafter, that Proposer will be disqualified from further proposal on the work to be provided under the Contract Documents.

05.15 OPENING OF PROPOSALS

Proposals will be opened, and base price will be read aloud. Other content will not be disclosed to competing Proposers and the contents will be kept confidential during negotiations. Until the negotiations are completed, only the number, identity and proposed price of the Proposers submitting Proposals will be made available to the public.

05.16 PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE

All Proposals will remain subject to acceptance for one-hundred twenty (120) days after the day of the Proposal opening, but Owner may, in its sole discretion, release any Proposal and return the Proposal security prior to that date.

05.17 AWARD OF CONTRACT

05.17.01 Owner reserves the right to reject any and all Proposals, to waive any and all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Proposer, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Proposals. Also, Owner reserves the right to reject the Proposal of any Proposer if Owner believes that it would not be in the best interest of the Project to make an award to that Proposer, whether because the Proposal is not responsive, or the Proposer is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established

by Owner. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

05.17.02 In evaluating Proposals, Owner will consider the qualifications of the Proposers, whether or not the Proposals comply with the prescribed requirements, and such alternatives, and other data, as may be requested in the Proposal Form or prior to the Notice of Award.

05.17.03 If the Contract is to be awarded, it will be awarded to the best value Proposer whose evaluation by Owner indicates to Owner that the award will be in the best interest of the Project.

05.17.04 If the contract is to be awarded, Owner will give the Successful Proposer a Notice of Award within one-hundred twenty (120) days after the day of the Proposal opening.

05.17.05 Owner reserves the right to increase the value of the contract by adding alternatives described in the Proposal.

05.17.06 Causes for Rejection; Waiver of Irregularities; Disqualification - In any case, of ambiguity or lack of clarity in stating the prices in the proposal, the Owner will use the construction most advantageous to it or reject the proposal.

05.17.07 Other causes for the Owner to disqualify a proposer or reject its proposal include:

- a) The proposal has any omission, alteration of form, addition or condition not called for, or unreasonable or unbalanced unit prices.
- b) The proposal is incomplete or is not accompanied by an acceptable proposal guaranty.
- c) More than one proposal is submitted by the proposer.
- d) There is evidence of collusion among proposers.
- e) There is evidence of unsatisfactory performance, default or litigation with an owner by the proposer under a previous contract, either with this Owner or with another owner, including work by the proposer as a subcontractor.
- f) There is evidence that the proposer is behind schedule, in arrears in payment to an employee, subcontractor or material supplier, in default, or in litigation with an owner under an existing contract.
- g) The Owner determines that the proposer is not responsible because there is evidence that the proposer does not have sufficient qualifications (including without limitation, lack of experience, poor safety record, insufficient personnel, equipment, financial resources, or any other attribute) to assure the satisfactory completion of the Project.
- h) The Owner determines that the proposer has been convicted of a criminal offense committed in Texas involving fraud, theft, bribery, kickbacks or unlawful gifts to a public official if the conviction occurred within three years immediately preceding either the date of submission of your bid, the submission of your statement of proposer's qualifications or the advertised contract award date.
- i) More than 50 percent of the work performed by subcontractors to the Contractor.

j) The proposer does not meet the minimum experience qualifications established in the Statement of Proposer's Qualifications.

05.17.09 Each proposer by submission of a proposal waives any claims it has or may have against the Owner, the Engineer, its sub-consultants and their employees and any other consultants, and any trustees, officers, and employees of Owner, connected with or arising out of the proposal administration, proposal evaluation, recommendation for Contract award, the award of the Contract and the rejection of any proposals.

05.18 CONTRACT SECURITY

The required performance and payment Bonds must be delivered to Owner not later than 10 days after Notice of Award.

05.19 SALES TAX

05.19.01 The Proposer shall investigate all statutory requirements for the payment of sales taxes and shall include the cost of any such payments in the Proposal prices of his proposal.

05.19.02 The Proposer's attention is directed to Chapter 151 of the Tax Code of the State of Texas. This section provides that all items used or consumed in direct pursuance of this Contract can be purchased free of State of Owner sales tax since the project is being performed for an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas.

05.20 LAWS AND REGULATIONS

The Proposer's attention is directed to the fact that all applicable Texas state laws, municipal ordinances and rules and regulations of all authorities having jurisdiction over the work to be performed and services to be provided will apply to the Contract through out, and they will be deemed to be included in the Contract the same as if herein written out in full.

The Proposer shall comply with the provisions of Exhibit 7, "Special Provision Contractor contractual Requirements and Title VI Assurances" attached hereto and made a part of this solicitation and awarded contract.

05.21 RESIDENT PROPOSERS

05.21.01 Texas provides no advantage to resident Proposers in the award process. However, offers from another state where that state favors their residents will be evaluated by adding the same differential to the proposal that would be required for a non-resident proposal to be awardable in their resident state. For example, how much lower a Texas firm must be in that state than one of their resident proposals in order to be the awardee.

05.21.02 Pursuant to Local Government Code §271.9051, the City of New Braunfels has a local preference resolution 2009-R61. This resolution authorizes the municipality to enter into a contract with the lowest Proposer or the Proposer whose principal place of business is in the City of New Braunfels if that local Proposer is within five percent of the lowest proposal price received from a Proposer who is not a resident and offers the municipality the best combination of contract price and additional economic development opportunities for the City created by the contract

award; including the employment of residents of the municipality and increased tax revenues to the municipality and total amount of the contract is less than \$100,000. This provision does not prohibit the City of New Braunfels from rejecting all proposals.

05.22 GENERAL CONTRACTOR REGISTRATION

Ordinance 2008-43 requires all general Contractors and their Subcontractors to be registered with the City of New Braunfels before commencing work within city limits. All information may be obtained from the Planning & Community Development department, Building Division on the City's website, www.newbraunfels.gov. In addition to topics such as permitting and fees, et cetera, the "Forms and Applications" hyperlink has links to the required "**Contractor's Registration Packet**" and "**Sub-Contractor Registration**" forms. Additional information may be provided by calling the Building Division at (830) 221-4060. Contractor must be registered with the City prior to construction start.

05.23 PREVAILING WAGES

05.23.01 Proposer must comply with all requirements of the prevailing wage statute, Government Code chapter 2258 and Davis-Bacon and Related Acts for non-Federal contracts.

05.23.02 Workers on the Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Highway-Heavy Trades "AS APPLICABLE".

A. Wages shall be paid in accordance with the Davis Bacon Wage Rates.

<https://sam.gov/content/wage-determinations> Exhibit 3; "Prevailing Wage Schedule."

05.23.03 Such wage rates shall be used throughout the contract. If a classification is to be used, which is not listed in the attached wage rates, Contractor shall submit to Owner rates and classification proposed for use, for approval, prior to performance of the Work.

05.24 EMPLOYMENT REQUIREMENTS AND WAGE RATES

05.24.01 This Contract shall be based upon payment by Contractor and his Subcontractors of wage rates not less than the general prevailing rate of per diem wages for Work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

05.24.02 The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.

05.24.03 Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. Contractor agrees to comply with the Immigration Reform and Control Act of 1986 and the Americans with Disabilities Act of 1990, and Contractor will indemnify and hold Owner harmless for any failure to so comply and any discrimination for which Contractor may be charged.

05.24.04 Contractor shall keep certified payrolls which will be collected and maintained by the Contractor for itself and all subcontractors and made available to the Owner as may be required upon request or for audit at completion of the job. Accurate records shall show the names and occupations of all laborers, workmen, and mechanics employed, together with the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by representatives of the Owner.

05.24.05 According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

05.24.06 Contractor shall comply with all requirements of the hours of work on public works law of the State of Texas, Texas Revised Civil Statutes, Articles 5165.1 to 5165.3, including the latest amendments thereto.

05.24.07 Pursuant to Texas Revised Civil Statutes, Article 4413(31), Contractor shall give preference in employment to honorably discharged veterans who were engaged in the services of the United States in time of war or conflict and who are and have been citizens of Texas for not less than five years.

05.25 DISCLOSURE OF PROPRIETARY INFORMATION

05.25.01 All materials submitted to Owner become public property and are subject to the Texas Public Information Act, Government Code Chapter 552, upon receipt. If Proposer does not desire proprietary information in the Proposal to be disclosed, each page must be identified and marked "proprietary" at time of submittal.

Owner will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

05.25.02. This provision applies if the Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner. Respondents and Contractor must (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner for the duration of the Contract; (2) promptly provide to the Owner any contracting information related to the Contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the Contract, either:

- i. provide at no cost to the Owner all contracting information related to the Contract that is in the custody or possession of the entity; or
- ii. preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner.

05.25.03 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Request for Proposals and Contract and the vendor agrees that the Contract can be terminated if the vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

05.26 OTHER TERMS OF AGREEMENT

05.26.01 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

05.26.02 Governing Law

The solicitation and the awarded Contract shall comply with all applicable Federal law and the laws of the state of Texas to the extent that they do not conflict with Federal law.

