

**Metropolitan Washington Airports Authority**  
**PROCUREMENT AND CONTRACTS DEPT.**  
**SOLICITATION OFFER AND AWARD**

Metropolitan Washington Airports Authority Procurement and Contracts Dept., MA-440 1 Aviation Circle, Suite 154 Washington, DC 20001-6000		1. FOR INFORMATION CALL NAME: <b>Betty J. Boothe</b> TELEPHONE NUMBER: <i>(No Collect Calls)</i> <b>703-417-8667</b>	
2. SOLICITATION NUMBER	3. TYPE OF SOLICITATION	4. DATE ISSUED	
<b>1-10-C171</b>	<b>REQUEST FOR PROPOSALS (RFP)</b>	<b>July 23, 2010</b>	

**SOLICITATION**

5. DESCRIPTION OF SUPPLIES, SERVICES, CONSTRUCTION

Contractor shall provide all labor, materials, tools, equipment and supervision necessary for the Runway 1-19 Safety Area Improvements and Runway 1 Hold Apron Modification - Early Utility Relocation Package at Ronald Reagan Washington National Airport, in accordance with the attached contract provisions, specifications and drawings.

All questions concerning this solicitation must be submitted by 3:00 PM August 13, 2010 via the Authority's website at: <http://www.mwaa.com/3095.htm>

**Note:** This solicitation has a 40% DBE participation goal.

NOTE: CONTRACTORS ARE RESPONSIBLE FOR VERIFYING NUMBER AND DATES OF AMENDMENTS PRIOR TO SUBMITTING A PROPOSAL. FAILURE TO ACKNOWLEDGE AN AMENDMENT MAY RESULT IN PROPOSAL BEING DETERMINED NON-CONFORMING.

6. BOND REQUIREMENTS

PAYMENT BOND: 100%                                                  PERFORMANCE BOND: 100%

7. PRE-PROPOSAL CONFERENCE

**DATE:** August 9, 2010                                                  **TIME:** 10:00 AM  
**LOCATION:** Second Floor Conference Room, East Building, Ronald Reagan Washington National Airport

8. DEADLINE FOR OFFER SUBMISSION

Sealed offers in original and **0** copies to perform the work or to furnish the supplies or services in the Schedule are due at the place specified at the top of this form by **1:00 P.M.** local time, **August 25, 2010**. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time the offers are due. Proposals will not be publicly opened.

**OFFER (Must be fully completed by offeror)**

9. NAME AND ADDRESS OF OFFEROR <i>(Include Zip Code)</i>		11. REMITTANCE ADDRESS <i>(If different than Item9)</i>	
		12A. E-MAIL ADDRESS	
10A. TELEPHONE NUMBER	10B. FAX NUMBER	12B. COMPANY INTERNET WEBSITE	

NOTICE: Offer shall be valid for 60 days

13. ACKNOWLEDGMENT OF AMENDMENTS (This offeror acknowledges receipt of amendments to this solicitation - give number and date of each)				14A. NAME & TITLE OF PERSON AUTHORIZED TO SIGN OFFER	
AMENDMENT NO.					
DATE				14B. SIGNATURE	14C. DATE

**AWARD (To be completed by MWAA)**

15. ACCEPTED AS TO ITEMS NUMBERED	16. CONTRACT NUMBER	21A. NAME OF CONTRACTING OFFICER
17. AMOUNT	18. DATE OF AWARD	21B. SIGNATURE OF CONTRACTING OFFICER
19. ACCOUNTING DATA	20. PROCUREMENT REQUEST NUMBER	

22. PROPERTY INFORMATION

CAPITALIZED ASSET       CONTROLLED ASSET       REAL PROPERTY

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02	DRAWINGS LIST	
03	CONSTRUCTION SAFETY MANUAL, Revision 15, dated July 2002	
04	OWNER CONTROLLED WRAP-UP INSURANCE PROGRAM MANUAL, June 2008 Edition	
05	AIRPORT BULLETINS – RONALD REAGAN WASHINGTON NATIONAL AIRPORT, April 2010 Edition	

**SECTION III - PRICE SCHEDULE**

The Price Schedule for this RFP is in Microsoft Excel format and downloadable at:

**<http://www.mwaa.com/3097.htm>**

The Price Schedule must be submitted in both electronic and hard copy. The hard copy is due not later than the time specified in Block 9 of the Solicitation Offer and Award form. The electronic copy of the Price Schedule in its original Microsoft Excel format on either a CD-ROM or 3.5" Floppy disk is due no later than 24 hours after the deadline for the hard copy. In the event of a discrepancy between the hard copy and the file on CD-ROM or Floppy disk, the hard copy will take precedence.

**SECTION IV - REPRESENTATIONS AND CERTIFICATIONS**

**01 PARENT COMPANY AND IDENTIFYING DATA**

A. A "parent" company, for the purpose of this provision, is one that owns or controls the activities and basic business policies of the offeror. To own the offeror's company means that the parent company must own at least 51% of the voting rights in that company. A company may control an offeror as a parent company even though not meeting the requirement for such ownership if the parent company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominant minority voting rights, use of proxy voting, or otherwise.

B. The offeror [ ] is, [ ] is not (check applicable box) owned or controlled by a parent company.

C. If the offeror checked "is" in paragraph B. above, it shall provide the following information:

Name and Main Office Address of  
Parent Company (include zip code)

Parent Company's Employer's  
Identification Number

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

\_\_\_\_\_

D. If the offeror checked "is not" in paragraph B. above, it shall insert its own Employer's Identification Number on the following line:

\_\_\_\_\_.

E. The offeror (or its parent company) [ ] is, [ ] is not (check applicable box) a publicly traded company.

F. The offeror shall insert the name(s) of its principal(s) on the following line:

\_\_\_\_\_.

**02 TYPE OF BUSINESS ORGANIZATION**

The offeror, by checking the applicable box, represents that:

A. It operates as [ ] a corporation incorporated under the laws of the State of \_\_\_\_\_, [ ] an individual, [ ] a partnership, [ ] a nonprofit organization, or [ ] a joint venture.

B. If the offeror is a foreign entity, it operates as [ ] an individual, [ ] a partnership, [ ] a nonprofit organization, [ ] a joint venture, or [ ] a corporation, registered for business in \_\_\_\_\_ (country).

**03 AUTHORIZED NEGOTIATORS**

The offeror represents that the following persons are authorized to negotiate on its behalf with the Authority in connection with this request for proposals or quotations:

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



**04 DISADVANTAGED BUSINESS ENTERPRISE REPRESENTATION**

A. Representation The offeror represents and certifies as part of its offer that it [ ] is, [ ] is not a Disadvantaged Business Enterprise.

B. Definition A Disadvantaged Business Is:

1. A small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

“Small business concern” means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Socially and economically disadvantaged individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. The Authority shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. The Authority also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged.

- (a) “Black American”, which includes persons having origins in any or the Black racial groups of Africa;
- (b) “Hispanic American”, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- (c) “Native American”, which includes persons who are American Indian, Eskimos, Aleut, or Native Hawaiian;
- (d) “Asian-Pacific American”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
- (e) “Asian-Indian American”, which includes persons whose origins are from India, Pakistan, and Bangladesh.
- (f) Women

C. Certification As verification of this representation, the offeror is encouraged to attach a copy of a current MBE/WBE certification from any agency to be used for the Authority's monitoring of MBE/WBE participation in its program

**05 MINORITY BUSINESS ENTERPRISE REPRESENTATION**

A. Representation The offeror represents that it [ ] is, [ ] is not a Minority Business Enterprise.

B. Definition A **Minority Business Enterprise** is:

1. A firm of any size which is at least **51%** owned by one or more minority persons or, in the case of a publicly-owned corporation, at least **51%** of all stock must be owned by one or more minority persons; and whose management and daily business operations are controlled by such persons. A person is considered to be a minority if he or she is a citizen of lawful resident of the United States and is:
  - a. Black (a person having origins in any of the black racial groups in Africa);
  - b. Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
  - c. Portuguese (a person of Portugal, Brazilian, or other Portuguese culture or origin, regardless of race);
  - d. Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
  - e. American Indian and Alaskan Native (a person having origins in any of the original peoples of North America.)

C. Certification As verification of this representation, the offeror is encouraged to attach a copy of a current MBE/WBE certification from any agency to be used for the Authority's monitoring of MBE/WBE participation in its program.

## 06 WOMEN BUSINESS ENTERPRISE REPRESENTATION

A. Representation The offeror represents that it [ ] is, [ ] is not a Women Business Enterprise.

B. Definitions A **Women Business Enterprise** is:

1. A firm of any size which is at least **51%** owned by one or more women or, in the case of a publicly-owned corporation, at least **51%** of stock must be owned by one or more such women; and
2. Whose management and daily business operations are controlled by such persons.

C. Certification As verification of this representation, the offeror is encouraged to attach a copy of a current MBE/WBE certification from any agency to be used for the Authority's monitoring of MBE/WBE participation in its program.

## 07 CONTRACTOR IDENTIFICATION

Each offeror is requested to fill in the appropriate information set forth below:

DUNS Identification Number \_\_\_\_\_ (this number is assigned by Dun and Bradstreet, Inc., and is contained in that company's Data Universal Numbering System (DUNS). If the number is not known, it can be obtained from the local Dun & Bradstreet office. If no number has been assigned by Dun & Bradstreet, insert the word "none.")

**08 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION**

A. The offeror certifies that --

- 1. The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (a) those prices, (b) the intention to submit a offer, or (c) the methods or factors used to calculate the prices offered;
- 2. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- 3. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

B. Each signature of the offeror is considered to be a certification by the signatory that the signatory:

- 1. Is the person in the offeror's organization responsible for determining the prices being offered in its offer, and that the signatory has not participated and will not participate in any action contrary to subparagraphs A.1. through A.3. above; or
- 2. a. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs A.1. through A.3. above

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(Insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this offer or proposal, and the title of his or her position in the offeror's organization);

- b. As an authorized agent, does certify that the principals named in subdivision B.2.a. above have not participated, and will not participate, in any action contrary to subparagraphs A.1. through A.3. above.
- c. As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs A.1. through A.3. above.

C. If the offeror deletes or modifies subparagraph A.2. above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**09 SUBCONTRACTORS**

The offeror represents that it intends to utilize the below listed subcontractor(s) if it is awarded a contract as a result of this solicitation. Any subcontractors identified as DBE, MBE, or WBE must meet the criteria stated in Clause 04, 05, or 06 above, as applicable.

NAME AND ADDRESS OF SUBCONTRACTOR

DBE, MBE, WBE, OR OTHER

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_____	_____
_____	_____
_____	_____

Once contract award has been made, the prime contractor shall not deviate from use of the above subcontractor(s) without prior written approval of the Contracting Officer.

**10 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

The Offeror certifies, to the best of its knowledge and belief, that:

A. The Offeror and/or any of its Principals:

1. Are  are not  presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
2. Have  have not , within a three-year period preceding this offer, 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) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and
3. Are  are not  presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision A.2 of this provision.

B. The Offeror has  has not , within a three year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

"Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

The Offeror agrees by submitting this offer that it will include this provision without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the offeror or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this offer.

**11 VIRGINIA LICENSE CERTIFICATION**

The offeror certifies that it holds a current Class \_\_\_ Virginia State Contractor's License, Number \_\_\_\_\_.

Notice: It is a violation of Virginia law for any party (prime contractor or subcontractor) to engage in, or offer to engage in, contracting work in the Commonwealth of Virginia unless the party has been licensed under the provisions of Title 54, Section 1103 of the Code of Virginia. Violation of this law constitutes the commission of a Class 1 misdemeanor.

**12 CERTIFICATION OF COMPLIANCE WITH EMPLOYMENT ELIGIBILITY VERIFICATION, FORM I-9**

The offeror certifies that it [ ] has [ ] has not read and [ ] is [ ] is not in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under. The offeror also certifies that its subcontractors are in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under.

**13 CERTIFICATION OF ENROLLMENT IN E-VERIFY**

A. If the Base Price is over \$100,000 the following applies:

1. The offeror certifies that it is currently enrolled as a [ ] non-Federal Contractor, [ ] Federal Contractor (note that the Airports Authority is not a federal entity and contractors are prohibited from verification of existing employees under any contract with the Airports Authority) in the E-Verify Program for employment verification operated by the U.S. Department of Homeland Security in partnership with the Social Security Administration and will continue to be enrolled, if awarded a contract, for the entire term of such contract.
2. The Offeror certifies that it [ ] will enroll as a non-Federal contractor in the E-Verify Program for employment verification operated by the U.S. Department of Homeland Security in partnership with the Social Security Administration within 30 days of contract award and will continue to be enrolled, if awarded a contract, for the entire term of such contract, but is not currently enrolled in the E-Verify Program.
3. Certification. As verification of this representation, the offeror is encouraged to attach a copy of proof of enrollment, such as its "Maintain Company" page from the E-Verify Website

B. If the Base Price is less than \$100,000, this provision is not applicable.

**SECTION V - SOLICITATION PROVISIONS****01 PRE-PROPOSAL CONFERENCE/SITE VISIT**

A pre-proposal conference will be held in the second floor conference room of the East Building, Ronald Reagan Washington National Airport, August 9, 2010 at 10:00 AM Local Time only for the contractors who have the solicitation.

**02 SOLICITATION DEFINITIONS**

"Offer" means "proposal" in negotiation. "Solicitation" means a request for proposals (RFP) or a request for quotations (RFQ) in negotiation. The Authority means Metropolitan Washington Airports Authority.

**03 CONTRACT AWARD**

- A. The Authority will award a contract resulting from this solicitation to the lowest responsive, responsible, qualified offeror whose offer conforms to the solicitation requirements.
- B. The Authority may (1) request "best and final offers," (2) reject any or all offers if such action is in the Authority's best interest, (3) accept other than the lowest offer, and/or (4) waive informalities and minor irregularities in offers received.
- C. The Authority may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.
- D. In evaluation and consideration of this procurement, the Authority, when deemed in its best interest, reserves the right to make multiple and/or split awards.
- E. The Authority may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Price Schedule, offers may not be submitted for quantities less than those specified. The Authority reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.
- F. A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Authority may accept an offer (or part of an offer, as provided in paragraph D. above), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Authority.
- G. Neither financial data submitted with an offer, nor representations concerning facilities for financing, will form a part of the resulting contract. However, if the resulting contract contains a provision providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.

**04 PRE-AWARD SURVEY**

The Authority reserves the right to perform or to have performed, an on-site survey of the offeror's facilities or previous work products and to investigate its other capabilities. This survey will serve to verify the data and

representations submitted, and to determine that the offeror has overall capability adequate to meet the contract requirements.

## **05 SITE VISIT**

Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

## **06 ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATION**

Offerors shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose on the Solicitation Offer and Award form; or (c) by letter or facsimile. The Authority must receive the acknowledgment by the time specified for receipt of offers.

## **07 EXPLANATION TO PROSPECTIVE OFFERORS**

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a written reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the receipt of offers will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

## **08 PREPARATION OF OFFERS**

- A. Offers must be (1) submitted on the forms furnished by the Authority or on copies of those forms, and (2) manually signed. The person signing an offer must initial each erasure or change appearing on any offer form.
- B. The offer form may require offerors to submit offer prices for one or more items on various bases, including--
  - 1. Base price offer;
  - 2. Alternate prices;
  - 3. Units of construction; or
  - 4. Any combination of subparagraphs B.1. through B.3 of this provision.
- C. Unless otherwise specified on the Price Schedule, the solicitation requires an offer on all items and failure to do so will disqualify the offer.
- D. Alternate offers will not be considered unless this solicitation authorizes their submission.
- E. This solicitation precludes the submission of exceptions, conditions, qualifications, or exclusions as part of the proposal. The offeror must respond to the solicitation as presented by the Authority without alteration or exception, unless otherwise allowed elsewhere in the solicitation.
- F. For unit priced contracts, offerors shall (1) show the unit price/cost, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price/cost for the quantity of each item offered in the "Amount" column of the Price Schedule. In case of discrepancy between a unit

price/cost and an extended price/cost, the unit price/cost will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

## 09 SUBMISSION OF OFFERS

- A. Offers and modifications thereof shall be submitted in sealed envelopes or packages showing the name and address of the offeror, the solicitation number, and the time specified for receipt. Envelopes or packages should be addressed and delivered to the following location:

Metropolitan Washington Airports Authority  
Procurement and Contracts Department, MA-440  
Ronald Reagan Washington National Airport  
1 Aviation Circle, Suite 154  
Washington, DC 20001-6000

- B. Offers and modifications thereof which are submitted via any form of electronic transmission such as facsimile (FAX) or telegraph will not be considered unless authorized by this solicitation.
- C. Offers, modifications thereof, and all documentation submitted in support of the offer, including but not limited to, written narrative, enclosures, submittal, examples of past work, financial statements, and videos will become the property of the Authority and will not be returned.

## 10 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF OFFERS

- A. Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and:
1. Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th); or
  2. Was sent by overnight express delivery service (i.e. FedEx, UPS, Airborne Express, U.S. Postal Service Express Mail, or other similar guaranteed delivery service) in time to have arrived prior to the date and time specified for receipt of offers.
  3. Was sent by mail or by overnight express delivery service (or was electronically transmitted via fax if authorized), and it is determined that the late receipt was due solely to mishandling by the Authority after receipt at the Authority's offices.
  4. Is in the Authority's best interest to accept the offer.
- B. Any modification or withdrawal of an offer except a modification resulting from the Contracting Officer's request for "best and final" offer is subject to the same conditions as in paragraph A.1. through 4. above.
- C. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should



request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

- D. The only acceptable evidence to establish the time of receipt at the Authority installation is the time/date stamp of that installation on the offer wrapper or other documentary evidence of receipt maintained by the installation.
- E. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service.
- F. Notwithstanding paragraph A. above, a late modification of an otherwise successful offer that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.
- G. Offers may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and that person signs a receipt for the offer.

## **11 SOLICITATION COSTS**

This solicitation does not commit the Authority to pay any costs incurred in the preparation or submission of any offer or to procure or contract for any work.

## **12 OFFEROR'S QUALIFICATIONS**

- A. Offers will be considered only from responsible individuals, partnerships, joint ventures, corporations or other private organizations demonstrating that they have the ability, experience and demonstrated resources to complete work in a timely manner and maintain a staff of regular employees adequate to ensure continuous performance of the work. Labor relations measured by standards of compensation, promptness in meeting obligations, and frequency of personnel changes, among other things, will be considered in determining whether an offeror has an established operating organization.
- B. Prior to award of contract, the Contracting Officer may require the apparent successful offeror to submit the following:
  - 1. List of the equipment to be used to perform the contract work.
  - 2. Number of employees and hours each will work per day.
  - 3. List of work to be subcontracted.
  - 4. List of firms for whom similar work has been performed in the past five (5) years and a description of the work accomplished for each firm.
  - 5. Qualifications and experience of key project individuals.
  - 6. Documentation showing that the offeror has provided reasonable and customary pricing based on industry standards.

## **13 ESTIMATED COST OF CONSTRUCTION**

The estimated cost of construction is between \$3,000,000 and \$4,000,000.

## **14 TYPE OF CONTRACT**

The Authority contemplates award of a firm fixed-price contract resulting from this solicitation.

**15 PLACE OF PERFORMANCE**

All work will be performed at:

Metropolitan Washington Airports Authority  
Ronald Reagan Washington National Airport  
Arlington County  
Gravelly Point, Virginia

**16 RESTRICTION ON DISCLOSURE AND USE OF DATA**

Offerors who include in their offers data that they do not want disclosed to the public for any purpose or use by the Authority except for evaluation purposes, shall--

A. Mark the title page with the following legend:

"This offer includes data that shall not be disclosed outside the Authority and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this offer. If, however, a contract is awarded to this offeror as a result of-or in connection with-the submission of this data, the Authority shall have the right to duplicate, use or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Authority's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]"; and

B. Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this offer."

**17 OFFER DOCUMENTS**

Offerors shall include in their offer submission all documents required by this solicitation including, but not limited to, the following:

- A. Solicitation Offer and Award
- B. Price Schedule (Section III)
- C. Representations and Certifications (Section IV)
- D. Section VII - Contract Provision 42, Brand Name or Approved Equal, Comparability of products of other manufacturers
- E. DBE Certification Exhibits as applicable:
  - Section VII - Exhibit A, Contractor's Certification of Nonsegregated Facilities
  - Section VII - Exhibit C, Contractor's Certification of Eligibility
  - Section VIII - Exhibit D, DBE/MBE/WBE Contract Participation Form
  - Section VIII - Exhibit F, DBE Certification Application or proof of certification
  - Section VIII - Exhibit F1, Application for Joint Venture Eligibility
  - Section VIII - Exhibit G, Request for Waiver
  - Section VIII - Exhibit H, DBE Unavailability Certification
  - Section VIII - Exhibit L, Offeror List
- F. Copy of Virginia State Contractor's License

**18 PROTESTS**

- A. Protests must be typewritten and hand-delivered or mailed to the Manager of the Procurement and Contracts Department, (MA-440), Metropolitan Washington Airports Authority, 1 Aviation Circle, Washington, DC 20001-6000. If a protest is mailed, it should be sent by registered or certified mail, return receipt requested. Protests sent by facsimile machine will not be considered to meet the applicable deadline unless the original is hand-delivered or mailed and received by the Procurement and Contracts Department Manager prior to the applicable deadline.
- B. If a potential offeror believes it has grounds to protest any terms or conditions contained in or omitted from a solicitation issued by the Authority or an amendment to that solicitation, the potential offeror must file its protest with the Authority's Procurement and Contracts Department Manager. The protest must be received by the manager by the earlier of the following two dates: (1) Fourteen (14) days after issuance date of the solicitation or the date of the solicitation amendment containing the terms and conditions that are the subject of the protest, or (2) the due date for bids or proposals.
- C. If an unsuccessful offeror on an Authority solicitation believes it has grounds to protest the rejection of its bid or proposal, or the award of a contract (other than grounds relating to the terms or conditions contained in or omitted from a solicitation or solicitation amendment), that offeror must file its protest with the Procurement and Contracts Department Manager. The protest must be received by the manager within seven (7) calendar days after the date of the Authority's letter notifying the offeror that its bid or proposal was unsuccessful or not accepted.
- D. The Procurement and Contracts Department Manager will attempt to respond to a protest within seven (7) days from receipt of the protest. If the manager determines that additional time will be required to respond to the protest, the manager will, within seven (7) days, notify the protestor of the time period within which a response will be made.
- E. The Authority's President and Chief Executive Officer may proceed with Award of the contract and notice-to-proceed while a protest is pending if he determines it to be in the Authority's best interest to do so.

