City of Biddeford
Finance Committee
November 15, 2022 5:00 PM Council Chambers and Zoom

Please click this URL to join:

https://biddeford.zoom.us/j/93817063227?pwd=eGM0TUxJU28rTEluZldKdnh1L1FhQT09

Webinar ID: 938 1706 3227
Passcode: 024523

Or One tap mobile:
+16465588656,,93817063227# US (New York)
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Or join by phone:
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US: +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592

International numbers available: https://biddeford.zoom.us/u/ady4Yiv6u7nd Zoom

Status: In-Person and via Zoom; Council Chambers; 5:00 p.m.

1. **Call to order**
2. **Approval of the Minutes**
   2.1. Minutes
   2022-11-1.docx
3. **Signing of the expenditure warrant**
4. **Discussion/Approval**
   4.1. Approval/Municipal Airport Consultant Agreement with Gale Associates Inc.
   20221115 Biddeford General Consultant Agreement
   20221115 Airport Gale- Associates- MEMO
   4.2. Approval/Website redesign
   Website Redesign Finance Committee Memo.docx
   CivicPlus Website Redesign Quote.pdf
5. **Other Business**
6. **Adjournment**

FINANCE COMMITTEE MEETING
Meeting date: November 1, 2022
Finance Committee Meeting

The meeting was called to order at 5:45pm by Councilor Norman Belanger

Present: Mayor Alan Casavant; Councilor Norman Belanger; City Manager James Bennett; Finance Director Nichole Wood.

Absent: Councilor Marc Lessard; Councilor William Emhiser

Approval of Minutes: ***October 18, 2022***
Motion by Mayor Casavant, seconded by Councilor Belanger to accept the minutes as printed.

Vote: Unanimous.
Motion carries.

Expenditure Warrants:
The Warrants were available for review.

Discussion/Approval:

A. **Approval/Award Flagpole purchase and installation – Gorham Flag**

Motion by Mayor Casavant, seconded by Councilor Belanger to approve the purchase of a flagpole from Gorham Flag in the amount of $6,230.00
Vote: Unanimous

Motion by Mayor Casavant, seconded by Councilor Belanger to adjourn.
Vote: Unanimous
Time: 5:50pm

AIRPORT GENERAL CONSULTANT AGREEMENT (AGCA)

by and between

CITY OF BIDDEFORD
205 Main Street, P.O. Box 586
Biddeford, ME 04005

and

GALE ASSOCIATES, INC.
163 Libbey Parkway
Weymouth, MA 02189

for

PLANNING AND ENGINEERING SERVICES

at

B19

Biddeford Municipal Airport

November 2022

AIRPORT GENERAL CONSULTANT AGREEMENT (AGCA)

(Airport Use Only)	
Airport Name: Biddeford Municipal Airport	Maximum AGCA Value: $5,000,000
Agreement Begin Date: November 15, 2022	Ordering Period Begin Date: November 15, 2022
Agreement End Date: November 15, 2027	Ordering Period End Date: November 15, 2027

This Airport General Consultant Agreement (hereinafter referred to as "AGCA") is entered into by and between **City of Biddeford** (hereinafter referred to as **"**Airport**"**), **205 Main Street, P.O. Box 586, Biddeford, ME 04005** and **Gale Associates, Inc.** (hereinafter referred to as "Consultant")**,** with its principal place of business located at **163 Libbey Parkway, P.O. Box 890189, Weymouth, MA 02189,** hereinafter referred to as the "Parties".

The following attachments are hereby incorporated into this agreement:

☒ **Appendix A – FAA Provisions**

☒ **Appendix B – MaineDOT Airport Consultant General Conditions**

☒ **Appendix C – Consultant Insurance Certificate(s)**

The Airport and the Consultant, in consideration of the mutual promises set forth in this Agreement, hereby agree as follows:

A. Purpose

AGCA's are ordering agreements which provide for an undefined quantity of consultant services. AGCA's are typically limited by a maximum total value and cover a specific period of time.

B. The Scope of Work

For the term of this AGCA, the Consultant agrees to provide Planning and Engineering services as defined in the Airport's RFQ. These services will be performed in accordance with the individual Project Contract(s), and the most current version of the Airport Consultant General Conditions.

C. Time

(1) Ordering Period **-** The Ordering Period of this AGCA begins on the date the Airport executes the agreement and ends on the date stated above.
(2) Project Contracts – Work ordered through individual Projects Contracts must be within the:
  (a) Ordering period of this AGCA and completed prior to the AGCA expiration date.
  (b) Scope of the services in this AGCA.
(3) Work Completion - When ordering work prior to the last day of the AGCA ordering period, both the Airport and the Consultant understand that the work must be completed in accordance with the project schedule. Under no circumstances will that schedule extend any later than the AGCA expiration date stated above without written FAA approval.

D. Financial Package Preparation and Evaluation

At the time a Consultant enters into an AGCA, said Consultant shall prepare a financial package to be submitted to the Airport for evaluation. This financial package must be submitted to the Airport on an annual basis for the term of the AGCA.

The financial package should include the following items:

(1) Financial statements for the immediate preceding accounting year as audited by a licensed independent public accountant in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants (AICPA). Any management letters prepared by the licensed independent public accountant as part of the audit should be included; or

(2) An audit report on the consultant's overhead for the preceding accounting year, prepared by a licensed independent public accountant, based on an audit made in accordance with (1) Government Auditing Standards issued by the U.S. Comptroller General and (2) the cost principles of Part 31 of the Federal Acquisition Regulations (48 CFR). This requirement does not apply to consultants who have not completed their first accounting year. The report should include:
   - (a) The auditor's opinion on the overhead and a detailed overhead schedule for which the audit opinion is given, including the overhead rates and the base upon which the rate is applied. The rate for Home Office Overhead should be included and a separate Field Overhead Rate should also be included if field operations are an offered client service or if the consultant has been selected for a service involving field services.
   - (b) The auditor's opinion on the ability of the accounting system to accumulate, allocate, and segregate direct and indirect costs.

The Airport will evaluate the financial package and advise the Consultant on the following:

(1) When financial statements are included in the package, the Airport will describe any concerns regarding the financial capabilities of the consultant.

(2) Whether the overhead audit is acceptable as a basis for supporting the utilization of the overhead rates proposed in contract negotiations; or

(3) If the audit is not acceptable, the Airport will describe the efforts necessary to obtain an acceptable overhead rate.

(4) Whether the consultant's accounting system has the ability to accumulate, allocate, and segregate allowable direct and indirect costs for billing purposes.

E. Insurance

Consultant must submit to the Airport, a current Certificate of Insurance that is in compliance with the Airport Consultant General Conditions and continue to do so on an annual basis through the term of the AGCA.

Project Contract.

As needs develop, the Airport shall assign specific tasks to the Consultant through a "Project Contract." The Project Contract shall include: project description, scope of work, list of key personnel and proposed schedule of milestones and budget.

A. Proposals

The proposal must demonstrate the Consultant's understanding of the proposed work and detail the Consultant's proposed approach to the work. Price proposal elements should be provided for each corresponding technical proposal task and include:

(1) Direct labor expenses for each employee and their respective classification of labor. These rates must be supported by a certified payroll signed by an authorized financial representative from the Consultant's firm.
(2) Proposed Overhead rates.
(3) Itemized direct non-salary expenses.
(4) Fixed Fee/Profit.
(5) Total proposed price.
(6) Subconsultant Proposal(s)

If a Subconsultant will be performing work on a project, the Prime Consultant must submit the Subconsultant's Proposal as supporting documentation.

Best and Final Offer. If the Airport and the Consultant cannot agree on an acceptable level of effort and price to perform the work, the Airport shall request a Best and Final Offer (BAFO). If the BAFO is unacceptable, then the negotiation should be terminated, and the Airport will initiate negotiations with the next most qualified selected Consultant.

B. Compensation

(1) Compensation for Project Contracts under this AGCA shall be negotiated and set forth in the Project Contract.
(2) The combined values of project contracts cannot exceed the maximum value of the AGCA.

C. AGCA Modifications

An AGCA cannot be modified for time or dollar value without written approval from the Airport and FAA. Once an AGCA has reached its expiration period, or its total dollar value, the consultant may no longer be eligible for any additional project contracts under the AGCA umbrella.

D. Representations

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

(1) All of the material statements, representations, covenants, and/or certifications provided during the selection process and included in this AGCA are complete and accurate.
(2) Work under this AGCA will not be reimbursed without a fully executed Project Contract (signed first by the Consultant and then by the Airport).
(3) Work performed outside the contract date of this AGCA shall not be reimbursed by the Airport.
(4) The Consultant knows of no legal, contractual, or financial impediment to entering into this AGCA.
(4) The person signing below is legally authorized by the Consultant to sign this AGCA on behalf of the Consultant and to legally bind the Consultant to the terms of the AGCA.

In Witness Whereof, the Consultant, for itself, its successors and assigns, hereby execute two (2) originals of this AGCA and binds itself to all covenants, terms, and obligations contained in this AGCA. The effective date of this AGCA will be on the date last signed below by an authorized Airport representative.

Gale Associates, Inc.	**Biddeford Municipal Airport**
By: ______________________	By: ______________________
Jon F. Lindberg, Principal	James A. Bennett, City Manager
11/8/2022	______________________
(Date)	*(Date)*

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

<u>FEDERAL AVIATION ADMINISTRATION (FAA)</u>

Appendix A

Procurement and Contracting Under AIP

Contents

Federal Contract Provisions

Procurements made under the AIP must comply with required Federal provisions established by various laws and statutes. The requirements for the provisions will vary depending on the type and size of the procurement action. Typically, procurement actions under the AIP fall within three categories: (1) Construction Development, (2) Equipment Acquisitions, and (3) Professional Services (A/E) Contracting. Application of a certain provision also depends on established contract dollar thresholds. Note that additional provisions are required in each category of Sponsor contracts if several contract dollar thresholds are exceeded. These additional provisions are listed following the general provisions that apply to each category of contract.

On this page ...

Construction Contracts

Provisions for all Construction Contracts

Buy American Preference - Title 49 U.S.C., Chapter 501 (Program Guidance Letter 10-02) (PDF) (posted 3/9/2010) Equipment Meeting Buy American Requirements (as of 8/6/2010) (MS Excel) (posted 8/10/2010) Foreign Object Debris (FOD) Detection Equipment Request for Qualifications (PDF) (posted 8/10/2010) Percent Calculation Worksheet (MS Excel) (posted 8/10/2010) Civil Rights Act of 1964, Title VI (MS Word) - Contractor Contractual Requirements - 49 CFR Part 21 Airport and Airway Improvement Act of 1982, Section 520 (MS Word) - Title 49 U.S.C. 47123 Lobbying and Influencing Federal Employees (MS Word) - 49 CFR Part 20 Access to Records and Reports (MS Word) - 49 CFR Part 18.36 Disadvantaged Business Enterprise (MS Word) - 49 CFR Part 26 Energy Conservation (MS Word) - 49 CFR Part 18.36 Breach of Contract Terms (MS Word) - 49 CFR Part 18.36 Rights to Inventions (MS Word) - 49 CFR Part 18.36 Trade Restriction Clause (MS Word) - 49 CFR Part 30 Veteran's Preference (MS Word) - Title 49 U.S.C 47112

Additional Provisions for Construction Contracts Exceeding $2,000

Davis Bacon Labor Provisions (MS Word) - 29 CFR Part 5 http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/

Procurement and Contracting Under AIP - Federal Contract Provisions

Additional Provisions for Construction Contracts Exceeding $10,000

Equal Opportunity Clause (MS Word) - 41 CFR Part 60-1.4 Certification of Non-Segregated Facilities (MS Word) - 41 CFR Part 60-1.8 Notice of Requirement for Affirmative Action (MS Word) - 41 CFR Part 60-4.2 Equal Employment Opportunity Specification (MS Word) - 41 CFR Part 60-4.3 Termination of Contract (MS Word) - 49 CFR Part 18.36

Additional Provisions for Construction Contracts Exceeding $25,000

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (MS Word) - 49 CFR Part 29

Additional Provisions for Construction Contracts Exceeding $100,000

Contract Workhours and Safety Standards Act Requirements (MS Word) - 29 CFR Part 5 Clean Air and Water Pollution Control (MS Word) - 49 CFR Part 18.36(i)(12)

Equipment Contracts

Provisions for all Equipment Contracts

Buy American Preference - Title 49 U.S.C, Chapter 501 (Program Guidance Letter 10-02) (PDF) (posted 3/9/2010) Equipment Meeting Buy American Requirements (as of 8/6/2010) (MS Excel) (posted 8/10/2010) Foreign Object Debris (FOD) Detection Equipment Request for Qualifications (PDF) (posted 8/10/2010) Percent Calculation Worksheet (MS Excel) (posted 8/10/2010) Civil Rights Act of 1964, Title VI (MS Word) - Contractor Contractual Requirements - 49 CFR Part 21 Airport and Airway Improvement Act of 1982, Section 520 (MS Word) - Title 49 U.S.C. 47123 Disadvantaged Business Enterprise (MS Word) - 49 CFR Part 26 Lobbying and Influencing Federal Employees (MS Word) - 49 CFR Part 20 Access to Records and Reports (MS Word) - 49 CFR Part 18.36 Energy Conservation (MS Word) - 49 CFR Part 18.36 Breach of Contract Terms (MS Word) - 49 CFR Part 18.36 Rights to Inventions (MS Word) - 49 CFR Part 18.36 Trade Restriction Clause (MS Word) - 49 CFR Part 30

Additional Provisions for Equipment Contracts Exceeding $10,000

Termination of Contract (MS Word) - 49 CFR Part 18.36

Additional Provisions for Equipment Contracts Exceeding $25,000

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (MS Word) - 49 CFR

Part 29 **Additional Provisions for Equipment Contracts Exceeding $100,000**

Clean Air and Water Pollution Control (MS Word) - 49 CFR Part 18.36(0(12)

Professional Services (A/E) Contracts Provisions for all A/E Contractshttp://www.faa.gov/airports/aip/procurement/federal_contract_provisions/
Procurement and Contracting Under AIP - Federal Contract Provisions

Civil Rights Act of 1964, Title VI (MS Word) - Contractor Contractual Requirements - 49 CFR Part 21 Airport and Airway Improvement Act of 1982, Section 520 (MS Word) - Title 49 U.S.C. 47123 Disadvantaged Business Enterprise (MS Word) - 49 CFR Part 26 Lobbying and Influencing Federal Employees (MS Word) - 49 CFR Part 20 Access to Records and Reports (MS Word) - 49 CFR Part 18.36 Breach of Contract Terms (MS Word) - 49 CFR Part 18.36 Rights to Inventions (MS Word) - 49 CFR Part 18.36 Trade Restriction Clause (MS Word) - 49 CFR Part 30

Additional Provisions for A/E Contracts Exceeding $10,000

Termination of Contract (MS Word) - 49 CFR Part 18.36 **Additional Provisions for A/E Contracts**

Exceeding $25,000

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (MS Word) - 49 CFR Part 29 http://www.faa.gov/airports/aip/procurement/federal contractprovisions/

Guidance for Buy American on Airport Improvement Program (AIP) or American Recovery and Reinvestment Act (ARRA) projects.