05.26.03 Venue

This Awarded Contract will be entered into and performed in Comal County, Texas, mandatory venue for any legal action related to this CSP and the awarded Contract shall be in the state District Courts of Comal County, Texas.

END OF SECTION

Bidding Requirements, Contract Forms and Conditions of the Contract
COST PROPOSAL FORM
CSP 25-023 Airport Security Fence Project
Exhibit 1

EXHIBIT 1

PROPOSAL FORM

PROJECT: Airport Security Fence Project

NAME OF PROPOSER: _____

The undersigned proposer does hereby declare and stipulate that this proposal is made in good faith, without collusion or connection with any other person or persons proposing for the same work, and that it is made in pursuance of and subject to all the terms and conditions of the advertisements, proposal requirements, the proposed construction contract, and the contract documents, including the plans pertaining to the work to be done, all of which have been examined by the undersigned. The undersigned hereby declares that he has visited the site, has had sufficient time to make all tests and investigations to arrive at an intelligent estimate of the cost of doing the work, and has carefully examined the plans, specifications, and contract documents relating to the work covered by his proposal, and that he agrees to do the work, and that no representations made by the City are in any sense a warranty, but are mere estimates for guidance of the contractor.

The undersigned further agrees that he will provide all necessary tools and apparatus, do all work, furnish all materials, and do everything required to carry out the work covered by this proposal, in strict accordance with the contract documents, and the requirements pertaining thereto, for the sum of sums set forth.

ADDENDA: The undersigned hereby acknowledges receipt of the following addenda to the Drawings and Specifications; all of the provisions and requirements of which addenda have been taken into consideration in the preparation of this Proposal.

Addendum No. _____ Dated _____

Bidding Requirements, Contract Forms and Conditions of the Contract
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PROPOSAL GUARANTY: A Bid Guaranty must be enclosed with this Proposal in the amount of not less than five percent (5%) of the total Bid. Following the Bid opening, submitted Bids may not be withdrawn for a period of (60) Calendar Days. Award of Contract will occur within this period, unless mutually agreed between the parties. The Bid guaranty may become the property of the OWNER, or the OWNER may pursue any other action allowed by law, if:

- Respondent withdraws a submitted Bid within the period stated above;
- Respondent fails to submit required post Bid information within the bid guaranty period, or any mutually agreed extension of that period; or,
- Respondent fails to execute the Contract and furnish the prescribed documentation (bonds, insurance, etc.) needed to complete execution of the Contract within five (5) Working Days after notice of award, or any mutually agreed extension of that period.

TIME OF COMPLETION: The undersigned Bidder agrees to commence work on the date specified in the written "Notice to Proceed" to be issued by the OWNER and to **substantially** complete construction of the improvements, as required by the Project Manual, Drawings and Addenda for the Work within **150** working days. **The Bidder further agrees to reach Final Completion within 180 working days after Substantial Completion as required by the Project Manual, Drawings and Addenda for the work.** The Bidder further agrees that should the Bidder fail to **substantially complete the Work or to** complete the Work within the number of days indicated in the Bid or as subsequently adjusted, Bidder shall pay the liquidated damages for each consecutive day thereafter as provided in the Contract; unless the OWNER elects to pursue any other action allowed by law.

Proposer shall indicate if they accept the specified construction durations or may show below a shorter duration period:

Calendar Days

LIQUIDATED DAMAGES: The Bidder understands and agrees that the timely completion of the described Work is of the essence. The Bidder and OWNER further agree that the OWNER's actual damages for delay caused by failure to timely complete the Project are difficult, if not impossible to measure. However, with respect to the additional administrative and consultant costs to be incurred by OWNER, the reasonable estimate of such damages has been calculated and agreed to by OWNER and Bidder. Therefore, the Bidder and the OWNER agree that for each and every **Working Day** the Work or any portion thereof, remains incomplete after the **Final Completion** date as established by the above paragraph, "Time of Completion", payment will be due to the Owner in the amount of **twelve hundred dollars (\$1200) per Working Day** as liquidated damages, not as a penalty, but for delay damages to the OWNER. Such amount shall be deducted by the OWNER from any Contract payment due. In the event of a default or breach by the CONTRACTOR and demand is made upon the surety to complete the project, in accordance with the Contract Documents, the surety shall be liable for liquidated damages pursuant to the Contract Documents in the same manner as the CONTRACTOR would have been.

Bidding Requirements, Contract Forms and Conditions of the Contract
COST PROPOSAL FORM
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OWNER reserves the right to reject any or all Bids and to waive any minor informality in any Bid or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Bids).

BID DOCUMENT EXECUTION AND ACKNOWLEDGMENT:

The undersigned Bidder certifies that he/she has read and understands the Invitation for Bids, the Instructions to Bidders, Addenda, and all other requirements applicable to the bidding process provided in the Contract.

Secretary, *if Bidder is a Corporation	<hr/>
(Seal)	<hr/> Authorized Signature
	<hr/> Title
	<hr/> Date
	<hr/>
	<hr/> Address
	<hr/> Telephone Number
	<hr/> Email Address for Person Signing Bid
	<hr/> Email Address for Bidder's Primary Contact Person

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

Bidding Requirements, Contract Forms and Conditions of the Contract
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EXHIBIT 1
PROPOSAL FORM

Respondent must submit Bid Form in PDF as the official bid response form and provide an Excel Format for tabulation purposes Only.

Refer to Exhibit 1 attached as the Excel Form

CITY OF NEW BRAUNFELS
NEW BRAUNFELS NATIONAL AIRPORT SECURITY FENCING
Schedule of Bid Items

Item No.	Spec No.	Quantity	Unit	Description (with unit price in words)	Unit Price	Total Price
BID SCHEDULE: BASE BID						
1.01	PLAN	1	LS	PROPERTY BOUNDARY SURVEY BY TX RPLS per lump sum	\$	\$
1.02	TxDOT 100	418	STA	PREPARING ROW (FENCE CLEARING) <MOD PER PLAN> per station (100 feet)	\$	\$
1.03	TxDOT 164	418.00	STA	BROADCAST SEED (PERM RURAL CLAY) <MOD PER PLAN> per station (100 feet)	\$	\$
1.04	TxDOT 500	1	LS	MOBILIZATION per lump sum	\$	\$
1.05	TxDOT 506	7,000	LF	TEMP SEDMT CONT FENCE (INSTALL)	\$	\$
1.06	TxDOT 506	7,000	LF	TEMP SEDMT CONT FENCE (REMOVE)	\$	\$
1.07	TxDOT 506	1	EA	CONSTRUCTION EXISTS (INSTALL) (TY 1)	\$	\$
1.08	TxDOT 506	1	EA	CONSTRUCTION EXITS (REMOVE)	\$	\$
1.09	TxDOT 550	34,500	LF	EXISTING FENCE REMOVAL <MOD PER PLAN>	\$	\$
1.10	TxDOT 550	23,003	LF	CHAIN LINK FENCE (INSTALL) (8') (BARB TOP) <MOD PER PLAN>	\$	\$
1.11	TxDOT 552	16,432	LF	WIRE GAME FENCE (INSTALL) (8') (BARB TOP) <MOD PER PLAN>	\$	\$
1.12	TxDOT 552	3	EA	WIRE FENCE (WATER GAP) <MOD PER PLAN>	\$	\$
1.13	TxDOT 550	13	EA	GATE (INSTALL) (DOUBLE) (8'X 16') <MOD PER PLAN>	\$	\$
1.14	TxDOT 636	4	EA	ALUMINUM SIGNS (TY A)	\$	\$
1.15	TxDOT 644	2	EA	IN SM RD SN SUP&AM TY10BWG(1)SA(P)	\$	\$
1.16	PLAN	19	EA	KNOX BOX PER NBFD REQUIREMENT	\$	\$
Total Base Bid Schedule All Bid Items (Words and Figures):						\$

Bidding Requirements, Contract Forms and Conditions of the Contract
COST PROPOSAL FORM
CSP 25-023 Airport Security Fence Project
Exhibit 1

Notes:

It is understood the quantities of work to be done at unit prices are approximate and are intended for bidding purposes only. Amounts are to be shown in both words and figures. In case of discrepancy, the amount shown in words shall govern.

Reference is hereby made to the Measurement and Payment Section of the Technical Specifications for further descriptions of all Bid Schedule work items.

Note:

Owner reserves the right to reject total of Bid Schedules for the Contract.