**19 PERFORMANCE AND PAYMENT BONDS****A. Performance Bond**

If the Base Price exceeds \$100,000, the Contractor shall furnish, within a maximum of ten (10) calendar days of request by the Authority, a performance bond in an amount equal to 100% of the contract price with a surety or sureties acceptable to the Authority. Acceptable sureties are listed in U.S. Treasury Department Circular 570 published annually. Failure to provide proper bonds within this time limit may result in rejection of the offer.

**B. Payment Bond**

If the Base Price exceeds \$100,000, the Contractor shall furnish, within a maximum of ten (10) calendar days of request by the Authority, a payment bond in an amount equal to 100% of the contract price with a surety or sureties acceptable to the Authority. Acceptable sureties are listed in U.S. Treasury Department Circular 570 published annually. Failure to provide proper bonds within this time limit may result in rejection of the offer.

- C. The Offeror's actual premium costs for the performance bond and payment bond (including premium costs for subcontractors of any tier) shall be reimbursed by the Authority. In order to be eligible for

payment under this provision of the contract, premiums must be found by the Authority to be reasonable and customary to the industry and proof of actual payment along with the surety's invoice must be provided to the Authority. **Premium costs shall not be included by the Offerors in any proposed pricing shown on Section III, "Price Schedule" and they will not be considered by the Authority in evaluating the Offeror's proposal amount.** For the purpose of funding the reimbursement of bond and insurance premiums, the Authority will calculate and include in the Award Amount, a 4 percent allowance as shown on the Section III "Price Schedule."

**20 INSURANCE COSTS**

Premium costs for Contractor provided insurance coverage as specified in Section VII Contract Provision 20, Paragraph B, including premium costs for subcontractors of any tier, shall be reimbursed by the Authority if found to be reasonable and customary to the industry and proof of actual payment along with the insurance carrier's invoice(s) are provided to the Authority. Offerors will not be reimbursed for any insurance costs for coverage provided by the Authority under the Owner Controlled Wrap-Up Insurance Program (OCWIP) which is described in Section VII, Contract Provision 20, Paragraph A. **Offerors shall not include in their proposals any costs for Contractor provided insurance or for coverage provided under the OCWIP.**

**21 CONTRACTOR NOTIFICATION OF OFFER RESULTS**

At least three working days after the date and time specified in the solicitation for receipt of offers, Contractors submitting an offer may inquire of the cognizant Contracting Officer concerning whether or not their firm is the apparent lowest priced or highest scored offeror. Unsuccessful offerors shall be informed of the successful offeror and the contract amount after award.

**AIRPORT IMPROVEMENT PROGRAM (AIP) SOLICITATION PROVISIONS**

**22 BUY AMERICAN CERTIFICATE (JANUARY 1991)**

By submitting an offer under this solicitation, except for those items listed by the offeror below or on a separate and clearly identified attachment to this offer, the offeror certifies that steel and each manufactured product, is produced in the United States (as defined in the provision Buy American - Steel and Manufactured Products or Buy American - Steel and Manufactured Products For Construction Contracts) and that components of unknown origin are considered to have been produced or manufactured outside the United States.

Offerors may obtain from the Contracting Officer lists of articles, materials, and supplies excepted from this provision.

PRODUCT	COUNTRY OF ORIGIN

**23 BUY AMERICAN - STEEL AND MANUFACTURED PRODUCTS FOR CONSTRUCTION CONTRACTS (JANUARY 1991)**

A. The Aviation Safety and Capacity Expansion Act of 1990 provides that preference be given to steel and manufactured products produced in the United States when funds are expended pursuant to a grant issued under the Airport Improvement Program. The following terms apply:

1. Steel and manufactured products. As used in this provision, steel and manufactured products include (1) steel produced in the United States or (2) a manufactured product produced in the United States, if the cost of its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all its components and final assembly has taken place in the United States. Components of foreign origin of the same class or kind as the products referred to in subparagraphs B.1. or B.2 shall be treated as domestic.
  2. Components. As used in this provision, components means those articles, materials, and supplies incorporated directly into steel and manufactured products.
  3. Cost of Components. This means the costs for production of the components, exclusive of final assembly labor costs.
- B. The successful offeror will be required to assure that only domestic steel and manufactured products will be used by the Contractor, subcontractors, materialmen, and suppliers in the performance of this contract, except those -
1. that the U.S. Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
  2. that the U.S. Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, that domestic preference would be inconsistent with the public interest; or
  3. that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

## **SECTION VI - SPECIAL PROVISIONS**

### **01 PLANS AND SPECIFICATIONS**

Six (6) copies of the plans and specifications shall be given to the Contractor at or shortly after the award of the contract. Thereafter, the responsibility of obtaining additional copies of the original contract drawings and specifications shall be the Contractor's. If any changes are made to these documents, the Contractor shall be furnished six (6) copies of any revised or additional specifications. The Contractor is responsible for obtaining the latest issue of all other documents referenced in the specifications.

Pursuant to the provision entitled, "Specifications and Drawings for Construction," within ten (10) calendar days after the effective date of the Notice to Proceed and before ordering any materials or performing any work, the Contractor shall verify the dimensions shown on the contract documents as compared to the actual dimensions at the site and be responsible for same. All discrepancies which will have a material impact on the work shall be reported immediately to the Contracting Officer for resolution.

Omissions from the specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the specifications or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the specifications.

### **02 PROHIBITION ON POSTING OF PLANS AND SPECIFICATIONS ON WEB SITES**

The posting of Metropolitan Washington Airports Authority (Authority) construction plans and specifications to individual web sites is prohibited, unless proper controls are instituted as identified below. Firms wishing to make these documents available to potential subcontractors/suppliers may do so by providing hard copies, downloading onto CDs, or posting them onto web sites behind a secure firewall with a password for subcontractors' access. Regardless of the format used to make the documents available to potential subcontractors/suppliers, a record must be kept of who receives the documents. While the documents may not be classified per se, for security reasons, Authority construction project plans and specifications should always be considered sensitive and not made available to others without controls in place.

### **03 SPECIAL SITE CONDITIONS**

The area as specified will be occupied and operational during the period of the contract and all contract work in the area shall be accomplished in such a manner as to cause minimum interruptions to the facilities and activities of the area, and must comply with all safety criteria and rules.

### **04 ACCESS TO AIRPORT SECURED AREA WORK SITES**

Access to the Airport Secured Area work sites for the contractor's vehicles is restricted to specific gate locations. These gate locations will be specified in the Contract Documents or at the pre-construction conference. The Contractor shall be responsible for making all traffic arrangements for vehicle activity outside the Airport's boundaries, and when necessary, the Contractor must provide/coordinate for traffic control assistance if the traffic volume interferes with normal traffic flow.

All gates used by the Contractor for access to the secured area of the Airport shall be closed and locked at all times except for passage for an authorized vehicle or pedestrian.

For gates **without** direct access from the public area to a security-controlled area, at least one dedicated person must be assigned (or contracted) to the gate. This person must be familiar with the safety and security requirements for the work site area and must have a means of direct contact with Airport Operations and the

Public Safety Communications Center, and adequate communication skills to clearly converse with Authority personnel.

For manned gates **with** direct access from the public area to a security-controlled area, the Airports Authority will provide a guard at no cost during the normal scheduled gate operational hours. The contractor shall provide a credit of \$400/day to reimburse the Airports Authority outside of these hours or if the gate is normally unmanned. A \$600/day credit is required for weekend and holiday. . Use of the Airport's Security contractor requires scheduling plans with advance notice of not less than 72 hours.

Note: The Airport requires at least three (3) business days notice to obtain Transportation Security Administration (TSA) approval of the security plan before permission to commence may be granted.

## **05 VALUE ENGINEERING CHANGE PROPOSALS**

### **A. General**

The Contractor is encouraged to voluntarily develop, prepare, and submit in writing, value engineering change proposals (VECP) for modifying the plans, specifications or other requirements of the contract for the purpose of reducing the cost of construction. The Contractor shall share equally with the Authority in any contract savings realized from accepted VECPs in accordance with paragraph C. below.

### **B. VECP Requirements**

The Contractor's VECP shall clearly demonstrate that changing the contract requirements would:

1. Result in a net reduction in the total contract amount;
2. Not impair, in any manner, the essential functions or characteristics of the project, including, but not limited to, service life, economy of operation, ease of maintenance, desired appearance, design and safety standards; and
3. Not detrimentally affect the project completion schedule.

As a minimum, the Contractor shall submit the following information to the Contracting Officer's Technical Representative with each VECP:

1. A description of both existing contract requirements for performing the work and the VECP, with a discussion of the comparative advantages and disadvantages of each;
2. An itemization of the contract requirements that must be changed if the VECP is adopted;
3. A detailed estimate of the cost of performing the work under the existing contract and under the VECP;
4. A statement of the date by which the Authority must notify the Contractor that a contract modification adopting the VECP will be issued. Said date shall be selected so as to preclude all schedule impacts to the project regardless of whether work proceeds as specified in the contract or as specified in the VECP;
5. A statement of the effect adoption of the VECP will have on the time for completion of the contract;

6. The contract items of work affected by the proposed changes, including any quantity variation attributable to them; and
7. A description and estimate of costs the Authority may incur in implementing the VECP, such as redesign, evaluation, tests, and operating and support costs.

C. VECP Savings Sharing Between Contractor and Authority

The Authority may accept in whole, or in part, any VECP submitted by the Contractor pursuant to this provision by issuing a contract modification which will identify the VECP on which it is based. The contract modification will provide for an equitable adjustment in the contract amount and will revise any other affected provisions of the contract documents.

The equitable adjustment in the contract amount shall be determined in accordance with the following:

1. Estimated gross savings shall include Contractor's labor, material, equipment, overhead, profit and bond.
2. New savings shall be determined by (1) deducting from the estimated gross savings, the Contractor's costs of developing and implementing the VECP (including any amount attributable to a subcontractor) and (2) adding the estimated amount of increased costs to the Authority resulting from the change, such as testing, redesign, implementation, inspection, related items, and Authority furnished material.
3. Net savings shall be shared between the Contractor and the Authority on the basis of fifty percent (50%) for the Contractor and fifty percent (50%) for the Authority.
4. The contract amount shall be reduced by the Authority's share of the net savings.

In the event that an accepted VECP will result in a reduction in the Authority's life cycle costs (i.e., annual operation and maintenance expenses), the Contractor shall receive a share of these projected savings. The contract amount shall be increased by twenty percent (20%) of any projected life cycle savings determined to be realized from the VECP for one (1) typical year of use.

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

The Contractor's costs of preparation and submission of VECPs which are not accepted by the Authority shall be borne entirely by the Contractor. Conversely, the Authority's review and evaluation costs of unaccepted VECPs will be at no cost to the Contractor.

D. VECP Submission and Processing

The Contractor shall submit six (6) copies of the VECP along with all supporting information to the COTR, and send one (1) copy to the Contracting Officer.

The Contracting Officer shall notify the Contractor of the status of the VECP within 21 calendar days after receipt by the Contracting Officer. If additional time is required for evaluation, the Contracting



Officer shall notify the Contractor within the 21-day period and provide the reason for the delay and the expected date of the decision. Unless this notification specifically states otherwise, the provisions of paragraph E. shall prevail, i.e.:

1. The Contractor shall continue to perform the work in accordance with the requirements of the contract; and
2. Failure of the Authority to adopt the VECP by the date specified in the VECP, or the date subsequently specified in writing, shall be deemed rejection of the VECP.

The Authority will process VECPs expeditiously; however, the Authority shall not be liable for any delay in acting upon a VECP.

If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted or rejected by the Authority.

Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this provision. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. The Contracting Officer's decision to accept or reject all or part of any VECP shall be final and not subject to the Disputes provision or otherwise subject to litigation.

The Contractor shall continue to perform the work in accordance with the requirements of the contract until a notice to proceed is issued or a contract modification applied incorporating the VECP into the contract. If a VECP has not been approved by the date upon which the Contractor's VECP submission specifies that a decision should be made, or such other date as the Contractor may subsequently have requested in writing, such VECP shall be deemed rejected.

#### E. Contractual Obligations

The submission of a VECP by the Contractor to the Authority shall not in itself affect the rights or obligations of either party under this contract.

Authority acceptance of a VECP and performance of the cost-reduction work shall not extend the time of completion of the contract unless specifically provided for in the contract modification.

The Contractor shall include an appropriate value engineering provision in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph C. above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Authority under this contract, but shall exclude any value engineering incentive payment to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments, provided that these payments shall not reduce the Authority's share of the savings resulting from the VECP.

#### F. Preliminary VECPs

The contractor may submit a Preliminary value engineering proposal (Preliminary VECP) to the Authority to determine whether an idea is considered feasible and to assist the Contractor in determining whether a formal VECP should be developed and submitted.

A Preliminary VECP should be brief, one or two pages if possible, but comprehensive. At a minimum, it should:

1. Describe the technical concept being contemplated;
2. Describe other, non-technical factors critical to analysis of the potential VECP such as schedule impacts, aesthetic considerations, operational or maintenance impacts, etc.;
3. Provide an order-of-magnitude estimate of the net cost savings which might be realized from the potential VECP; and
4. State approximate costs for development of the formal VECP.

Submittal of a Preliminary VECP:

1. Does not establish ownership of a value engineering idea;
2. Does not establish a right to share in any resultant savings;
3. Does minimize the Contractor's risk in those areas where the Authority does not desire VE activity.

Ownership of a value engineering idea is not established until a fully documented formal VECP is submitted.

The Authority will review the Preliminary VECP within ten (1) business days and indicate if the ideas presented therein:

1. Have potential;
2. Could be modified to have potential; or
3. Have little or no chance of being accepted.

Indication by the Authority that a Preliminary VECP has potential does not guarantee that the subsequent formal VECP will be accepted. The Authority shall be the sole judge of the acceptability of a formal VECP and reserves the right to reject a VECP for any reason including technical, non-technical, financial or contractual reasons.

Submittal of Preliminary VECPs is not a requirement and is strictly optional. However, submittal of a Preliminary VECP can reduce the Contractor's risk by identifying those ideas that have little or no chance of being accepted.

## **06 CONTRACTOR PERFORMANCE EVALUATION**

The Airports Authority will conduct periodic written evaluations of the contractor's performance at various intervals throughout the life of this contract. Input for these evaluations will be provided by the Contracting Officer's Technical Representative (COTR), Contracting Officer, and, where appropriate, the end user. The COTR will be responsible for completing the evaluation forms and reviewing their contents with the contractor. The intervals at which these evaluations will be conducted will be established prior to commencement of performance and the contractor advised accordingly.

These evaluations should be looked upon as a partnering tool between the contractor and the Airports Authority. It is hoped that they will help the contractor improve performance and communications when needed, as well as provide an opportunity for the Airports Authority to recognize positive performance. It is the Airports Authority's intent to use these evaluations to help keep communications open between the parties and foster achievement of a quality end product.

## **07 PARTNERING**

The Authority intends to facilitate contract management by encouraging the foundation of a cohesive partnership with the Contractor, its subcontractors, and the Authority's contract management staff. This partnership will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives are effective and efficient contract performance, intended to achieve completion within budget, on schedule and in accordance with plans and specifications.

The terminology "partnering" and "partnership" as used herein shall mean a relationship of open communication and close cooperation. There is no intent to create a legal relationship nor a contractual commitment. Participation in this partnering program will be totally voluntary; however, once an arrangement is agreed, commitment to its success is essential.

Any cost associated with effectuating this partnership will be agreed to by both parties and will be shared equally. To implement this partnership initiative, it is anticipated that within 60 days of Notice to Proceed the Contractor's on-site project manager and the Authority's Contracting Officer's Technical Representative will attend a partnership development seminar followed by a team building workshop to be attended by the Contractor's key on-site staff and the Authority's personnel. Follow-up workshops will be held periodically throughout the duration of the contract as agreed by the Contractor and the Authority.

One of the goals of partnering is the resolution of disputes in a timely, professional and non-adversarial manner. In the event disputes can not be informally resolved, the process described in Contract Provision No. 24, entitled "Disputes" shall govern.

## SECTION VII - CONTRACT PROVISIONS

### 01 PRE-CONSTRUCTION REQUIREMENTS

#### A. Pre-construction Conference

Within ten (10) calendar days after award of a contract, the Contracting Officer will arrange for a pre-construction conference to be held at the Authority (exact date, time, and place to be specified by a separate communication), and attended by representatives of the Authority and the Contractor.

The Contractor shall deliver the following to the Contracting Officer at the conference.

##### 1. Progress Schedules

Pursuant to the provision entitled, "Schedules for Construction Contracts", the Contractor shall provide progress schedules for the project. The Contractor shall deliver five (5) copies of the schedule to the Contracting Officer at or before the time of the Pre-construction Conference and submit schedule updates showing actual progress in the same number of copies on the first calendar day of each month for the duration of the contract term. Failure to comply with this provision shall be grounds for termination for default.

##### 2. Insurance

Pursuant to the provision entitled "Insurance," the Contractor shall submit an Advice of Insurance evidencing insurance coverage provided under the Owner-Controlled Wrap-Up Insurance Program (OCWIP) and a certificate of insurance evidencing the required insurance coverage obtained at Contractor expense. NOTE: All insurance requirements must be met prior to commencement of work on the job site.

##### 3. Airport Identification Badges

The Contractor shall submit Designated Official Certification documentation and applications for Airport Identification Badges as specified **iby the Contracting Officer's Technical Representative (reference Section X, Attachment 05)**.

#### B. Notice to Proceed

A Notice to Proceed will be issued by the Contracting Officer based on satisfactory receipt of the preceding items.

### 02 SCHEDULES FOR CONSTRUCTION CONTRACTS

A. The Contractor shall, at or before the time of the pre-construction conference, prepare and submit to the Contracting Officer for approval five (5) copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress schedule of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period.

B. The Contractor shall enter the actual progress on the schedule as directed by the Contracting Officer, and upon doing so shall immediately deliver five (5) copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved

schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Authority. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

- C. Failure of the Contractor to comply with the requirements of the Contracting Officer under this provision shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

### **03 SUSPENSION OF WORK; DELAYS**

- A. The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for a period of time that the Contracting Officer determines necessary for the convenience of the Authority.
- B. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this provision for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.
- C. A claim under this provision shall not be allowed (1) for any costs incurred more than 20 days before Contractor notifies the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

### **04 PAYMENTS - CONSTRUCTION CONTRACTS**

#### **A. Payments by the Authority**

The Authority shall pay the Contractor the contract price as provided in this contract. Monthly progress payments shall be made as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates provided by the Contractor and approved by the Contracting Officer. The Authority shall make payments within 30 calendar days after receipt of a proper invoice in the office designated in Paragraph B. Billing Instructions.

The Authority strongly recommends that contractors participate in a program whereby payments under this contract are made via electronic funds transfer into the contractor's bank. Contractor requests to initiate such service shall include the bank name, address, account number, contact person, telephone number, and American Bankers Association (ABA) 9-digit identifying number. The initial request and any subsequent changes must be signed by the contractor's signatory of the contract and shall be submitted directly to the Authority's Finance Office (MA-22B).

**B. Billing Instructions**

1. Invoice Submittal. The Contractor shall submit, no more than once each month, an original and three copies of both its invoice and the Authority's Invoice Attachment Form (see the following paragraph) for payment to the following address:

Metropolitan Washington Airports Authority  
Accounting Department, MA-22B  
1 Aviation Circle, Suite 230  
Washington, DC 20001-6000

2. Invoice Attachment Form. The Invoice Attachment Form (see Exhibit J) shall provide information on **all subcontractors**, each subcontractor's scope of services, and the subcontract dollar amount for those services. When reviewing the Contractor's invoicing for the reporting period, the Authority will use the Invoice Attachment Form as verification of subcontracting activities and payments. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. Failure to include required Exhibit J Attachment may delay payment of your invoice.
3. Basis for Payment of Lump Sum Line Items. Progress payments for Lump Sum Line Items shall be based upon actual progress made toward completion of the line item. Insofar as possible, the Contractor shall measure or estimate progress using a quantifiable/verifiable standard of measurement. The payment amount for a lump sum line item shall be calculated by multiplying the price of the line item times the percentage completed during the billing period. In reviewing estimates, the Contracting Officer may authorize material delivered to or near the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if such consideration is specifically authorized by this contract.
4. Basis for Payment of Unit Priced Line Items. If the quantity of a unit-priced item in this contract is an estimated quantity, progress payments for such item shall be based upon the actual quantities completed/delivered. The payment amount for a unit priced line item shall be calculated by multiplying the unit price (taking into account Contract Provision 04,H entitled, "Variation in Estimated Quantity" as applicable) times the quantity completed during the billing period.
5. Basis for Payment of Cost Reimbursable Items. The total cost of bond and insurance premiums for coverage required by this contract for the Contractor and subcontractors of all tiers shall be reimbursed by the Authority based on actual costs incurred, providing such costs are reasonable and customary based on industry standards and proof of payment along with the surety's and insurance carrier's invoices are provided to the Authority. See Solicitation Provision 19 and Contract Provision 20 for bond and insurance coverage requirements which are eligible for reimbursement. Contractors shall submit consolidated invoices (for the Contractor and subcontractors) for reimbursement of bond and insurance premiums. It is anticipated that the invoice for bond premiums will be submitted soon after the bonds have been purchased and proof of payment is available. Consolidated invoices for insurance premiums may be submitted on an annual basis. The retainage provisions in paragraph (E) below shall not apply to payments attributable to bond premiums and insurance coverage. Payment of these reimbursable items may require thirty days processing time in addition to the normal invoice processing time. Because payment of these reimbursable items will require a modification to the

contract to provide funding, it is anticipated that thirty days processing time will be required to make payment for these items in addition to the normal invoice processing time.

Bonding costs associated with change order work will be reimbursed upon completion of the contract.