In accepting AIP or ARRA funding, grant recipients are certifying that they will not acquire (or permit any contractor or Sub-contractor) to use any steel or manufactured products produced outside the United States on any portion of the project for which funds are provided, unless otherwise approved by the FAA. Therefore, for the AIP or ARRA funded portion of a project, grant recipients must either:

1. Certify, in writing, all products are wholly produced in the US of US materials, or
2. Request a waiver to use non-US produced products, or
3. Certify that all equipment that is being used on the project is on the Nationwide Buy American conformance list.

The AIP funded portion of a project includes the grant recipient's local share.

Types of Waivers

There are four types of waivers to Buy American:

1. Public interest waiver;
2. Insufficient quantity AND quality for ARRA (AIP projects allow waivers for insufficient quantity OR quality);
3. 60% or more of the components and subcomponents in the facility or equipment are of US origin and final assembly is in the US; or
4. Applying Buy American increases the cost of the overall project by more than 25%.

Many pieces of equipment are constructed with some non-US produced components or subcomponents. Therefore, it is expected that the majority of grants will have waivers issued unless the project is constructed of materials that already have a nationwide waiver.

Nationwide Waiver

Much of the equipment that is frequently used on AIP or ARRA projects has been reviewed by FAA Headquarters and a nationwide waiver has been issued. The Nationwide Buy American conformance list is posted on the www.faa.gov website at the following address:

> http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/ by clicking the tab, "Equipment Meeting Buy American Requirements"

If the equipment is on the nationwide waiver list, no additional waiver is required.

Who can Issue Waivers

Only FAA headquarters may issue waivers for reasons 1 and 2. FAA field offices (Regional Offices and/or Airports District Offices) may issue waivers for reasons 3 and 4.

For block grant state projects, the FAA must issue the waivers. Block grant states are not allowed to issue a waiver.

Defining the Project, Facility and Equipment, and Final Assembly Location in the 60%/US final assembly waiver

The waiver can be considered if "at least 60% of the cost of the components and subcomponents in the **facility or equipment** are produced in the United States and the final assembly of the facility or equipment has occurred in the United States." The correct application of the terms is discussed below.

Project

The **"Project"** is generally the project that is being bid. The "Project" does not extend over multiple grants or phases, even though the overall project may be phased or may be built in multiple bid packages.

Facility or Equipment

- For a building, the portion of the building that is being funded under the AIP or ARRA grant is the "**facility**" listed in the waiver.

- For other projects, the bid items as described in the latest edition of FAA Advisory Circular 5370-10 will generally be the "**equipment**" referred to in the waiver except for airfield electrical equipment.

- For airfield electrical equipment, the "L-" items listed in the Addendum to FAA Advisory Circular 5345-53C, latest edition will generally be the "**equipment**" referred to in the waiver.

- For a vehicle or single piece of equipment like a snow plow or ARFF vehicle, the single vehicle itself is the "**equipment**."

Final Assembly Location and Labor Exclusion

Final assembly is the substantial transformation of the various components and subcomponents into the equipment. For a building, the final assembly is actual construction of the building.

- For any project other than a building project, the final assembly location is the location where the equipment is assembled, **not the project site itself**.

- For a building, the final assembly location is the airport building site.

In any calculation of Buy American percentage, the labor for the final assembly is excluded. This is because the Buy American statute is based on the cost of materials and equipment, not labor. For a building, this means that only the costs of the materials as they are delivered to the airport site are considered when calculating US and non-US component and subcomponent costs. For equipment, the costs of the final assembly at the manufacturing site are excluded.

Common Materials that are waived or excluded from Buy American - Cement, Concrete, Asphalt and Steel

Cement and concrete is excluded from the Buy American preference requirements (although the steel used for reinforcement, ties, stirrups, etc. must meet Buy American.)

Asphalt and other petroleum products are waived as an excepted item under AMS Guidance T3.6.4.1.e: Foreign Acquisition - Definitions identifying Asphalt as a petroleum product.

Steel is specifically identified in the statute. Therefore, all rebar and discrete, identifiable steel components must be manufactured in the United States.

FAA Waiver

After the FAA has determined that the final assembly location is in the US and the percent of US components and subcomponents is above 60%, a waiver may be issued. **The waiver is for the single project - not a nationwide waiver**.

What Information is required to Issue a Waiver (AIP and ARRA) and for the Federal Register Notice (ARRA)

For waiver type 3, a waiver can be considered if "at least 60% of the cost of the components and subcomponents in the **facility or equipment** are produced in the United States and the final assembly of the facility or equipment has occurred in the United States."

Grant recipients must request waivers from FAA in writing, with sufficient supporting information. Grant recipients are responsible for ensuring their waiver request is complete and accurate using project specific information provided directly by the contractor or the contractor's supplier.

The FAA will conduct its review and approval based on the information provided by the grant recipient.

The information that must be provided for either equipment or for a building:

- Project Number
- Project Name
- Airport Name
- Total Project Cost
- Total Equipment or Bid Item Cost for which the waiver is being requested
- Total Equipment or Bid Item Cost excluding labor for final assembly.

For equipment, the following additional information is required:

- The equipment or bid item for which the waiver is being requested
- The manufacturer and country of origin of the equipment or bid item.
- The location of the final assembly of the equipment or bid item (not the airport site)

- The cost of the US components and subcomponents for the equipment or bid item for which the waiver is being requested

- The cost of the non-US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The resulting percent of US and non-US components

For a building, the following additional information is required:
- The building (called the facility in the Buy American statute) for which the waiver is being requested
- The manufacturer and country of origin of the US and non-US materials that will be used in the building,
- For a building, the location of the final assembly is the airport site
- The cost of the US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The cost of the non-US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The resulting percent of US and non-US components

Grant recipients are urged to submit waiver requests as early as possible.

Waivers that are issued on ARRA projects must be included in a Federal Register notice, which will generally be published on a quarterly basis.

<u>Sample Letter of Approval of Waiver</u>:

When FAA is satisfied that a waiver may be issued based on the 60%/US final assembly criteria, a letter must be written to the airport sponsor approving the waiver. The text of the letter follows.

A copy of the letter must be forwarded to APP-500 along with a copy of the supporting documentation that was submitted by the airport for the waiver. The information used in the letter will be the basis of the Federal Register notice. The Federal Register notice may include copies of the waiver letters or will be a tabular listing of the waivers. Therefore, regions must forward both a *.pdf copy of the signed letter and an editable copy of the letter.

XXXX Airport
AIP-Project No. X-XX-XXXX-XX
Project Name
Waiver of Buy American Requirements

I have reviewed the request for Waiver of Buy American Requirement submitted XXX for the use of XXXXX equipment on the subject project. The information submitted by the airport for:

Item for which waiver is being issued: i.e L-831 Transformers
Manufacturer:
Final Assembly Location:

Percent US Components and Subcomponents:

The information submitted satisfies the requirement for waiver of the requirements of the Buy American per 49 USC Section 50101 based on over 60% of the cost of components and subcomponents to be used in the project being produced in the United States.

The waiver is hereby approved for use on this AIP grant project.

Common Misconceptions

- Belief that if a manufacturer is "FAA-certified" that Buy America has been satisfied. This is not true. The FAA certification certifies that technical standards have been met. However, FAA-certified equipment manufactured outside the U.S. does not meet Buy America provisions of the AIP unless a waiver has been issued.

- Misconception that the North America Free Trade Act (NAFTA) exempts equipment manufactured in Mexico or Canada from "Buy America" requirements. This is not true for AIP or ARRA projects.

Text of Buy American statute from 49 United States Code §50101

§ 50101. Buying goods produced in the United States

(a)Preference.- The Secretary of Transportation may obligate an amount that may be appropriated to carry out section 106 (k), 44502 (a)(2), or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102 (e), 48106, 48107, and 48110) of this title for a project only if steel and manufactured goods used in the project are produced in the United States.

(b)Waiver.- The Secretary may waive subsection (a) of this section if the Secretary finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) the steel and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(3) when procuring a facility or equipment under section 44502 (a)(2) or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102 (e), 48106, 48107, and 48110) of this title—

(A) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and

(B) final assembly of the facility or equipment has occurred in the United States; or

(4) including domestic material will increase the cost of the overall project by more than 25 percent.

(c) Labor Costs.- In this _, labor costs involved in final assembly are not included in calculating the cost of components.

The most recent list of manufacturer's equipment that meets the Buy American Requirements (as determined by HQ) can be found on the FAA website under "Procurement and Contracting under AIP".

Foreign Object Debris (FOD) Detection Equipment Request for Qualifications

The Federal Aviation Administration recently published a notice in the Federal Register requesting information from manufacturers of FOD Detection Systems (Federal Register Vol. 75, No. 150 / Thursday, August 5, 2010 / Notices Page 47344). In order for FAA to determine whether AIP grant funds can be used for a manufacturer's FOD Detection equipment, FAA must determine whether the equipment meets the requirements of 49 USC §50101, Buy American Preferences.

Under 49 USC §50101(b)(3), the Secretary of Transportation may waive the Buy American preference requirement if the goods are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality. The Secretary has delegated this authority to the Federal Aviation Administration.

On September 30, 2009, FAA published Advisory Circular (AC) 150/5220-24, Airport Foreign Object Debris (FOD) Detection Equipment. The AC specified the requirements for FOD detection equipment at airports. A link to the Advisory Circular is here: http://www.faa.gov/airports/resources/advisory_circulars/

If FAA cannot find that there are enough USA manufacturers of FOD detection equipment to produce FOD detection equipment in sufficient and reasonable amounts, it will issue a nationwide waiver to the foreign manufacturers of FOD detection equipment that it has identified as being capable of meeting the AC requirements.

To make this determination, manufacturers of FOD detection equipment, both domestic and foreign, are requested to complete the form indicated here and prepare a letter of technical certification, and email them to Nancy.S.Williams@faa.gov by September 15, 2010.

The form "percent calculation.xls" is a spreadsheet that is filled out by the manufacturer. Using the complete FOD detection system as the Level 0 product, the manufacturer must complete the breakdown through Level 2 indicating the costs of the items and placing them in the column for either US product or non-US product. The costs listed are for materials only, no costs of labor, installation, assembly at the final manufacturing site, overhead, profit or other non-product costs may be included.

On the form, the manufacturer must indicate the city and state where the FOD detection system is manufactured. If the computer system that is used to record the data and receive the signals is a commercial off-the shelf computer system, it should not be included in the percent calculation list, however an explanatory note must be included with the form.

The second required submittal is a certification prepared by the manufacturer on the manufacturer's letterhead that the equipment listed meets the requirements of the AC. The Required Capabilities listed in the AC must be met, however the recommended capabilities that are listed in Section 3.2 c.(1)(b), Section 3.2 (c)(2) and Section 3.2 (c)(3) are not required to be included in the certification. The letter must specify whether the certification is for continuous inspection or mobile detection. The letter must be signed by a legally-responsible member of the manufacturer who can attest to the technical capabilities of the equipment.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy S. Williams, Airports Financial Assistance, APP 501, Room 619, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8822.