BIDDER: _____

AUTHORIZED SIGNATURE: _____

DATE: _____

**Bidding Requirements, Contract Forms and Conditions of the Contract
BOND FORMS
CSP 25-023 Airport Security Fence Project
Exhibit 2**

BID BOND

THE STATE OF TEXAS §
§
§
COUNTY OF §

KNOW ALL BY THESE PRESENTS:

That we, _____, as Principal herein, and _____, a corporation organized and existing under the laws of the State of _____, and who is authorized and admitted to issue surety bonds in the State of Texas, Surety herein, are held and firmly bound unto the **City of New Braunfels, Texas**, located in **Comal County, Texas**, Obligee herein, in the sum of _____ Dollars (\$_____) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the Accompanying Proposal, dated the _____ day of _____, 20____, which is hereto attached and made a part hereof for all purposes, for the construction of the **Airport Security Fence**.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, if the said Principal shall not withdraw said Proposal within the period specified therein after the opening of same, or, if no period be specified, within thirty (30) days after the said opening, and shall within the period specified therefore, or if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature, enter into written Contract with the Obligee in accordance with the Proposal as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract, or in the event of the withdrawal of said Proposal within the period specified, or the failure to enter into such Contract and give such bond within the time specified, if the Principal shall pay the Obligee the difference between the amount specified in said Proposal and the amount for which the Obligee may procure the required work or supplies or both, if the latter be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

**Bidding Requirements, Contract Forms and Conditions of the Contract
BOND FORMS
CSP 25-023 Airport Security Fence Project
Exhibit 2**

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 20____.

The date of bond shall not be prior to date of Contract.

PRINCIPAL

ATTEST:

(Principal) Secretary

(S E A L)

By: _____

Name: _____

Title: _____

Address: _____

Witness as to Principal

Telephone Number: _____

SURETY

ATTEST:

Secretary

(S E A L)

By: _____

Name: _____
Attorney in Fact

Address: _____

Witness as to Surety

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

**Bidding Requirements, Contract Forms and Conditions of the Contract
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PERFORMANCE BOND

THE STATE OF TEXAS

§

COUNTY OF _____

§

KNOW ALL BY THESE PRESENTS:

That we, _____, as Principal herein, and [Surety], a corporation organized and existing under the laws of the State of [Surety's state of incorp] and who is authorized and admitted to issue surety bonds in the State of Texas, as surety, are held and firmly bound unto the City of New Braunfels, Texas, a municipal corporation with its principal location of 550 Landa St., New Braunfels, Texas, Comal County, Obligee herein, in the sum of [printed amount of bond] Dollars (\$[numeric amount of bond]) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a certain written contract with the Obligee dated the _____ day of _____, 20____, herein referred to as "the Contract" and incorporated herein and made a part hereof for all purposes, for the construction of the following project: **Airport Security Fence.**

NOW, THEREFORE, the condition of this obligation is such, if the said Principal shall faithfully perform the work in accordance with the plans, specifications, and other Contract Documents and shall fully indemnify and hold harmless the Obligee from all costs and damages which Obligee may suffer by reason of Principal's failure to perform the Work in conformity with the Contract Documents, and reimburse and repay Obligee for all outlay and expense that Obligee may incur in making good such default, then this obligation shall be void; otherwise, to remain in full force and effect. Whenever Contractor shall be declared by Obligee to be in default under the Contract, the Surety shall, upon request of Obligee and within seven (7) calendar days from receipt of Obligee's notice of Contractor's default, commence and thereafter complete performance of Contractor's obligations under the Contract. This Bond covers all contractual obligations of Contractor under the Contract, including, without limitation, the indemnity, warranty and guaranty obligations. The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of any of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and

**Bidding Requirements, Contract Forms and Conditions of the Contract
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any notices provided in such regard shall not create as to any party a duty related thereto. The penal limit of this bond shall automatically be increased by the amount of any change order, supplemental agreement or amendment which increases the price of the Contract.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in accordance with the provisions of such statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 20____.

The date of bond shall not be prior to date of Contract.

PRINCIPAL

ATTEST:

(Principal) Secretary

(S E A L)

By: _____

Name: _____

Title: _____

Address: _____

Witness as to Principal

Telephone Number: _____

SURETY

ATTEST:

Secretary

(S E A L)

By: _____

Name: _____

Attorney in Fact

Address: _____

**Bidding Requirements, Contract Forms and Conditions of the Contract
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Witness as to Surety

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

Approved as to Form:

City of New Braunfels
550 Landa St.
New Braunfels, Texas 78130

By: _____

Title: _____

Date: _____

**Bidding Requirements, Contract Forms and Conditions of the Contract
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PAYMENT BOND

THE STATE OF TEXAS
COUNTY OF _____

KNOW ALL BY THESE PRESENTS:

That we, _____, as Principal herein, and [Surety], a corporation organized and existing under the laws of the State of [Surety's state of incorp] and who is authorized and admitted to issue surety bonds in the State of Texas, as surety, are held and firmly bound unto the City of New Braunfels, Texas, a municipal corporation with its principal location of 550 Landa St., New Braunfels, Texas, Comal County, Obligee herein, in the sum of [printed amount of bond] Dollars (\$[numeric amount of bond] for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, Principal has entered into a certain written contract with the Obligee dated the _____ day of _____, 20____, which contract is hereby referred to herein as "the Contract" and is incorporated herein to the same extent as if copied at length, for the following project:

Airport Security Fence.

NOW, THEREFORE, the condition of this obligation is such, that if the said Principal shall directly or indirectly timely make payment to each and every claimant (as defined in Chapter 2253, Texas Government Code, as amended) supplying labor or materials in the prosecution of the work under the Contract, then this obligation shall be void; otherwise, to remain in full force and effect. *This obligation may be enforced by the Obligee in the event of bankruptcy or default by Principal in payments to suppliers of labor or materials in the prosecution of the work under the Contract, in either of which events the Surety shall make such payments as Principal has failed to pay and as may be required to complete the work under the contract.* The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such regard shall not create as to any party a duty related thereto.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in

**Bidding Requirements, Contract Forms and Conditions of the Contract
BOND FORMS
CSP 25-023 Airport Security Fence Project
Exhibit 2**

accordance with the provisions of said statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 20 ____.

The date of bond shall not be prior to date of Contract.

PRINCIPAL

ATTEST:

(Principal) Secretary

(S E A L)

Witness as to Principal

By: _____

Name: _____

Title: _____

Address: _____

SURETY

ATTEST:

Secretary

(S E A L)

Witness as to Surety

By: _____

Name: _____

Attorney in Fact

Address: _____

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

**Bidding Requirements, Contract Forms and Conditions of the Contract
BOND FORMS
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Approved as to Form:

City of New Braunfels
550 Landa St.
New Braunfels, Texas 78130

By: _____

Title: _____

Date: _____

Bidding Requirements, Contract Forms and Conditions of the Contract
PREVAILING WAGE RAES AND PAYROLL REPORTING
CSP 25-023 Airport Security Fence
Exhibit 3

WAGE RATE DETERMINATION

COUNTY NAME: COMAL

Wages are based on DOL General Decision:

TX TX20250007- Heavy, Highway

- Wages shall be paid in accordance with the Davis Bacon Wage Rates.
<https://sam.gov/content/wage-determinations>

PREVAILING WAGES

Proposers must comply with all requirements of the prevailing wage Statue 2258 for non- Federal contracts and Davis-Bacon and Related Acts for federal contracts.

Workers on the Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Highway-Heavy Trades "AS APPLICABLE".

- A. Wages shall be paid in accordance with the Davis Bacon Wage Rates.
<https://sam.gov/content/wage-determinations>

Such wage rates shall be used throughout the contract. If a classification is to be used, which is not listed in the attached wage rates, Contractor shall submit to owner rates and classification proposed for use, for approval, prior to performance of the Work.

EMPLOYMENT REQUIREMENTS AND WAGE RATES

This Contract shall be based upon payment by Contractor and his Subcontractors of wage rates not less than the general prevailing rate of per diem wages for Work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.

Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. Contractor agrees to comply with the Immigration Reform and Control Act of 1986 and the Americans with Disabilities Act of 1990, and Contractor will indemnify and hold Owner harmless for any failure to so comply and any discrimination for which Contractor may be charged.

Contractor and each Subcontractor shall keep certified payrolls be collected and maintained by the Contractor for itself and all subcontractors and made available to the Owner as may be required upon request or for audit at completion of the job.

According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

Contractor shall comply with all requirements of the hours of work on public works law of the State of Texas, Texas Revised Civil Statutes, Articles 5165.1 to 5165.3, including the latest amendments thereto.

**Bidding Requirements, Contract Forms and Conditions of the Contract
PREVAILING WAGE RAES AND PAYROLL REPORTING
CSP 25-023 Airport Security Fence
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" General Decision Number: TX20250007 01/03/2025

Superseded General Decision Number: TX20240007

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McLennan and Williamson Counties) and 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	. Executive Order 14026
into on or after January 30,	generally applies to the
2022, or the contract is	contract.
renewed or extended (e.g., an	. The contractor must pay
option is exercised) on or	all covered workers at
after January 30, 2022:	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.