C. Timely Payments to Subcontractors

The Contractor promises that it will pay its subcontractors within 10 days following receipt of payment from the Authority. The prime contractor also agrees to return any retainage withheld from subcontractors within 10 days after the subcontractor has satisfactorily completed its work. Any delay or postponement of payment may not take place without prior approval of the Authority. A finding of non-payment is a material breach of this Contract. The Authority may, at its option, increase allowable retainage or withhold progress payments unless and until the Contractor demonstrates timely payment of sums due subcontractors. Provided however, the presence of a "pay when paid" provision in a subcontract shall not preclude Authority inquiry into allegations of non-payment. Provided, further, that the remedies above shall not be employed when the Contractor demonstrates that failure to pay results from a bona fide dispute with its subcontractor or supplier. The Contractor shall incorporate this provision into all subcontracts that result from this Contract.

D. DBE Owned Banks

Contractors are encouraged to utilize banks which are owned and controlled by Disadvantaged Business Enterprises (DBE). To obtain a list of Disadvantaged Business Enterprise banks, contact the Equal Opportunity Programs Office at 703-417-8625.

E. Partial Withholding of Progress Payments

If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of ten (10) percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount which the Contracting Officer considers adequate for protection of the Authority and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, portion of work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

F. Contractor Submission Of W-9 Required Prior to Contract Award

As a prerequisite for contract award, the contractor shall complete all parts of the Internal Revenue Service ("IRS") Form W-9 (Request for Taxpayer Identification Number and Certification). Contract award will not be made until the completed W-9 has been received by the Authority. The W-9 form and instructions are available to contractors by accessing the IRS website at [www.irs.gov](http://www.irs.gov) and inserting the form number "W-9".

The W-9 information is requested so that we may determine the need to file IRS Form 1099 in connection with payments made by the Authority to the contractor. To assure accurate maintenance of your firm's status, the submission of the W-9 is required for each contract or purchase order executed by and between the Authority and its contractors. If the term of the contract exceeds one year, the Authority may request periodic resubmission of the W-9. If the contractor fails to submit the form by the

deadline stated in the resubmission request, the Authority may refuse to pay invoices until the form has been submitted.

G. Transfer of Title (Ownership)

All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Authority, but shall not be construed as:

1. Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
2. Waiving the right of the Authority to require the fulfillment of all the terms of the contract.

H. Variation in Estimated Quantity

If the quantity of a unit-price item in this contract is an estimated quantity and the actual quantity of the unit-price item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be made upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within ten (10) days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

I. Final Payment

The Authority shall pay the amount due the Contractor under this contract after:

1. Completion and acceptance of all work;
2. Presentation of a properly executed final invoice;
3. Return of all airport identification cards and keys; and
4. Presentation of releases of all claims, liens and encumbrances against the Authority arising by virtue of this contract. The release shall identify other claims, liens and encumbrances, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract have been assigned. Any assignment must be approved by the Contracting Officer.

**05 DIFFERING SITE CONDITIONS**

- A. The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.



- B. The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this provision and the contract modified in writing accordingly.
- C. No request by the Contractor for an equitable adjustment to the contract under this provision shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in A. above for giving written notice may be extended by the Contracting Officer.
- D. No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

## **06 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK**

- A. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance; (6) the proximity to aircraft and its effect in project performance; (7) the proximity to the public that is expected at an operating airport. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Authority, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Authority.
- B. The Authority assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Authority. Nor does the Authority assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

## **07 MATERIAL AND WORKMANSHIP**

- A. All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, or as otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- B. The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall

also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- C. All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

## **08 SUPERINTENDENCE BY THE CONTRACTOR**

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

## **09 KEY PERSONNEL**

The Contractor shall notify the Contracting Officer prior to making any change in key personnel. Key personnel are defined as follows:

- A. Personnel identified in the proposal as key individuals to be assigned for participation in the performance of the contract;
- B. Personnel whose resumes were submitted and approved; or
- C. Individuals who are designated as key personnel by the Authority.

The Contractor must demonstrate that the qualifications of prospective personnel are equal to or exceed the qualifications of the personnel being replaced. Notwithstanding any of the foregoing provisions, key personnel shall not be replaced unless the Contractor has demonstrated to the satisfaction of the Contracting Officer/Contracting Officer's Technical Representative (COTR) that the qualifications of the proposed substitute personnel are equal to or better than the qualifications of the personnel being replaced. Written approval will be granted for replacement personnel after coordination with the Authority.

## **10 PERMITS AND RESPONSIBILITIES**

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work, which may have been accepted under the contract.

## **11 OTHER CONTRACTS**

The Authority may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with other Contractors and with Authority employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit

or permit any act that will interfere with the performance of work by any other Contractor or by Authority employees.

## **12 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS**

- A. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- B. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. Repairs are to be performed as needed or on a 24-hour basis as may be required by the Contracting Officer at no additional cost. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.
- C. The Contractor shall submit the name and phone number of an electrician and plumber to be used on an emergency basis should immediate repairs to damaged utilities be required.

## **13 OPERATIONS AND STORAGE AREAS**

- A. The Contractor shall confine all operations (including storage of materials) on Authority premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Authority, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.
- B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Authority. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- C. The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.
- D. All temporary buildings required by the Contractor shall be weather and watertight and maintained in a neat orderly appearance for the duration of the work and shall be provided with raised wood floors, solid-sheathed composition roof, adequately screened windows for light and ventilation and substantial wood doors with provision for locking.

- E. The Contractor shall provide temporary chemical toilet structures. Toilet structures shall be provided in numbers as required in adequately sized structures, located as approved, and maintained in a clean and sanitary condition subject to the approval of the Contracting Officer's Technical Representative (COTR).
- F. Surface or subsurface water or other fluids shall not be permitted to accumulate in excavations nor in or about the premises and vicinity thereof. Should such conditions be encountered or develop, the water or other fluid shall be controlled and suitably disposed of at no additional cost by means of temporary pumps, piping drainage lines, troughs, ditches, dams, or other methods approved by the Contracting Officer's Technical Representative (COTR).
- G. Throughout the entire construction period, effectively dust-palliate the work area, unpaved and paved roads used in the operations, and unused portions of the site. Such palliation shall include application of intermittent watering and sprinkling at such frequency as will satisfactorily lay the dust. The use of calcium chloride for dust palliation is not permitted.

#### **14 USE AND POSSESSION PRIOR TO COMPLETION**

- A. The Authority shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Authority intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Authority's possession or use shall not be deemed an acceptance of any work under the contract. Prior to final acceptance the Contractor shall protect and ensure all portions of the work in beneficial occupancy against damages resulting from either equipment or work not yet placed into beneficial occupancy except to the extent such damage is the direct result of negligence on the part of Authority personnel or their representatives, or normal wear and tear.
- B. While the Authority has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Authority's possession or use, notwithstanding the terms of the provision in this contract entitled "Permits and Responsibilities." If prior possession or use by the Authority delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

#### **15 CLEANING UP**

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Authority. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

#### **16 AVAILABILITY AND USE OF UTILITY SERVICES**

- A. The Authority shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. If the contract provides that the Contractor is to pay for utility services, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Authority or, where the utility is produced by the

Authority, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

- B. The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Authority, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.
- C. Electrical power is available through Authority load centers. Wiring for temporary power shall be so arranged as to cause no interference with normal airport operations. Electric temporary wiring shall be kept thoroughly insulated and special precautions shall be taken to avoid short circuits using type THW wire and waterproof sockets and fittings throughout.
- D. Water will be made available to the Contractor at the site for construction and personnel use with approval from the Contracting Officer's Technical Representative (COTR) for connections to the water supply. On all connections the Contractor will be required to install and use meters to be provided by the Metropolitan Washington Airports Authority Utilities Branch. Requests for meters will be coordinated through the Contracting Officer's Technical Representative (COTR). The Contractor shall pay all costs for bringing water from its source. The cost of the water will be paid by the Authority, unless a determination is made by the Contracting Officer that the Contractor is not taking reasonable measures to conserve its use, in which case the Contractor will be required to install a meter at its own expense and bear the cost of the water used.
- E. Sanitary conveniences are the responsibility of the Contractor.

## 17 LAYOUT OF WORK

The Contractor shall lay out its work from Authority established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or by someone else through the Contractor's negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

## 18 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

- A. The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of a difference between drawings and the specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- B. Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction",

"requirement", "order", "designation", or prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by" or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

C. Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place", that is, "furnished and installed".

D. Shop Drawings

1. "Shop drawings" means drawings, submitted to the Authority by the Contractor, subcontractor, or any lower tier subcontract or pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e. form, fit, and attachment details) of materials or equipment. It also includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The Authority may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
2. If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Authority's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with 3. below.
3. If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
4. The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor. Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.
5. The Contractor shall mark up one set of reproducibles (Sepia/Mylar) to show the as-built conditions. These record documents shall be kept current and available on the job site at all times. All changes from the contract plans which are made in the work or additional information which might be uncovered in the course of construction shall be accurately and neatly recorded as they occur by means of details and notes. The marked reproducibles will be jointly inspected for accuracy and completeness by the Contracting Officer's Technical Representative (COTR)

and a responsible representative of the Construction Contractor prior to submission of each monthly pay estimate. A determination by the COTR that record documents are not current may result in withholding of progress payments by the Contracting Officer. The record documents shall be returned to the COTR upon completion of the work and are subject to the approval of the COTR.

## 19 INDEMNIFICATION

- A. To the fullest extent permitted by law, the Contractor shall hold harmless and indemnify the Authority, the Authority's employees, and the Authority's agents, Contractors, subcontractors, and consultants, and agents and employees of any of them, from and against all claims, suits, damages, losses, expenses, and attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, suit, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or damage to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused by negligent acts or omissions of the Contractor or any of its subcontractors, their agents, or anyone directly or indirectly employed by them, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
- B. In claims against any person or entity indemnified under this provision by an employee of the Contractor, a subcontractor, an employee of a subcontractor, or an agent of the Contractor or a subcontractor, the indemnification obligation under this provision shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

## 20 INSURANCE

### A. Authority Provided Insurance

1. The Authority has implemented an Owner Controlled Wrap-Up Insurance Program (OCWIP) to furnish certain insurance coverage with respect to job site work. This contract is covered by the OCWIP; your participation and that of your subcontractors of any tier is mandatory, unless specifically excluded. It is important to note that the OCWIP is not intended to cover the Contractor's consultants, suppliers, vendors or materials dealers, nor any fabrication, manufacturing, or operations conducted away from the job site. OCWIP coverages do not apply to Contractors or subcontractors of any tier performing work under an excluded contract, or other Contractors or subcontractors deemed to be ineligible for coverage, as defined in Chapter 2, Subsection 2.3 entitled "Contractors Not Enrolled in the OCWIP," of the Owner Controlled Wrap-up Insurance Program Manual (the *OCWIP Manual*).
2. OCWIP Insurance Manual. The *OCWIP Manual* is incorporated herein and attached hereto at Section X, Attachment 04. (Note: This manual may be revised from time to time. The latest revision to the manual is available from the "Business Information" section of the Authority's website at <http://www.mwaa.com>.) The *OCWIP Manual* provisions, when read in conjunction with the actual insurance policies, shall control the insurance and claim responsibilities and rights of the parties to this contract. If there is any disagreement or inconsistency between the *OCWIP Manual* and this contract provision, this contract provision shall prevail.
3. Coverage Provided Under the OCWIP. The Authority hereby agrees to maintain at its sole expense the following insurance coverage **for all enrolled** Contractors and subcontractors of any tier:

- a. Workers' Compensation and Employer's Liability (On-site coverage, except for asbestos abatement Contractors)
- b. Commercial General Liability (On-site coverage)
- c. Automobile Liability (On-site coverage, not including travel to or from the Job Site)
- d. Umbrella Excess Liability
- e. Contractor's Pollution Legal Liability (including asbestos abatement)
- f. Builder's Risk (On-site property coverage)

Please refer to the *OCWIP Manual* for coverage details and procedural requirements. Note that the Authority retains the right to modify and/or terminate the OCWIP policies upon forty-five (45) days written notice to the covered Contractors and subcontractors.

4. Contractor Responsibilities. The Contractor and all subcontractors of any tier are required to cooperate with the Authority and the Authority's insurance administrator with respect to the administration and operation of the OCWIP. The Contractor's responsibilities shall include, but not be limited to:
  - a. Provision of necessary contract, operations and insurance information;
  - b. Inclusion of the OCWIP provisions in all subcontracts;
  - c. Notification to the Insurance Administrator of all subcontracts awarded;
  - d. Maintenance and provision of monthly payroll records and other records as necessary for premium computation in accordance with OCWIP Manual Paragraph 6.2. The mandatory *Monthly Payroll Report* must be submitted by the 10<sup>th</sup> day of each month to Aon Risk Services, Inc.;
  - e. Compliance with applicable loss control (safety) and claims reporting procedures and provisions as outlined or subsequently modified in the **Construction Safety Manual**;
  - f. Maintenance of the OSHA No. 200 Form to be provided monthly to the Authority or the Authority's designated representative; and
  - g. Completion of all necessary insurance applications prior to start of work.
5. No Release. The carrying of the above described insurance shall in no way be interpreted as limiting the Contractor's liability or relieving the Contractor or subcontractor of any other responsibility under this agreement or any applicable law, statute or regulation.

#### B. Contractor Provided Insurance

1. Coverage Required. The Contractor and all subcontractors enrolled in the OCWIP shall maintain the following minimum insurance coverage throughout the contract period. These coverages shall be written by insurance companies possessing a current rating of B+6 or higher from the A.M. Best Company or an equivalent rating.
  - a. Architects & Engineers Liability (for design work)
  - b. Workers' Compensation (for asbestos Contractors only)

Contractors should refer to Chapter 4 of the *OCWIP Manual* for the details of this coverage, including additional insured requirements.

2. Premium Reimbursement. The Contractor and subcontractors of any tier shall be reimbursed their actual premium costs for the contract related to any coverage required by the preceding paragraph B.1. Refer to Contract Provision 04, entitled "Payments - Construction Contract," paragraph B.5. for specific information concerning reimbursement of premiums.



## 21 CHANGES

- A. The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
1. In the specifications (including drawings and designs);
  2. In the method or manner of performance of the work;
  3. In the Authority-furnished facilities, equipment, materials, services, or site; or
  4. Directing acceleration in the performance of the work.
- B. Any other written or oral order (which, as used in this paragraph (B), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this provision, if the Contractor gives the Contracting Officer written notice within seven calendar days of the written or oral order stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.
- C. Except as provided in paragraphs (A) and (B) of this provision, no order, statement, or conduct of the Contracting Officer shall be treated as a change or entitle the Contractor to an equitable adjustment.
- D. If any change under this provision causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a "proposal for adjustment" (hereafter referred to as proposal) based on defective specifications, no proposal for any change under paragraph (B) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Authority is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications. If an equitable adjustment is made and the contract is modified in writing, the Contractor shall modify its insurance and bonding coverage accordingly.
- E. The Contractor must submit any proposal under this provision within 30 days after (1) receipt of a written change order under paragraph (A) above, (2) furnishing a written notice under paragraph (B) above, or (3) after completion of Time and Material work in accordance with Paragraph H, unless this period is extended by the Authority. Failure to document the basis for change within prescribed time shall constitute an abandonment of all entitlement. The proposal must include a written statement describing the Contractor's assessment of the scope of change and costs thereof as well as a definitive determination of the effect of the change on time. The proposal for equitable adjustment may be included in the notice under paragraph (B) above.
- F. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- G. The following mark-ups are allowable on Lump Sum proposals submitted by the Contractor:
1. When Contractor or Subcontractor perform the work, they will be allowed the following mark-ups on direct productive costs:

- a. Ten percent overhead
  - b. Ten percent profit on proposals less than \$100,000 and five percent profit on proposals more than \$100,000
2. The Contractor and each Subcontractor not performing the work will be allowed a five (5) percent (%) mark-up on a lower tier Subcontractor's total costs subject to the limitations stated in subparagraph 3 below. The Contractor shall certify all Subcontractors proposals. The certification shall indicate the following:
- a. The claim is made in good faith
  - b. The supporting data is accurate and complete to the best of the Contractor's knowledge and belief.
  - c. The amount requested accurately reflects the contract adjustment for which the Contractor believes the Authority is liable.
3. The maximum allowable mark-up totals per Change Proposal which the Authority will be subject are twenty-seven (27%) percent for cost over \$100,000 and thirty-three (33%) percent for cost under \$100,000.
- H. Should circumstances dictate that changed work be started immediately, the Contracting Officer may direct the Contractor, and the Contractor shall proceed with the work on a Time and Material basis pending a contract modification. The Contractor shall provide on a daily basis separate records of Time and Material work, which will be subject to Contracting Officer's approval and audit. Work done on the basis of time and material shall be subject to all requirements of the contract. The following shall apply for Time and Material records:
1. Labor: Labor costs shall be composed of direct labor cost plus labor burdens. The Contractor shall submit his breakdown for approval. Direct labor cost shall be no higher than those regularly paid the employee. Upon the request of the Contracting Officer, the Contractor shall provide certified payroll records for audit purposes.
  2. Materials: Vendor's invoices accompanied by evidence of payment shall be supplied to establish the Contractor's cost of material. Payment will only be made for the material consumed during the performance of the Time and Material Work or for approved material which is incorporated as part of the finished work.
  3. Equipment: The value of equipment shall be completed by utilizing current Blue Book Equipment Rental Rates as follows:
    - a. If the equipment is owned, hourly rates will be computed based on the latest version of the "Blue Book Rental Rate for Construction Equipment." Hourly rates will be computed by dividing monthly Blue Book rates (excluding operating costs) by 176, and adjusting for region and depreciation. In the case of any machinery or equipment not referred to in the Blue Book Rental Rates, a monthly rental rate shall be computed on the basis of an amount that is the equivalent of 6 percent of the manufacturer's list price of the sale (new) of such equipment. The hourly rate in such cases will be determined by dividing the monthly rate by 176 when actually operating. Payment for equipment idled as a direct result of the change, if applicable, shall be based on 50 percent of the rate determined herein.

- b. If the equipment is rented, the compensation shall be based on the actual rental costs supported by invoices.
- c. No payment will be made for the small tools defined as individual pieces of equipment or tools having a new value of \$1,000.00 or less.

4. Mark-ups:

- a. On work performed by the Prime Contractor or a Subcontractor:

- (1) Fifteen Percent combined overhead and profit on net increased labor.
- (2) Ten percent combined overhead and profit on net increased material.
- (3) No mark-ups will be allowed on increased equipment.

- b. On work not performed by the Prime Contractor or a Subcontractor:

The Contractor and each Subcontractor not performing the work will be allowed a five (5) percent (%) mark-up on a lower tier Subcontractor's costs excluding Subcontractor mark-ups, regardless of the tier of the Subcontractor.

- c. The maximum allowable mark-up totals per Change Proposal which the Authority will be subject are twenty-seven (27%) percent for cost over \$100,000 and thirty-three (33%) percent for cost under \$100,000.

- I. The allowable percentages of cost for overhead and profit are deemed to include such costs as the following: Field management personnel including project manager, superintendent, site engineer, CQC, Safety and utility coordination personnel. All field office expenses required by Contract, expenses for timekeepers, clerks and watchmen, cost of correspondence of any kind, and insurance not specifically mentioned herein and not included in the Owner Controlled Wrap-Up Insurance program, all expenses in connection with the maintenance and operation of the field office, schedule update, use of small tools, and cost of small vehicles generally used for transporting either workmen, materials, tools or equipment to job location, and incidental job burdens, and overhead of Contractor's established home office, branch office or similar facilities. Other costs not listed herein shall be subject to the approval of the Contracting Officer.

- J. Bonding costs associated with change order work will be reimbursed upon completion of the contract.

## **22 INSPECTION OF CONSTRUCTION AND FINAL INSPECTION AND ACCEPTANCE**

- A. Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

- B. The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Authority. All work shall be conducted under the general direction of the Contracting Officer and is subject to Authority inspection and testing at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

- C. Authority inspections and tests are for the sole benefit of the Authority and do not:
1. Relieve the Contractor of responsibility for providing adequate quality control measures;
  2. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
  3. Constitute or imply acceptance; or
  4. Affect the continuing rights of the Authority after acceptance of the completed work under paragraph I. below.
- D. The presence or absence of an Authority inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
- E. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Authority may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Authority shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- F. The Contractor shall, without charge, replace or correct work found by the Authority not to conform to contract requirements, unless in the Authority's interest the Authority consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises. If the Authority chooses not to accept the work with a contract price adjustment and if the Contractor does not promptly replace or correct rejected work, the Authority may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.
- G. If, before acceptance of the entire work, the Authority decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material to perform removal. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet the contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- H. Upon completion of all work required by the plans and specifications, the Contractor shall request final inspection from the Contracting Officer's Technical Representative (COTR). If the work is not acceptable to the COTR, the Contractor will be furnished a list of items which must be made acceptable. The Contractor shall again request final inspection after the completion of the unacceptable items. If the work inspected by the COTR is then found to comply fully with the requirements of the contract, it shall be accepted by the Contracting Officer. Acceptance will not occur unless all items are acceptable.
- I. Unless otherwise specified in the contract, the Authority shall accept, as promptly as practicable after completion and inspection, all work required by the contract, or that portion of the work that the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Authority's rights under any

warranty or guarantee. Final payment shall be made after acceptance of all work and the receipt of a fully executed Contractor's Release, and will be made in accordance with the terms and conditions of the contract.

## 23 WARRANTY OF CONSTRUCTION

- A. In addition to any other warranties in this Contract, the Contractor warrants, except as provided in paragraph J. of this provision, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship furnished or performed by the Contractor or any subcontractor or supplier of any tier.
- B. This warranty shall continue for a period of 1 year from the date of substantial completion of the work. If the Authority takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Authority takes possession.
- C. The Contractor shall remedy at the Contractor's expense any defects and any failure to conform to contract requirements. In addition, the Contractor shall remedy at the Contractor's expense any damage to Authority-owned or controlled real or personal property, when that damage is the result of:
1. The Contractor's failure to conform to contract requirements; or
  2. Any defect of equipment, material, workmanship, or design furnished.
- D. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this provision. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- E. The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- F. If the Contractor fails to remedy any failure, defect, or damage within 14 calendar days after receipt of notice, unless permitted otherwise by the Contracting Officer, the Authority shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- G. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
1. Obtain all warranties that would be given in normal commercial practice;
  2. Require all warranties to be executed, in writing, for the benefit of the Authority, if directed by the Contracting Officer; and
  3. Enforce all warranties for the benefit of the Authority, if directed by the Contracting Officer.
- H. In the event the Contractor's warranty under paragraph B. of this provision has expired, the Authority may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- I. Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier of any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Authority nor for the repair of any damage that results from any defect in Authority-furnished material or design.