Company

Date:

Point of Contact (Provide address, telephone, fax, e-mail)

PRODUCT STRUCTURE Multi-Level Bill of Materials through level 2 only

Item:
FAA Item Number

Address of Final Assembly Location:

Total Material Cost
US Content, % [1]
Other, %_______

						US Origin*		Other	
Level (0, 1, 2)	Part Number	Description[2]	Quantity Per Unit	Unit of Measure	Price/Unit of Measure	Price/Unit of Measure	Cost/Each	Price/Unit of Measure	Cost/Each

1. Attach Certificate of Origin, US Customs Form 434
2. Items Listed in Federal Acquisition Regulation Part 25.104 may be counted as US Origin, however should include note stating that item is exempt in 25.104

CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

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

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

1.2 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 Sub-contractors, including procurements 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.

1.3 Solicitations for Sub-contracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a sub-contract, including procurements of materials or leases of equipment, each potential contractor 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.

1.4 Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor 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.

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

a. Withholding of payments to the contractor under the contract until the contractor complies,
and/or

b. Cancellation, termination, or suspension of the contract, in whole or in part.

1.6 Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every sub-contract, including procurements 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 sub-contract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a Sub-contractor 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.

Application

Required in all contracts and sub-contracts

Reference

49 CFR Part 21
AC 150/5100-15

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

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

Application
Incorporate in all contracts funded under AIP

Reference
Airport and Airway Improvement Act of 1982, Section 520
Title 49 47123
AC 150/5100-15, Para. 10.c.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(1) No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

Application
Required in all contracts and sub-contracts

Reference
49 CFR Part 20, Appendix A

ACCESS TO RECORDS AND REPORTS

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

Application
Incorporate into all procurement contracts that funded by AIP funds

Reference
49 CFR Part 18.36(i)
FAA Order 5100.38

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§26.13) - The contractor or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The prime contractor agrees to pay each Sub-contractor under this prime contract for satisfactory performance of its contract no later than ***[specify number]*** days from the receipt of each payment the prime contractor receives from ***[Name of recipient].*** The prime contractor agrees further to return retainage payments to each Sub-contractor within [specify the same number as above] days after the Sub-contractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the ***[Name of Recipient].*** This clause applies to both DBE and non-DBE Sub-contractors.

Application
The contract assurance clause shall be incorporated verbatim. The prompt payment clause represents sample language that meets the requirements of 49 CFR Part 26.29. Recipients should refer to the language included their approved DBE program

Reference
49 CFR Part 26

ENERGY CONSERVATION REQUIREMENTS

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163)

Application
The regulation does not prescribe the language for the requirement. The above clause represents sample language that meets the intent of 49 CFR Part 18.36(i)(13)

Reference
49 CFR Part
18.36 Public
Law 94-163

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the contractor or their Sub-contractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

Application

The FAA does not prescribe the exact language to be incorporated. The above clause represents sample language that addresses the requirements of 49 CFR Part 18.36(i)(1). This provision requires grantees to incorporate administrative, contractual or legal remedies in instances where contractors violate or breach contract terms. Grantees should consult with their legal counsel to develop the appropriate clause that meets the minimum requirements of 49 CFR Part 18.36.

This provision is required in all contracts that exceed the simplified acquisition threshold, presently set at $100,000.

Reference
49 CFR Part 18.36

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.

Application
Incorporate into all procurement contracts that funded by AIP funds

Reference
49 CFR Part 18.36(i)(8)
FAA Order 5100.38

TRADE RESTRICTION CLAUSE

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

a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of theUnitedStates Trade Representative (USTR);

b. has not knowingly entered into any contract or sub-contract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor sub-contracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or sub-contractor who is unable to certify to the above. If the contractor knowingly procures or sub-contracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier sub-contracts. The contractor may rely on the certification of a prospective sub-contractor 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 Sub-contractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Sub-contractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or Sub-contractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or sub-contract 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.

Application
Incorporate into all contracts funded by AIP.

Reference
49 CFR Part 30.13
FAA Order 5100.38

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 as defined in Section 515(c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

Application
Incorporate into all construction contracts financed under the AIP program.

Reference
Title 49 U.S.C. 47112(c)
Advisory Circular 150/5100-6d

DAVIS BACON REQUIREMENTS

1. Minimum Wages

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

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

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

2 Withholding.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to David-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 Sub-contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records 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.
(ii)(A) 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 paragraph 5.5(a)(3)(i) above. 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 Sub-contractors.

(B)Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or Sub-contractor 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 paragraph (3)(i) 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 incorporated into the contract.

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

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

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

4. Apprentices and Trainees.

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

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

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

5. Compliance With Copeland Act Requirements.

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

6. Subcontracts.

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

7. Contract Termination: Debarment.

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

8. Compliance With Davis-Bacon and Related Act Requirements.

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

9. Disputes Concerning Labor Standards.

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

10. Certification of Eligibility.

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

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

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

Application
Incorporate into all construction contracts and subcontracts that exceed $2,000 and are financed under the AIP program.

Reference
29 CFR Part 5.5
Advisory Circular 150/5100-6d

EQUAL EMPLOYMENT OPPORTUNITY - 41 CFR PART 60-1.4(b)

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

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

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

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

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

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

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

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

Application
Incorporate in all construction contracts and subcontracts that exceed $10,000

Reference
Executive Order 11246
41 CFR Part 60 -1.4
AC 150/5100-15, Para. 22.a.

CERTIFICATION OF NONSEGREGATED FACILITIES - 41 CFR

PART 60-1.8 Notice to Prospective Federally Assisted Construction

Contractors

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a federally-assisted construction contract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

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

Notice to Prospective Sub-contractors of Requirements for Certification of Non-Segregated Facilities

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a subcontract exceeding $10,000, which is not exempt from the provisions of the Equal Opportunity Clause.

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

CERTIFICATION OF NONSEGREGATED FACILITIES

The federally-assisted construction contractor certifies that she or he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that she or he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies that she or he will not maintain or provide, for his employees, segregated facilities at any of his establishments and that she or he will not permit his employees to perform their services at any location under his 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 areas, restrooms, and washrooms, restaurants and other eating areas, 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 she or he has obtained identical certifications from proposed Sub-contractors for specific time periods) she or he will obtain identical certifications from proposed Sub-contractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that she or he will retain such certifications in his files.

Application

Incorporate in all construction contracts and subcontracts that exceed $10,000. The notices should be placed within the solicitation for proposals. The actual certification should be incorporated in the contract agreement.

Reference

Executive Order 11246
41 CFR Part 60 -1.8

AC 150/5100-15, Para. 22.b.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION - 41 CFR PART 60-2

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade (Vol. 45 Federal Register pg. 65984 10/3/80)

Goals for female participation in each trade (6.9%)

These goals are applicable to all the contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its Federally involved and non-federally involved construction.

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

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

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is [insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any].

Application
Incorporate in all construction contracts and subcontracts that exceed $10,000. This notice should be placed within the solicitation for proposals. The goals for minority participation are dependent upon the Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA). Refer to Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table listed all EA and SMSA and their associated minority goals. The 6.9% for female participation represents a national goal.

Reference
Executive Order 11246
41 CFR Parts 60 - 4

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS - 41 CFR Part 60.4.3

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;

d. "Minority" includes:

(1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

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

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 18.7a through 18.7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement

contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

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

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

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

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such a superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and Sub-contractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (18.7a through 18.7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 18.7a through 18.7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

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

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

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

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

13.The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 18.7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14.The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

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

Application
Incorporate in all construction contracts and subcontracts that exceed $10,000. This provision shall be included in the solicitation and the contract agreement.

Reference
Executive Order 11246
41 CFR Parts 60 – 4.3 AC
150/5100-15, Para. 22.c.

TERMINATION OF CONTRACT

a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.

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

Application
Incorporate into all procurement contracts that funded by AIP funds that exceed $10,000.

Reference
49 CFR Part 18.36(i)(2)
FAA Order 5100.38

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

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.

Application
Incorporate into all contracts that exceed $25,000, which funded under the AIP. Incorporate in all contracts for auditing services regardless of the contract amount.

Reference
49 CFR Part 29 FAA
Order 5100.38

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS 29 CFR PART 5

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

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

3. Withholding for Unpaid Wages and Liquidated Damages.
The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or Sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or Sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

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

Application
Incorporate into all construction contracts and subcontracts that exceed $100,000 and are financed under the AIP program.

Reference
29 CFR Part 5.5
Advisory Circular 150/5100-6d

CLEAN AIR AND WATER POLLUTION CONTROL

Contractors and Sub-contractors 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. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued hereunder;

c. That, as a condition for the award of this contract, the contractor or Sub-contractor 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.

Application
Incorporate in all contracts and subcontracts that exceed $100,000.

Reference
49 CFR Part 18.36(i)(12) Section 306 of the Clean Air Act Section 508 of the Clean Water Act

<u>MaineDOT Airport Consultant General Conditions</u>

Appendix B

Biddeford Municipal Airport

(Airport)

AIRPORT CONSULTANT GENERAL CONDITIONS

May 3, 2012

TABLE OF CONTENTS

Agreement

The Consultant shall furnish or provide the services necessary to complete the Project in accordance with these Airport Consultant General Conditions ("**ACGC**") and the Sponsor's requirements, as outlined in the Airport General Consultant Agreement ("**AGCA**") and Airport Project Contract.

General Provisions

Representation by Sponsor

By executing the AGCA or an Airport Project Contract, the Sponsor's signatory represents that, to the best of their knowledge, the Consultant (or any of its representatives) has not been required, as a condition of obtaining or carrying out the AGCA or Airport Project Contracts to:

a. employ or retain any firm or person; or
b. pay or agree to pay any firm, person or organization any fee, contribution, donation, or consideration of any kind.

Representations by Consultant

By signing the AGCA and/or an Airport Project Contract(s), the signatory represents that they are a duly authorized representative of the Consultant firm and represents that neither they nor the Consultant firm has (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the Consultant) to solicit or secure the AGCA and related contracts; (b) agreed, as an expressed or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or; (c) paid, or agreed to pay, to any firm, organization, or person (other than a bona fide employee working solely for the Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the AGCA, Airport Project Contract and any related contracts.

By signing the AGCA and/or an Airport Project Contract, the Consultant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.
b. Have not within three (3) years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:
    i. fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract,
    ii. violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
iv. have not within a three (3) year period preceding this application or proposal had one or more Federal, State or Local government transactions terminated for cause or default.

In addition, the Consultant will not hire any material or service providers who are debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any state, federal, or local agency.

Priority of Conflicting Contract Documents

If the Consultant discovers any error, omissions, conflict, or discrepancy related to the Contract Documents that may significantly affect the cost, quality, conformity, or timeliness of the work, the consultant must notify the Sponsor. The Parties agree that the following components of the contract documents shall control in the following descending order of priority:

Modification to the Airport Project Contract
Airport Project Contract and Appendices
Modifications to the Airport General Consultant Agreement
Airport General Consultant Agreement and Appendices
Airport Consultant General Conditions

General Scope of Work

The Airport Project Contracts are to be considered federally funded, unless expressly stated otherwise in the Contract Documents. As a Federally funded Contract, it is governed by all Federal requirements set forth in these ACGC and all related appendices.

Standards

All work, to the extent applicable, shall conform to the appropriate, related, current editions of the following publications, including, but not limited to:

Maine Department of Transportation

a. Standard Details and Supplemental Standard Details
b. Standard Specifications with Interim Specifications
c. Outline of the Department's latest Project Development Process
d. CADD Standards
e. Bridge Design Manual
f. Highway Design Guide
g. Survey Manual
h. MaineDOT Right-of-way Policies and Procedures
i. MaineDOT Utilities Policies and Procedures
j. MaineDOT Construction Manual
k. MaineDOT Best Management Practices for Erosion and Sediment Control
l. MaineDOT Format for Bridge Soils Reports
m. MaineDOT Format for Highway Soils Reports

AASHTO

a. A Policy on Geometric Design of Highways and Streets
b. LRFD Bridge Design Standards with Interim Specifications
c. Standard Specifications for Highway Bridges with Interim Specifications
d. Other Applicable AASHTO Standards and Guide Specifications

Highway Research Board

a. Highway Capacity Manual, SR 209

U.S. Department of Transportation

a. Pertinent Federal-Aid Policy Guides
b. Rules and Regulations, Federal Highway Administration
c. Manual on Uniform Traffic Control Devices for Streets and Highways
d. Roadside Design Guide
e. American Railway Engineering and Maintenance Association (AREMA) Manual
f. FHWA Right-of-Way Project Development Guide
g. Federal Aviation Administration Advisory Circulars
h. Federal Aviation Administration AIP Handbook

Exceptions to the referenced design standards must be approved in writing by the Sponsor.

Owner Responsibilities

No Personal Liability

The Sponsor's employees and other representatives act solely as representatives of the Sponsor when conducting and exercising authority granted to them under the AGCA and/or Airport Project Contract. Such persons have no liability either personally or as Sponsor employees to consultant for the implementation of the Airport Project Contract or AGCA.

Project Identification Numbers

All contract documents initiated by the Sponsor will reference the related Airport Improvement Project Number (AIPN) or State Aid Project Improvement Project Number (SAIPN). This number along with the State PIN should be referenced on all related invoicing and correspondence to the Sponsor.

Inform Consultant about Project Requirements

The Sponsor shall provide all relevant criteria and information pertaining to Sponsor's requirements for the Project which may include the following:

a. Property descriptions.
b. Zoning, deed and other land use restrictions.
c. Property, boundary, easement, right-of-way and other special surveys or data.
d. Planning Studies.
e. Explorations of subsurface conditions, drawings of physical conditions, hydrographic surveys at or contiguous to the site.
f. Environmental Assessments and other relevant environmental or cultural studies.
g. Data or consultations as required for the Project.