**Bidding Requirements, Contract Forms and Conditions of the Contract
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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:	. Executive Order 13658 generally applies to the contract.	. 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.
---	--	---

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

SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures).....	\$ 12.56 **	
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER Paving & Curb.....	\$ 12.94 **	

**Bidding Requirements, Contract Forms and Conditions of the Contract
PREVAILING WAGE RAES AND PAYROLL REPORTING
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Structures.....\$ 12.87 **

LABORER

Asphalt Raker.....	\$ 12.12	**
Flagger.....	\$ 9.45	**
Laborer, Common.....	\$ 10.50	**
Laborer, Utility.....	\$ 12.27	**
Pipelayer.....	\$ 12.79	**
Work Zone Barricade		
Servicer.....	\$ 11.85	**

PAINTER (Structures)\$ 18.34

POWER EQUIPMENT OPERATOR:

Agricultural Tractor.....	\$ 12.69	**
Asphalt Distributor.....	\$ 15.55	**
Asphalt Paving Machine.....	\$ 14.36	**
Boom Truck.....	\$ 18.36	
Broom or Sweeper.....	\$ 11.04	**
Concrete Pavement		
Finishing Machine.....	\$ 15.48	**
Crane, Hydraulic 80 tons		
or less.....	\$ 18.36	
Crane, Lattice Boom 80		
tons or less.....	\$ 15.87	**
Crane, Lattice Boom over		
80 tons.....	\$ 19.38	
Crawler Tractor.....	\$ 15.67	**
Directional Drilling		
Locator.....	\$ 11.67	**
Directional Drilling		
Operator.....	\$ 17.24	**
Excavator 50,000 lbs or		
Less.....	\$ 12.88	**
Excavator over 50,000 lbs....	\$ 17.71	**
Foundation Drill, Truck		
Mounted.....	\$ 16.93	**
Front End Loader, 3 CY or		
Less.....	\$ 13.04	**
Front End Loader, Over 3 CY.	\$ 13.21	**
Loader/Backhoe.....	\$ 14.12	**

**Bidding Requirements, Contract Forms and Conditions of the Contract
PREVAILING WAGE RAES AND PAYROLL REPORTING
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Mechanic.....\$ 17.10 **
Milling Machine.....\$ 14.18 **
Motor Grader, Fine Grade....\$ 18.51
Motor Grader, Rough.....\$ 14.63 **
Pavement Marking Machine....\$ 19.17
Reclaimer/Pulverizer.....\$ 12.88 **
Roller, Asphalt.....\$ 12.78 **
Roller, Other.....\$ 10.50 **
Scraper.....\$ 12.27 **
Spreader Box.....\$ 14.04 **
Trenching Machine, Heavy....\$ 18.48

Servicer.....\$ 14.51 **

Steel Worker

 Reinforcing.....\$ 14.00 **
 Structural.....\$ 19.29

TRAFFIC SIGNALIZATION:

 Traffic Signal Installation
 Traffic Signal/Light Pole
 Worker.....\$ 16.00 **

TRUCK DRIVER

 Lowboy-Float.....\$ 15.66 **
 Off Road Hauler.....\$ 11.88 **
 Single Axle.....\$ 11.79 **
 Single or Tandem Axle Dump
 Truck.....\$ 11.68 **
 Tandem Axle Tractor w/Semi
 Trailer.....\$ 12.81 **

WELDER.....\$ 15.97 **

-

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

=====

**Bidding Requirements, Contract Forms and Conditions of the Contract
PREVAILING WAGE RAES AND PAYROLL REPORTING
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** 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.

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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 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 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 or by mail to:

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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.

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END OF GENERAL DECISION"

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VENDOR CERTIFICATIONS

The Proposer is required to submit the following information to Owner for consideration:

Provide responses that are clear and comprehensive.

Company name: _____

Permanent main office address: _____
Street _____ City, ST _____ ZIP _____

Tax ID No.: _____

2. Provide a list of officers of the firm who, while in the employ of the firm or the employ of previous firms, were associated with contracts which resulted in lawsuits, contracts defaulted or filed for bankruptcy.

3. Form of ownership: Proprietorship Partnership Corporation Other (specify) _____

DEBARMENT/SUSPENSION INFORMATION:

1. Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity? Yes No

If yes, identify in an attachment the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

SURETY INFORMATION

1. Has the Respondent ever had a bond or surety canceled or forfeited?

Yes No

If yes, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture. (Provide in this format.)

BANKRUPTCY INFORMATION

1. Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings? Yes No

If yes, state in an attachment, the date, court, jurisdiction, cause number amount of liabilities and amount of assets.

2. Provide a list of officers of the firm who, while in the employ of the firm or the employee of previous firms, were associated with contracts which result in lawsuits, contracts defaulted or filed for bankruptcy. (Please attach if applicable.)

LITIGATION DISCLOSURE

Failure to fully and truthfully disclose the information required by this Litigation Disclosure may result in the disqualification of your bid/proposal from consideration or termination of the contract, once awarded.

2. Has your company ever failed to complete, defaulted, or been terminated on a project? Yes No

If yes, attach the project name and location, owner and architect names, and explanation of the occurrence.

2. Does your company have any involvement in prior, pending or threatened claims or litigation alleging?

A) Non-compliance by your company with any obligations under any current contract or previous contract within the last five years, including completion, remaining on schedule and cooperation with the owner; or Yes No

B) Any error or omission by your company in performing services under any current contract or previous contract within the last five years; and/or Yes No

C) Non-payment to Sub-Contractors and material suppliers? Yes No

D) Have your or any member of your Firm or Team paid liquidated damages in the last three (3) years? Yes No

If you answered yes to any of the above questions, provide in an attachment the project

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name and location, owner and architect names, and explanation of the nature, status and/or outcome of such claim or litigation.

3. Has your company or any of your Sub-Contractors' companies ever failed to take corrective action on items of work under warranty during the warranty period? Yes No

4. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years? Yes No

EXPERIENCE & QUALIFICATIONS:

Prospective Respondents must show and document that they are responsible, qualified, capable, bondable, etc. to fulfill and abide by the specifications herein listed, and prospective respondents must have the capability and capacity in all respects to fully satisfy all of the contractual requirements described in this solicitation. Prospective bidders must not have been terminated by the City of New Braunfels on any prior project.

1. How many years has your current organization been doing business as a construction general contractor? _____ years?
If less than five (5) years, please explain in an attachment your organization's construction general contractor history.

2. Your company certifies that the Superintendent/Manager you propose for this Project has sufficient knowledge, skills and experience in similar Project work: Yes No

3. Your company certifies that it is able to meet the insurance requirements and provide Certificates of Insurance as specified in the General and Supplemental Conditions of this Contract. Yes No

4. Your company certifies that it is not in arrears in the payment of any obligations to the City of New Braunfels, including, without limitation, property or sales taxes, fees or utility charges. Yes No

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If no to any of the above, attach an explanation.

5. Bids shall be considered from responsible respondents with experience in fence and security installation of the same or similar type, size, nature and class as the project being proposed. The Respondent's experience, in combination with its subcontractor's experience, should include relevant projects within the last five (5) years.
 - 5.1 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, phone number, architects, contract amount, percent complete, scheduled completion date, and type of work performed by your work forces. Include names and phone numbers of contact persons for each project.
 - 5.1.1 State total worth of work in progress and under contract: _____
 - 5.2 On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion, the type of work performed by your work forces, and percentage of the cost of the work performed with your own forces. Include names and phone numbers of contact persons for each project.
 - 5.2.1 State average annual amount of construction work performed during the past years: _____
- 5.3 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.
- 5.4 Proposer shall provide the name of each subcontractor and/or supplier the Proposer will use in the performance of the contract. The proposer shall specify the work to be performed, the amount of the subcontract and the percentage of the contract the proposer will expend throughout the life of the project.

(Please note that any changes in the subcontractor and/or supplier listed below shall require additional approval prior to contract execution.)

6. Provide a list of primary sub-Contractors and Suppliers for the Work.

PROJECT SCHEDULE

Provide an estimated project schedule based on the construction specifications. Include this information as a Gantt Chart in Tab 6.

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FINANCIAL

1. Please indicate the current limit of your Bonding Capacity: _____
2. How much work is your firm currently contracted to provide? (Provide current total amount of work in dollars from ALL sources.) _____
3. List bank references, including name and title, address and phone of contact person.

4. Will you provide a detailed financial statement and furnish any other pertinent information that may be required by the City. Yes No

If no, explain:

CERTIFICATIONS:

1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. Yes No
 - A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the solicitation process or in the Contract execution;
 - B. "fraudulent practice" means an intentional misrepresentation of facts made
 1. to influence the solicitation process or the execution of the Contract to the detriment of Owner,
 2. to establish Cost Estimate or Contract prices at artificial non-competitive levels, or
 3. to deprive Owner of the benefits of free and open competition;
 - C. "collusive practice" means a scheme or arrangement between two or more Respondents, with or without the knowledge of Owner, a purpose of which is to establish Cost Estimates at artificial, non-competitive levels; and
 - D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the solicitation process or affect the execution of the Contract.