- J. This warranty shall not limit the Authority's rights under the Inspection and Acceptance provision of this contract with respect to latent defects, gross mistakes, or fraud.
- K. Defects in design or manufacture of equipment specified by the Authority on a "brand name and model" basis, without deviation shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Authority.

## **24 DISPUTES**

### **A. General**

This contract provision sets forth the Authority's disputes procedures for disputes under remedy-granting contract provisions and non-material breaches of contract. It applies to all disputes except disputes based upon a material breach of contract.

It is the Authority's policy to encourage resolution of disputes by mutual agreement between the Contracting Officer and the Contractor. Consistent with this intent, the Authority requires, as a condition precedent to the initiation of litigation, the exhaustion of the administrative disputes procedure described in this contract provision. If the dispute is not resolved by the administrative disputes procedure, the contractor may proceed to court litigation in accordance with the agreements contained in this contract.

### **B. Waiver of Jury Trial**

To the fullest extent permitted by law, the Contractor and the Authority hereby waive their respective rights to a trial by jury on any dispute or claim or cause of action upon, arising under, arising out of or related to, the contract. In addition, the Contractor and the Authority hereby waive their respective rights to trial by jury in any other proceeding or litigation of any type brought by any of the contracting parties against the other party whether with respect to contract claims or actions, tort claims, or otherwise. Without limiting the foregoing, the Authority and the Contractor further agree that their respective rights to a trial by jury are waived as to any action, counterclaim, or other proceeding that seeks, in whole or in part, to challenge the validity or enforceability of the contract. This waiver of jury trial shall also apply to any subsequent amendments, modifications, renewals or supplements to the contract.

### **C. Performance Pending Dispute**

The contractor shall proceed diligently with performance of the contract's requirements, including the disputed portions, pending resolution of any dispute.

### **D. Steps of Administrative Disputes Procedure**

#### **1. Claim Submission**

The Contractor shall submit a written claim signed and certified as true and accurate and that it is made in good faith based upon supporting facts and cost and pricing data that are current, accurate and complete as of date of submission and date of any agreement; the claim and certifications shall be made by a duly authorized officer of the Contractor. The claim at a minimum shall include a) the basis of liability; b) basis of request for additional compensation, time extension request or other relief requested; c) a narrative that fully explains the basis for liability; d) the claim must state that it is made in good faith, that the supporting facts and cost and pricing data are current, accurate and complete as of the date of certification, and the

amount of additional compensation, time of performance, or other relief requested reasonably and accurately reflect the added cost, added time of performance, and other damage the Contractor reasonably believes it has incurred; and e) the claim must include or specifically reference all actual cost accounting records, actual schedule data, as-built data, or other data or facts that relate to any aspect of the Contractor's claim.

2. Prohibited Claim Formats

Monetary claims based on anticipatory profits are prohibited. Monetary claims requests based on a total cost approach are prohibited. Time extension requests or claims on a total time approach are prohibited.

E. Claims Review and Disposition

1. Contracting Officer Discussions

Discussions between the Contracting Officer and the Contractor concerning the claim presented shall occur within a reasonable period of time after submission of the certified claim and receipt by the Contracting Officer of sufficient information, including, but not limited to, information resulting from an audit, if deemed necessary. Discussions shall be conducted in good faith for the resolution of the dispute, including the exchange of relevant information. If requested by the Contracting Officer, the COTR shall provide the Contracting Officer with a written response to the claim that references the applicable provisions of the statement of work, contract requirements, and applicable contract provisions and may include a specific request that the COTR obtain additional information or audit access, or both. The Contractor shall provide such additional information or audit access and failure to promptly provide such information or access shall be a bar to the claim.

2. Alternative Dispute Resolution (ADR)

Non-binding evaluative mediation is established as the ADR for this contract. The parties agree that the following procedures shall apply:

- a. Selection of the neutral mediator shall be as made by the parties; a neutral means an individual who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services related to significant construction contracts.
- b. All statements made as a part of the proceeding and all memoranda, work products or other materials made during the course of the mediation are deemed confidential and are to be treated in accordance with Virginia Code Section 8.01-576.10; in addition, the statements and any written materials are considered privileged settlement discussions, are not party admissions, and are made without prejudice to any party's legal position, if mediation does not result in an agreement.
- c. Materials prepared for the mediation are not subject to disclosure in any other judicial or administrative proceeding.
- d. Informal discovery is permissible in the form of production or inspection of certain categories of documents.
- e. The parties agree to split evenly the costs of the mediator and any incidental costs associated with holding the mediation.

3. Impasse and Litigation

If the ADR procedure does not result in an agreement, an impasse can be declared.

4. Contracting Officer's Final Decision

Upon the declaration of an impasse, the Contractor shall request a written final decision by the Contracting Officer. The Contracting Officer shall issue a final decision within sixty (60) calendar days from receipt of the request and adequate documentation unless the dispute is determined to be complex in nature. The final decision of the Contracting Officer shall be final and conclusive unless within thirty (30) calendar days from receipt of the Contracting Officer's final decision, the Contractor mails or otherwise furnishes a written notice of appeal to the Manager, Procurement and Contracts Department.

5. Litigation

Following the completion of the administrative disputes resolution process without an agreement as indicated by the timely receipt of a notice of appeal, the dispute may be resolved by litigation without a jury before a court of competent jurisdiction within the Commonwealth of Virginia.

F. Remedies for inappropriate claims

The following remedies are provided for the Authority's use in the event the Contractor submits reckless or frivolous claims or false, misleading, or material misrepresentations relating to claims.

1. Remedies for Reckless or Frivolous Claims

In the event that the Contractor makes a claim against the Authority and the Contractor's claim, as certified by an officer of the contractor, is a) found by a court to be based on any reckless statement contained in the certification of the claim or b) is found by a court to be of frivolous nature or materially overstated in amount, then the Contractor shall be liable to the Authority and shall pay to it a percentage of costs incurred by the Authority in investigating, analyzing, negotiating, mediating and litigating (including attorneys' fees) the frivolous or overstated claim. The percentage of costs referenced shall be equal to the percentage of the contractor's total claim which is determined through litigation to be the result of a reckless statement or frivolous claim. "Frivolous" shall mean having no basis in law or in fact. This remedy is a contractual remedy and does not otherwise affect the other rights of the Authority in law or in equity.

2. Remedies for False or Misleading Statements or Material Misrepresentation

Any claim by the Contractor that is based on false or reckless statements that mislead the Authority or material misrepresentations shall entitle the Airports Authority to a full recovery of all costs incurred by the Authority in investigating, analyzing, negotiating, mediating and litigating (including attorneys' fees) the claim. This remedy is a contractual remedy and does not otherwise affect the other rights of the Authority in law or in equity.

**25 TERMINATION FOR CONVENIENCE OF THE AUTHORITY**

- A. The Authority may terminate performance of work under this contract in whole or in part if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer



shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

- B. After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this provision:
1. Stop work as specified in the notice.
  2. Place no further subcontracts or orders (referred to as subcontracts in this provision) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
  3. Terminate all subcontractors to the extent they relate to the work terminated.
  4. Assign to the Authority, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Authority shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  5. With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this provision.
  6. As directed by the Contracting Officer, transfer title and deliver to the Authority (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Authority.
  7. Complete performance of the work not terminated.
  8. Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Authority has or may acquire an interest.
  9. As directed or authorized by the Contracting Officer, use its best efforts to sell and/or return at the Authority's expense to manufacturers, suppliers, or distributors for full credit less any applicable restocking charges, any property of the types referred to in subparagraph 6. above; provided, however, that the Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Authority under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- C. After expiration of the plant clearance period, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Authority to remove those items or enter into an agreement for their storage. Within 15 days, the Authority will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- D. After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- E. Subject to paragraph D. above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E. or paragraph F. below, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph F. below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- F. If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph E. above:
1. For contract work performed before the effective date of termination, the total (without duplication of any items) of--
    - a. The cost of this work;
    - b. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph a. above; and
    - c. A sum, as profit on a. above, determined by the Contracting Officer, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph c. and shall reduce the settlement to reflect the indicated rate of loss.
  2. The reasonable costs of settlement of the work terminated, including--
    - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - b. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
    - c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- G. Except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph F. above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Authority or to a buyer.

- H. The Contractor shall have the right of appeal, under the Disputes provision, from any determination made by the Contracting Officer under paragraph D. F. or J. except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph D. or J. and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph D. F. or J. the Authority shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- I. In arriving at the amount due the Contractor under this provision, there shall be deducted--
1. All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
  2. Any claim which the Authority has against the Contractor under this contract; and
  3. The agreed price for, or the proceeds of, sale of materials, supplies or other things acquired by the Contractor or sold under the provisions of Paragraph B.9. of this provision and not recovered by or credited to the Authority.
  4. The amount credited to the Contractor for materials, supplies or other things that are returned to the manufacturers, suppliers or distributors in accordance with Paragraph B.9. of this provision and not recovered by or credited to the Authority.
- J. If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this provision shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.
- K. Payments Under Termination
1. The Authority may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
  2. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Authority upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- L. Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Authority, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting

Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

## 26 DEFAULT

- A. If the Contractor: 1. fails to comply with the terms of this contract; 2. refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension; or 3. fails to complete the work within this time, the Authority may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Authority may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plants on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Authority resulting from the Contractor's refusal or failure to comply with the contract or to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Authority in completing the work.
- B. The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this provision, if:
1. The delay in completing the work or failure to comply with contract terms arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (a) acts of God or of the public enemy, (b) acts of the Authority in either its sovereign or contractual capacity, (c) acts of another Contractor in the performance of a contract with the Authority, (d) fires, (e) floods, (f) epidemics, (g) quarantine restrictions, (h) strikes, (i) freight embargoes, (j) unusually severe weather, or (k) delays of subcontractors or suppliers of any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers, and
  2. The Contractor, within ten (10) days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay or failure to comply with contract terms. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended.
- C. If, after termination of the Contractor's right to proceed, it is determined 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 termination had been issued for the convenience of the Authority.
- D. The rights and remedies of the Authority in this provision are in addition to any other rights and remedies provided by law or under this contract.

## 27 CORRESPONDENCE PROCEDURES

Correspondence of any nature shall be directed as required by the Contracting Officer. Specific requirements will be provided at the Pre-construction conference.

## 28 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) AUTHORITY

The Contracting Officer may designate personnel to act as his authorized representatives for one or more contract administration functions not involving a change in the scope, price, terms, or conditions of the

contract. Such designation will be in writing, set forth by a separate letter signed by the Contracting Officer, and will contain specific instructions as to the extent to which the representative may take action for the Contracting Officer. Such designation will not contain authority to sign contractual documents, nor will it authorize the designee to order contract changes, modify contract terms, or create any liability on the part of the Authority.

## 29 HOLIDAYS

Except as noted, work will not be allowed on the following holidays or on holidays observed in lieu thereof:

New Year's Day	Labor Day
Martin Luther King Jr.'s Birthday	Columbus Day
President's Day	Veteran's Day
Memorial Day	Thanksgiving
Independence Day	Christmas

## 30 SAFETY REQUIREMENTS

In performing this contract the Contractor shall protect the health and safety of employees and other persons; prevent damage to property, materials, supplies, and equipment; and avoid interrupting the normal operation of the airport. The Contractor shall also comply with the provisions of the Authority's *Construction Safety Manual*, incorporated herein and attached hereto at Section X, Attachment 03. (Note: This manual may be revised from time to time. The latest revision to the manual is available from the "Business Information" section of the Authority's website at <http://www.mwaa.com>.)

## 31 INTERPRETATION OR MODIFICATION

Except as otherwise provided in this contract, no oral statement of any person and no written statement of anyone other than the Contracting Officer, shall modify or otherwise affect the terms or meaning of the contract or specifications. All requests for interpretation or modifications shall be made in writing to the Contracting Officer.

## 32 SECURITY

All Employees who will be working unescorted in a restricted area of the airport must have an Airport Identification badge. There must be one person with a valid identification badge with the work crew at all times. When contract work requires the group to separate, additional badged escorts must be provided.

The Contractor's company vehicles and equipment must be registered with the Airport Operations Division. Vehicles utilized in restricted areas must meet requirements set forth in the applicable Orders and Instructions for the airport. Personnel shall be licensed by the Airport Pass and ID Section of Airport Operations prior to vehicle operation on the Airport Operations Area (AOA).

Security Training: All individuals who apply for a restricted area access must attend an FAA required training session prior to receipt of the Airport Identification badge and vehicle operator's permit. NOTE: Submission of fraudulent or intentional false statements may lead to legal enforcement action by the FAA.

The Contractor, subcontractors and their respective employees must enforce the Airport Security Program, failure to do so will result in removal of restricted area access. Vehicle registration, vehicle operator's permits, security requirements, procedures, associated costs and applicable forms are as specified **by the Contracting Officer's Technical Representative (reference Section IX, Attachment 05)**.

**33 PROPOSALS FOR CONTRACT MODIFICATION**

- A. The Contractor, in connection with any proposal for a Contract modification, shall furnish to the Contracting Officer a fully itemized proposal of the Contractor's cost for performing the work, within the time prescribed in Provision 21, Changes, Paragraph E, detailed as follows:
1. Labor description, daily hours, total hours and wage rate per hour. Wages paid shall be no higher than those regularly paid the employee.
  2. Material description, quantities, unit cost, and total cost. Payment will be made only for material consumed during the performance of the change or for approved material incorporated as an integral part of the finished work. The Contractor shall submit vendor quotations in support of material cost estimates.
  3. Equipment classification, model number and year, daily hours, total hours, and rate per hour. If the equipment is rented, payment shall be made on the basis of rental cost supported by paid rental invoices. If the equipment is owned, hourly rates will be computed based on the latest version of the "Blue Book Rental Rate for Construction Equipment." Hourly rates will be computed by dividing monthly Blue Book rates (excluding operating costs) by 176, and adjusting for region and depreciation. Hourly rates shall be charged only for those hours the equipment is actually in operation. Payment for equipment idled as a direct result of the change, if applicable, shall be based on 50 percent of the rate determined herein.
- B. For all Proposals that include a request for an extension in Contract time, the Contractor shall submit to the Contracting Officer, as part of the Contractor's proposal, a fully detailed analysis, based on the approved construction schedule, that establishes the relationship between the change in work and the requested time extension. The only basis for any extension of Contract time will be the demonstrated impact of an excusable delay on the critical path of the Project Schedule. For proposals that do not include a request for an extension of Contract time it will be deemed that the changed work has no impact on the scheduled milestones or Contract Completion Date.
- C. For all changes in the work to be performed by a subcontractor, the Contractor shall furnish the subcontractor's fully itemized breakdown of quantities and prices which shall bear the original signature of an authorized representative of the subcontractor.
- D. The Contractor shall certify all proposals, indicating the following:
1. The proposal is made in good faith, and
  2. The supporting data is current, accurate and complete to the best of the Contractor's knowledge and belief, and
  3. The amount requested accurately reflects a reasonable Contract adjustment to which the Contractor believes it is entitled.
- On proposals for equitable adjustment or claims in excess of \$50,000 the certification shall be by a duly authorized officer of the Contractor.
- E. The following mark-ups are allowable on Lump Sum proposals submitted by the Contractor:
1. When Contractor or Subcontractor perform the work, they will be allowed the following mark-ups on direct productive costs:

- a. Ten percent overhead
  - b. Ten percent profit on proposals less than \$100,000 and five percent profit on proposals more than \$100,000
2. The Contractor and each Subcontractor not performing the work will be allowed a five (5) percent (%) mark-up on a lower tier Subcontractor's total costs subject to the limitations stated in subparagraph 3 below. The Contractor shall certify all Subcontractor's proposals. The certification shall indicate the following:
- a. The proposal is made in good faith
  - b. The supporting data is accurate and complete to the best of the Contractor's knowledge and belief.
  - c. The amount requested accurately reflects the contract adjustment for which the Contractor believes the Authority is liable.
3. The maximum allowable mark-up totals per Change Proposal to which the Authority will be subject are twenty-seven (27%) percent for cost over \$100,000 and thirty-three (33%) percent for cost under \$100,000.
- F. The allowable percentages of cost for overhead and profit are deemed to include such costs as the following: Field management personnel including project manager, superintendent, site engineer, CQC, Safety and utility coordination personnel, all field office expenses required by Contract, expenses for timekeepers, clerks and watchmen, cost of correspondence of any kind, and insurance not specifically mentioned herein and not included in the Owner Controlled Wrap-Up Insurance program, all expenses in connection with the maintenance and operation of the field office, schedule update, use of small tools, and cost of small vehicles generally used for transporting either workmen, materials, tools or equipment to job location, and incidental job burdens, and overhead of Contractor's established home office, branch office or similar facilities. Other costs not listed herein shall be subject to the approval of the Contracting Officer.
- G. If the change involves only a credit, the Contract Price will be reduced by the amount it would have cost the Contractor if the work omitted had not been eliminated; including a negotiated allowance for overhead and profit, however, the Contractor and the affected subcontractors will be allowed to retain a sum, not in excess of three percent (3%) of the change value, for the administrative cost of the deductive change.
- If the change involves both a credit and debit, the Contractor shall include a separate accounting of each, with a summarization of the net adjustment to price and/or time. No allowance to the Contractor shall be paid for loss of anticipated profit due to any changes in the Work.
- H. Where a change makes work necessary on an overtime basis, the Contracting Officer's approval for overtime work shall be obtained before the work is commenced.
- I. On changes in the work that may involve a compensable extension of Contract time, the Contractor's cost for extended overhead shall be based upon actual and verifiable home office costs that are directly related to the change involved. Use of formulas (such as Eichleay) to estimate extended or under absorbed home office overhead shall not be allowed. Upon the request of the Contracting Officer, home office overhead records shall be made available for audit and verification purposes.

- J. The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

### **34 DISPOSAL**

The Contractor shall at all times keep the work areas clean as work progresses. All contract-generated trash, debris, and empty containers shall be removed from the work site daily and disposed of off airport property. There shall be no dumping or disposal on the airport.

### **35 CONTRACTOR'S FIELD OFFICE**

Any field office established by the Contractor shall be subject to the approval of the COTR and will be established in accordance with his direction.

### **36 OPERATION OF MOTOR VEHICLES**

- A. The Contractor shall have identification decals or other approved identification on all vehicles entering the Airport. Each employee of the Contractor (and of his subcontractors) driving motor vehicles on the Airport shall have a valid driver's license and each such motor vehicle shall have a current inspection sticker if required by the state of registration. Only properly identified vehicles of the Contractor shall be allowed in the work area.
- B. After award of contract, and before commencing use of vehicles, the Contractor shall furnish to the Contracting Officer a list showing the following:
1. Name and address of each of his employees and those of his subcontractors that will be involved with the movement of motor vehicles.
  2. Operator's permit number for each employee in (A) above.
  3. Registration number of each vehicle that will be used at the Airport.
- C. All of the Contractor's personnel driving motor vehicles on the AOA must obtain an aerodrome operator's permit through the Airport Operations Division.

### **37 ROYALTIES AND PATENTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Authority and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Authority.



**38 ORDER OF PRECEDENCE**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Price Schedule (excluding the specifications); (b) Representations and Certifications; (c) Special Provisions; (d) Contract Provisions; (e) other documents, exhibits, and attachments; (f) the specifications; and (g) the drawings.

**39 CLAIMS FOR ADDITIONAL COSTS**

If the Contractor wishes to make a claim for an increase in the contract sum, he shall give the Authority written notice of his intent to do so within twenty (20) calendar days following the occurrence of the event giving rise to the claim, but prior to proceeding to execute the work, except in an emergency endangering life or property. No such claim shall be valid unless so made. Any change in the contract sum resulting from such claim shall be authorized by change order.

**40 ENGLISH SPEAKING REPRESENTATIVE**

At all times when any performance of the work at any site is being conducted by any employee of the Contractor or his subcontractors, the Contractor shall have a representative present who has the capability of receiving instructions in the English language, fluently speaking the English language and explaining the work operations to persons performing the work in the language that those performing the work are capable of understanding. The Contracting Officer shall have the right to determine whether the proposed representative has sufficient technical and lingual capabilities, and the Contractor shall immediately replace any individual not acceptable to the Contracting Officer.

**41 TAXES**

The Contractor is responsible for all applicable Federal, state, and local taxes of all kinds on materials, labor, or services furnished by it or arising out of its operations under the contract. Such taxes shall include, without limitation, sales, use, excise, employee benefit and unemployment taxes, customs duties, and income taxes.

**42 BRAND NAME OR APPROVED EQUAL**

Unless otherwise provided in the solicitation, or unless the name is followed by words indicating that no substitution is permitted, the reference to a certain brand name, make, model number, or manufacturer does not restrict the offer to the specific brand, make, model number or manufacturer identified. The specific references to a brand is not intended to exclude other products but to convey the salient characteristics of function, performance, design requirements and quality of the item described. Comparable products of other manufacturers will be considered if proof of comparability is contained in or accompanies the offer. Any item which the Authority at its sole discretion determines to be the equal to that which is specified, considering quality, workmanship, economy of operation, and suitability for the process intended, will be accepted.

**43 LIQUIDATED DAMAGES-CONSTRUCTION**

A. The parties recognize that time is of the essence in this contract and the Authority will suffer financial loss if the entire project (all work) is not completed within the time specified in Section III, Price Schedule, plus any extensions thereof granted by the Authority. The Authority and the Contractor also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Authority if the project is not completed on time. Accordingly, instead of requiring any such proof, the parties agree that as liquidated damages for delay (but not as penalty) the Contractor shall pay the Authority the following amounts for applicable phases of work not completed as specified in Section III, Price Schedule (Commencement, Prosecution and Completion of Work) or

any proper extension thereof granted by the Contracting Officer. Such liquidated damages may be withheld by the Authority from progress payments or final payment otherwise due the Contractor.

**FIRST LD:** Substantially complete all work associated with Levee Road Relocation within 120 calendar days after NTP = \$1,100/calendar day of delay.