Accuracy

The Consultant is responsible for reviewing all, reports, data, and information provided by the Sponsor and notifying the Sponsor of any error, omissions, conflict, or discrepancy.

Advise Consultant of Services of Other Consultants

The Sponsor shall advise the Consultant of the identity and scope of services of any independent Consultants employed by Sponsor providing services on the Project. The Sponsor's Project Manager will be responsible for coordinating the efforts of Consultants under contract with the Sponsor.

Consultant Responsibilities

Project Records

All project records, whether printed or electronic, made by the Consultant and Sub-consultant(s), or furnished to the Consultant by the Sponsor shall, upon completion of the work contemplated under the Airport Project Contract, be filed with the Sponsor. The Consultant and Sub-consultant(s) shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred under the Airport Project Contract and shall make such materials available at their respective offices at all reasonable times during the Airport Project Contract period and for three (3) years from the date of final payment under the Airport Project Contract. The Consultant and Sub-consultant(s), shall allow inspection and audit of pertinent documents by the Sponsor or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested, at no cost to the Sponsor.

The Consultant shall keep records in such form as may be easily audited and in accordance with 48 CFR, Part 31 - Contract Cost Principles and Procedures. The employee’s salary record shall show time spent on the work. Audits shall be performed and issued in accordance with Generally Accepted Government Auditing Standards (GAGAS) as promulgated by the Comptroller General of the United States of America.

The Consultant shall retain all records in accordance with 49 CFR §18 which shall contain documentation of project progress, as well as, dates of all meetings, plan submissions, agreements, etc. with agencies or persons other than those of the Consultant.

Invoice Documentation

Records of Consultant's costs pertinent to Consultant's compensation under an Airport Project Contract shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify Consultant's charges and upon Sponsor’s timely request, copies of such records shall be made available to the Sponsor at its facility. Records shall be available for review by the Sponsor for a period of three (3) years following final payment.

Ownership of Documents

The Sponsor acknowledges the Consultant’s plans and specifications as instruments of professional service.

All original data furnished to the Consultant by the Sponsor shall be returned to the Sponsor in good order.

All plans, specifications and exhibits prepared or obtained under the terms of the Airport Project Contract shall be delivered to and become the sole property of the Sponsor upon completion of the work. Consultant shall be entitled to maintain a copy of all such documents for its business files for a period of three (3) years from the date of final payment.

If the Sponsor alters the Consultant's plans, specifications, and/or exhibits or uses said plans, specifications, and/or exhibits for purposes other than their original intended use, the Consultant shall not be held liable.

Endorsed and Sealed

All plans, specifications, estimates, and data prepared by the Consultant shall be signed and sealed with a State of Maine seal by the Consultant's Licensed Professional Engineer, Landscape Architect, Geologist, Site Evaluator, Surveyor, Soil Scientist, Master Plumber or other professional, as applicable under Maine State Law.

Utility Coordination

The Consultant shall make every reasonable effort to minimize the impact to existing utilities and also minimize lengths of relocated or proposed additional utilities.

Sub-consultants and Outside Associates and Consultants

A Consultant may not enter into a subcontract with a party unless that party is specifically identified in the Airport Project Contract as a Sub-consultant. The Consultant must first notify the Sponsor's Project Manager; or designee before retaining other Sub-consultants. The Sponsor retains the right to reject the Sub-consultant, if the Sponsor has concerns about the Sub-consultant's ability to perform the services described.

Consultant's Duties Regarding Sub-consultant(s)
The Consultant is responsible for:

a. Assuring that its Sub-consultant(s) has sufficient skill and experience to perform the work properly, and
b. Coordinating and managing its Sub-consultant(s) to achieve the intent of the Contract.

Claims
The Consultant agrees not to bring any claims for damages sought by its Sub-consultant(s) against the Sponsor and hereby indemnifies and holds the Sponsor harmless against any claims arising from failure by the Consultant to coordinate and manage its Sub-consultant(s) and from any and all claims or liabilities arising from work performed by the Sub-consultant. Subcontracting does not alter the Consultant's obligations under an AGCA or Airport Project Contract.

Flow Down
All subcontracts of the Consultant, and all lower tier subcontracts, shall contain the required FAA contract provisions and all applicable provisions of the Contract and these ACGCs.

No Third Party Beneficiaries
The Consultant and the Sponsor agree that the AGCA and/or Airport Project Contract are not intended to create any third-party beneficiaries or to authorize anyone not a party to the AGCA or Airport Project Contract to maintain an action under said ACGCA or Airport Project Contract provisions.

Accuracy

The Consultant shall be responsible for the services rendered, the professional quality, technical accuracy, and the coordination of all documents, designs, drawings, specifications, and other services furnished by the Consultant and Sub-consultant(s) under an Airport Project Contract. The Sponsor shall not be responsible for discovering deficiencies in the work product or professional services, but will notify the Consultant if a deficiency is discovered.

Standard of Care
Consultant represents that it has the requisite skills, expertise and licensing to perform all contract work using the accepted standards of care in the Consultant's profession or occupation.

Redesign Responsibility for Errors and Omissions
Upon request, the Consultant agrees to correct any errors, or omissions caused by the fault or negligence of Consultant and Sub-consultant(s) in work required under an Airport Project Contract without undue delay and without cost to the Sponsor.

Electronic Exchange of CADD Data

The Consultant must follow the most recent version of the Sponsor's specifications for required electronic (computer) data, at the time of Airport Project Contract execution, as it relates to engineering design project deliverables in effect. Consultants wishing to perform professional engineering services for Sponsor are required to deliver electronic data as specified in said document. The specification also requires Consultants to accept and utilize pertinent electronic input data as provided by Sponsor. It is the responsibility of the Consultant to translate this data into other formats required for use in their design software. A copy of this specification may be obtained from the Sponsor or designee.

Progress Reports

Prior to the start of work, the Consultant shall furnish the Sponsor with a proposed progress schedule in the Sponsor's standard format. The Consultant will outline the various phases of work that will need to be completed in order to meet the schedule set forth by the Sponsor.

During the course of the project, the Consultant shall submit to the Sponsor, a Monthly Project Status Report of accomplishments from the preceding month. The progress report shall be used to keep team members and the Contract Administrator informed about project status and issues. Information will include:

a. A written statement describing the work accomplished during the period and to date.
b. An estimate of the percentage of work completed within the specified services.
c. An estimate of the effort needed to complete the specified services.
d. The percentage of contract time elapsed and the percentage of contract amount expended (including contract modifications.).
e. Contract Modifications to date and anticipated contract modifications.
f. Any information needed from Sponsor to complete the project and avoid delays.
g. An explanation if the percent completion does not agree with the agreement time elapsed.

h. The Consultant's action plan to remedy and address any non-conforming or unacceptable work submitted to Sponsor.
i. Document anticipated problems and possible solutions.
j. The Consultant will keep the Sponsor informed as to changes in rates and key personnel.

These progress reports shall be submitted to Sponsor on a **monthly basis** regardless of whether or not payments are due. Failure to submit could result in non-payment of the invoice, or a determination for cause of default, and shall be recorded in the Consultant's Performance Evaluation. If work is temporarily delayed, the Consultant may suspend submittal of the monthly progress reports with written approval from Sponsor. The Consultant shall be responsible for addressing any action that may be required to keep the project on schedule.

Sponsor shall have a period of fifteen (15) business days after receipt of the submissions to complete the review and make any necessary comments. Following the review, the Consultant will make any revisions and corrections requested by Sponsor.

Equal Opportunity & Civil Rights

Requirements Applicable to Federally Funded Contracts

Projects shall be considered federally funded, unless the Airport Project Contract states otherwise. By signing the AGCA and/or Airport Project Contract, the Consultant certifies to all of the provisions contained in Appendix A – which is made a part of these ACGCs with the exception that the word "Consultant" should be substituted for the word "Contractor." This Appendix contains provisions that are required in all federally funded contracts. Unless expressly otherwise provided, the Consultant must comply with all provisions contained in said Appendix A.

DBE Compliance

The Consultant shall ensure that Disadvantaged Business Enterprises (DBEs), as defined, have the maximum opportunity to participate in the performance of the Airport Project Contract. In this regard, the Consultant shall analyze documented efforts to incorporate Disadvantaged MaineDOT certified firms into the Sponsor's federally funded programs. If the Sponsor has established an annual goal for DBE utilization, this annual goal shall be specified in the Airport Project Contract.

If, upon analysis of documented efforts, the Sponsor determines that the annual goal is not being met, then the Sponsor may establish specific contractual goals which would be announced in the Request for Proposal.

The Consultant shall check with the Maine Department of Transportation's Civil Rights Office DBE, OJT, and Civil Rights Office we site at www.maine.gov/mdot/disadvantaged-business-enterprises/dbe-home.php, to confirm that the business enterprise it plans to utilize as a DBE has valid, current DBE certification

Sponsor is currently operating under a race neutral goal but does reserve the ability to place race conscious goals on a contract specific basis if it determines that the current DBE goal is not being met pursuant to Federal Regulations 49 CFR 26.51.

If DBE attainment goals are required on a specific contract by the Sponsor, the Consultant shall not perform within its own organization, or assign to any other business, activity designated for the DBE's without the written consent from the DBE and the Sponsor. Any action taken by the Consultant in regards to this section shall be approved by the Sponsor.

The Consultant shall verify and submit to the Sponsor the following:

a. A DBE Proposed Utilization Plan – this document will be furnished when the Consultant submits a successful proposal; it reflects the firm's efforts to mainstream DBE firms into their project team, and must be approved by the Sponsor's Civil Rights Office prior to award of the contract.

b. Final Goal Verification forms – this will be submitted with the Consultant's final invoice. The Consultant will report on their efforts to utilize DBE firms, and the percentage of the project value paid to the DBE's as compared with the commitments made in the DBE Proposed Utilization Plan. The Sponsor reserves the right to withhold payment of the final invoice until this documentation is received.

Additional Services and Schedule

Additional Services

All requests for additional services must be submitted in writing to the Project Manager or Project Manager's Designee outlining both the scope and cost. The Sponsor will issue a written modification after both Sponsor and Consultant agree on the services to be performed and the cost of same. The Consultant shall not proceed with the work until a written modification has been executed by the Sponsor.

Time

Schedule
The Consultant shall perform its work in accordance within the timeframes set forth in the AGCA and the Airport Project Contract.

Extensions
If during the process of the work it is necessary to change or extend a date because of circumstances beyond the Consultant's control, then a request in writing shall be made to the Sponsor within ten (10) days of when the Consultant realized a change or extension was required. This request will include an estimate of any additional cost, if applicable. Any requests of this type will also be noted in the Monthly Project Status Report.

Late Delivery
If the Consultant fails to perform work within the timeframes indicated in the Airport Project Contract, including any pre-approved time extensions by the Sponsor, for reasons unrelated to performance by the Sponsor, and the Sponsor reasonably determines that such failure causes a financial impact on the Sponsor, such failure shall be recorded in the consultant's performance evaluation and used as part of the Sponsor's selection process for future projects.

Compensation and Payments

Invoicing

The Consultant will be paid in accordance with the payment method agreed upon in the Airport Project Contract.

Submission of Invoices
Invoices shall:

1. Reference the AIPN or SAIPN along with the State PIN.
2. Be submitted monthly by the Consultant to the Sponsor's Project Manager, or his/her designee.
    a. Be submitted in a form acceptable to the Sponsor, accompanied by the progress report, and supporting documentation (e.g. receipts for direct expenses), and any information required in accordance with FAA and MaineDOT guidelines.

The Sponsor will not be required to make any payments until these documents are received, reviewed and accepted.

Payment of Invoices
Payment for services shall be made in accordance with the terms negotiated in the Airport Project Contract and deemed eligible per 48 CFR Part 31. Invoicing will be based upon the certified payroll for costs incurred during the previous period, plus reimbursement for out-of-pocket expenses. Requests for reimbursement of out-of-pocket expenses must be accompanied by receipts. When applicable, these progressive or "progress" payments shall include a proportionate amount of the fixed fee.

The Sponsor's review, approval, acceptance of, or payment for, services provided under an Airport Project Contract shall not be construed to operate as a waiver of any rights, claim or damage, under the Contract, or of any cause of action arising out of the contractual performance.

Semifinal Estimate
When 80% to 90% of the total cost estimate (including modifications) has been expended under the Airport Project Contract, the Consultant shall develop a detailed estimate of the dollar amount and work hours necessary to complete the work, including an explanation of where and why any overruns are anticipated to occur. If the Sponsor is satisfied that sufficient justification exists, a contract modification with a revised maximum amount may be approved.

Final Invoice
The Consultant must make a notation on the final invoice stating it is the "Final Invoice".

Payment

Upon the Sponsor's receipt and acceptance of all required deliverables and services, including but not limited to plans, reports, and documents, the Sponsor will pay the total cost as defined in the Airport Project Contract, less previous payments to the Consultant. This payment shall constitute payment in full for all acceptable work performed under the Airport Project Contract.

In the event of any termination as outlined within these ACGCs, Consultant shall be entitled to invoice the Sponsor and shall be paid, for all acceptable work performed, in accordance with said section, through the effective date of termination.