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2. NON-COLLUSION CERTIFICATION:

A. Non-Collusion Certification: Do you certify that all of the following are true and correct concerning your company's cost estimate? Yes No

1. That you are fully informed of the contents of the solicitation and the circumstances of its preparation;
2. That your cost estimate is genuine and is not a collusive or sham cost estimate;
3. That neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other respondent, firm or person to submit a collusive or sham cost estimate, or to refrain from responding, or sought by communication or conference with any other respondent, firm or person to fix the prices, overhead, profit, or any cost element in your cost estimate or in any other cost estimate, or to secure through
4. any collusion, conspiracy, or agreement any advantage against the City of New Braunfels or any other respondent; and
5. The prices quoted in your cost estimate are fair and proper and are not affected by any collusion, conspiracy, connivance or unlawful agreement on the part of your company or anyone acting on its behalf.

3. CONTRACTS WITH COMPANIES THAT BOYCOTT ENERGY COMPANIES:

Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract.

Yes
 No

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

4. CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM INDUSTRY:

Contractor verifies that 1 it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or 2 the verification required by Section 2274 002 of the Texas Government Code does not apply to the contract.

- Yes
- No

If Contractor is a company with 10 or more full time employees and if this Agreement has a value of at least \$100 000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274 it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

5. CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL:

A. Contractor verifies that it: (1) does not boycott Israel currently; and (2) will not boycott Israel during the term of the contract:

- Yes
- No

B. Pursuant to 808 (HB89) and Chap. 2270 (SB253) and Sections 2271 of the Texas Government Code:

1. “Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

C. Pursuant to subtitle F, Chapter 2252, Texas Government Code, contractor verifies that it will not engage in business with Iran, Sudan or a foreign terrorist organization while providing products or services under a governmental contract.

- Yes
- No

6. ANTI-LOBBYING:

A. Lobbying activities or representations by the Bidder are prohibited between the date that the Invitation for Competitive Sealed Proposal (CSP) is issued and the date of contract execution.

1. During a no-contact period, a bidder shall make a representation only through the authorized contact person.

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2. During the no-contact period, a bidder may not make a representation to a City official or to a City employee other than to the authorized contact person. This prohibition also applies to a vendor that makes a representation and then becomes a bidder.
3. The prohibition of a representation during the no-contact period applies to a representation initiated by a bidder, and to a representation made in response to a communication initiated by a City official or a City employee other than the authorized contact person.

Do you certify that you are fully informed of the Anti-lobbying information above and all parties of your company will be informed?

Yes
 No

7. CERTIFICATE OF NONDISCRIMINATION OF EMPLOYEMENT:

The Bidder certifies that Bidder has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if Bidder has not participated in a previous contract of this type, or if Bidder has had previous contract or subcontracts and has not filed, Bidder will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Yes
 No

Note—The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)) and must be submitted by Bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations. Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

8. PROHIBITION ON CERTAIN TELECOMMUNICATIONS EQUIPMENT OR SERVICES:

Contractor acknowledges: **Yes** **No**

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)].

9. DISCLOSURE OF PROPRIETARY INFORMATION

Contractor acknowledges: **Yes** **No**

9.1. All materials submitted to Owner become public property and are subject to the Texas Public Information Act, Government Code Chapter 552, upon receipt. If Proposer does not desire proprietary information in the Proposal to be disclosed, each page must be identified and marked "proprietary" at time of submittal.

Owner will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

9.2. This provision applies if the Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner. Respondents and Contractor must (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner for the duration of the Contract; (2) promptly provide to the Owner any contracting information related to the Contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the Contract, either:

- provide at no cost to the Owner all contracting information related to the Contract that is in the custody or possession of the entity; or
- preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner.

9.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Request for Proposals and Contract and the vendor agrees that the Contract can be terminated if the vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

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10. CONTRACTOR'S ASSURANCE (Subcontracts-Federal Aid Projects)

By signing this proposal, the contractor is giving assurances that all subcontract agreements will incorporate the Standard Specification and Special Provisions to Section 9.9., Payment Provisions for Subcontractors, all subcontract agreements exceeding \$2,000 will incorporate the applicable Wage Determination Decision, and all subcontract agreements will incorporate the following:

- FAA Federal Provisions as represented in Special Provisions – Exhibit 6 and Exhibit 16

SEE NEXT PAGE FOR ACKNOWLEDGEMENT

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ACKNOWLEDGEMENT

THE STATE
OF TEXAS
COUNTY OF
COMAL

I certify that I have read all of the specifications and general RFQ requirements and do here by certify that all items submitted meet specifications. I certify that my responses and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Questionnaire, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this questionnaire may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my response to this solicitation to be rejected.

Company's Name

Signature, Authorized Representative of Respondent

Title

SUPPLEMENTAL CONDITIONS

These Supplemental Conditions are in addition or changes to the requirements of the Project Manual Section 6 General Conditions and Sections 7-29 and are a part of the Contract Documents.

ARTICLE 07.01.02

Section 6 – ARTICLE 4 – AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

Reference Section 06.04.05.A of the General Conditions:

Delete this section “Reference Points” in its entirety.

ARTICLE 07.02.01

Section 6 – ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

Reference Section 06.14.07.A.2 of the General Conditions:

Insert paragraph “e”:

- e. Contractor delivers to Owner a Full and Final Release and Affidavit of Bills Paid in the form attached hereto as Attachment No. 1, executed by Contractor.

ARTICLE 07.03.01

Section 15 – Item 1.04 – CONSTRUCTION SCHEDULE

Reference Item 1.04 C (8):

8. A Billing Schedule (tabulation of the estimated monthly billings) for the Work shall be prepared and submitted by the Contractor with the submission of the bid and with every monthly pay application. The total for each month and a cumulative total will be indicated. These monthly forecasts are only for planning purposes of the Owner. Monthly payments for actual work completed will be made by the Owner in accordance with Article 11 of the General Conditions.

Reference Item 1.04 D:

- D. The Contractor must receive approval of the Owner for the Construction Schedule and Billing

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Schedule prior to each monthly Application for Payment. No payment will be made until these are accepted.

- E. Contactor will be required to make accommodations for the regular business of the golf course operations during construction.

ARTICLE 07.07.01

Section 27 – Project Record Documents

Reference Item 2.0 EXECUTION

Insert Paragraph B:

- B. All project documents will be maintained on the City provided project management software, "Procore". Contractor will be responsible for uploading, maintaining, and viewing all project related documentation within the software.

END OF SECTION

SPECIAL PROVISIONS

These Special Provisions are the Federal requirements and Title VI Assurances" attached hereto and made a part of this solicitation and awarded contract documents.

AIRPORT IMPROVEMENT PROGRAM FEDERAL CONTRACT PROVISIONS

SPECIAL PROVISION- CONTRACTOR CONTRACTUAL REQUIREMENTS AND TITLE VI ASSURANCES

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

1. COMPLIANCE WITH REGULATIONS

The contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

2. NONDISCRIMINATION

The contractor, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

3. SOLICITATIONS FOR SUBCONTRACTORS, INCLUDING PROCUREMENT OF MATERIALS AND EQUIPMENT

In all solicitations either by competitive bidding or negotiation made by contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. INFORMATION AND REPORTS

The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities, as may be determined by the Agent or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

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5. SANCTIONS FOR NONCOMPLIANCE

In the event of the contractor's noncompliance with the nondiscrimination provisions of this Agreement, the Agent shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the Agreement until the contractor complies, and/or
- (b) cancellation, termination, or suspension of the Agreement, in whole or in part.

6. GENERAL CIVIL RIGHTS PROVISIONS

The contractor assures that it will comply with pertinent statutes, Executive orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964. This provision binds the contractor from the bid solicitation period through the completion of the contract. (Section 520, Airport and Airway Improvement Act of 1982.)

7. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

- (1) No Federal appropriated funds shall be paid, by or on behalf of the contractor, 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 the making of any Federal grant and the amendment or modification of any Federal grant.
- (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 any Federal grant, the contractor shall complete and submit Standard Form-LLL, "**Disclosure of Lobby Activities**," **in accordance with its instructions, refer to Exhibit 9.**

8. RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed. (49 CFR Part 18).

9. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or

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disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

10. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

11. ACCESS TO RECORDS AND REPORTS

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

12. TRADE RESTRICTION

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

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

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waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government. Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous. The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

13. BREACH OF CONTRACT TERMS

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

14. CLEAN AIR AND WATER POLLUTION CONTROL

Contractors and subcontractors agree:

- 1) That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- 2) To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- 3) That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- 4) To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

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15. 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) above, 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 above, 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 above.