**SECOND LD:** Return Runway 1-19 to operational status by 6:00 a.m. after nightly closure = \$10,000/first 15 minutes of late opening; \$14,000/second 15 minutes of late opening, and \$24,000/third and successive 15 minutes of delay.

**THIRD LD:** Substantially complete all work associated with this project within 165 calendar days from NTP = \$2,700/calendar day of delay.

- B. If the Authority terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the entire project, together with any increased costs to the Authority in completing the entire project.
- C. For the purpose of calculating whether an extension of time changes the Agreement's project completion date for the purpose of calculating liquidated damages under this provision, the following criteria apply:
1. extensions of time will be allowed under this provision for strikes against the Contractor, any subcontractors and any fabricators when no alternate source is reasonably available;
  2. extensions of time will be allowed under this provision for unusually severe weather conditions as defined elsewhere;
  3. extensions of time will be allowed for national strikes against basic material manufacturers who are supplying products for this project, e.g., steel, cement, polymer industries, if it is shown to the satisfaction of the Contracting Officer that such strikes have affected the project;
  4. extensions of time will be allowed when the Contractor is able to show, to the satisfaction of the Contracting Officer that the circumstances which are causing the delay are completely beyond his control or beyond that of his subcontractors and suppliers of materials.
- D. The Contractor must apply to the Contracting Officer for any extension of time. The Contracting Officer shall be the sole judge as to whether the extension is justified and how long it should be. Each extension shall be documented in writing by the Contracting Officer on the day the decision is made with his reason for extension.

#### **44 PERFORMANCE OF WORK BY THE CONTRACTOR**

The Contractor shall perform on the site, and with its own organization, at least twenty-five percent (25%) of the total direct labor and at least twenty-five percent (25%) of the total work-in-place to be performed under the contract. Prior to award, the Contractor must demonstrate to the Contracting Officer's satisfaction that both of these standards will be met during contract performance. Labor and work to be counted when determining whether the Contractor has met the self-performance requirement shall not include any work that the Contractor performs under the supervision of a subcontractor.

This self-performance percentage may be reduced by a supplemental agreement to this contract if, during performance of the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Authority.

**45 PUBLICITY RELEASES**

Publicity releases in connection with this contract will not be made by the Contractor unless prior written approval is obtained from the Manager, Procurement and Contracts Department.

**46 AUDIT AND INSPECTION OF RECORDS**

The Contractor shall maintain records and the Contracting Officer shall, until the expiration of five years after final payment under this Contract have access to and the right to examine any pertinent books, documents, papers and records of the Contractor involving the formation of the contract, transactions related to the Contract, for the purpose of inspection, making audit, examination, excerpts and transcriptions. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Contracting Officer shall until the expiration of five years after final payment under the Contract have similar access to and the right to examine any pertinent books, documents, papers and records of the subcontractor(s) involving all aspects of the subcontract including formation.

The Contracting Officer shall have all of the aforementioned rights for all types of contracts including fixed price contracts. The rights include without limitation the right to examine costs. The Authority's rights hereunder are in addition to any other audit and inspection rights under the Contract. The Authority reserves these rights because cost information is frequently needed to investigate performance issues and whether it is in the Authority's interest to exercise other reserved rights under the contract. The Contracting Officer shall have the broad rights of audit and inspection including but not limited to, the right to examine books, records, documents and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature that have been incurred for the performance of this Contract. Such right of examination shall include inspection at all reasonable times of the Contractor's labor, materials, plant or such parts thereof, or other costs or revenues as may be expended or received as a part of the performance of the Contract.

When costs are a factor in any request for an equitable price adjustment pursuant to a remedy granting provision of the Contract, the Contractor shall maintain separate accounts by specific designation or other suitable accounting procedure of all incurred segregable, direct costs, less allocable credits. Failure to maintain such cost records is a bar to any claim, legal or equitable, for such costs.

**47 CONSENT TO ASSIGNMENT**

The Contractor shall obtain the written consent of the Contracting Officer prior to any assignment of all or any part of this contract.

**48 NOTIFICATION OF OWNERSHIP CHANGES**

The Contractor shall notify the Contracting Officer in writing when the Contractor becomes aware that a change in its ownership is certain to occur. The Contractor shall also include this provision in all subcontracts under this contract, requiring each subcontractor to notify the Contracting Officer in writing when the subcontractor becomes aware that a change in its ownership is certain to occur.

**49 COMPLIANCE WITH EMPLOYMENT ELIGIBILITY VERIFICATION, FORM I-9**

The Contractor shall ensure that it is in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under, and that it will maintain compliance as long as any work is being performed under this contract with the Authority. The Contractor shall also ensure that its subcontractors are in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8

U.S.C. 1324a) and the regulations issued there under, and that its subcontractors will maintain compliance as long as they are performing any work under this contract with the Authority.

## 50 EMPLOYMENT ELIGIBILITY VERIFICATION

Applicable for all construction contracts over \$100,000 with a duration of over 120 days.

### A. Definitions. As used in this clause—

1. “Commercially available off-the-shelf (COTS) item”—
  - a. Means any item of supply that is—
    - (1) A commercial item;
    - (2) Sold in substantial quantities in the commercial marketplace; and
    - (3) Offered to the Airports Authority, without modification, in the same form in which it is sold in the commercial marketplace; and
  - b. Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. “Bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.
2. “Employee assigned to the contract” means an employee who was hired after November 6, 1986, who is directly performing work, in the United States. An employee is not considered to be directly performing work under a contract if the employee—
  - a. Normally performs support work, such as indirect or overhead functions; and
  - b. Does not perform any substantial duties applicable to the contract.
3. “Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.
4. “Subcontractor” means any person or business, at any tier, who provides goods and or services required to be supplied or performed by a contractor under Contract with the Airports Authority.

### B. Enrollment and verification requirements.

1. If the Contractor is not enrolled as a non-Federal Contractor in E-Verify at time of contract award, the Contractor shall—
  - a. *Enroll.* Enroll as a non-Federal Contractor in the E-Verify program within 30 calendar days of contract award and provide proof satisfactory to the Contracting Officer that the Contractor is registered with and participating in the E-verify program;

- b. *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph B.3. of this section) and continue to use E-Verify for all of employer's new hires throughout the term of the contract; and
2. If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall provide satisfactory proof to the Contracting Officer that the Contractor is registered with and participating in the E-verify program and, throughout the term of the contract, use E-Verify to initiate verification of employment eligibility of—
  - a. All new employees.
    - (1) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph B.3. of this section); or
    - (2) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph B.3. of this section); or
  - b. Existing Employees. Contractors are prohibited from verifying existing employees under this contract unless they are a Federal Contractor and have a separate contract with the Federal Government which contains the E-Verify clause. The Airports Authority is not a federal entity and therefore verification of existing employees through the performance of this contract is prohibited.
3. If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with the Airports Authority pursuant to a performance bond, the Contractor shall follow the applicable verification requirements at B.1. or B.2. respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.
4. The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program Memorandum of Understanding (MOU).
  - a. The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor shall notify the contracting officer in writing within ten (10) calendar days of the occurrence.
  - b. During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph B. of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify. Suspension or debarment is considered a material breach of contract.

- C. Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verifygov/E-Verify>.
- D. Subcontracts. The Contractor shall provide proof to the Contracting Officer that all Subcontractors are registered with and participating in the E-verify program and include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—
1. Is for—
    - a. Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or
    - b. Construction or construction-related services;
  2. Has a value of more than \$3,000

## 51 AUTHORITY PROPERTY

The Contractor shall have custodial management responsibility for all Authority-owned personal and real property assets (hereafter referred to as “property”) that are provided during the contract term. This applies to all Authority property that is approved and provided by the Authority’s Contracting Officer’s Technical Representative (COTR), regardless of cost or whether the Contractor is authorized to directly purchase it or it is purchased by the Authority. Title to all Authority property provided to the Contractor shall remain with the Authority unless otherwise specified in the contract. Custodial management responsibility includes tracking assets, maintaining property records, preparing and submitting property documents, safeguarding assigned property, assisting with inventories, ensuring that assigned property is used only for official Authority purposes, and identifying property that is no longer needed and reporting it to the COTR.

Property assets provided to the Contractor shall be managed by the Contractor using the following identification methods approved by the COTR and their respective Authority Property Control Office:

1. An Authority issued bar code number for assets which are formally recorded by the respective Property Control Office
2. The manufacturer’s assigned serial number
3. A unique recording number issued by the Contractor for tracking purposes and approved by the respective Authority Property Control Office when the manufacturer’s assigned serial number is unavailable

Contractors shall ensure that they do not use any Authority property that has not been specifically authorized for their use by the COTR. If Contractors require additional Authority property, that requirement shall be submitted to the COTR in writing, including full justification prior to any use of such property.

An inventory of all property provided to the Contractor shall be conducted on the first and last day of the contract term by the Contractor’s representative, COTR, and a representative from the respective Authority Property Control Office. An Authority property transfer form with a detailed property inventory listing will be used to transfer property at the beginning of the contract term. The inventory lists shall include the description of the property, bar code number (if assigned), serial number, acquisition cost, acquisition date, manufacturer,

year manufactured, location, and user. If the acquisition cost and date for an item are unknown, the respective Authority Property Control Office will determine an estimated cost and date. If the COTR assigns additional property to the Contractor during the contract term or if property is returned to the Authority through the COTR by the Contractor, the respective Authority Property Control Office will be responsible for recording and maintaining an updated property inventory listing for Authority property that is bar coded. The Contractor will be responsible for recording and maintaining an updated property inventory listing for all non-bar coded Authority property. The COTR will be responsible for informing their respective Authority Property Control Office whenever property is issued or returned by the Contractor, including any changes that affect the property inventory records.

The Contractor accepts the provided property in "as is" condition. The COTR and/or the respective Authority Property Control Office may conduct scheduled or unscheduled property inventories during the contract term. The Contractor will perform at least annually a physical inventory of all Authority provided property. A corporate officer of the Contractor shall certify to the COTR and respective Authority Property Control Office that the property on the listings is still in the possession of the Contractor and has been used only in connection with this contract. The inventory listings should indicate a description of each asset, acquisition cost, acquisition date, manufacturer, year manufactured, its condition and location, the serial number, and the Authority asset bar code, if applicable. The existing Contractor's representative, new Contractor's representative, COTR, and a representative from the respective Property Control Office will conduct an inventory at the end of the contract period.

The COTR and the Property Control Office shall ensure that all property provided to the Contractor is returned to the Authority in the same condition as originally provided, with the exception of reasonable wear and tear, when it is no longer needed or at the end of the contract term. If the assigned property is not returned by the Contractor in the same condition as it was issued (with the exception of reasonable wear and tear) or has been lost, the Contractor will be liable for the loss or damage and will be required to reimburse the Authority for the cost to replace the property or to restore the property to its original condition, as determined by the Property Control Office and COTR.

**You will be advised by separate communications from the Contracting Officer's Technical Representative (COTR) of the necessary property asset management procedures and specific recording levels established for all property under your control during the remainder of your contract term.**

## **52 CONFLICT OF INTEREST**

Firms participating in the planning and design of the work involved in this contract are excluded from participating in any part of the construction process, either as a prime or subcontractor.

### **AIRPORT IMPROVEMENT PROGRAM (AIP) CONTRACT PROVISIONS**

## **53 STANDARD REQUIREMENTS FOR AIRPORT IMPROVEMENT PROGRAM CONTRACTS**

- A. AIP Project. The work in this contract is being undertaken and accomplished by Metropolitan Washington Airports Authority in accordance with the terms and conditions of a grant agreement between the Metropolitan Washington Airports Authority, hereinafter referred to as the Sponsor, and the United States, under the Airport and Airway Improvement Act of 1982 (AAIA) (P.L. 97-248, 49 U.S.C. 2201 et seq) and Part 152 of the Federal Aviation Regulations (14 CFR Part 152), or its successor regulation, pursuant to which the United States has agreed to pay a certain percentage of the costs of the project that are determined to be allowable project costs under the Act. The United States is not a party to this contract and no reference in this contract to the Federal Aviation Administration (FAA) or any representative thereof, or to any rights granted to the FAA or any

representative thereof, or the United States, by the contract, makes the United States a party to this contract.

- B. Consent to Assignment. The Contractor shall obtain the prior written consent of the sponsor to any proposed assignment of any interest in or part of this contract.
- C. FAA Inspection and Review. The Contractor shall allow any authorized representative of the FAA to inspect and review any work or materials used in the performance of this contract.
- D. Disadvantaged Business Enterprises. It is the policy of the Department of Transportation that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of this contract.

The Contractor agrees to ensure that disadvantaged business enterprises have the maximum opportunity to participate in the performance of subcontracts. In this regard the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subcontracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract.

#### **54 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EEO) (EXECUTIVE ORDER 11246, AS AMENDED)**

- A. The offeror's or bidder's attention is called to the "Equal Employment Opportunity Provisions" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- B. The goals for minority and female participation, expressed in percentage terms FOR THE CONTRACTOR'S AGGREGATE WORK FORCE in each trade on all construction work in a covered area, are as follows:

Goals for minority participation

Goals for female participation

28.0%

6.9%

1. These goals are applicable to all the Contractor's CONSTRUCTION WORK FORCE (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.
2. 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 Provision, 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 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 Contract 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.



- C. The Contractor shall provide written notification to the Director, Office of Federal Contract Compliance Programs (OFCCP), within ten (10) working days of award of any construction subcontract in excess of \$10,000.00 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, 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.
- D. As used in this notice and in the contract resulting from this solicitation, the "covered area" is Washington, DC, Standard Metropolitan Statistical Area (SMSA) Counties in Washington, DC, Maryland, and Virginia. In Virginia, SMSA counties include Fairfax, Loudoun, and Prince William counties.

For your information, the Department of Labor has eliminated all imposed EEO plans and the Philadelphia Plan as a means of complying with Executive Order 11246. Hometown Plans can still be used; however, signatories are required to submit goals and timetables for the utilization of women to the Director, OFCCP, U.S. Department of Labor, Washington, DC. 20210.

## 55 REPORTS

- A. Contractors/subcontractors with 50 or more employees and Contracts over \$50,000.00.

All Contractors and subcontractors performing on federally assisted projects are required to file annually (on or before March 31) complete and accurate reports on SF 100 (Employee Information Report, EEO-1) to the Joint Reporting Committee. The first report is due within 30 days after award unless such report was filed within the preceding 12-month period.

Standard Form 100 is normally furnished based on a mailing list, but can be obtained from the Joint Reporting Committee, P.O. Box 2236, Norfolk, Virginia 20501.

- B. Contractors/subcontractors with Contracts over \$10,000.00.

As indicated in paragraph E of the EEO Provision, monthly Employment Utilization Reports, CC 257 (previously SF 257) will be submitted to the OFCCP, U.S. Department of Labor, 3535 Market Street, Room 1310, Philadelphia, PA 19104.

## 56 EQUAL EMPLOYMENT OPPORTUNITY PROVISION

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

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, 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 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 by COTR) setting forth the provisions of this nondiscrimination provision.

- B. 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, or national origin.
- C. The Contractor will send, to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice (to be provided by COTR) advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order 11246, as amended, of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246, of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Comptroller General of the United States, Department of Transportation, FAA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination provisions of the contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Contractor will include the portion of the sentence immediately preceding paragraph A. and the provisions of paragraphs A. through F. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the 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 a Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractors and subcontractors may satisfy the requirements of paragraph B. of the referenced EEO provision by complying with any of the following:

1. Stating in the Request for Proposals (RFP) that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin, or
2. Including appropriate insignia in display or other advertising as prescribed by the Department of Labor, or
3. Using a single advertisement grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants will have equal consideration for employment without regard to race, color, religion, sex, or national origin, or
4. Using the phrase "an equal opportunity employer" in a single advertisement in clearly distinguishable type.

See Poster Next Page

NOTICE TO BE POSTED PER PARAGRAPHS A. AND C. OF THE EEO PROVISION

*Equal Employment Opportunity is the Law - Discrimination is prohibited by the Civil Rights Act of 1964 and by Executive Order No. 11246.*

*Title VII of the Civil Rights Act of 1964 - Administered by:*

***Equal Employment Opportunity  
Commission***

*Prohibits discrimination because of race, color, religion, sex, or national origin by employers with 75 or more employees by labor organizations with a hiring hall of 75 or more members, by employment agencies, and by joint labor-management committees for apprenticeship or training. After July 1, 1967 employers and labor organizations with 50 or more employees or members will be covered; after July 1, 1968 those with 25 or more will be covered.*

*ANY PERSON  
who believes he or she has been discriminated against*

*SHOULD CONTACT  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION*

*2401 E Street NW Washington, DC 20506*

*Executive Order Number 11246 - Administered by:*

***Office of Federal Contract  
Compliance***

*Prohibits discrimination because of race, color, religion, sex, or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.*

*By all federal government contractors and subcontractors, and by contractors performing work under a federal assisted construction contract, regardless of the number of employees in either case.*

*ANY PERSON  
Who believes he or she has been  
discriminated against*

*SHOULD CONTACT  
OFFICE OF FEDERAL CONTRACT  
COMPLIANCE*

*U.S. Department of Labor  
Washington, DC 20210*

**57 STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246, AS AMENDED)**

- A. As used in these specifications:
1. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  2. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
  3. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
  4. "Minority" includes:
    - a. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
    - c. 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
    - d. 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).
- B. 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 solicitation from which this contract resulted.
- C. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO provision 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.
- D. The Contractor shall implement the specific affirmative action standards provided in paragraphs G.1 through G.16 of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction

contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

- E. 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.
- F. 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.
- G. 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:

1. Ensure and maintain in 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 on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
2. 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.
3. 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 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.
4. 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.
5. 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 G.2 above.
6. 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.
  7. 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 their employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
  8. 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.
  9. 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.
  10. 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.
  11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  12. 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.
  13. 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.
  14. 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.

15. 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.
  16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G.1 through G.16). The efforts of a Contractor association, joint Contractor union, Contractor community, or other similar groups of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under G.1 through G.16 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 work force participation, makes 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.
- I. A single goal for minorities and a separate single goal for women have been established. The Contractor, however is required to provide EEO and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate number (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 under utilized).
- J. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- K. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- L. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Provision, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and in its implementing regulations, by the OFCCP. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246.
- M. 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 G. of these specifications so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- N. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic,

apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

- O. 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).

**58 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION**

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

- A. 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, Regulations), which are herein incorporated by reference and made a part of this contract. Note: The Contractor's Certification of Nonsegregated Facilities at Exhibit A must be completed.
- B. Nondiscrimination. The Contractor, with regard to the work performed by it during the contract, 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 contract covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontracts, Including Procurement 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 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 contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. 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 Authority 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.
- E. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Authority shall impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
1. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  2. Cancellation, termination, or suspension of the contract, in whole or in part.



- F. Incorporation of Provisions. The Contractor shall include the provisions of paragraphs A. and E. 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 sponsor or the Federal Aviation Administration may direct 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 supplier as a result of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- G. Breach of Contract Terms - Sanctions. Any violation or breach of the terms of this contract on the part of the Contractor/subcontractor may result in the suspension or termination of this contract or such other action which may be necessary to enforce the rights of the parties of this agreement.

## 59 FOREIGN TRADE RESTRICTIONS

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 or nationals 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 Contractor 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; and
- 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 provision are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Contractor or subcontractor who is unable to certify to the above. If the Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on the 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 upon 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 immediate 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.

## **60 SECRETARY OF LABOR REQUIREMENTS**

### Minimum Wages

- A. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to laborers or mechanics, subject to the provisions of paragraph A.6. 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 paragraph A.4. of this section Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph A.1 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.
1. The Contracting Officer shall require that any class of laborers or mechanics 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 therefor only when the following criteria have been met:
    - a. Except with respect to helpers as defined in 29 CFR 5.2 (N) (4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
    - b. The classification is utilized in the area by the construction industry; and
    - c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
    - d. With respect to helpers as defined in 29 CFR 5.2 (N) (4) such a classification prevails in the area in which the work is performed.

2. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standard Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the contracting officer within the 30-day period that additional time is necessary.
3. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the 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.
4. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A.2. or A.3. of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
5. 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.
6. 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.

#### 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 contracts. In the event of failure to pay any laborer or mechanic, including apprentices, trainees, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

Payrolls and Basic Records

- A. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) 2(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a) (1) (iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b) (2)(C.B.) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual 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.
- B. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all 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 subparagraph 5.5 (a) (3) (i) of Regulation, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.
- C. 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 maintained under subparagraph 5.5 (2) (3) (i) of Regulations, 29 CFR Part 5 above 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.
- D. 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 C. of this section.
- E. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of the United States Code.

- F. The Contractor or subcontractor shall make the records required under paragraph A. 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.

#### Apprentices and Trainees and Helpers

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

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

2. 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.
3. Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in subparagraph 5.5(a)(1)(ii). The allowable ratio of helpers to the journeymen employed by the Contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each Contractor's or in each subcontractor's own work force employed on the job site). Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for classification of work actually performed. In addition, any helper performing work on the job site in excess of the ration permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

#### 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.

#### Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the provisions contained in 29 CFR 5.5 (1) through (10) and such other provisions as the Federal Aviation Administration may by appropriate instruction require, and also a provision requiring the subcontractors to include these provisions 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 provisions in 29 CFR 5.5.

#### Contract Termination: Debarment

A breach of the contract provisions in 29 CFR 5.5 may be grounds for termination of the contract, and for the debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

**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.

**Disputes Concerning Labor Standards**

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes provision 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 provision 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.

**Certification of Eligibility**

- A. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(A)(1).
- B. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- C. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- D. One Contractor shall certify as to his eligibility by signing Exhibit C, "Contractor's Certification of Eligibility".

**Contract Work Hours and Safety Standards Act**

- A. **Overtime Requirements** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek, which ever is greater.
- B. **Violation; Liability for Unpaid Wages; Liquidated Damages** In the event of any violation of the provision set forth in paragraph A. above, the Contractor or 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 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 provision set forth in paragraph A. 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 provision set forth in paragraph A. above.
- C. **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 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 provision set forth in paragraph B. above.

- D. Subcontracts The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraph A. through D. and also a provision requiring the subcontractor to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provision set forth in paragraphs A. through D.
- E. Working Conditions No Contractor or subcontractor may require any laborer or mechanic employed in the performance of any contract to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to his health or safety as determined under construction safety and health standards (29 CFR Part 1926) issued by the Department of Labor.