In the event that an Airport Project Contract is terminated for reasons other than indicated above, without completion of the services as specified in the Airport Project Contract, the total cost of the work completed plus, when applicable, a percentage of the Fixed Fee proportional to the amount of work completed shall constitute payment in full for the Airport Project Contract.

Maximum Amount Payable
The total estimated cost of the project shall be stipulated in the Airport Project Contract. The amount must not be exceeded without a written contract modification between the Consultant and the Sponsor. The work is to be completed as economically as possible and will be subject to review by the Sponsor.

Maximum Reimbursement
The Sponsor follows MaineDOT's policy regarding salary limits and the Consultant and Sub-consultants are required to conform to these limits. Waiver of these limits must be made in writing using the Sponsor's Wage Waiver Request Form.

No Inflation Adjustments/Interest
No payments due the Consultant shall be adjusted for inflation. No interest shall be due or payable on any payment due the Consultant, regardless of any statement on the billing invoice.

Direct Expenses
Direct expenses as defined by 48 CFR Part 31; such as telephone, tolls, reproduction costs and approved Sub-consultant(s) costs shall be billed at actual cost; mileage and per diem will be billed in accordance with the guidance set for the below. Sponsor does not allow any mark-up on direct expenses and Sub-consultant costs.

Reproduction of plans for submittal to the Sponsor shall be charged at actual costs. Any reproduction costs incurred for the Consultant's internal use is considered overhead expenses and not chargeable as a direct expense.

The reimbursable costs for mileage and per diem (lodging which requires overnight stay and meals) shall not exceed the current amount allowed by the State of Maine. This information can be found at http://www.maine.gov/mdot/cpo/index.shtml, under "Quick Links" and "Doing Business with MaineDOT".

Amounts Due the Sponsor

The Sponsor may deduct sums otherwise due the Consultant for actions inconsistent with the contract requirements. Where the sums to be deducted are more than the funds otherwise due the Consultant, the Consultant shall remit all amounts due the within thirty (30) days of demand by the Sponsor.

The Sponsor reserves the right to be reimbursed by the Consultant for the following:

1. Payment(s) made for work that fails to meet professional standards of construction engineering and inspection**;** or
2. Overpayments or incorrect payments identified by audit findings; or
3. Costs that due to actions by the Consultant, are found to be ineligible for Federal/State funding.

These reimbursements may be recovered through an action in law, or equitable or through equitable rights of set-off. The Sponsor shall promptly notify the Consultant of any such claim for reimbursement and give the Consultant full opportunity to defend itself.

Set-Off Rights

The Sponsor shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to the option to withhold for the purposes of set-off any monies due to the Sponsor under this Contract up to any amounts due and owing to the Sponsor with regard to this contract, any other Contract with Sponsor, including any Contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the Sponsor for any other contract.

Indemnity, Insurance Waiver of Subrogation

This Section contains general requirements for indemnification and insurance by the Consultant.

Indemnification

Consultant agrees to indemnify, defend, and hold harmless the Sponsor and its officers, agents and employees from any and all claims, damages, debts, demands, suits, actions, reasonable attorney fees, court costs, arbitration or other dispute resolution costs, expenses and any liabilities of every kind or nature attributable to, resulting from, or arising out of any negligent or intentional act, error, omission or breach of contract by the Consultant or Sub-consultant(s) in the performance and furnishing of services under the AGCA and/or Airport Project Contract.

This indemnification provision shall survive any termination or expiration of the GCA and/or Project Contract.

Insurance

Procured Insurance
All insurance coverage must be provided by an insurance company or companies licensed or approved to do business in the State of Maine by the Maine Bureau of Insurance. Consultant and Sub-consultant(s) shall pay all premiums and take all other actions necessary to keep required insurances in effect during such times as the AGCA and/or Airport Project Contract obligations exist. Certificates of Insurance shall be provided to the Sponsor upon execution of an AGCA or Stand-Alone Airport Project Contract and on an annual basis thereafter. A Consultant may request a waiver for insurances that may not be applicable for the work to be performed; these requests shall be submitted to the Sponsor's Request for Insurance Waiver Form.

Additional Insured
The Sponsor shall be included as an additional insured on Commercial General Liability insurance policies carried by both the Consultant and Sub-consultant(s) that are applicable to the Project.

Nothing in these General Conditions constitutes a waiver of any defense, immunity or limitation of liability that may be available to the Sponsor, or its officers, agents or employees, and shall not constitute a waiver of other privileges or immunities that may be available to the Sponsor.

Certificates of Insurance to Sponsor
Consultant shall deliver to Sponsor a signed, valid certificates of insurance proving the coverage required by this agreement, the AGCA and/or the Airport Project Contract. Such certificates shall be furnished prior to commencement of Consultant services and whenever said policies are renewed thereafter during the period of the AGCA and/or Airport Project Contract.

Commercial General Liability Insurance
The Consultant and Sub-consultant(s) shall purchase and maintain a policy of Commercial General Liability or other coverage affording equal or greater protection as determined by the Sponsor, in an amount not less than $1,000,000 per occurrence and $2,000,000 in the aggregate. Such policy shall include products and completed operations as well as contractual liability coverage.

When the work to be performed entails the use of barges, tug boats, work boats, supply boats, etc., Protection and Indemnity coverage shall be provided at the limits called for under Commercial General Liability insurance.

Professional Liability
The Consultant and Sub-consultant(s) shall purchase and maintain a Professional Liability insurance policy for errors and omissions that provides minimum liability coverage of $1,000,000.00 per claim and annual aggregate. This policy shall cover negligent acts, errors or omissions by the Consultant and Sub-consultant(s) engaged by Consultant and other any person or entity for whom the Consultant is legally liable arising out of the rendition of services pursuant to the AGCA and/or Airport Project Contract. The Sponsor reserves the right to adjust liability coverage on a project-by-project basis as it deems appropriate.

Automobile Liability
The Consultant and Sub-consultant(s) shall carry Automobile Liability insurance covering the operation of all motor vehicles including any which are rented, leased, borrowed or otherwise used in connection with the project. The limit of liability under this section shall be $1,000,000 per occurrence.

Workers' Compensation Insurance
Consultant and Sub-consultant(s) shall carry Workers' Compensation Insurance or shall qualify as a self-insurer with the State of Maine Workers' Compensation Board, all in accordance with the requirements of the laws of the State of Maine. When maritime exposures exist, coverage should be arranged to include United States Long Shore and Harbor Workers coverage.

When Required:

Pollution Liability
In the event that any disruption, handling, abatement, remediation, encapsulation, removal, transport, or disposal of contaminated or hazardous material is required, the Consultant or its Sub-consultant shall secure a Pollution Liability policy in addition to any other coverages required. The insurance shall be provided on an occurrence based policy and shall remain in effect for the duration of the Project. Minimum acceptable limit is $1,000,000 per occurrence.

Railroad Protective Liability
When working adjacent to a railroad, the Consultant and its Sub-consultants shall carry Railroad Protective Liability Insurance, as required by the Railroad.

Claims

Each insurance policy shall include a provision requiring the insurer to investigate and defend all named insured's against any and all claims for death, bodily injury or property damage, even if groundless.

Compliance

The Consultant shall be in compliance with this section provided they:

a. Procure coverage under one policy of insurance covering all risks arising out of performance of the Airport Project Contracts; or
b. Procure separate insurance policies to cover all risks arising out of performance of the Airport Project Contract. In either case, a Certificate of Insurance must be filed for each policy indicating that all required insurance has been obtained.
c. Agree to provide, upon request, a copy of their insurance policy.

Default, Termination or Suspension

Grounds for Default

The Consultant is in default of the Airport Project Contract if the Consultant:

a. Fails to promptly begin the work under the Airport Project Contract after being authorized to proceed; or
b. Fails to perform the work with sufficient labor, equipment, or materials to assure the timely completion of the work; or
c. Fails to meet standards of performance as outlined in this document; or
d. Discontinues the performance of the work without Sponsor approval; or
e. Continues to perform work outside the contract period or after receipt of instructions from the Sponsor directing that work be stopped; or
f. Fails to resume work that has been suspended as required by the Airport Project Contract; or
g. Becomes insolvent or is declared bankrupt or files for bankruptcy; or
h. Allows any final judgment to stand against the Consultant unsatisfied for a period of ten (10) days; or
i. Makes an assignment for the benefit of creditors without authorization by the Sponsor; or
j. In any other manner, fails to perform the work in Substantial Conformity with any material provision of the AGCA and/or Airport Project Contract; or
k. Fails to comply with these ACGCs and related Appendices.

Notice of Default / Cure
Except as otherwise provided in these ACGCs, upon the occurrence of a default, the Sponsor will give a written Notice of Default to the Consultant and elect its remedies as set forth below. Any delay by the Sponsor in providing a written Notice of Default shall in no way constitute a waiver by the Sponsor of any provision of the AGCA and/or Airport Project Contract. If the Sponsor determines the default is not curable, the Notice of Default shall also include the date of termination.

Termination

The Sponsor may, by written order to the Consultant, terminate the AGCA and/or Airport Project Contract as provided in this section. Termination of the AGCA and/or Airport Project Contract or portion thereof shall not relieve the Consultant of its contractual responsibilities for the work completed prior to termination.

For Cause
The Sponsor may terminate the AGCA and/or the Airport Project Contract for cause due to the occurrence of one or more of the events of default set out in this section if the Consultant fails to effect a timely cure of all defaults identified in the Notice of Default within the fourteen (14) days from the date of the Notice (the “Cure Period”). The Sponsor, in its sole discretion, may extend the Cure Period if the Consultant has initiated good faith efforts to cure said default(s) and requires a reasonable amount of additional time to complete the cure. If the Consultant fails to cure the default(s) specified in the Notice of Default within the Cure Period or any extensions thereof, the Sponsor may immediately terminate the AGCA and/or Airport Project Contract for cause by written Notice of Termination for Cause. In this event, any or all Consultant products are the sole property of the Sponsor, and the Sponsor may enter into an agreement with another entity for the completion of the Work, or use such other methods as in the opinion of the Sponsor are required for the completion of the intent of the Airport Project Contract in an acceptable and timely manner.

The Sponsor shall pay for all accepted items of work performed prior to the date of termination at prices determined by the Sponsor. The Consultant shall make all project records available to the Sponsor upon request regarding payment under this section. All costs and charges incurred by the Sponsor, together with the cost of completing the work specified in the Airport Project Contract, shall be deducted from amounts otherwise due the Consultant. If such expenses exceed the sum that would have been payable under the AGCA and/or Airport Project Contract, then the Consultant is liable and shall pay to the Sponsor the amount of such excess within thirty (30) days of the delivery of a statement setting forth such expenses to the Consultant, as applicable.

If the Consultant files for bankruptcy at any time before expiration of the AGCA and/or Airport Project Contract, then the Consultant agrees, if requested by the Sponsor and within thirty (30) days of such request, to take all actions necessary or convenient to reject or accept the AGCA and/or Airport Project Contract under the executory contract provisions of the federal bankruptcy code. Upon termination for cause, the Sponsor may, at its discretion, terminate the AGCA and/or Airport Project Contract.

For Convenience
The Sponsor may terminate the AGCA and/or Airport Project Contract for convenience or for any reason that is in the best interest of the Sponsor. Terminations for reasons beyond the control of the Consultant are terminations for convenience. The Sponsor shall notify the Consultant of such terminations by sending a Notice of Termination for Convenience.

In case of a Termination for Convenience, the Sponsor shall pay for all accepted items of work as of the date of termination at agreed upon prices. The Consultant shall make all project records available to the Sponsor upon request regarding payment under this section. Acceptable materials, obtained by the Consultant for the work but which have not been incorporated therein, may at the option of the Sponsor be purchased from the Consultant at actual cost and shall be delivered by the Consultant to a prescribed location or otherwise disposed of as mutually agreed.

After receipt of Notice of Termination for Convenience from the Sponsor, the Consultant may also submit a claim for additional damages or costs not covered above or elsewhere in the Airport Project Contract to the Project Manager within sixty (60) days of the effective termination date. Such claim may include such cost items as project investigative costs, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, Sub-consultant(s) costs not otherwise paid for, idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the Airport Project Contract, and any other cost or damage item for which the Consultant reasonably believes reimbursement should be made. In no event, however, shall loss of anticipated profits be considered as part of any settlement.

The Sponsor shall respond in writing to such claim within sixty (60) days of receipt.

Right to Suspend Work

The Sponsor has the right to suspend any or all work at any time for any reason as it deems necessary. Consultant may receive payment for the portion of services completed through the date of suspension.

Copyright and Licenses

Requirements for Registration of Designers

Design of services under an Airport Project Contract regulated by Maine State Law shall be done or reviewed, approved and stamped by an employee of Consultant or Sub-consultant(s) who performed or supervised preparation of same and who has the appropriate registration or license governing the scope of services in the Airport Project Contract.

Patents and Copyrights

Data, and publication rights to any documents, produced under the terms of an AGCA and/or Airport Project Contract are reserved by the Sponsor. The Consultant shall not copyright the material produced under the terms of the AGCA and/or Airport Project Contract without written approval of the Sponsor, except to the extent necessary to protect its rights pursuant to the following paragraph.

The parties to an AGCA and/or Airport Project Contract mutually agree that, if patentable discoveries, intellectual property and software, or inventions should result from work described therein, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. However, the Consultant agrees to and does hereby grant to the Sponsor and the United States Government an irrevocable, nonexclusive, nontransferable, and royalty free license to use any such invention in the future on any project.