3) Withholding for Unpaid Wages and Liquidated Damages.

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 any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

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 section.

16. INCORPORATION OF PROVISIONS

The contractor shall include the provisions of paragraphs 1 through 15 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Agent or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Agent to enter into such litigation to protect the interests of the Agent and Sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

17. CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

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The Engineer certifies, by acceptance of this Agreement, that the Engineer:

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

If the Engineer cannot certify both of the above representations, the Engineer is ineligible to accept this Agreement unless the Agent 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 Engineer therefore must provide information to the Agent and the Sponsor about its tax liability or conviction to the Agent and the Sponsor, 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. The Engineer agrees that it will incorporate this provision for certification in all lower tier subcontracts.

18. 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.

19. ENERGY CONSERVATION REQUIREMENTS

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201et seq.).

20. 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 \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

21. 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:

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- 1) **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes 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) **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 sponsor or the Federal Aviation Administration 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 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.

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally Assisted Programs at the Federal Aviation Administration)

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22. NONDISRIMINATION STATUTES AND AUTHORITIES

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 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 of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

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- 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.).

23. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

The Engineer shall comply with the provisions of Attachment G, "Disadvantaged Business Enterprise (DBE) Assurances" attached hereto and made a part of this Agreement. For any additional services, DBE goals will be amended, and a new plan filed.

There is no DBE goal identified even if 0 goal, must be in contract. The wording we have in our contract is, The DBE goal for this contract to be subcontract is 0 % of the dollar value of the prime contract to DBEs.

24. CHILD SUPPORT CERTIFICATION

Under Section 231.006 of the Family Code, the Engineer certifies that the individual or business entity named in this Agreement is eligible to receive the specified grant or payment and acknowledges that this Agreement may be terminated, and payment withheld if this certification is inaccurate. The Engineer further acknowledges that he or she has read Attachment I, attached hereto and made a part of this Agreement.

25. ISRAEL BOYCOTT CERTIFICATION AND PROHIBITION: Pursuant to Texas Govt. Code Chap. 808 (HB89) and Chap. 2270 (SB253):

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

ENGINEER hereby certifies that (1) it does not boycott Israel, and (2) shall not boycott Israel during the term of the Professional Services Agreement.

End of Section

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION**
(49 CFR Part 29 - Appendix A)

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

Instructions For Certification

- 1 By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- 2 The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective 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 primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3 The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
- 4 The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5 The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

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- 6 The prospective primary 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 proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- 7 The prospective primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8 A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- 9 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 a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 10 Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, 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.
 - 10.1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) 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;
 - (c) 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 (1)(b) of this certification;

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(d) 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.

10.2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature/Authorized Certifying Official

Typed Name and Title

Applicant/Organization

Date Signed

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DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

Project: 2415NWBRF
Project Name: Airport Improvement Fence
City: City of New Braunfels
County: Comal

The following goal for disadvantaged business enterprises is established:

DBE 0%

Certification of DBE Goal Attainment

By signing the Bid, the Bidder certifies that the above DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the Bidder will provide a good faith effort to substantiate the attempt to meet the goal.

Failure to provide commitments to meet the stated goal or provide a satisfactory good faith effort will be considered a breach of requirements of the proposal. As a result, the bid guarantee of the Bidder will be property of OWNER and the Bidder will be excluded for rebidding on the project when it is re-advertised.

CONTRACTOR

By: _____

Name: _____

Title: _____

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Certification Regarding Lobbying

Certification For Contracts, Grants, Loans, And Cooperative Agreements

The undersigned certifies, 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 undersigned, 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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.

Signature/Authorized Certifying Official

Typed Name and Title

Applicant/Organization

Date Signed

**Bidding Requirements, Contract Forms and Conditions of the Contract
FEDERAL CERTIFICATION – CHILD SUPPORT
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Exhibit 10**

CHILD SUPPORT STATEMENT FOR NEGOTIATED CONTRACTS AND GRANTS

Under Section 231.006, Texas Family Code, the Engineer/Architect certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate. If the above certification is shown to be false, the Engineer/Architect is liable to the state for attorney's fees, the cost necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or the contract.

A child support obligor or business entity ineligible to receive payments because of a payment delinquency of more than thirty (30) days remains ineligible until: all arrearages have been paid; the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency; or the court of continuing jurisdiction over the child support order has granted the obligor an exemption from Subsection (a) of Section 231.006, Texas Family Code, as part of a court-supervised effort to improve earnings and child support payments.

***REFER TO NEXT PAGE FOR STATE OF TEXAS CHILD SUPPORT BUSINESS
OWNERSHIP FORM***

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State of Texas Child Support Business Ownership Form

County: **COMAL**

Project Name:

LG Project Number: **2415NWBFRF**

Business Entity Submitting: _____

Section 231.006, Family Code, requires a bid for a contract paid from state funds to include the names and social security number of individuals owning 25% or more of the business entity submitting the bid.

1. In the spaces below please provide the names and social security number of individuals owning 25% or more of the business.

Name

Social Security Number

2. Please check the box below if no individual owns 25% or more of the business. (No individual owns 25% or more of the business.)

Except as provided by Section 231.302(d), Family Code, a social security number is confidential and may be disclosed only for the purpose of responding to a request for information from an agency operating under the provisions of Part A and D to Title IV of the Federal Social Security Act (42 USC Section 601-617 and 651-699).

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.

The information collected on this form will be maintained by _____ Enter Local Government Name With few exceptions, you are entitled on request to be informed about the information collected about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under Section 559.004 of the Government Code, you are also entitled to have information about you corrected that you believe is incorrect.

Signature

Printed Name

Firm

Date

BUY AMERICAN PREFERENCE

Certification of Compliance with FAA Buy American Preference – Construction Projects

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 (ü) 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 §

Bidding Requirements, Contract Forms and Conditions of the Contract
FEDERAL CERTIFICATION – BUY AMERICAN
CSP 25-023
Exhibit 11

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.

Bidding Requirements, Contract Forms and Conditions of the Contract
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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

Firm

Date

Bidding Requirements, Contract Forms and Conditions of the Contract
FEDERAL CERTIFICATION – CERTIFICATE OF INTERESTED PARTIES – FORM 1295
CSP 25-023
Exhibit 12

CERTIFICATE OF INTERESTED PARTIES		FORM 1295	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.			
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.			
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.			
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.			
4 Name of Interested Party		City, State, Country (place of business)	
		Nature of Interest (check applicable)	
		Controlling	Intermediary
5 Check only if there is NO Interested Party.		<input type="checkbox"/>	
6 UNSWORN DECLARATION			
My name is _____, and my date of birth is _____.			
My address: _____ (street) _____ (city) _____ (state) _____ (zip code) _____ (country)			
I declare under penalty of perjury that the foregoing is true and correct.			
Executed in _____ County, State of _____, on the _____ day of _____, 20_____. (month) (year)			
_____ Signature of authorized agent of contracting business entity (Declarant)			
ADD ADDITIONAL PAGES AS NECESSARY			

Bidding Requirements, Contract Forms and Conditions of the Contract
FEDERAL CERTIFICATION – CONFLICT OF INTEREST – CIQ
CSP 25-023
Exhibit 13

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

THIS AGREEMENT is dated as of the _____ day of _____ of the year 20__ by and between CITY OF NEW BRAUNFELS (Owner) and _____ (Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents as listed below:

The Contract Agreement]

Standard General Conditions of the Contract

Any other documents used—Special Conditions, Technical Specifications, etc.

Payment Bond

Performance Bond

Warranty Bond (if requested by the City)

Plans and Specifications

ARTICLE 2 - THE PROJECT

2.01 Project Title: Airport Security Fence Project

2.02 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

The project includes a property boundary survey by a Texas RPLS and the installation of approximately 23,000 linear feet of chain link fence and 16,400 linear feet of game fence along with fence removal, new gates, and associated improvements.

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

KSA ENGINEERS, INC.

816 Park Two Drive

Sugar Land, TX 77478

(Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

A. Time is of the essence in all phases of the Work and performance of obligations owed by the Contractor to the Owner as stated in the Agreement and the Contract Documents. All time limits for Milestones, if any, Substantial Completion, and completion and **readiness for final**

payment as stated in the Contract Documents are of the essence of the Contract. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.