## 61 INSPECTION OF RECORDS

The Contractor shall maintain an acceptable cost accounting system. The Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States shall have access to any books, documents, paper, and records of the Contractor which are directly pertinent to the specific contract for the purposes of making an audit, examination, excerpts, and transcriptions. The Contractor shall maintain all required records for 3 years after the Sponsor makes final payment and all other pending matters are closed.

## 62 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. Information regarding these rights is available from the FAA and the Sponsor.

## 63 CLEAN AIR AND WATER POLLUTION CONTROL

Contractors and subcontractors agree:

- A. 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;
- B. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1987 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;
- C. 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;
- D. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

## 64 VETERAN'S PREFERENCE

In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam-era and disabled veterans. However, this preference may be given only where the individuals are available and qualified to perform the work to which the employment relates.



EXHIBIT A

CONTRACTOR'S CERTIFICATION OF NONSEGREGATED FACILITIES

The federally assisted construction contractor certifies that it does not maintain or provide, for its employees, any segregated facilities at any time of its establishments and that it does not permit employees to perform services at any locations, under its control, where segregated facilities are maintained. The federally assisted construction contractor certifies that it will not maintain or provide, for its employees, segregated facilities at any of its establishments and that it will not permit its employees to perform services at any location, under its control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the equal opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work area, restrooms and washrooms, restaurants and other eating area, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directives or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000.00 which are not exempt from the provisions of the equal opportunity clause and that he will retain such certifications in his files.

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

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Name and Title (Please Type)

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Signature

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Date

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

EXHIBIT B

DEPARTMENT OF LABOR WAGE DETERMINATION

GENERAL DECISION: VA20100020 03/12/2010 VA20

Date: March 12, 2010

General Decision Number: VA20100020 03/12/2010

Superseded General Decision Number: VA20080020

State: Virginia

Construction Type: Highway

Counties: Alexandria\*, Arlington, Clarke, Culpeper, Fairfax, Falls Church\*, Fauquier, Fredericksburg\*, King George, Loudoun, Manassas Park\*, Manassas\*, Prince William, Spotsylvania, Stafford and Warren Counties in Virginia.

\*INDEPENDENT CITIES

HIGHWAY CONSTRUCTION PROJECTS (Excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

Modification Number	Publication Date
0	03/12/2010

\* ELEC0026-001 06/01/2009

	Rates	Fringes
Electricians.....	\$ 37.60	12.28+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King Jr.'s Birthday, Inauguration Day, Memorial Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day or days designated as legal holidays by the Federal Government.

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IRON0201-003 05/01/2009

	Rates	Fringes
Ironworker (Reinforcing).....	\$ 25.20	14.33

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SUVA1999-001 01/29/1999

	Rates	Fringes
Asbestos Worker/Heat and Frost Insulator.....	\$ 9.83	
BLASTER.....	\$ 11.33	
Carpenters (Structure).....	\$ 11.56	
Concrete Finisher.....	\$ 12.84	
Deckhand.....	\$ 9.50	

FENCE ERECTOR.....	\$ 7.25
Flagger.....	\$ 9.25
Form Setter.....	\$ 10.92
Guardrail erector.....	\$ 9.75
Laborers:	
Asphalt Rakers.....	\$ 10.50
Construction Workers I (Skilled Laborers).....	\$ 9.72
Construction Workers II (Laborers).....	\$ 8.40
Landscape Workers.....	\$ 8.39
Pipelayers.....	\$ 9.17
Power Tool Operators.....	\$ 10.06
MASON (Structure).....	\$ 8.65
Painter, Bridge.....	\$ 11.47
Painters: (All Other Work).....	\$ 18.00
Plumbers.....	\$ 14.31
Power equipment operators:	
Air Compressor Operators.....	\$ 9.50
Asphalt Distributor Operators.....	\$ 10.76
Asphalt Paver Operators.....	\$ 11.97
Backhoe Operators.....	\$ 11.72
Bulldozer Operators, Utility.....	\$ 12.71
Bulldozer Operators.....	\$ 11.93
Concrete Finish Machine Operators, Utility.....	\$ 11.15
Concrete Finish Machine/ Screed Operators (Bridge)...	\$ 13.00
Concrete Paving Machine Operators.....	\$ 11.00
Concrete Pump Operators.....	\$ 8.33
Concrete Saw Operators.....	\$ 8.00
Crane, Derrick, Dragline Operators.....	\$ 14.76
Crusher Tender Operators.....	\$ 10.35
Drill Operators.....	\$ 9.69
Excavator Operators.....	\$ 12.00
Front-End Loader Operators 2 yds. & under.....	\$ 11.40
Over 2 yds.....	\$ 11.91
Fuel and Lubricant Service Truck Drivers.....	\$ 11.88
Gradall Operators.....	\$ 14.00
Grade Checkers.....	\$ 7.47
Hydro-Seeder Operators.....	\$ 10.78
Log Skidder Operators.....	\$ 15.00
Mechanics.....	\$ 13.75
Mobile Mixer Operator.....	\$ 10.71

Motor Grader Operators	
Fine Grade.....	\$ 12.90
Rough Grade.....	\$ 12.55
Oiler Greaser.....	\$ 10.00
Pavement Marker Operators...	\$ 9.00
Pavement Marking Truck	
Operators.....	\$ 8.50
Pavement Planing	
Groundman.....	\$ 10.00
Operators.....	\$ 10.00
Pipe Boring/Jacking	
Machine Operators.....	\$ 9.75
Plant Operators.....	\$ 10.00
Roller Operators	
Finish.....	\$ 10.86
Rough.....	\$ 9.59
Scrapper Pan Operators.....	\$ 10.41
Shot Blast Machine	
Operators.....	\$ 8.13
Shovel Operators.....	\$ 10.09
Slip-Form Paver Operators...	\$ 9.00
Slurry Seal Paver	
Machine Operators.....	\$ 9.67
Truck Drivers.....	\$ 8.63
Stabilizer Operators.....	\$ 8.32
Stone Spreader Operators....	\$ 10.13
Subgrade Machine Operators..	\$ 8.80
Tractor Operators	
Crawlers.....	\$ 8.02
Utility.....	\$ 9.96
Transit Mix Truck Drivers...	\$ 9.75
Trenching Machine Operators..	\$ 10.00
Vacuum Machine Operators....	\$ 10.20
Sheet Metal Worker.....	\$ 11.50
SIGN ERECTOR.....	\$ 15.00
Structural workers.....	\$ 17.08
Truck drivers:	
Heavy Duty	
Over 7 c.y.....	\$ 9.46
Under 7 c.y.....	\$ 8.38
Multi-Rear Axle.....	\$ 10.17
Single Rear Axle.....	\$ 9.08
Tandem Rear Axle.....	\$ 9.25
WATERPROOFER.....	\$ 7.28
Welder.....	\$ 12.10

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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) (ii)).

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In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

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WAGE DETERMINATION APPEALS PROCESS

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

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write 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 the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

The request should be accompanied by a full statement of the interested party's position and by 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

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

EXHIBIT C

CONTRACTOR'S CERTIFICATION OF ELIGIBILITY

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

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

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Name and Title (Please Type)

-----  
Signature

-----  
Date

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



## **SECTION VIII – DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

Disadvantaged Business Enterprise (DBE) participation goals are applicable to certain airport contracts that involve federal Airport Improvement Program grants. The contract to be awarded under this solicitation is subject to the DBE Program requirements described below.

### **01 OBLIGATIONS**

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract or subsequent subcontracts.

### **02 ELIGIBILITY**

To be eligible for participation in a Federally-assisted contract as a DBE, a company must be a business organized for profit and must qualify as a Disadvantaged Business Enterprise (DBE) under 49 CFR Part 26. The definition of a DBE is provided in Section VIII (07)(A).

The apparent successful offeror who claims DBE status, and all of its subcontractors claiming DBE status, must be certified as such by the Authority prior to award of this contract and are subject to a thorough investigation to establish status as a DBE, in accordance with the criteria specified in Section VIII (07)(A) and 49 CFR Part 26. All DBE firms shall keep their DBE certifications current throughout the life of the contract (see Section VIII (E)(2)(D)). If a DBE certified firm participating in this contract outgrows the small business size standard (for example, the firm's annual gross receipts increase sufficiently during the term of this contract to cause the three year average of the DBE's annual gross receipts to exceed the size standard) during the term of this contract, the firm will continue to be considered a DBE for purposes of calculating DBE participation for this contract until this contract expires. If a DBE certified firm participating in this contract becomes ineligible for DBE certification for any reason other than growth in its annual gross receipts during the term of this contract (e.g., the DBE is purchased by a large firm), the Authority reserves the right to require the Contractor to substitute a certified DBE firm to perform the ineligible DBE's work under this contract.

The following are applicable small business size standards for an eligible DBE under this solicitation: For general contractors, the average gross receipts of the business, including its affiliates, shall not exceed \$17.4 million, based on the last three (3) years of receipts; for special trade contractors, the average gross receipts of the business, including its affiliates, shall not exceed \$12 million, based on the last three (3) years of receipts. The receipts of affiliated firms shall be aggregated with the applicant firm's receipts in determining whether the applicant meets the small business size standards.

### **03 DBE PARTICIPATION**

- A. The DBE goal is listed in Section VIII (03) (B) below. By signing the offer, offeror commits to make good faith efforts to achieve the DBE goal listed in Section VIII (03)(B)(1) below, unless a waiver request meeting the requirements of Section VIII(04) is submitted with the offer. Failure to sign the offer or submit a waiver request with the offer will result in the offer being found to be in nonconformance with the RFP and rejected. The Authority will treat all other matters of DBE participation (for example, whether the offeror has made a good faith effort to meet the DBE goal, the sufficiency of the submitted Contract Participation Form (Exhibit D), or whether a DBE for whom preaward substitution is sought was proposed in good faith) as matters relating to the offeror's responsibility that the Authority may determine prior to award through communications with the offeror(s) in question. Unless the Authority declares otherwise, such communications with the offeror(s) in question do not constitute "negotiations" or "discussions" as these terms are used in the Authority's Contracting Manual and do not require communication with other offerors.

B. The following DBE participation clauses apply to this solicitation:

1. The DBE goal for this solicitation is forty percent (40%) of the total offer amount of the contract. The forty percent (40%) DBE participation shall be computed as outlined in Section VIII (03) (D). The Contractor shall promptly, using reasonable measures, all DBE firms participating in this contract, including itself if it is a DBE, to renew their DBE certifications and notify the Authority immediately of any change in status that would affect their eligibility for DBE certification.
2. If the offeror is not a DBE, the DBE goal may be met by first tier subcontracts with DBEs, or by joint venturing with an Authority certified DBE.
3. No offeror that seeks to meet the DBE goal through subcontracting or through a joint venture shall be considered to have met this goal unless the DBE subcontractor(s) and/or the DBE joint venture partner(s) are certified by the Authority as DBEs and perform a commercially useful function as defined in Section VIII (07)(F).
4. When modifications to the contract increase the total dollar value of the contract, the Contractor shall make best efforts under the circumstances to maintain the DBE participation of forty percent (40%), so that by completion of the contract, forty percent (40%) of the total dollar value of the contract will have been performed by DBEs. The Contractor must submit a revised Contract Participation Form and Revised Letter(s) of Intent, or other documentation acceptable to the Authority, which reflects changes in the DBE participation associated with the modifications to the contract.
5. The Authority discourages offerors and contractors from the practice known as "shopping the contract" when such practice results in a disparate impact on subcontractors at any tier. Although offerors and contractors are expected to provide the Authority with the best value possible for the work performed, this expectation should not be construed to mean that the Authority expects or condones any subcontractor, including DBEs, to perform work at an unreasonably low price.
6. The Authority is committed to significant participation of minority and woman-owned business enterprises (MBEs and WBEs) in this contract, and encourages offerors to meet the DBE participation goal with significant participation by MBEs and WBEs who qualify as DBEs.

C. Where subcontracting is proposed, the Authority may evaluate the amount of work subcontracted, the industry practices involved, and any other relevant factors in determining whether the DBE is performing a commercially useful function, as defined in Section VIII (07). If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total value of its contract with its own work force, or the DBE subcontracts a greater portion of its work than would be expected on the basis of normal industry practice for the type of work involved, it may be presumed that the DBE is not performing a commercially useful function.

D. Computing DBE participation

Offerors shall apply the following rules to determine whether their DBE participation will meet the contract's DBE goal (see Section VIII (03) (B.)(1.)):

1. When a DBE participates in a contract, only the value of the work actually performed by the DBE can be counted toward the DBE goal.

2. A prime offeror who is an eligible DBE certified by the Authority can count the amount of its own participation in the contract towards the DBE goal, provided that it is performing a commercially useful function as defined in Section VIII (07) (F). Subject to the conditions in Section VIII (03)(D) (4-11) below, it can also count the total value of the work that other DBEs perform under a subcontract, provided that the DBE is performing a commercially useful function as defined in Section VIII (07) and is certified by the Authority.
3. A non-DBE prime offeror, in a joint venture with a DBE, may count toward its DBE goal only that portion of the total dollar value of the contract work to be performed by the DBE joint venture partner, provided that the DBE joint venture partner is performing a commercially useful function as defined in Section VIII (07)(F), and provided further, that the joint venture is an eligible joint venture. The eligibility requirements are defined in Section VIII (07)(C).
4. Once a prime contract or subcontract has been awarded to a certified DBE, the DBE must remain certified until its work is complete on the project. The dollar value of work performed under this contract by a firm after it has ceased to be certified as a DBE, or if its certification lapses, will not be counted toward DBE participation.
5. The Authority will not credit the participation of a DBE subcontractor toward the prime contractor's DBE achievement until the amount being counted has been paid to the DBE.

Note: The following subsections discuss the Authority's approved methods of calculating DBE participation for certain types of subcontracts.

6. A non-DBE prime offeror who plans to subcontract work to DBE contractors may count toward its DBE goal only the total dollar value of first tier subcontracts that DBEs will self-perform, provided that:
  - a. Each first tier DBE subcontractor is an eligible subcontractor that has been certified as a DBE by the Authority; and
  - b. Each first tier DBE subcontractor is performing a commercially useful function in the work of the contract as defined in Section VIII (07)(F).
7. A non-DBE prime offeror who plans to obtain supplies or materials from a DBE manufacturer (i.e., a producer of goods from raw materials or one which substantially alters them before resale) may count towards its DBE goal the total dollar value of first tier DBE manufacturer subcontracts provided that:
  - a. The manufacturer has been certified as a DBE by the Authority; and
  - b. The DBE assumes the actual responsibility for directly manufacturing the materials or supplies.
8. A non-DBE prime offeror who plans to obtain supplies or materials from a DBE stocking distributor or stocking supplier may count towards its DBE goal sixty percent (60%) of the first tier DBE distributor and stocking supplier contracts provided that:
  - a. The stocking distributor or stocking supplier has been certified as a DBE by the Authority; and

- b. The DBE assumes the actual responsibility for directly providing the materials or supplies.
9. A non-DBE prime offeror who plans to obtain materials or supplies from a DBE non-stocking supplier or distributor, (i.e., a DBE broker, agent, or packager) may count only the broker, agent or packager fee plus transportation cost (usually not more than five percent (5%) of the total value of the subcontract) toward its DBE goal provided that the DBE broker, agent or packager is certified as a DBE by the Authority.
  10. A non-DBE prime offeror who plans to obtain the services of a DBE hauling/trucking firm may count towards its DBE goal:
    - a. The full value of the transportation services provided by the DBE, provided that the DBE hauling/trucking subcontractor is using trucks it owns, insures, and operates using drivers it employs, is performing a commercially useful function as defined in Section VIII (07)(F)(2) and is certified as a DBE by the Authority under an appropriate SIC code. The DBE may also receive credit for the full value of the transportation services it provides using trucks leased from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from a non-DBE firm is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
    - b. The cost of materials/supplies may not be counted toward the total value of the hauling firm's subcontract unless the DBE hauling firm is also certified as a DBE stocking supplier or non-stocking supplier, and requirements in Sections VIII (03)(D)(8) or (9) are met. The total subcontract value, the hauling/trucking fee, and the materials price shall be listed on Exhibits D and E as separate line items.
  11. A non-DBE prime offeror who plans to lease or rent equipment from a DBE equipment rental firm may count the total value of the rental/lease contract provided that:
    - a. The DBE equipment rental firm is certified as a DBE by the Authority under an appropriate SIC code; and,
    - b. the equipment is used for the performance of a distinct element of the contract work; and,
    - c. the rental/lease cost(s) are not in excess of industry standard rates for leased or rented equipment; and,
    - d. the DBE equipment rental firm must actually own or control the equipment and maintain a yard or other facility where such equipment is stored.
- E. Offeror Conformance with DBE Requirements
1. Documents to be Submitted With Offer
    - a. To be in conformance with this solicitation, the offeror is required to commit to meeting the DBE participation goal in Section VIII (03) above. **The offeror's signature on this offer signifies its commitment to the goal.** If the offeror is unable to commit to all or any portion of the DBE goal, it must submit a DBE Goal Waiver Request Form (Exhibit

G) in accordance with the requirements of Section VIII (04) below with this offer to be in conformance with this solicitation.

b. Contract Participation Form

All offerors (including those who are Authority certified DBEs or eligible joint ventures and who plan to count themselves to fulfill the DBE goal) shall submit a Contract Participation Form (Exhibit D) with their offers. Exhibit D is to list all firms that are participating in the contract and to provide all information required by the Exhibit. This form must be signed and dated by the prime contractor's representative. Offerors are also asked to identify MBEs and WBEs.

c. Offeror List

The Department of Transportation regulations under 49 CFR Part 26 require all offerors to identify all firms (DBEs and non-DBEs) who attempted to participate as subcontractors or suppliers on this federally assisted contract. All offerors shall complete the Offeror List (Exhibit L), including all firms, both DBEs and non-DBEs, that quoted to you on potential subcontracts and supplies for this contract.

2. Documents to Be Submitted After Offer Submission

a. Letters of Intent

The apparent successful offeror shall submit original signed Letters of Intent (Exhibit E) from each of the DBEs identified on the Contract Participation Form (Exhibit D) as those firms which will perform work to meet the DBE goal of this solicitation. These Letters of Intent must be submitted within three (3) business days after the Contracting Officer's request. Each Letter of Intent shall be completely filled out and signed by the DBE and co-signed by the offeror. A detailed description of the DBE's scope of work must be provided on Exhibit E.

In an RFP process, the signed Letter of Intent represents intent by the DBE to perform the subcontract at the price stated on the Contract Participation Form (Exhibit D), if the offer is accepted by the Authority without negotiation. However, if price negotiation occurs, the offeror shall submit to the Authority a revised Exhibit D with its revised offer, and within three (3) business days after the Contracting Officer's request. Letter(s) of Intent (Exhibit E). The offeror is not required to renegotiate prices with any DBEs identified on the initial Exhibit D; consequently, the revised Exhibit D submitted after negotiations between the Authority and the offeror is not required to show any change to the original price agreed to by the DBE.

b. DBE Certification

1. All DBEs must be certified by the Authority as DBEs pursuant to 49 CFR Part 26 prior to award of this contract. All joint venture(s) between non-DBE and a DBE must be formally certified by the Authority pursuant to 49 CFR Part 26 as an eligible joint venture prior to award of this contract. The definitions and qualifications for DBEs and eligible joint ventures are outlined in Section VIII (07) (C).

2. The apparent successful offeror shall submit the following within three (3) business days after notification by the Contracting Officer unless otherwise determined by the Contracting Officer:

For each DBE named by the offeror that has not already been certified by the Authority, a completed application for DBE certification (Exhibit F) must be submitted. The completed application for certification shall be submitted by the applicant firm in a sealed envelope identified as "Proprietary Data for Use by the Authority only". The application must be fully completed and must include all documents required by the application. If the Authority determines, after receiving the application, that any information or document is missing from the application, the apparent successful offeror must submit such missing information or document to the Authority within two (2) business days of being notified (unless another time period is established by the Authority). If the firm is already certified by the Authority as a DBE, the apparent successful offeror may submit a copy of the DBE certification letter (certification must be current), or submit the firm's DBE certification number and expiration date.

- c. If the apparent successful offeror or a subcontractor is a joint venture between a non-DBE and a DBE partner, the joint venture must also submit the Application for Joint Venture Eligibility (Exhibit G). The DBE joint venture partner must also complete the Authority application for DBE certification unless currently certified by the Authority. These documents must be submitted within three (3) business days after notification by the Contracting Officer that the joint venture is the apparent successful offeror, unless the Contracting Officer determines a different deadline.
- d. All DBEs shall keep their DBE certifications current and shall immediately notify the Authority if they become ineligible for DBE certification.

### 3. Failure to Submit Documents and Information

Failure to submit Contract Participation Form (Exhibit D), Letters of Intent (Exhibit E), Disadvantaged Business Enterprise Program Certification Application (Exhibit F)(if applicable), DBE Goal Waiver Request Form (Exhibit G)(if needed), or Offeror List (Exhibit L), by a deadline specified by the Contracting Officer, may result in rejection of the offer.

## 04 REQUEST FOR WAIVER

- A. If an offeror is unable to meet all or any part of the DBE participation goal, the offeror must submit a Request for Waiver (Exhibit G) of the goal with the offer. The Request for Waiver must demonstrate that the offeror has made a good faith effort to meet the DBE participation goal. The Request for Waiver must include a detailed report of the efforts employed by the offeror to meet the DBE goal, and such reporting must sufficiently satisfy the Authority that the requested waiver is justified. If the Authority is not satisfied that the requested waiver is justified, the offeror will be notified in writing that the good faith efforts were not met. The notification will provide the offeror an opportunity for an administrative reconsideration. The request for administrative reconsideration shall be postmarked not later than seven (7) days after the initial notification of denial of the waiver was received by the offeror. As part of this administrative reconsideration, the offeror will have an opportunity to provide written documentation and argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. If requested, the offeror will be provided an opportunity to meet with the reconsideration official prior to the issuance of a final decision. If the reconsideration official determines that good faith efforts were not made, the Authority may reject the offer. The offeror will be notified of

the reconsideration official's decision in writing. The decision is final and is not administratively appealable to the U.S. Department of Transportation. Note: A waiver of any portion of the DBE goal does not relieve the offeror of its responsibilities and requirements under Section VIII (03)(E) concerning submission of the Contract Participation Form, Letters of Intent and certification documents for the DBE participation that the offeror has proposed.