The Consultant shall indemnify and hold harmless the Sponsor and any affected third party or political subdivision from all claims of infringement that arise from use of any patented or copyrighted items provided by the Consultant.

Claims and Disputes

General

To preserve any claim arising out of the AGCA and/or the Airport Project Contract, the parties shall comply with and exhaust all provisions of this Section. Unless otherwise agreed in writing, the Consultant shall continue to perform its services during any dispute resolution process. If the Consultant continues to perform, the Airport shall continue to make payments in accordance with the AGCA and/or Airport Project Contract of amounts not in dispute.

Negotiation with Sponsor

The Consultant shall promptly notify the Sponsor, or their designee, in writing of disputes that could significantly affect scope, schedule or compensation. After such notice, the Consultant and the Sponsor shall promptly negotiate in good faith to resolve the dispute. The Sponsor will promptly issue a decision.

Dispute Resolution

If the parties are unable to resolve the dispute through mediation, the parties may agree to binding arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association or seek judicial review through a civil action commenced in the Superior Court of Maine, in the county of the Sponsor's choice.

Miscellaneous Provisions

Environmental

Historic and Archeological Considerations
Unless otherwise expressly provided in the Contract, the Consultant may assume that the Project has no effect upon any site of historic or archaeological significance, as identified by the National Historic Preservation Act of 1966 and the Archaeological and Historic Preservation Act of 1974.

If the Consultant discovers any object of potential archaeological, paleontologic, or other historic interest, all work that could disturb said object shall immediately cease and shall not be resumed until an investigation of the object and related deposits have been completed and the removal of articles of interest has been accomplished. Should such a deposit be discovered, the Consultant shall immediately notify the Sponsor or its designee. The first indication of archaeological deposits may be the burial grounds or campsites of Native Americans that reveal the bones of the dead and people's implements. The first indications of paleontologic deposits may be the exposure of marine fossils or shells found mainly in clay deposits. Indications of deposits of more recent historic interest may be the exposure of dumps in landfill areas, abandoned campfire sites, and building foundations.

The Consultant is hereby notified of a Maine statute, 27 MRSA §371, which states that artifacts, specimens, and material which are public property by virtue of having been found on, in, or beneath State controlled lands, and places ownership of the same in the State of Maine.

Hazardous Environmental Condition
The Sponsor shall give prompt written notice whenever it observes or otherwise becomes aware of a hazardous environmental condition that affects the Project.

If a Consultant or Sub-consultant(s) suspects that a Hazardous Environmental Condition exists, Consultant or Sub-consultant(s) shall <u>immediately</u> notify the Sponsor or its designee. This notice requirement does not create a duty or obligation for the Consultant to discover any such condition unless that duty is established by the Airport Project Contract.

Laws and Regulations

All work shall conform to <u>all</u> applicable laws and regulations of the federal government and the State of Maine.

Entire Agreement/Binding Effect/Modification/Assignment

The Sponsor and the Consultant including their partners, successors, executors, administrators and legal representatives of Sponsor and Consultant (and to the extent permitted by the AGCA, the assigns of Sponsor and Consultant) are hereby bound to each other with respect to all covenants, agreements and obligations of the AGCA and/or Airport Project Contract.

Neither Sponsor nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in the AGCA and/or Airport Project Contract without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written Consent To An Assignment, no assignment shall release or discharge the assignor from any duty or responsibility under the AGCA and/or Airport Project Contract.

a. Unless expressly provided otherwise in the AGCA and/or Airport Project Contract:

    i. Nothing in the AGCA and/or Airport Project Contract shall be construed to create, impose, or give rise to any duty owed by Sponsor or Consultant to any Contractor, Contractor's Sub-contractor/Sub-consultant(s), supplier, other individual or entity for or employee of any of them.

    ii. All duties and responsibilities undertaken pursuant to the AGCA and/or Airport Project Contract shall be for the sole and exclusive benefit of Sponsor and Consultant and not for the benefit of any other party.

b. No changes are to be made in the AGCA or Airport Project Contract unless they are in writing and agreed upon by both parties.

Severability

The invalidity or unenforceability of any particular provision or part thereof of this agreement shall not affect the remainder of said provision or any other provisions, and this agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

Non-Waiver

If the Sponsor fails or refuses to enforce any provision in the GCA and/or Project Contract that shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of the GCA and/or Project Contract.

Force Majeure

The Sponsor may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Sponsor may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

No Waiver

If the Sponsor fails or refuses to enforce any provision in the AGCA and/or Airport Project Contract that shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of the AGCA and/or Airport Project Contract.

Conflict of Interest

A person or entity entering into an AGCA and/or Airport Project Contract may not have any financial or other interest, other than the performance of the AGCA and/or Airport Project Contract, in the project or in its outcome. This prohibition includes, without limitation, (a) any agreement with, or other interest involving, third parties who have an interest in the outcome of the project that is the subject of the AGCA and/or Airport Project Contract; (b) any agreement providing incentives or guarantees of future work on the project or related matters; and (c) any interest in real property acquired for the project unless such real property interest is openly disclosed to the Sponsor before the person or entity entered into the Airport Project Contract.

a. This section prohibits all conflicts of interest both at the time the contracting party enters into an AGCA and/or Airport Project Contract and during the life of an AGCA and/or Airport Project Contract.
b. This section prohibits situations involving an actual conflict of interest and those creating an appearance of a conflict of interest. The Sponsor may waive this prohibition or impose curative modifications on the scope of any AGCA or Airport Project Contract between the person or entity and the Sponsor to eliminate the conflict or the appearance of a conflict.
c. A Consultant involved in the preparation of information that shall be used or considered in evaluations under the National Environmental Policy Act shall, by virtue of signing the AGCA and/or Airport Project Contract, attest that Consultant (a) has no financial or other interest in, or commitment for, any future contract related to the design or construction of the project or any of its alternatives, (b) has no financial or other interest in said project or its alternatives, or any part thereof, and (c) has no other interest which, under applicable law, would prohibit the selection of said Consultant to prepare an Environmental Assessment, Environmental Impact Statement, or other environmental documents for the project.
d. All determinations made under this section shall be left at the sole discretion of the Sponsor.

Abbreviations / Definitions

Abbreviations

Abbreviations are defined in the following list. Abbreviations not defined in this Section or otherwise in the Airport Project Contract shall have the meaning that is commonly accepted in the engineering and construction industry.

AASHTO	American Association of State Highway and Transportation Officials
AGCA	Airport General Consultant Agreement
AIP	Airport Improvement Program
BAFO	Best and Final Offer
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
MaineDOT	Maine Department of Transportation
MRSA	Maine Revised Statutes Annotated
MUTCD	Manual on Uniform Traffic Control Devices
NEPA	National Environmental Policy Act
OSHA	Occupational Safety and Health Administration
PIN	Project Identification Number
P.L.	Public Law
QBS	Qualifications Based Selection
RFP	Request for Proposal
RFQ	Request for Qualifications
SAIP	State Aid Improvement
USC	United States Code

Definitions

Airport Consultant General Conditions (ACGC). General terms, conditions, and procedures that govern how the work will be performed or furnished by Consultant with respect to any Project. ACGC normally apply to all contracts of the issuing Sponsor. These are different from Special Provisions which would only apply to an individual contract for a specific type of work.

Airport General Consultant Agreement (AGCA). The AGCA is an agreement that places the Consultant "on call" for a specific service, for a specified ordering period, up to a maximum dollar amount. The AGCA does not obligate Sponsor to acquire services from a selected firm, nor does it specify overhead rates, unit price or amounts. These are specific to the individual Airport Project Contracts negotiated under the AGCA.

Airport Project Contract (APC). A written binding agreement between the Sponsor and the Consultant relating to a specific task or project with a defined scope of work and compensation negotiated pursuant to the Airport General Conditions. Airport Project Contracts can be "stand-alone" or negotiated under the umbrella of a general multi-year Airport General Consultant Agreement (AGCA).

Airport Improvement Project Numbers (AIPN). A number assigned by FAA that identifies the project.

As-Built Drawings. The drawings as issued for construction on which the construction contractor upon completion of the work has shown changes due to contract modifications (Change Orders and Supplemental Agreements), actual site conditions, and other information which Sponsor considers to be significant.

Brooks Act. The law that establishes federally mandated procedures for the Qualifications Based Acquisition (QBA) of consultant services. It outlines requirements and procedures for awarding Professional Architect & Engineering contracts.

Consultant. An individual or firm under contract to provide non-construction professional services for the Sponsor.

Cost Plus Fixed Fee. A cost reimbursement payment method. The Consultant is reimbursed for the actual, supportable, cost incurred including salaries, overhead, and direct expenses. In addition the Consultant is paid an agreed-upon amount for a fixed fee (profit), based on the actual scope of work, including degree of risk, relative difficulty, size of job, and period of performance. This type of payment is suitable when the scope of work is fairly well defined.

Detailed Scope of Services or Work. A clear, accurate, and detailed description of; the technical requirements for the services to be rendered, how the work must be conducted, how achievements will be assessed, and the obligations of both the Consultant and Sponsor.

Deliverables. Something of value that a Consultant delivers to the Sponsor in exchange for consideration from the Sponsor pursuant to the terms of an AGCA or an Airport Project Contract.

Direct Expenses. Direct expenses as defined by 48 CFR Chapter 1, Part 31; such as telephone, tolls, reproduction costs, per diem and approved Sub-consultant(s) costs shall be billed at actual cost. The reimbursable costs for mileage and per diem (lodging which requires overnight stay and meals) shall not exceed the current amount allowed by the State of Maine. This information can be found at http://www.maine.gov/osc/travel/.htm. Reproduction of plans for submittal to the Sponsor shall be charged at actual costs. Any reproduction costs incurred for the Consultant's internal use is considered overhead expenses and not chargeable as a direct expense. Sponsor does not allow any mark-up on direct expenses and Sub-consultant costs.

Effective Date of an Airport General Consultant Agreement or Airport Project Contract. The date indicated in the Agreement or Contract on which it becomes effective, but if no such effective date is indicated, it means the date on which the Agreement or Contract is signed by the last of the two (2) parties to sign.

Final Audit. The audit performed by the Sponsor after the expiration of a contract. The main purpose of the audit is to review final invoicing and determine the project's actual indirect cost rate for final payment.

Hourly Rate. The negotiated hourly rate accepted by the Airport for performance of work for the duration of the Contract as outlined in said Contract.

Indirect Expense. An expense that is incurred for an entire business enterprise as a unit that cannot be traced directly to a project.

Lump Sum. A negotiated payment method. It provides for a price; which included all salaries, overhead, profit, and other project expenses, that is not subject to any adjustments because of cost changes the Consultant might encounter in the performance of the work. This method is used when the Scope of Work is clear and well defined, and the total cost can be estimated accurately.

Notice to Proceed. A written notice from the Sponsor to the Consultant stating the date the Consultant can begin work subject to the conditions of the contract. The performance time of the contract starts from the Notice to Proceed date.

Overhead Costs. (or indirect expenses) are costs that may benefit or are associated with two (2) or more business activities, but are not specifically allocated to a specific project. Overhead differs from general and administrative costs in that these costs can be associated with a unit based on benefit. Some examples of overhead costs are rent, depreciation, employee recruitment and training, and general or professional insurance policy costs.

Pre-execution Review. A financial review of a Consultant's accounting records which is conducted prior to contract execution. The review includes but is not limited to the verification of insurance, and the supportability of overhead rates, and payroll.

Project. Any unit of work or study for which a Consultant selection is made and a Contract entered into.

Project Manager. An employee of the Sponsor assigned the responsibility for managing project scope, budget, and schedule.

Proposal. An offer as part of a negotiation made by a Consultant to the Sponsor in reply to a Request for Proposal (RFP) which forms the technical and price basis when entering into a mutually binding contract.

Provisional Overhead Rate. The amount of compensation due to a Consultant for an initial period of time following the execution of a contract. This rate is typically increased or decreased as a result of the Sponsor's Final Audit.

Rates. The rate paid a Consultant for performance of work.

Request for Proposal (RFP). The Sponsor initiates a request to a Consultant or group of Consultants for a proposal or offer to perform a specific Scope of Work.

Request for Qualifications (RFQ). The Sponsor's request to the Consultant community requesting an outline of the firm's ability to provide Consultant and professional services in a particular area of need, discipline or service.

Special Provision. A provision unique to an agreement or contract which supersedes any inconsistent or conflicting clause in the ACGC. Special Provisions shall be identified in the AGCA or the Airport Project Contract.

Specifications. That segment of the contract documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship to be applied to the work and administration of same.

Sponsor. Airport owner or formally assigned entity who is responsible legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants and other obligations that are contained in the AIP project applications and grant agreement forms.

State Aid Improvement Project Number (SAIPN). A number assigned by the State of Maine that identified state funded project (no federal funds).

Sub-consultant. Individual or entity having a contract with Consultant to furnish services with respect to this Project as Consultant's independent professional associate, Consultant, Sub-consultant, or vendor.

Substantial Completion. The time at which the work (or a specified portion thereof) has progressed to the point as determined by the Sponsor is sufficiently complete to be utilized for the purpose for which it is intended.