4.02 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within **150** calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.3 of the Project Manual General Conditions and completed and ready for final payment in accordance with Section 6 Article 14.7 of the General Conditions within **180** calendar days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner (**\$1200.00**) per calendar day for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner (**\$1200.00**) per calendar day for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

4.04 *Special Damages*

A. In addition to the amount provided for in liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

4.05 *Claims for Additional Time*

A. Contractor shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site only as determined from climatological data set forth in this subsection. Contractor shall bear the

entire economic risk of all weather delays and disruptions and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Rainy days shall not be considered an abnormal or adverse weather condition for which an extension of time will be granted unless and except in those months during which the actual cumulative number of rainy days within the month exceed the historical average cumulative number of rainy days for said month, provided that the rainfall prevented the execution of major items of work on normal working days. A rain day is defined as a day when rainfall exceeds one-tenth (.1) inch during a twenty-four (24) hour period. The historical number of Weather Days per calendar month is as follows, based upon regional weather data from the National Weather Service or NOAA:

Average Weather Days per Month

Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
(4)	(4)	(4)	(3)	(5)	(6)	(4)	(3)	(4)	(4)	(4)	(4)

The number of rain days shown in the Rainfall Table for the first and last months of this Agreement will be prorated in determining the total number of rain days expected during the period of this Agreement.

B. Requests for an extension of time pursuant to this subsection shall be promptly submitted to Owners in accordance with Article 10, Section 6 of the Project Manual General Conditions. Failure to timely submit a complete notice of claim for delays and extension of time for completion due to abnormal or adverse weather conditions or rainy days pursuant to this subsection shall result in the denial of a request for extra time for performance under the Contract Documents.

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract.

A. For all Work, at the prices stated in Contractor's Bid Form, attached hereto as Exhibit B.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions and Supplemental Conditions (if applicable). Contractor delivers to Owner a Full and Final Release and Affidavit of Bills Paid in the form attached hereto as Attachment No. 1, executed by Contractor.

Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided herein:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:
 - a. 95% (percent) of Work completed.
 - b. 95% (percent) of cost of materials and equipment not incorporated in the Work.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

7.01 To induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - MISCELLANEOUS

8.01 *Terms*

A. Terms used in this Agreement will have the meanings stated in the General Conditions.

8.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.03 Successors and Assigns

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

8.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 Governing Law

A. The Contract shall be governed by the law of the state of Texas without regard to its conflict of law principles.

8.06 Venue

A. This Agreement is entered into and performed in Comal County, Texas, and the Contractor and the Owner agree that mandatory venue for any legal action related to this contract shall be in the District Courts of Comal County, Texas.

8.07 Indemnity Against Loss

A. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY OF NEW BRAUNFELS AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES, ON ACCOUNT OF DAMAGE TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ALL PERSONS, INCLUDING EMPLOYEES OF THE CONTRACTOR OR ANY OF ITS CONSULTANTS, WHICH MAY ARISE FROM ANY NEGLIGENT ACT, ERROR OR OMISSION, ON THE PART OF THE CONTRACTOR, ITS EMPLOYEES, AGENTS, AND CONSULTANTS, PURSUANT TO THIS CONTRACT.

B. THE CITY DOES NOT ASSUME ANY LIABILITY TO THIRD PERSONS, NOR WILL THE

OWNERS REIMBURSE THE CONTRACTOR FOR ITS LIABILITY TO A THIRD PERSON, WITH RESPECT TO LOSS DUE TO DEATH, BODILY INJURY, OR DAMAGE TO PROPERTY RESULTING IN ANY WAY FROM THE PERFORMANCE OF THIS CONTRACT OR ANY SUBCONTRACT HEREUNDER, AND CONTRACTOR FURTHER AGREES TO PROVIDE THE DEFENSE FOR, AND INDEMNIFY AND HOLD HARMLESS OWNERS FROM ANY AND ALL CLAIMS, SUITS, CAUSES OF ACTION, AND LIABILITY, ARISING IN CONNECTION WITH THIS CONTRACT.

8.08 *Prohibition on Contracts with Companies Boycotting Israel*

A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. [USE IN LIEU OF THE PREVIOUS SENTENCE IF THE CONTRACTOR IS EXEMPT FROM THE ISRAEL BOYCOTT REQUIREMENT—The Contractor hereby declares that it is exempt from Chapter 2271 of the Texas Government Code, as amended.] The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

8.09 *Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited*

A. The Contractor represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

B. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Contractor and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

8.10 *Electronic Signatures (this section is omitted)*

8.11 *Texas Public Information Act*

- A. The Contractor recognizes that this Project is publicly owned, and the Owner is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to the Owner, to cooperate with the Owner for any particular needs or obligations arising out of the Owner's obligations under the TPIA. This acknowledgement and obligation are in addition to and complimentary to the Owner's audit rights.
- B. This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the City.
- C. The Contractor must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner for the duration of the Agreement; (2) promptly provide to the Owner any contracting information related to the Agreement that is in the custody or possession of the Construction Manager on request of the Owner; and (3) on completion of the Agreement, either:
 - i. provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of the Contractor; or
 - ii. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

ARTICLE 9 - INSURANCE

9.01 *Evidence of Contractor's Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured, the certificates and other evidence of insurance required to be provided by Contractor in accordance with the Insurance Rider that is Exhibit A to this Agreement. Evidence of insurance is attached as Exhibit B to this Agreement.

Exhibit A – Insurance Rider

Exhibit B – Evidence of Insurance

Exhibit C –Contractor's Bid Form

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

Bidding Requirements, Contracts Forms & Conditions of the Contract

DRAFT CONTRACT AGREEMENT

CSP 25-023

Exhibit 14

This Agreement will be effective on _____, _____ (which is the Effective Date of the Agreement).

OWNER:

CITY OF NEW BRAUNFELS

By: _____

Printed Name: Robert Camareno

Title: City Manager

[CORPORATE SEAL]

Attest: _____

Title: _____

Address for giving notices:

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

CONTRACTOR:

By: _____

Printed Name: _____

Title: _____

[CORPORATE SEAL]

Attest: _____

Bidding Requirements, Contracts Forms & Conditions of the Contract

DRAFT CONTRACT AGREEMENT

CSP 25-023

Exhibit 14

Title: _____

Address for giving notices:

License No.: _____
(Where Applicable)

Agent for service or process:

(If Contractor is a corporation or a partnership, attach evidence or authority to sign.)

Bidding Requirements, Contracts Forms & Conditions of the Contract

DRAFT CONTRACT AGREEMENT

CSP 25-023

Exhibit 14

Exhibit A to the Contract – Insurance Rider

Exhibit A to the Contract – Insurance Rider



**City of New Braunfels
Insurance Requirements
Construction and/or Renovation**

INSURANCE AND LIABILITY: During the period of this contract, contractor shall maintain at his expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall:

- (i) Name City of New Braunfels and New Braunfels Utilities as additional insured/or an insured, as its interests may appear.
- (ii) Provide City of New Braunfels and New Braunfels Utilities a waiver of subrogation.
- (iii) Provide City of New Braunfels with a thirty (30) day advance written notice of cancellation or material change to said insurance.
- (iv) Provide the City Purchasing Agent at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of Notice of Award.

Submit a certificate of insurance reflecting the following coverages.

Submit a certificate of insurance reflecting coverage as follows:

a. Automobile Liability:

Bodily Injury (Each person)	-	\$1,000,000.00
Bodily Injury (Each accident)	-	\$1,000,000.00
Property Damage	-	\$1,000,000.00

b. General Liability (Including Contractual Liability):

Bodily Injury	-	\$1,000,000.00
Property Damage	-	\$1,000,000.00
Aggregate	-	\$2,000,000.00

c. Excess Liability:

Umbrella Form	-	\$5,000,000.00
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d. Builders' Risk:

- Project Value

e. Worker's Compensation:

- Statutory

Or Employer's Liability Insurance:

Each Accident	-	\$1,000,000.00
Disease each employee	-	\$1,000,000.00
Policy Limit	-	\$1,000,000.00

Exhibit B to the Contract – Contractors Evidence of Insurance

[Name of Contractor]

(Insert Certificate of Insurance Here)

Exhibit C to the Contract – Contractor's Bid Response Form

**Exhibit D to the Contract – FEDERAL GUIDELINES FOR CONTRACT
PROVISIONS FOR OBLIGATED SPONSORS AND AIRPORT IMPROVEMENT
PROGRAM PROJECTS**

(inserted here)