- B. The offeror's report supporting the waiver request shall include documentation to substantiate that good faith efforts were made. The Request for Waiver Procedure Form (Exhibit G) contains a sample list of the efforts that an offeror may make. This list is not intended to be exclusive or exhaustive.

The good faith efforts of an offeror shall be evaluated by the Authority to determine whether the efforts to obtain DBE participation were those that a firm aggressively seeking subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable probability of success; and whether based upon the size, scope and complexity of the subcontract, there were qualified DBE firms available and willing to accept the contract at a competitive price.

Efforts that are merely pro forma are not good faith efforts to meet the goal. Efforts to obtain DBE participation are considered pro forma, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of DBE participation to meet the DBE goal. For example, advertising or bulk mailings, alone or together, are considered pro forma and not good faith efforts unless followed up with telephone calls and/or correspondence consistent with normal business practice. If the DBE provides an offer, reasonable efforts to negotiate must be demonstrated.

- C. Documents Required for Good Faith Efforts Waiver

1. The Request for Waiver of the DBE goal, the Report of Good Faith Efforts, and all documentation of good faith efforts (Exhibit G) shall be submitted by an offeror with its offer by the offer deadline. Failure to submit the Request for Waiver with the offer will cause the offer to be rejected as nonconforming to the solicitation.
2. DBE Unavailability Certificate Forms (Exhibit H) are to be used if the DBE contacted responded to the prime offeror and stated that it was unavailable for a specific reason. These forms, if applicable, shall be submitted with the Request for a Waiver (Exhibit G) of the goal.

- D. The Authority's Equal Opportunity Programs office will assist offerors by identifying Authority certified DBE firms and MBE/WBE firms. Upon request, a directory of Local Disadvantaged, Disadvantaged, Minority Owned, Women Owned firms will be provided for information only. The Authority does not warrant or guarantee the performance capability of any firms listed therein. The Authority's Equal Opportunity Programs Office may be contacted at (703) 417-8625, or at the following address: Metropolitan Washington Airports Authority, Equal Opportunity Programs, 1 Aviation Circle, Washington, DC 20001-6000.

## 05 PREAWARD SUBSTITUTIONS

The Authority expects contractors to achieve DBE participation using the firm(s) specified on the Contract Participation Form (Exhibit D). On occasion it may be necessary to substitute other firms to achieve the DBE participation. No substitution may occur without the Authority's prior written approval. The Authority will approve a proposed substitution if it determines that the offeror has acted in good faith in attempting to meet the DBE participation achievement and if the Authority concurs that the substitution is necessary. The following are some examples of when substitution may be necessary:

- A. Failure to qualify as a DBE, if the firm was proposed in good faith by the offeror.
- B. Death or physical disability, if the named DBE prime contractor, DBE subcontractor, or DBE partner(s) of the joint venture is an individual.
- C. Dissolution, if a corporation or partnership.
- D. Bankruptcy.
- E. Inability to furnish the required performance and payment bond.
- F. Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- G. Failure or refusal to execute the subcontract in accordance with the terms of an offer negotiated with the Contractor, but only where the Contracting Officer can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the successful offeror obtained an enforceable commitment from the subcontractor involved.
- H. Failure to comply with the terms and conditions of its subcontract or joint venture agreement.
- I. Voluntary decision by the DBE to not participate on the project prior to signing the Letter of Intent.
- J. The Authority determines that a named DBE is unlikely to perform a commercially useful function or is unable to perform work of the nature and scope claimed for it and the Authority finds that the offeror acted in good faith with respect to its decision to propose that DBE.

## **06 POST-AWARD COMPLIANCE**

- A. Compliance Reviews
  - 1. The Authority may conduct post-award compliance reviews to ensure that the named DBEs on the original or, as a result of contract modification, amended Contract Participation Form (Exhibit D), submitted to and accepted by the Authority, perform the work as assigned, and at least at the agreed price that was identified on Exhibit D. Specifically, compliance reviews verify: (1) the participation of those DBE subcontractors identified on Exhibit D; (2) the scope of work for each DBE listed on Exhibit D; and, (3) at least at the agreed price identified for each DBE listed on Exhibit D. The Authority may use the Invoice Attachment Form (Exhibit J), or other appropriate information, to verify the participation of each DBE subcontractor identified on Exhibit D, as submitted by the prime contractor. Delineated on these forms will be the activities of all first tier subcontractors including DBEs, for the purpose of monitoring the progress of all phases of the contract. The invoice attachment form will be submitted by the prime contractor with every invoice submitted.
  - 2. The Authority is committed to equitable treatment and meaningful utilization of, and timely payment and return of retainage to, DBE subcontractors. All offerors are advised that the contract resulting from this solicitation will include the subcontractor payments and return of retainage clause referenced in Section VII (04) (C). This provision must be incorporated into all subcontracts.



- B. By accepting this contract, the Contractor agrees to the following requirements:
1. The Contractor shall prompt with reasonable measures all DBE firms participating in this contract to renew their DBE certifications and to notify the Authority immediately of any change in status that would affect their eligibility for DBE certification.
  2. The Contractor shall submit a revised Contract Participation Form and Revised Letter(s) of Intent, or other documentation acceptable to the Authority, which reflects changes in the DBE participation associated with the modifications to the contract within three days of the Contracting Officer's request.
  3. The Contractor shall submit a completed Invoice Attachment Form (Exhibit J) with each monthly invoice. Delineated on each Exhibit J will be the activities of all first tier (including second tier, if allowable in the contract) subcontractors, including DBEs, MBEs, and WBEs for the purpose of monitoring the progress of all phases of the contract. The Contractor is responsible for the accuracy of all information reported. Lack of inclusion of a completed Exhibit J with each monthly invoice may result in delay in payment.
  4. The Contractor shall allow the Authority access to records relating to the contract, including but not limited to, subcontracts, payroll records, tax information and accounting records, for the purpose of ascertaining whether the DBEs are performing the scheduled subcontract work and the Contractor is otherwise in compliance with the contract's DBE participation goals.
  5. The Contractor shall maintain DBE subcontractor records of all DBE subcontracting activities. These records shall include current DBE subcontractor logs, the Authority's Invoice Attachment Form (Exhibit J) and evidence of payments to DBE subcontractors, including but not limited to, copies of canceled checks and paid invoices. These records must evidence compliance with the terms of the contract. Copies of these records will be available to the Contractor Officer or the Equal Opportunity Specialist to review upon request. The Contractor shall document any changes in the DBE contract resulting from increases or decreases in contract value due to contract modifications or other changes, new DBE subcontracts, completion of existing DBE contracts or approved substitution of a DBE subcontractor.
  6. The Contractor shall maintain a detailed record of every non-compliance issue and corrective action taken. Examples of non-compliance issues are found below in Section VIII (06)(C).
- C. The Contractor shall be found to be in non-compliance if the Contractor fails to fulfill the DBE participation commitment contained in the Contract Participation Form (Exhibit D) and Letter(s) of Intent (Exhibit E). The following are examples of non-compliance:
1. The terms of a subcontract with a DBE do not agree with the Contract Participation Form and/or Letter of Intent.
  2. A firm other than the DBE listed on the Contract Participation Form (Exhibit D) is performing the subcontract work listed on Exhibit D, unless the substitution was authorized by the Authority. The Invoice Attachment Form (Exhibit J) may be used by the Authority to monitor the activities of DBEs and to identify incidence of non-compliance.
  3. The Contractor is purchasing the supplies or materials when the Contractor has represented to the Authority that the DBE subcontractor will supply both the labor and supplies or materials for the subcontract.

4. The Contractor requires the DBE subcontractor to perform additional or different work than was agreed in the Letter of Intent (Exhibit E) and the formal contract between the prime contractor and the DBE subcontractor, without additional compensation, and without filing a Revised Letter of Intent (Exhibit E1) with the Authority.
  5. The Contractor is paying the DBE subcontractor less than the agreed price of the subcontract as defined in the Letter of Intent (Exhibit E), or in the Revised Letter of Intent (Exhibit E1) without cause.
  6. The Contractor is not paying the DBE subcontractor in accordance with the payment provisions of their subcontract.
  7. The Contractor fails to submit Invoice Attachment Form (Exhibit J) with his/her invoice submittal, and other documents requested for the purpose of conducting a post-award compliance review.
  8. The Contractor's payments to a DBE subcontractor do not meet the DBE dollar commitment made in the Contract Participation Form (Exhibit D).
  9. The Contractor fails to accurately report payments to DBE subcontractor(s) on the Invoice Attachment Form (Exhibit J).
  10. The DBE subcontractor enters into second tier subcontracts without written approval by the Authority.
  11. The DBE subcontractor is not performing a commercially useful function as defined in Section VIII (07)(F).
- D. If the Contractor is found to be in non-compliance, the Authority may impose appropriate sanctions, (including, but not limited to, withholding of payments or termination of the contract in accordance with the DEFAULT clause) if corrective action acceptable to the Authority is not taken within forty-eight (48) hours (or such other time period deemed appropriate by the Contracting Officer) after notification by the Contracting Officer.
- E. If a DBE listed on the Contract Participation Form (Exhibit D) is determined not to be performing a commercially useful function and it is determined by the Authority that a misrepresentation was made by the DBE, the firm's DBE certification with the Authority may be revoked. In such cases, the Contractor will be required to replace the DBE found to be ineligible with another eligible, certifiable DBE approved by the Authority that will perform a commercially useful function.
- F. Post Award Substitution: The Authority may permit the Contractor to make post-award DBE substitutions consistent with the principles established in Section VIII (05) and (06).

## **07 DEFINITIONS**

- A. "Disadvantaged Business Enterprise" (DBE) is defined as a for-profit small business concern that is (1) at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation in which at least 51 percent of the stock of which is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Socially and economically disadvantaged individual” means any individual who is a citizen (or lawfully admitted permanent resident) of the United States, and who is—

1. any individual that the Authority finds to be a socially and economically disadvantaged individual on a case-by-case basis. Each such individual must submit the Personal Net Worth Statement showing that his or her personal net worth does not exceed \$750,000.
  2. any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged, provided that the individual also submits the Certification of Social and Economic Disadvantage Eligibility and the Personal Net Worth Statement showing that his or her personal net worth does not exceed \$750,000.
    - a. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
    - b. “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
    - c. “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
    - d. “Asian-Pacific American,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
    - e. “Subcontinent Asian-Indian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh; Bhutan, the Maldives Islands, Nepal or Sri Lanka;
    - f. Women;
    - g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- B. The term “subcontractor” for purposes of Section VIII, shall mean an individual or firm with which the offeror or subcontractor, proposes to enter into an agreement for the performance of work on the site or for the manufacture, fabrication, or supply of equipment or materials or services used in the construction of the project. The term “subcontractor” shall further refer only to first tier subcontractors unless the contract also permits second tier contracting.
- C. The term “Joint Venture” shall mean an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and/or knowledge.
- For solicitations which are not set-aside 100% for DBEs, “an eligible joint venture” is one in which the DBE partner of the joint venture meets the definition of an eligible DBE and the DBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management, responsibility, risks, and profits of the joint venture in proportion to its ownership interest in the joint venture. The DBE joint venture member must also perform a commercially useful function.
- D. “Affiliates” Business concerns are affiliates of each other when either directly or indirectly, (1) one business concern controls or has the power to control the other, or (2) a third party or parties controls or has the power to control both. In determining whether business concerns are affiliated, consideration

shall be given to all appropriate factors, including common ownership, common management, and contractual relationships. The provisions of 13 CFR Part 121 will be used to guide the Authority in determining whether firms are affiliated.

- E. "Minority Business Enterprises and Women Business Enterprises" (MBE/WBE). The Authority is committed to achieving significant participation of minority and women-owned businesses in its contracting opportunities. To be considered a minority or women-owned business enterprise, the business concern must be at least 51 percent owned and controlled by one or more minority (African American, Hispanic American, Native American, Asian-Indian American, Asian Pacific American) or female individuals. The firm's management and daily business operations must be controlled by one or more of the qualifying individuals who own it.
- F. "Commercially Useful Function"
1. A DBE is considered to perform a commercially useful function when it:
    - a. is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved;
    - b. is responsible, with respect to materials and supplies used on the contract, for negotiating price, ordering materials, and installing (where applicable) and paying for the material itself; and
    - c. when the amount of work performed, when compared to industry practices, is commensurate with the amount the DBE is to be paid under the contract and the DBE credit claimed for its performance of the work. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total value of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it may be presumed that the DBE is not performing a commercially useful function.
  2. The following factors should be used in determining whether a DBE trucking company is performing a commercially useful function:
    - a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
    - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
    - c. If the DBE leases additional trucks, said lease agreements must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased trucks from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

## METROPOLITAN WASHINGTON AIRPORTS AUTHORITY DBE/MBE/WBE CONTRACT PARTICIPATION FORM

Check One: Original  Revised  Date: \_\_\_\_\_ Contract No.: \_\_\_\_\_

Name of Offeror: \_\_\_\_\_ Project Name: \_\_\_\_\_

Original Contracted DBE Participation: \$ \_\_\_\_\_ Original Percent Contracted DBE Participation: \_\_\_\_\_ %

**The Offeror shall submit the Contract Participation Form to the Contracting Officer with the offer. Please attach additional sheets if needed.**

EX	LIST THE PRIME AND <u>ALL</u> FIRST TIER FIRMS PARTICIPATING IN THIS CONTRACT <small>Identify whether firms are *P, S, JV, SP, B, H, MFG, in next column.</small>	TYPE OF FIRM <small>(see below)</small>	FEDERAL TAX ID <small>(also known as Employer Identification Number) nine digit number.</small>	Enter "X" for all that apply				ADDRESS <small>(Number, Street, City, State, ZIP)</small>	DESCRIBE TYPE OF WORK <small>(Electrical, Paving, etc. with notation e.g. "Labor Only", "Material Only", "Complete") Item Number if Applicable, Quantity, Unit Price</small>	AGREED PRICE
				DBE	MBE **	WBE ***	OTHER			
	<i>SAMPLE</i>	S	55-5555555	X	X			<i>12345 Main Street, Washington, DC 20001</i>	<i>Furnish and install Structural Steel</i>	<i>\$986,000.00</i>
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
<b>TOTAL AGREED PRICE MUST EQUAL TOTAL OFFERED PRICE:</b>										

I, \_\_\_\_\_, a duly authorized representative of \_\_\_\_\_, certify that the above information is true and correct.  
(type or print name) (name of firm)

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

**TYPE OF FIRM**

\*P = Prime Contractor  
S = Subcontractor  
JV = Joint Venture

SP = Stocking Supplier/Distributor  
B = Broker, Agent, Packager  
H = Hauler  
MFG = Manufacturer

\*\* MBE = A certified Minority Business Enterprise (Attach current certification letter)  
\*\*\* WBE = A certified Women Business Enterprise (Attach current certification letter)  
(Information regarding MBE/WBE participation will be used for generalized statistical purposes and program analysis.)

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY  
LETTER OF INTENT**

\_\_\_\_\_ Contract Number \_\_\_\_\_  
 (Name of Prime Contractor) Location \_\_\_\_\_  
 \_\_\_\_\_ Contract Name \_\_\_\_\_  
 (Name of 1<sup>st</sup> Tier Subcontractor (If Applicable))

- A. The undersigned DBE intends to perform the work associated with this contract as (Check one):  
 Individual  Partnership  Corporation  Joint Venture
- B. The undersigned DBE will perform the work associated with this contract as a (Check all that apply):  
 Construction Contractor  Stocking Supplier  Manufacturer  Stocking Distributor  
 Broker, Agent, Packager  Hauler  Service Provider (for non-construction contracts)
- C. The undersigned DBE will:  Perform the following services  Supply the following materials, equipment, supplies:

**IF AVAILABLE, PLEASE ATTACH A COPY OF THE PROPOSED SCOPE OF WORK FOR THIS SUBCONTRACTOR.**

Item Number	Detailed Description Of Scope of Work	Scope of Services (Check One)	Quantity	Unit Price
01	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____
02	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____
03	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____
04	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____

**Please Attach Additional Sheets if Necessary**

- D. Work described above will be performed at the following total price: \$ \_\_\_\_\_.
- E. Total Contract Amount: \$ \_\_\_\_\_
- F. Term of Contract      Commencement Date: \_\_\_\_\_      Completion Date: \_\_\_\_\_
- G. \_\_\_\_\_% of the dollar value of the subcontract will be performed by (check if applicable):  
 Non-DBE contractors       Non-DBE suppliers.

The undersigned will enter into a subcontract consistent with the above upon execution of a contract between the Prime Contractor and the Authority: **(NOTE: SIGNATURES MUST BE DATED)**

\_\_\_\_\_ Agreed To \_\_\_\_\_  
 (Print or Type Name of DBE Firm) (Print or Type Name of Prime Contractor)

By \_\_\_\_\_  
 (Print or Type Name and Title) (Print or Type Name and Title)

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

\_\_\_\_\_  
 (Print or Type DBE's Certification Number and Expiration Date)

**FOR MWAA USE ONLY**

MWAA EOP Specialist's Approval \$ \_\_\_\_\_  
 (Enter The Amount of Contract Approved for DBE Participation) (Signature) (Date)

MWAA/EOP 02/2005

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY  
REVISION TO ORIGINAL LETTER OF INTENT**

\_\_\_\_\_  
(Name of Prime Contractor)                      Contract Number \_\_\_\_\_  
 \_\_\_\_\_  
(Name of 1<sup>st</sup> Tier Subcontractor (If Applicable))                      Location \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Contract Name \_\_\_\_\_

Revision # \_\_\_\_\_ MWA Change Notice # \_\_\_\_\_ MWA Contract Modification # \_\_\_\_\_  
 Describe Change or Modification \_\_\_\_\_  
 This revision represents:  Increase in Contract Amount  Decrease in Contract Amount  
 If Decrease, state reason \_\_\_\_\_

- A. The undersigned DBE intends to perform the work associated with this contract as (Check one):  
 Individual  Partnership  Corporation  Joint Venture
- B. The undersigned DBE will perform the work associated with this contract as a (Check all that apply):  
 Construction Contractor  Stocking Supplier  Manufacturer  Stocking Distributor  
 Broker, Agent, Packager  Hauler  Service Provider (for non-construction contracts)
- C. The undersigned DBE will:  Perform the following services  Supply the following materials, equipment, supplies:

**IF AVAILABLE, PLEASE ATTACH A COPY OF THE PROPOSED SCOPE OF WORK FOR THIS SUBCONTRACTOR.**

Item Number	Detailed Description Of Scope of Work	Scope of Services (Check One)	Quantity	Unit Price
01	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____
02	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____
03	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____
04	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____

**Please Attach Additional Sheets if Necessary**

- D. Work described above will be performed at the following total price: \$\_\_\_\_\_.
- E. Original Total Contract Amount: \$\_\_\_\_\_ Current Total Contract Amount: \$\_\_\_\_\_  
 Total Amount of This Revision: \$\_\_\_\_\_ New Total Contract Amount: \$\_\_\_\_\_
- F. Term of Contract                      Original Commencement Date: \_\_\_\_\_ Original Completion Date: \_\_\_\_\_  
                                                          Revised Commencement Date: \_\_\_\_\_ Revised Completion Date: \_\_\_\_\_
- G. \_\_\_\_\_% of the dollar value of the subcontract will be performed by (check if applicable):  
 Non-DBE contractors                       Non-DBE suppliers.

The undersigned will enter into a subcontract consistent with the above upon execution of a contract between the Prime Contractor and the Authority: **(NOTE: SIGNATURES MUST BE DATED)**

\_\_\_\_\_  
(Print or Type Name of DBE Firm)                      Agreed To                      \_\_\_\_\_  
 \_\_\_\_\_  
(Print or Type Name of Prime Contractor)

By \_\_\_\_\_  
(Print or Type Name and Title)                      \_\_\_\_\_  
 \_\_\_\_\_  
(Print or Type Name and Title)

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

\_\_\_\_\_  
(Print or Type DBE's Certification Number and Expiration Date)

**FOR MWA USE ONLY**

MWA EOP Specialist's Approval \$ \_\_\_\_\_  
 (Enter The Amount of Contract Approved for DBE Participation)                      \_\_\_\_\_  
 \_\_\_\_\_  
 (Signature)                      \_\_\_\_\_  
 \_\_\_\_\_  
 (Date)

## **EXHIBIT F**

### **DBE CERTIFICATION APPLICATION**

**The Disadvantaged Business Enterprise (DBE) Program application forms are available for download from the Metropolitan Washington Airports Authority's website at:**

**[http://www.mwaa.com/business\\_information/contracting\\_opportunities/ldb\\_e\\_db\\_e\\_certification](http://www.mwaa.com/business_information/contracting_opportunities/ldb_e_db_e_certification)**



**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY**

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**APPLICATION FOR JOINT VENTURE ELIGIBILITY**

Note: This form need not be filled in if all joint venture firms are DBE firms.

<p>1. JOINT VENTURE NAME AND ADDRESS (Company Name, Address, City State Zip)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>2. CONTACT PERSON AND TITLE</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>3. TELEPHONE</p> <p>_____</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------

4. IDENTIFY THE COMPANIES WHICH COMPRISE THE JOINT VENTURE  
(DBE PARTNER(S) MUST COMPLETE DBE APPLICATION):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5a. DESCRIBE ROLE OF DBE FIRM IN THE JOINT VENTURE:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

b. NATURE OF JOINT VENTURE'S BUSINESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

c. DESCRIBE VERY BRIEFLY THE EXPERIENCE AND BUSINESS QUALIFICATIONS OF EACH NON-DBE JOINT VENTURER: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. IS THE JOINT VENTURE RESPONDING TO A SPECIFIC AUTHORITY SOLICITATION?

YES     NO    IF YES, WHICH ONE? \_\_\_\_\_

7. WHAT IS THE PERCENTAGE OF DBE OWNERSHIP IN THE JOINT VENTURE?

\_\_\_\_\_

\_\_\_\_\_



**AFFIDAVIT**

“The undersigned swear that the foregoing statements are true and correct and include all material information necessary to identify and explain the terms and operation of the joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide the Metropolitan Washington Airports Authority (the Authority) current, complete, and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records, and files of the joint venture, by authorized representatives of the Authority or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.”