GENERAL CONSULTANT CONDITIONS

Schedule of Exhibits (Appendices)

APPENDIX A

A1 – Notice of Consultants Compliance with Title VI of the Civil Rights Act of 1964 for Federal Aid Contracts.

During the performance of an AGCA and/or Airport Project Contract, the Consultant, for itself its assignees and successors in interest (hereinafter referred to as the "Consultant") agree as follows:

a. Compliance with Regulations: The Consultant shall comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21 through Appendix H and Title 23, Code of Federal Regulations 710.405 (b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The Consultant, with regard to the work performed by it after award and prior to the completion of the contract work, shall not discriminate on the ground of race, color or national origin in the selection and retention of Sub-consultants, including procurements of materials and leases of equipment. The Consultant 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 Subcontract, Including Procurements of Material and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of services, material or equipment, each potential Sub-consultant or supplier shall be notified by the Consultant of the Consultants obligations under this contract and the regulations relative to nondiscrimination on the ground of race, color, or national origin.

d. Information and Reports: The Consultant shall provide all information and reports required by the regulations, or orders and instructions 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 state highway agency or the FHWA/FAA/FTA to be pertinent to ascertain compliance with such regulations, orders and instructions.

   Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the state highway agency or the FHWA/FAA/FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the state highway agency shall impose such contract sanctions as it or the FHWA/FAA/FTA may determine to be appropriate, including but not limited to:

i. withholding of payments to the Consultant until the Consultant complies and/or
ii. cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The Consultant shall include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The Consultant shall take action with respect to any subcontract or procurement as the state highway agency or the FHWA/FAA/FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Consultant becomes involved in or is threatened with, litigation with a Sub-consultant or supplier as a result of such direction, the Consultant may request the state to enter into such litigation to protect the interests of the state; and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

Maine Revised Statutes
Part 2: CIVIL SERVICE
Chapter 65: CODE OF FAIR PRACTICES AND AFFIRMATIVE ACTION HEADING: PL 1975, C. 153, §1 (NEW)

784. State action and contracts

1. **State action.** No agency or individual employee of the State or state related agencies will discriminate because of race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap while providing any function or service to the public, in enforcing any regulation, or in any education, counseling, vocational guidance, apprenticeship and on-the-job training programs. Similarly, no state or state related agency Contractor, Sub-contractor, or labor union or representative of the workers with which the contractor has an agreement, will discriminate unless based on a bona fide occupational qualification. State agencies or related agencies may withhold financial assistance to any recipient found to be in violation of the Maine Human Rights Act or the Federal Civil Rights Act. Any state agency or related agency shall decline any job order carrying a specification or limitation as to race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap, unless it is related to a bonafide job requirement. [1985, c. 388, §2 (AMD).]
2. **Public contracts.** Every state or state related agency contract for public works or for services shall incorporate by reference the following provisions: "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, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. [1985, c. 388, §2 (AMD).]
   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, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap. [1985, c. 388, §2 (AMD).]
   c. The contractor will send to each labor union or representative of the workers with which he has a collective or bargaining agreement, or other contract or understanding, whereby he is furnished with labor for the performances of his contract, a notice, to be provided by the contracting department or agency, advising the said labor union or workers' representative of the contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment. [1975, c. 153, §1 (NEW).]
   d. The contractor will cause the foregoing provisions to be inserted in all contracts for any work covered by this agreement so that such provisions will be binding upon each Sub-contractor. [1975, c. 153, §1 (NEW).]
   e. Contractors and Sub-contractors with contracts in excess of $50,000 will also pursue in good faith affirmative action programs. [1991, c. 807, §1 (NEW).]
   f. [1991, c. 807, §1 (AMD).]SECTION HISTORY 1975, c. 153, §1 (NEW). 1985, c. 388, §2 (AMD). 1991, c. 807, §1 (AMD).

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A2 – Federal EEO and Civil Rights Requirements

Unless expressly otherwise provided in the Contract Documents, the provisions contained in this Section 2 of this "Federal Contract Provisions Supplement" are hereby incorporated into the Contract Documents.

1. **<u>Nondiscrimination & Civil Rights</u>** - Title VI

The Consultant and its Sub-consultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Sponsor deems appropriate. The Consultant and Sub-consultants shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with all State of Maine and other Federal Civil Rights laws.

For related provisions, see Subsection B - "Nondiscrimination and Affirmative Action - Executive Order 11246" of this Section 2 and Section 3 - Other Federal Requirements of this "Federal Contract Provisions Supplement" including section II - "Nondiscrimination" of the “Required Contract Provisions, Federal Aid Construction Contracts”, and or FHWA-1273.

2. **<u>Nondiscrimination and Affirmative Action - Executive Order 11246</u>**

Pursuant to Executive Order 11246, which was issued by President Johnson in 1965 and amended in 1967 and 1978, this Contract provides as follows.

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

a. Ensure and maintain a working environment free of harassment, intimidations, and coercion at all sites, and in all facilities at which the Consultant’s employees are assigned to work. The Consultant, where possible, shall assign two or more women to each construction project. The Consultant shall specifically ensure that all forepersons, superintendents, and other on-site supervisory personnel are aware of and carry out the Consultant’s obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Consultant or its union have employment opportunities available, and to maintain a record of the organization’s responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Consultant by the union or, if referred, not employed by the Consultant, this shall be documented in the file with the reason therefore, along with whatever additional actions the Consultant may have taken.

d. Provide immediate written notification to the Sponsor when the union(s) with which the Consultant has a collective bargaining agreement has not referred to the Consultant a minority person or woman sent by the Consultant, or when the Consultant has other information that the union referral process has impeded the Design-Builder's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Consultant's employment needs, especially those programs funded or approved by the Department of Labor. The Consultant shall provide notice of these programs to the sources compiled under B above.

f. Disseminate the Consultant's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Consultant in meeting its EEO obligation; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Forepersons, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Consultant'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 Consultant's EEO policy with other Consultant's and Sub-consultants with whom the Consultant does or anticipates doing business.

i. Direct its recruitment efforts, both orally and written to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Consultant's recruitment area and employment needs. Not later that one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Consultant shall send written notification to organizations such as the above describing the openings, screenings, procedures, and test to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth, both on the site and in other areas of a Consultant's workforce.

k. Validate all tests and other selection requirements.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Consultant's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Consultant's and suppliers, including circulation of solicitations to minority and female Consultant associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Consultant's EEO policies and affirmative action obligations.

3. **<u>Disadvantaged Business Enterprise (DBE) Requirements</u>**

The Sponsor has established an annual Disadvantaged Business Enterprise goal to be achieved through race neutral means. This goal shall adjust periodically and shall be provided by Supplemental Provision. Unless otherwise specifically provided in the Contract, there are no specific percentage requirements for use of DBEs for individual construction contracts.

The Consultant shall comply with all provisions of this section regarding DBE participation and the Sponsor's latest version of the Disadvantaged Business Enterprise Program Plan, said Plan being incorporated herein by reference. In the case of conflict between this Contract and said Plan, this Contract shall control. The Sponsor reserves the right to adjust DBE goals on a project-by-project basis by addendum.

<u>DBE Program Requirements</u>

<u>Policy:</u> It is the Sponsor's policy that DBEs as defined in 49 CFR Part 26 revised 2005, and referenced in the Transportation Equity Act for 21st Century of 1998, as amended from the Surface Transportation Uniform Relocation Assistance Act of 1987, and the Intermodal Surface Transportation Efficiency Act of 1991. The intent hereto remains to provide the maximum opportunity for DBEs to participate in the performance of contracts financed in whole or in part with federal funds.

The Sponsor and its Consultant shall not discriminate on the basis of race, color, national origin, ancestry, sex, age, or disability in the award and performance of DOT assisted contracts.

Disadvantaged Business Enterprises are those so certified by the Maine Department of Transportation's Civil Rights Office prior to bid opening date.

The Sponsor has determined that elements of a good faith effort to meet the contract goal include but are not limited to the following:

a. Whether the Consultant advertised in general circulation, trade association, and minority/women's-focus media concerning the sub-contracting opportunities;

b. Whether the Consultant provided written notice to a reasonable number of specific DBEs that their interest in the contract is being solicited;

c. Whether the Consultant followed up on initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;

d. Whether the Consultant selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals;

e. Whether the Consultant provided interested DBEs with adequate information about the plans, specification and requirements of the contract;

f. Whether the Consultant negotiated in good faith with interested DBEs, not rejecting the DBE as unqualified without sound reasons based on a thorough investigation of their capabilities;

g. Whether the Consultant made efforts to assist interested DBEs with other appropriate technical/financial assistance required by the Sponsor or Consultant;

h. Whether the Consultant effectively used the services of available minority/women's community organizations, minority/women's business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

Substitutions of DBEs: The following may be acceptable reasons for the Sponsor's approval of such a change order:

- The DBE defaults, voluntarily removes itself;
- The Sponsor deletes portions of the work to be performed by the DBE.

It is not intended that the ability to negotiate a more advantageous contract with another certified DBE or Sub-contractor be considered a valid basis for such a change in DBE utilization once the DBE has an executed signed subcontract.

Failure to carry out the terms of this Standard Specification shall be treated as a violation of this contract and shall result in contract sanctions which may include withholding of partial payments totaling the creditable dollars amount which would have been paid for said DBE participation, termination of this contract or other measures which may affect the ability of the Consultant to obtain Sponsor contracts.

Copies of the Maine Department of Transportation's list of certified consultants may be obtained from:

Maine Department of Transportation
Civil Rights Office
#16 State House Station
Augusta, Maine 04333-0016
Tel. (207) 624-3066

or from their website at: www.maine.gov/mdot/disadvantaged-business-enterprises/dbe-home.php

APPENDIX B

Procurement and Contracting Under AIP - Federal Contract Provisions

Procurement and Contracting Under AIP

Contents **Federal Contract Provisions**

Procurements made under the AIP must comply with required Federal provisions established by various laws and statutes. The requirements for the provisions will vary depending on the type and size of the procurement action. Typically, procurement actions under the AIP fall within three categories: (1) Construction Development, (2) Equipment Acquisitions, and (3) Professional Services (A/E) Contracting. Application of a certain provision also depends on established contract dollar thresholds. Note that additional provisions are required in each category of Sponsor contracts if several contract dollar thresholds are exceeded. These additional provisions are listed following the general provisions that apply to each category of contract.

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Construction Contracts

Provisions for all Construction Contracts

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http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/

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Buy American Preference - Title 49 U.S.C, Chapter 501 (Program Guidance Letter 10-02) (PDF) (posted 3/9/2010) Equipment Meeting Buy American Requirements (as of 8/6/2010) (MS Excel) (posted 8/10/2010) Foreign Object Debris (FOD) Detection Equipment Request for Qualifications (PDF) (posted 8/10/2010) Percent Calculation Worksheet (MS Excel) (posted 8/10/2010) Civil Rights Act of 1964, Title VI (MS Word) - Contractor Contractual Requirements - 49 CFR Part 21 Airport and Airway Improvement Act of 1982, Section 520 (MS Word) - Title 49 U.S.C. 47123 Disadvantaged Business Enterprise (MS Word) - 49 CFR Part 26 Lobbying and Influencing Federal Employees (MS Word) - 49 CFR Part 20 Access to Records and Reports (MS Word) - 49 CFR Part 18.36 Energy Conservation (MS Word) - 49 CFR Part 18.36 Breach of Contract Terms (MS Word) - 49 CFR Part 18.36 Rights to Inventions (MS Word) - 49 CFR Part 18.36 Trade Restriction Clause (MS Word) - 49 CFR Part 30

Additional Provisions for Equipment Contracts Exceeding $10,000

Termination of Contract (MS Word) - 49 CFR Part 18.36

Additional Provisions for Equipment Contracts Exceeding $25,000

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Part 29 **Additional Provisions for Equipment Contracts Exceeding $100,000**

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Professional Services (A/E) Contracts Provisions for all A/E Contractshttp://www.faa.gov/airports/aip/procurement/federal_contract_provisions/
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Civil Rights Act of 1964, Title VI (MS Word) - Contractor Contractual Requirements - 49 CFR Part 21 Airport and Airway Improvement Act of 1982, Section 520 (MS Word) - Title 49 U.S.C. 47123 Disadvantaged Business Enterprise (MS Word) - 49 CFR Part 26 Lobbying and Influencing Federal Employees (MS Word) - 49 CFR Part 20 Access to Records and Reports (MS Word) - 49 CFR Part 18.36 Breach of Contract Terms (MS Word) - 49 CFR Part 18.36 Rights to Inventions (MS Word) - 49 CFR Part 18.36 Trade Restriction Clause (MS Word) - 49 CFR Part 30

Additional Provisions for A/E Contracts Exceeding $10,000

Termination of Contract (MS Word) - 49 CFR Part 18.36 **Additional Provisions for A/E Contracts**

Exceeding $25,000

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (MS Word) - 49 CFR Part 29 http://www.faa.gov/airports/aip/procurement/federal contractprovisions/

Guidance for Buy American on Airport Improvement Program (AIP) or American Recovery and Reinvestment Act (ARRA) projects.