Bidding Requirements, Contracts Forms & Conditions of the Contract

LIQUIDATED DAMAGES WORKSHEET

CSP 25-023

Exhibit 15

City of New Braunfels Liquidated Damages Calculations - Feb. 2025

(A)	Number of Hours or Days (B)	Units (C)	Rate (D)	Indirect Rate (E)	Weekly Costs (B*D+E)	Monthly (Weekly*4)	Annual Rate	Hourly Rate	Job Level	Health	RCA	Total Benefits	Indirect Rate
Field Representative(s)	40	hrs	\$ 32.00	1.42	\$ 1,817.60	\$ 7,270.40	\$ 66,560	\$ 32.44	Yr5 Constr Insp	\$ 9,510	\$ 18,637	\$ 28,147	0.43
Field Representative Truck	5	days	\$ 48.00	1.00	\$ 240.00	\$ 960.00	\$ 70,000	\$ 47.95					
Project Manager	20	hrs	\$ 50.00	1.37	\$ 1,370.00	\$ 5,480.00	\$ 103,850	\$ 49.93	DO	\$ 9,510	\$ 29,078	\$ 38,588	0.37
PM Truck	5	days	\$ 48.00	1.00	\$ 240.00	\$ 960.00	\$ 70,000	\$ 47.95					
Program Manager or Director	5	hrs	\$ 77.00	1.34	\$ 515.90	\$ 2,063.60	\$ 160,240	\$ 77.04	EW-2	\$ 9,510	\$ 44,867	\$ 54,377	0.34
Administration Costs-Purchasing	10	hrs	\$ 46.00	1.38	\$ 634.80	\$ 2,539.20	\$ 95,886	\$ 46.10	HH - Purch Mgr	\$ 9,511	\$ 26,848	\$ 36,359	0.38
Administration Costs - TCI	10	hrs	\$ 25.00	1.47	\$ 367.50	\$ 1,470.00	\$ 52,000	\$ 25.00	R-Proj Specialist	\$ 9,510	\$ 14,560	\$ 24,070	0.46
Consultant Engineer	5	hrs	\$ 182.00	1.00	\$ 910.00	\$ 3,640.00			Contract Rate				
					\$ -	\$ -							
Total Monthly Cost						\$ 24,383.20							
Average Days Per Month						20							
Liquidated Damages Per Day						\$ 1,219.16							

Based on these calculations, use \$1,200/day in liquidated damages in the contract.

(A) construction administrative items (B) unit used per week, such as you will have a full-time field representative(s) who will work an average of 50 hours per week.
 (C) unit of measure (i.e. hours, days, week)
 (D) rate or the cost per unit
 (E) indirect rate (sometimes called overhead rate) applied to the labor cost to cover the costs of benefits

The liquidated damages contract provision provides a mechanism for the local government (LG) to recover costs associated with the contract time overrun. Liquidated damages are required as a means of recovering, at a minimum, construction engineering costs from a contractor. The LG must monitor and assess liquidated damages according to specifications.

The LG needs to define liquidated damages in the bid documents. The LG is not allowed to use TxDOT liquidated damages rates. The LG must submit documentation of how it derived its liquidated damages rates and TxDOT must approve the methodology.

Guidance from FHWA: <http://www.fhwa.dot.gov/programadmin/contracts/contracts03.cfm#07>



FAA
Airports

Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects

(Issued on May 24, 2023)

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Bidding Requirements, Contracts Forms & Conditions of the Contract

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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

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.
 - 1) Terminology:
 - 5) 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.
 - 6) 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.
 - 7) For purposes of determining requirements for contract provisions, the term **“contract”** includes professional services, and subcontracts and supplier contracts such as purchase orders.
 - 8) 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).
 - a. The term **“bid”** is understood to mean a bid, an offer, or a proposal.
 - b. The term **“applicant”** is understood to mean the following in different contexts:
 - 9) 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).
 - i. For all other clauses, the term **“applicant”** means a bidder, offeror, or proposer for a contract.

Sponsor Actions

In general, Sponsor's actions consistent with obligations:

- 10) Include in its procurements the provisions that are applicable to its project.
- 11) 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.
- 12) 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).
- 13) **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.
- 14) Require the contractor (including all subcontractors) to insert these contract provisions in each lower tier contract (e.g., subcontract or sub-agreement).
- 15) 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.
- 16) Require that the prime contractor be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor, or service provider.
- 17) Verify that any required local or State provision does not conflict with or alter a Federal law or regulation.

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.

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
<u>Access to Records and Reports</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<u>Affirmative Action Requirement</u>	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
<u>Breach of Contract</u>	\$250,000	NIS	REQD	REQD	REQD	REQD	n/a
<u>Buy American Preferences</u>	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) <u>Buy American Statement</u>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) <u>Construction</u>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) <u>Equipment/Building Projects</u>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
<u>Civil Rights – General</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
<u>Civil Rights - Title VI Assurances</u>	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) <u>Notice - Solicitation</u>	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) <u>Clause - Contracts</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) <u>Clause – Transfer of U.S. Property</u>	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) <u>Clause – Transfer of Real Property</u>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) <u>Clause - Construct/Use/Access to Real Property</u>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) <u>List – Pertinent Authorities</u>	\$0	NIS	REQD	REQD	REQD	REQD	REQD
<u>Clean Air/Water Pollution Control</u>	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
<u>Contract Work Hours and Safety Standards</u>	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
<u>Copeland Anti-Kickback</u>	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
<u>Davis Bacon Requirements</u>	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a
<u>Debarment and Suspension</u>	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
<u>Disadvantaged Business Enterprise</u>	\$ 250,000	REQD	REQD	REQD	REQD	REQD	n/a
<u>Distracted Driving</u>	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
<u>Domestic Preferences for Procurements</u>	\$0	NIS	REQD	REQD	REQD	REQD	Info
<u>Equal Employment Opportunity</u>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(1) <u>EEO Contract Clause</u>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(2) <u>EEO Specification</u>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
<u>Federal Fair Labor Standards Act</u>	\$ 0	REQD	REQD	REQD	REQD	REQD	Info

Bidding Requirements, Contracts Forms & Conditions of the Contract**FAA – AIRPORTS - GUIDELINES****CSP 25-023****Exhibit 16**

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
<u>Foreign Trade Restriction</u>	\$ 0	REQD	REQD	REQD	REQD	REQD	n/a
<u>Lobbying Federal Employees</u>	\$ 100,000	REF	REQD	REQD	REQD	REQD	n/a
<u>Occupational Safety and Health Act</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
<u>Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment</u>	\$0	NIS	REQD	REQD	REQD	REQD	Info
<u>Prohibition of Segregated Facilities</u>	\$0	NIS	Limited	REQD	Limited	Limited	n/a
<u>Recovered Materials</u>	\$10,000	REF	Limited	REQD	REQD	Limited	n/a
<u>Right to Inventions</u>	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
<u>Seismic Safety</u>	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
<u>Tax Delinquency and Felony Conviction</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<u>Termination of Contract</u>	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
<u>Veteran's Preference</u>	\$ 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: **[Sponsor must insert established goal]**

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 **[Sponsor must insert state, county, and city]**.

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/. 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,¹ 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.

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:

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

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

- e) To provide to the Airport Sponsor or the FAA evidence that documents the source and origin of the iron, steel, and/or manufactured product.
- f) To faithfully comply with providing U.S. domestic products.
- g) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- h) Certify that all construction materials used in the project are manufactured in the U.S.

The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

- f) To the submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
- g) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
- h) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
- i) To furnish U.S. domestic product for any waiver request that the FAA rejects.
- j) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

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

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

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

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

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

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

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

Date

Signature

Company Name

Title

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:

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- 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 contact 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 regardless of funding source .	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 regardless of funding source .	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 regardless of funding source .	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">Assurance 2 of the DOT Standard Title VI Assurances and Nondiscrimination ClausesAssurance 30(d) of the Airport Sponsors Assurances	<ol style="list-style-type: none">1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and2) All Sponsor proposals for negotiated agreements regardless of funding source.	A6.3.1

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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">• Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses• Assurance 30(e)(1) of the Airport Sponsor Assurances	<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">• Assurance 4 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses• Assurance 30e.3 of the Airport Sponsor Assurances	<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

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Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<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">• Assurance 5 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses• Assurance 30(e)(4)(a) of the Airport Sponsor Assurances	<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
<p>Clause for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program</p> <ul style="list-style-type: none">• Assurance 6 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses• Assurance 30(e)(4)(b) of the Airport Sponsor Assurances	<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

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Title VI List of Pertinent Nondiscrimination Acts and Authorities <ul style="list-style-type: none">• Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses• Assurance 30(e)(2) of the Airport Sponsor Assurances	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. This list can only be omitted if the FAA has determined that the contractor or company is already subject to substantively identical nondiscrimination requirements.	A6.4.1 List must be included in all applicable contracts.

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:

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

Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

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

Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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-

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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

Bidding Requirements, Contracts Forms & Conditions of the Contract

FAA – AIRPORTS - GUIDELINES

CSP 25-023

Exhibit 16

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/offeror" 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

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- 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.

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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 identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued

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

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 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

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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:

- 6) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 7) 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.

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.

END OF DOCUMENT

Bidding Requirements, Contracts Forms & Conditions of the Contract
CITY CONSTRUCTION PROJECT MANUAL
CSP 25-023
Exhibit 17

The City Construction Project Manual is posted on the City Website at the following link:

<https://www.newbraunfels.gov/DocumentCenter/View/34163/Construction-Project-Manual-section-6-296-2024posted>