Name of Joint Venture (if any) \_\_\_\_\_

Names of companies forming Joint Venture \_\_\_\_\_

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

Name(s) \_\_\_\_\_

Title(s) \_\_\_\_\_

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared (name) \_\_\_\_\_, to me personally known, who being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

Commission Expires \_\_\_\_\_

[Seal]

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared (name) \_\_\_\_\_, to me personally known, who being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

Commission Expires \_\_\_\_\_

[Seal]

**DBE GOAL**  
**WAIVER REQUEST FORM**  
**PROCEDURE**

This procedure must be followed if an offeror cannot meet the DBE subcontracting requirements in whole or in part. The Request for Waiver must be submitted in writing with the proposal. The Request for Waiver must report and document the efforts made by the offeror to solicit DBEs for participation and clearly outline the offeror's reasons why no subcontracting opportunities exist. A waiver request must also demonstrate that there are an insufficient number of DBEs to provide adequate competition and reasonable prices. The provisions of Section VIII (04) must be reviewed by the offeror before submitting a request for a waiver.

A blanket statement that there are no DBE businesses to provide services or materials related to the proposal is INADEQUATE. An explanation of how that conclusion was reached must be provided or the request will be determined to be pro forma and not in good faith.

Actions which may demonstrate a good faith effort on the part of the bidder include, but are not limited to, the following:

1. Soliciting through all reasonable and available means (e.g. attendance at preproposal meetings scheduled by the Authority, advertising and/or written notices in major circulation newspapers such as the Washington Post, trade association publications, and disadvantaged and minority and women oriented media) the interest of all certified DBEs who have the capacity to perform the work of the contract. The offeror must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The offeror must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. (a) Negotiating in good faith with interested DBEs. It is the offeror's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
5. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the Authority or the offeror.
6. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
7. Negotiate in good faith with interested DBEs, and not reject DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.

WAIVER REQUEST (Continued)

**REQUEST FOR WAIVER**

\_\_\_\_\_ hereby requests a waiver of the required contract goals for the participation of DBEs as specified in solicitation number \_\_\_\_\_. All good faith efforts to identify potential DBEs as subcontractors have been made, but we have been unable to obtain the required goals for the following reason(s):

\_\_\_\_\_  
(Authorized Representative)

\_\_\_\_\_  
(Date)

NOTE: All advertisements, telephone conversations, and other documentation to support this statement should be attached.

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY  
DBE UNAVAILABILITY CERTIFICATION**

I, \_\_\_\_\_, \_\_\_\_\_ of  
(Name) (Title)  
\_\_\_\_\_, certify that on \_\_\_\_\_  
(Offeror) (Date)

I contacted the following DBEs to obtain a quote for work items to be performed on Contract  
Number \_\_\_\_\_.

<u>DBE (Name of Firm)</u>	<u>Work Items Sought</u>
_____	_____
_____	_____
_____	_____

To the best of my knowledge and belief, said DBEs were unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare an offer or bid, for the following reason(s):

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

Signature \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_ was offered an opportunity to bid or make an offer on  
(Name of DBE)  
the above identified work on \_\_\_\_\_ by \_\_\_\_\_.  
(Date) (Source)

The above statement is a true and accurate account of why I did not submit an offer/bid on this project.

\_\_\_\_\_  
(Signature of DBE)

\_\_\_\_\_  
(Title)

Exhibit I

Disadvantaged Business Enterprise (DBE)  
Size Standards for Solicitation #1-10-C171

<u>NAICS Code</u>	<u>Type Of Work / Service</u>	<u>DBE Size Standard</u>
238910	Site Work	\$14.0 Million
237110	Water and Sewer Lines	\$4.0 Million
238211	Electrical	\$22.41 Million

To be considered a DBE small business, a business firm's average annual gross receipts or average number of employees for the last three (3) years cannot exceed the applicable Small Business Administration (SBA) size standard. Even if a firm meets the SBA small business size standard for the service or good, a firm will not be considered a DBE if its average annual gross receipts for the last three (3) years exceeds a cap of \$22.41 million. Gross receipts or numbers of employees of all affiliates of the firm are included when determining the firm's average annual gross receipts or average number of employees.

Firms will only be certified as a DBE for services or goods that they are able to provide at the time of DBE certification and for which they do not exceed the applicable SBA size standard, as noted above. A DBE firm adding services or goods during the term of its certification may request the Authority's Equal Opportunity Programs Department to amend the DBE certification to include these new services or goods provided the firm also meets the applicable SBA size standards for these new services or goods, as noted above.

Your firm must be certified for the work you plan to perform or for the goods you plan to manufacture or supply on this contract.

There may be other NAICS codes approved for this project. If this list does not include a DBE NAICS code and size standard for work that you anticipate may be needed for this project, you must request it through the Contracting Officer.

The Authority will review your request. If the NAICS code is accepted for this solicitation, the change will be formally communicated in an amendment to the solicitation.

## METROPOLITAN WASHINGTON AIRPORTS AUTHORITY INVOICE ATTACHMENT FORM

Name Of Prime Contractor \_\_\_\_\_  
 Contract Name & Number \_\_\_\_\_  
 Original Contract Amount \$ \_\_\_\_\_ Payments Received \$ \_\_\_\_\_  
 Current Contract Amount \$ \_\_\_\_\_ Retainage Withheld \$ \_\_\_\_\_  
 Invoice Period From \_\_\_\_\_ Through \_\_\_\_\_ Date Submitted \_\_\_\_\_  
 Actual DBE Participation To Date \$ \_\_\_\_\_  
 Current Scheduled DBE Participation \$ \_\_\_\_\_  
 Total Original Contracted DBE Participation \$ \_\_\_\_\_ Percent Original Contracted Participation \_\_\_\_\_ %

#	NAME OF SUBCONTRACTOR	DESCRIPTION OF WORK	* D B E	M B E	W B E	O T H E R	MONTHLY CONTRACT INFORMATION				% C O M P L E T E	% D B E
							ORIGINAL SUBCONTRACT AMOUNT	CURRENT SUBCONTRACT AMOUNT	TOTAL PAYMENTS TO DATE	AMOUNT THIS INVOICE		
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
14												
15												
16												
17												
18												
<b>TOTALS</b>												

\* PUT AN "X" IN THIS COLUMN ONLY IF SUBCONTRACTOR IS AN AUTHORITY CERTIFIED DBE.

I certify that the information furnished above is correct to the best of my knowledge and represents the current status of the firm's (Prime Contractor) subcontract(s) with the listed firms (Subcontractors) for the designated period covered by this report.

Signed: \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

**This form must be attached to all Invoices submitted by the Prime Contractor.**



**Metropolitan Washington Airports Authority  
INSTRUCTIONS FOR COMPLETING  
THE INVOICE ATTACHMENT FORM (EXHIBIT J)**

**I. USE AUTHORIZED FORMS**

Use only **Authority approved forms** to file monthly Invoice Attachment Form. Do not change or amend the Authority approved form in any manner. Authority approved forms are available on hard copy or diskette from the EOP Specialist assigned to the contract. Note that all subcontractors are to be listed on the Invoice Attachment Form. Also, note that some entries are required that apply only to the sum of DBE contracts. To facilitate accuracy in reporting, it is recommended that DBE subcontractors be listed first and a subtotal appear in each of the four sub-columns that comprise the "Monthly Contract Information" section of the report.

**II. REPORT ALL DBEs EVERY MONTH**

Every DBE firm whose contract is counted toward achievement of the participation requirement must appear on the Invoice Attachment Form every month. If there is no invoice activity for a DBE in any given month, enter "0" in the column, "Amount this Invoice". Note that all other information must be entered, must be current and correct.

**III. LEDGER PORTION**

**A. Name & Description of Work** - Enter the subcontractor's name and description of work. For DBEs, these entries must be the same as comparable information appearing on the Letter of Intent and the Contract Participation Form.

**B. Classification of Subcontractor(s)**

Only those subcontractors who meet the DBE eligibility requirements may be classified as DBEs on the Invoice Attachment Form.

Assign classifications as follows:

1. **DBE**-Place an "X" in this column only if the subcontractor is an Authority certified DBE.
2. **MBE**-Place an "X" in this column if the subcontractor is also a minority-owned company, regardless of their size. This classification should also be used for subcontractors who have submitted a certification application but have not yet been certified. Once certification has been achieved, such firms should be classified as both MBE and DBE. This column is also used to calculate Voluntary Participation of Minority-owned firms. Thus, a subcontractor can be classified as both DBE and MBE, or, just MBE.
3. **WBE**-Place an "X" in this column if the subcontractor is a woman-owned company regardless of their size. This classification should also be used for

**Metropolitan Washington Airports Authority**  
**Instructions for Completing the Invoice Attachment Form**

subcontractors who have submitted a certification application but have not yet been certified. Once certification has been achieved, such firms should be classified as both DBE and WBE. This column is also used to calculate Voluntary Participation of woman-owned firms. Thus, a subcontractor can be classified as both DBE and WBE, or just WBE.

4. **Other**-Place an "X" in this column for all subcontractors who cannot be classified as either DBE, MBE or WBE.

**C. Original Subcontract Amount**

Enter the original subcontract amount. For DBEs, this must be the amount submitted on the DBE's Letter of Intent and approved by the Authority.

**D. Current Subcontract Amount**

Enter the current subcontract amount. If this amount is the same as the entry in "Original Subcontract Amount", enter it. For DBEs, if this amount is different that the amount entered in "Original Subcontract Amount", a **Revised Letter of Intent** must be on file with and approved by the EOP Specialist. It is recommended that **Revised Letters of Intent** be submitted with the Invoice Attachment Form that initially reports the New Contract amount.

**E. Total Payments to Date**

Enter the sum of payments that have been made to that subcontractor as of the date of the report. Note that this column should not contain diminishing amounts, i.e., a succeeding month's entry lower than the preceding month's entry. If this occurs, the Authority may request an examination of additional records to verify the correct amount.

**F. Amount of This Invoice**

Enter the amount of the subcontractor's invoice being submitted with this report.

**G. Percentage Amount Complete**

Enter the percentage that equals the progress of that subcontractor's work.

**H. Percent DBE**

This entry depends upon the type of contract and terms stated in the solicitation. The **percentage for non-DBEs is always "0"**. Thus, if the subcontractor does not meet the requirements stated above to be classified as a DBE, the percentage entered in this column **must be "0"**.

**Metropolitan Washington Airports Authority  
Instructions for Completing the Invoice Attachment Form**

**IV. TOP PORTION OF INVOICE ATTACHMENT FORM**

**A. Original Contract Amount**

Enter the original amount of the Prime's Contract.

**B. Payments Received**

Enter the sum total of payments received as of the date of the report.

**C. Current Contract Amount**

Enter the current amount of the Prime's Contract.

**D. Retainage Withheld**

Enter the amount of retainage withheld. If none, enter 0.

**E. Invoice Period**

Enter the month being reported, i.e. January 1 to January 31, 2000.

**F. Date Submitted**

Enter the date the report is submitted to the Authority.

**G. Actual DBE Participation to Date \$**

Enter the sum of Total Payments to DBEs.

**H. Current Scheduled DBE Participation \$**

Enter the sum of Current Subcontract Amounts reported for **DBEs only**, i.e, do NOT include current subcontract amounts for non-DBEs even though they appear in the ledger portion of the report.

**I. Total Original Contracted DBE Participation \$**

Enter the dollar amount of the original DBE participation requirement of this contract.

**J. Percentage Original Contracted Participation**

Enter the percentage of required DBE participation for this contract.



**DBE PARTICIPATION REPORT  
PART II – CUMULATIVE LEDGER**

Name Of Prime Contractor \_\_\_\_\_

Contract Name & Number \_\_\_\_\_

Actual DBE Participation to Date \$ \_\_\_\_\_

Current Scheduled DBE Participation \$ \_\_\_\_\_ Percent Scheduled \_\_\_\_\_

Total Originally Contracted DBE Participation \$ \_\_\_\_\_ Percent Originally Contracted Participation \_\_\_\_\_

Total Amount of Contract \$ \_\_\_\_\_ Number of DBE Ledger Sheets Attached \_\_\_\_\_

Date Submitted \_\_\_\_\_ Reporting Period From \_\_\_\_\_ Through \_\_\_\_\_

**LIST IN ALPHABETICAL ORDER**

#	NAME OF DBE SUBCONTRACTOR	DESCRIPTION OF WORK	TIER	TYPE	ORIGINAL SUBCONTRACT AMOUNT	CURRENT SUBCONTRACT AMOUNT	CUMULATIVE AMOUNT BILLED	CUMULATIVE AMOUNT PAID
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
<b>TOTALS</b>								



**SECTION IX - ATTACHMENTS**

**ATTACHMENT 01**

**SPECIFICATIONS**



**ATTACHMENT 02**

**DRAWINGS LIST**

RUNWAY 1-19 SAFETY AREA IMPROVEMENTS AND RUNWAY 1 HOLD APRON MODIFICATION  
 EARLY UTILITY RELOCATION PACKAGE  
 RONALD REAGAN WASHINGTON NATIONAL AIRPORT  
**DRAWING LIST**  
 ALL DRAWINGS ARE DATED JUNE 15, 2010

Sheet Number	Sheet File Name	Sheet Title
1	GN00.0001	Cover Sheet
2	GN01.0001	Drawing Index
3	GN01.0002	Summary of Quantities
4	GN01.0003	General Notes and Abbreviations
5	GN02.0001	General Site Plan
6	GN02.0002	Safety Plan
7	GN02.0003	FAR Part 77 Airspace Restriction Plan
8	GN02.0004	Contractor Access, Staging Area, and Temporary Stockpile Location Plan
9	GN02.0005	General Sequence of Construction and Work Restrictions Plan
10	GN03.0001	Maintenance of Traffic Plan Glide Slope Area
11	GN03.0002	Maintenance of Traffic Plan Levee Road
12	GN03.0003	Maintenance of Traffic Plan Levee Road
13	GN03.0004	Construction Phasing and Maintenance of Traffic Details
14	CV01.0001	Survey Control Plan
15	CV01.0002	Geometric Control Plan
16	CV02.0001	Demolition Plan Glide Slope Area
17	CV02.0002	Demolition Plan Levee Road
18	CV02.0003	Demolition Plan Levee Road
19	CV03.0001	Paving and Geometry Plan Glide Slope Area
20	CV03.0002	Paving and Geometry Plan Levee Road
21	CV03.0003	Paving and Geometry Plan Levee Road
22	CV03.0101	Grading and Drainage Plan Glide Slope Area
23	CV03.0102	Grading and Drainage Plan Levee Road
24	CV03.0103	Grading and Drainage Plan Levee Road
25	CV03.0301	Stormwater Pollution Prevention Plan Glide Slope Area
26	CV03.0302	Stormwater Pollution Prevention Plan Levee Road
27	CV03.0303	Stormwater Pollution Prevention Plan Levee Road
28	CV03.0601	Levee Road Profile
29	CV04.0001	Typical Pavement Sections
30	CV04.0002	Prefabricated Vertical Drain Plan and Details
31	CV04.0003	Settlement Plate Details
32	CV05.0001	Stormwater Pollution Prevention Plan Details
33	CV05.0002	Stormwater Pollution Prevention Plan Details
34	CV05.0003	Drainage Details
35	CV05.0004	Drainage Details
36	CV07.0001	Drainage Profiles
37	CV07.1001	Levee Road Cross Sections
38	CV07.1002	Levee Road Cross Sections
39	CV07.1003	Levee Road Cross Sections
40	CV07.1004	Levee Road Cross Sections
41	EL00.0001	Abbreviations and Definitions
42	EL00.0002	Airfield Lighting General Notes, Legend and Abbreviations
43	EL00.0003	(TYP) Series Circuit and Cable ID Tag Detail
44	EL00.0004	MWAA Cable ID Tag Schedule
45	EL00.0005	MWAA Security Camera and Pad Mounted Equipment Schedule
46	EL00.0006	FAA Cable ID Tag Schedule
47	EL01.0001	Ductbank Layout Plan 1
48	EL01.0002	Ductbank Layout Plan 2
49	EL01.0003	Ductbank Layout Plan 3
50	EL01.0004	Ductbank Layout Plan 4
51	EL01.0005	TV-900 Area Large Scale Ductbank Plan
52	EL01.0006	R/W 1 Glide Slope and Relocated Diesel Generator Site Plan
53	EL01.0007	ALSF-2 Pier Large Scale Ductbank Plan
54	EL01.0008	Authority/Contractor Security Camera Proposed FOC and Power Layout
55	EL02.0001	Electrical Demolition Plan 1
56	EL02.0002	Electrical Demolition Plan 2
57	EL02.0003	Electrical Demolition Plan 3
58	EL02.0004	Electrical Demolition Plan 4
59	EL02.0005	Cable Demolition Schedule
60	EL04.0001	TV-900 Equipment Layout Plan
61	EL04.0002	TV-900 Conduit Plan
62	EL06.0001	Existing TV-900 4.16KV Distribution One-Line Diagram

RUNWAY 1-19 SAFETY AREA IMPROVEMENTS AND RUNWAY 1 HOLD APRON MODIFICATION  
 EARLY UTILITY RELOCATION PACKAGE  
 RONALD REAGAN WASHINGTON NATIONAL AIRPORT  
**DRAWING LIST**  
 ALL DRAWINGS ARE DATED JUNE 15, 2010

Sheet Number	Sheet File Name	Sheet Title
63	EL06.0002	Modifications to Existing ASR-9 and Glide Slope 4.16KV Distribution Schematic
64	EL06.0003	Proposed TV-900 4.16KV Distribution One-Line Diagram
65	EL06.0004	R/W 1 ILS Relocated Diesel Generator Shelter One-Line Diagram
66	EL06.0005	R/W 1 ILS Relocated Diesel Generator Shelter Equipment Rack
67	EL06.0006	R/W 1 ILS - Future Glide Slope One-Line Diagram and Cutover Operation No. 2
68	EL06.0007	R/W 1 ILS - Future Glide Slope Equipment Rack
69	EL06.0008	Preparatory Work and Cutover Operation No.1
70	EL06.0009	Cutover Operation No.3
71	EL06.0010	Existing Pad Mounted Equipment Photos
72	EL06.0011	Power and Comm to Security Cameras Schematic
73	EL07.0001	Pad Mounted Equipment Foundation
74	EL07.0002	Handhole Details
75	EL07.0003	Power Manhole Details 1
76	EL07.0004	Power Manhole Details 2
77	EL07.0005	Ductbank Details 1
78	EL07.0006	Ductbank Details 2
79	EL07.0007	Ductbank Backfill Details
80	EL07.0008	Existing Electrical Structure Interior Layout 1
81	EL07.0009	Existing Electrical Structure Interior Layout 2
82	EL07.0010	Ductbank Cabling and Handhole Cluster 903 Interior Layout
83	EL07.0011	Ductbank Cabling and Handhole Cluster 903 Interior Layout
84	EL07.0012	Ductbank Cabling and Handhole Cluster 904 Interior Layout
85	EL07.0013	Ductbank Cabling and Handhole Cluster 905 Interior Layout
86	EL07.0014	Ductbank Cabling and Handhole Cluster 905 Interior Layout
87	EL07.0015	Ductbank Cabling and Handhole Cluster 905 Interior Layout
88	EL07.0016	Ductbank Cabling and Handhole Cluster 906 Interior Layout
89	EL07.0017	Ductbank Cabling and Handhole Cluster 906 Interior Layout
90	EL07.0018	Typical Security Camera Power and Control Cabinet Details and Schedule
91	EL08.0001	Ductbank Profiles 1
92	EL08.0002	Ductbank Profiles 2
93	EL08.0003	Ductbank Profiles 3
94	EL09.0001	TV-900 Panel Schedules 1
95	EL09.0002	TV-900 Panel Schedules 1
96	X001.4001	Relocated ASDE Reflector Details
97	X005.1001	Runway 1 Comm Cable - FAA#19 Copper Control Cable Schematic (Sheet 1 of 3)
98	X005.1002	Runway 1 Comm Cable - FAA#19 Copper Control Cable Schematic (Sheet 2 of 3)
99	X005.1003	Runway 1 Comm Cable - FAA#19 Copper Control Cable Schematic (Sheet 3 of 3)
100	X005.1004	Runway 1 Comm Cable - TV-900 Interior FAA#19 Copper Control Cable Layout
101	X005.1005	Runway 1 Comm Cable - TV-900 Area FAA#19 Copper Control Cable Photographs
102	X005.2001	Runway 1 Comm Cable - JB-9 and JB-10 Demark Details
103	X005.3001	Runway 1 Comm Cable - Demark (JB-8)
104	X005.3002	Runway 1 Comm Cable - R/W 1 G/S Demark (JB-9)
105	X005.3003	Runway 1 Comm Cable - R/W 1 G/S Diesel Generator Shelter Demark (JB-9A)
106	X005.3004	Runway 1 Comm Cable - TV-900 Demark (JB-10)
107	X005.3005	Runway 1 Comm Cable - ALSF-2 Demark (JB-11)
108	X005.4001	Runway 1 Comm Cable - FAA#19 Copper Control Cable Quality Assurance Testing Schedules
109	X005.4002	Runway 1 Comm Cable - FAA#19 Copper Control Cable Quality Assurance Testing Schedules
110	X005.4003	Runway 1 Comm Cable - FAA#19 Copper Control Cable Quality Assurance Testing Schedules
111	X005.4004	Runway 1 Comm Cable - FAA#19 Copper Control Cable Quality Assurance Testing Schedules
112	X005.4005	Runway 1 Comm Cable - FAA#19 Copper Control Cable Quality Assurance Testing Schedules
113	X005.4006	Runway 1 Comm Cable - FAA#19 Copper Control Cable Quality Assurance Testing Schedules

**ATTACHMENT 03**

**CONSTRUCTION SAFETY MANUAL**  
**Revision 15, dated July 2002**

**ATTACHMENT 04**

**OWNER CONTROLLED WRAP-UP INSURANCE PROGRAM MANUAL  
June 2008 Edition**

**ATTACHMENT 05**

**AIRPORT BULLETINS  
RONALD REAGAN WASHINGTON NATIONAL AIRPORT  
April 2010 Edition**