In accepting AIP or ARRA funding, grant recipients are certifying that they will not acquire (or permit any contractor or Sub-contractor) to use any steel or manufactured products produced outside the United States on any portion of the project for which funds are provided, unless otherwise approved by the FAA. Therefore, for the AIP or ARRA funded portion of a project, grant recipients must either:

1. Certify, in writing, all products are wholly produced in the US of US materials, or
2. Request a waiver to use non-US produced products, or
3. Certify that all equipment that is being used on the project is on the Nationwide Buy American conformance list.

The AIP funded portion of a project includes the grant recipient's local share.

Types of Waivers

There are four types of waivers to Buy American:

1. Public interest waiver;
2. Insufficient quantity AND quality for ARRA (AIP projects allow waivers for insufficient quantity OR quality);
3. 60% or more of the components and subcomponents in the facility or equipment are of US origin and final assembly is in the US; or
4. Applying Buy American increases the cost of the overall project by more than 25%.

Many pieces of equipment are constructed with some non-US produced components or subcomponents. Therefore, it is expected that the majority of grants will have waivers issued unless the project is constructed of materials that already have a nationwide waiver.

Nationwide Waiver

Much of the equipment that is frequently used on AIP or ARRA projects has been reviewed by FAA Headquarters and a nationwide waiver has been issued. The Nationwide Buy American conformance list is posted on the www.faa.gov website at the following address:

> http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/ by clicking the tab, "Equipment Meeting Buy American Requirements"

If the equipment is on the nationwide waiver list, no additional waiver is required.

Who can Issue Waivers

Only FAA headquarters may issue waivers for reasons 1 and 2. FAA field offices (Regional Offices and/or Airports District Offices) may issue waivers for reasons 3 and 4.

For block grant state projects, the FAA must issue the waivers. Block grant states are not allowed to issue a waiver.

Defining the Project, Facility and Equipment, and Final Assembly Location in the 60%/US final assembly waiver

The waiver can be considered if "at least 60% of the cost of the components and subcomponents in the **facility or equipment** are produced in the United States and the final assembly of the facility or equipment has occurred in the United States." The correct application of the terms is discussed below.

Project
The **"Project"** is generally the project that is being bid. The "Project" does not extend over multiple grants or phases, even though the overall project may be phased or may be built in multiple bid packages.

Facility or Equipment
- For a building, the portion of the building that is being funded under the AIP or ARRA grant is the "**facility**" listed in the waiver.

- For other projects, the bid items as described in the latest edition of FAA Advisory Circular 5370-10 will generally be the "**equipment**" referred to in the waiver except for airfield electrical equipment.

- For airfield electrical equipment, the "L-" items listed in the Addendum to FAA Advisory Circular 5345-53C, latest edition will generally be the "**equipment**" referred to in the waiver.

- For a vehicle or single piece of equipment like a snow plow or ARFF vehicle, the single vehicle itself is the "**equipment**."

Final Assembly Location and Labor Exclusion
Final assembly is the substantial transformation of the various components and subcomponents into the equipment. For a building, the final assembly is actual construction of the building.

- For any project other than a building project, the final assembly location is the location where the equipment is assembled, **not the project site itself**.

- For a building, the final assembly location is the airport building site.

In any calculation of Buy American percentage, the labor for the final assembly is excluded. This is because the Buy American statute is based on the cost of materials and equipment, not labor. For a building, this means that only the costs of the materials as they are delivered to the airport site are considered when calculating US and non-US component and subcomponent costs. For equipment, the costs of the final assembly at the manufacturing site are excluded.

Common Materials that are waived or excluded from Buy American - Cement, Concrete, Asphalt and Steel

Cement and concrete is excluded from the Buy American preference requirements (although the steel used for reinforcement, ties, stirrups, etc. must meet Buy American.)

Asphalt and other petroleum products are waived as an excepted item under AMS Guidance T3.6.4.1.e: Foreign Acquisition - Definitions identifying Asphalt as a petroleum product.

Steel is specifically identified in the statute. Therefore, all rebar and discrete, identifiable steel components must be manufactured in the United States.

FAA Waiver

After the FAA has determined that the final assembly location is in the US and the percent of US components and subcomponents is above 60%, a waiver may be issued. **The waiver is for the single project - not a nationwide waiver**.

What Information is required to Issue a Waiver (AIP and ARRA) and for the Federal Register Notice (ARRA)

For waiver type 3, a waiver can be considered if "at least 60% of the cost of the components and subcomponents in the **facility or equipment** are produced in the United States and the final assembly of the facility or equipment has occurred in the United States."

Grant recipients must request waivers from FAA in writing, with sufficient supporting information. Grant recipients are responsible for ensuring their waiver request is complete and accurate using project specific information provided directly by the contractor or the contractor's supplier.

The FAA will conduct its review and approval based on the information provided by the grant recipient.

The information that must be provided for either equipment or for a building:

- Project Number
- Project Name
- Airport Name
- Total Project Cost
- Total Equipment or Bid Item Cost for which the waiver is being requested
- Total Equipment or Bid Item Cost excluding labor for final assembly.

For equipment, the following additional information is required:

- The equipment or bid item for which the waiver is being requested
- The manufacturer and country of origin of the equipment or bid item.
- The location of the final assembly of the equipment or bid item (not the airport site)

- The cost of the US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The cost of the non-US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The resulting percent of US and non-US components

For a building, the following additional information is required:

- The building (called the facility in the Buy American statute) for which the waiver is being requested
- The manufacturer and country of origin of the US and non-US materials that will be used in the building,
- For a building, the location of the final assembly is the airport site
- The cost of the US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The cost of the non-US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The resulting percent of US and non-US components

Grant recipients are urged to submit waiver requests as early as possible.

Waivers that are issued on ARRA projects must be included in a Federal Register notice, which will generally be published on a quarterly basis.

<u>Sample Letter of Approval of Waiver</u>:

When FAA is satisfied that a waiver may be issued based on the 60%/US final assembly criteria, a letter must be written to the airport sponsor approving the waiver. The text of the letter follows.

A copy of the letter must be forwarded to APP-500 along with a copy of the supporting documentation that was submitted by the airport for the waiver. The information used in the letter will be the basis of the Federal Register notice. The Federal Register notice may include copies of the waiver letters or will be a tabular listing of the waivers. Therefore, regions must forward both a *.pdf copy of the signed letter and an editable copy of the letter.

XXXX Airport
AIP-Project No. X-XX-XXXX-XX
Project Name
Waiver of Buy American Requirements

I have reviewed the request for Waiver of Buy American Requirement submitted XXX for the use of XXXXX equipment on the subject project. The information submitted by the airport for:

Item for which waiver is being issued: i.e L-831 Transformers
Manufacturer:
Final Assembly Location:

Percent US Components and Subcomponents:

The information submitted satisfies the requirement for waiver of the requirements of the Buy American per 49 USC Section 50101 based on over 60% of the cost of components and subcomponents to be used in the project being produced in the United States.

The waiver is hereby approved for use on this AIP grant project.

Common Misconceptions

- Belief that if a manufacturer is "FAA-certified" that Buy America has been satisfied. This is not true. The FAA certification certifies that technical standards have been met. However, FAA-certified equipment manufactured outside the U.S. does not meet Buy America provisions of the AIP unless a waiver has been issued.

- Misconception that the North America Free Trade Act (NAFTA) exempts equipment manufactured in Mexico or Canada from "Buy America" requirements. This is not true for AIP or ARRA projects.

Text of Buy American statute from 49 United States Code §50101

§ 50101. Buying goods produced in the United States

(a)Preference.- The Secretary of Transportation may obligate an amount that may be appropriated to carry out section 106 (k), 44502 (a)(2), or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102 (e), 48106, 48107, and 48110) of this title for a project only if steel and manufactured goods used in the project are produced in the United States.

(b)Waiver.- The Secretary may waive subsection (a) of this section if the Secretary finds that—

(1)applying subsection (a) would be inconsistent with the public interest;

(2)the steel and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(3)when procuring a facility or equipment under section 44502 (a)(2) or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102 (e), 48106, 48107, and 48110) of this title—

(A)the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and

(B)final assembly of the facility or equipment has occurred in the United States; or

(4)including domestic material will increase the cost of the overall project by more than 25 percent.

(c)Labor Costs.- In this _, labor costs involved in final assembly are not included in calculating the cost of components.

The most recent list of manufacturer's equipment that meets the Buy American Requirements (as determined by HQ) can be found on the FAA website under "Procurement and Contracting under AIP".

Foreign Object Debris (FOD) Detection Equipment Request for Qualifications

The Federal Aviation Administration recently published a notice in the Federal Register requesting information from manufacturers of FOD Detection Systems (Federal Register Vol. 75, No. 150 / Thursday, August 5, 2010 / Notices Page 47344). In order for FAA to determine whether AIP grant funds can be used for a manufacturer's FOD Detection equipment, FAA must determine whether the equipment meets the requirements of 49 USC §50101, Buy American Preferences.

Under 49 USC §50101(b)(3), the Secretary of Transportation may waive the Buy American preference requirement if the goods are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality. The Secretary has delegated this authority to the Federal Aviation Administration.

On September 30, 2009, FAA published Advisory Circular (AC) 150/5220-24, Airport Foreign Object Debris (FOD) Detection Equipment. The AC specified the requirements for FOD detection equipment at airports. A link to the Advisory Circular is here: http://www.faa.gov/airports/resources/advisory_circulars/

If FAA cannot find that there are enough USA manufacturers of FOD detection equipment to produce FOD detection equipment in sufficient and reasonable amounts, it will issue a nationwide waiver to the foreign manufacturers of FOD detection equipment that it has identified as being capable of meeting the AC requirements.

To make this determination, manufacturers of FOD detection equipment, both domestic and foreign, are requested to complete the form indicated here and prepare a letter of technical certification, and email them to Nancy.S.Williams@faa.gov by September 15, 2010.

The form "percent calculation.xls" is a spreadsheet that is filled out by the manufacturer. Using the complete FOD detection system as the Level 0 product, the manufacturer must complete the breakdown through Level 2 indicating the costs of the items and placing them in the column for either US product or non-US product. The costs listed are for materials only, no costs of labor, installation, assembly at the final manufacturing site, overhead, profit or other non-product costs may be included.

On the form, the manufacturer must indicate the city and state where the FOD detection system is manufactured. If the computer system that is used to record the data and receive the signals is a commercial off-the shelf computer system, it should not be included in the percent calculation list, however an explanatory note must be included with the form.

The second required submittal is a certification prepared by the manufacturer on the manufacturer's letterhead that the equipment listed meets the requirements of the AC. The Required Capabilities listed in the AC must be met, however the recommended capabilities that are listed in Section 3.2 c.(1)(b), Section 3.2 (c)(2) and Section 3.2 (c)(3) are not required to be included in the certification. The letter must specify whether the certification is for continuous inspection or mobile detection. The letter must be signed by a legally-responsible member of the manufacturer who can attest to the technical capabilities of the equipment.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy S. Williams, Airports Financial Assistance, APP 501, Room 619, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8822.

Company

Date:

Point of Contact (Provide address, telephone, fax, e-mail)

PRODUCT STRUCTURE Multi-Level Bill of Materials through level 2 only

Item: FAA Item Number

Total Material Cost
US Content, % [1]
Other, %_______

Address of Final Assembly Location:

						US Origin*		Other	
Level (0, 1, 2)	Part Number	Description[2]	Quantity Per Unit	Unit of Measure	Price/Unit of Measure	Price/Unit of Measure	Cost/Each	Price/Unit of Measure	Cost/Each

1. Attach Certificate of Origin, US Customs Form 434
2. Items Listed in Federal Acquisition Regulation Part 25.104 may be counted as US Origin, however should include note stating that item is exempt in 25.104

CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

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

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

1.2 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 Sub-contractors, including procurements 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.

1.3 Solicitations for Sub-contracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a sub-contract, including procurements of materials or leases of equipment, each potential contractor 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.

1.4 Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor 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.

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

a. Withholding of payments to the contractor under the contract until the contractor complies,
and/or
b. Cancellation, termination, or suspension of the contract, in whole or in part.

1.6 Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every sub-contract, including procurements 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 sub-contract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a Sub-contractor 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.

Application
Required in all contracts and sub-contracts

Reference
49 CFR Part 21
AC 150/5100-15

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

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

Application
Incorporate in all contracts funded under AIP

Reference
Airport and Airway Improvement Act of 1982, Section 520
Title 49 47123
AC 150/5100-15, Para. 10.c.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(1) No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

Application
Required in all contracts and sub-contracts

Reference
49 CFR Part 20, Appendix A

ACCESS TO RECORDS AND REPORTS

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

Application
Incorporate into all procurement contracts that funded by AIP funds

Reference
49 CFR Part 18.36(i)
FAA Order 5100.38

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§26.13) - The contractor or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The prime contractor agrees to pay each Sub-contractor under this prime contract for satisfactory performance of its contract no later than ***[specify number]*** days from the receipt of each payment the prime contractor receives from ***[Name of recipient].*** The prime contractor agrees further to return retainage payments to each Sub-contractor within [specify the same number as above] days after the Sub-contractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the ***[Name of Recipient].*** This clause applies to both DBE and non-DBE Sub-contractors.

Application
The contract assurance clause shall be incorporated verbatim. The prompt payment clause represents sample language that meets the requirements of 49 CFR Part 26.29. Recipients should refer to the language included their approved DBE program

Reference
49 CFR Part 26

ENERGY CONSERVATION REQUIREMENTS

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163)

Application
The regulation does not prescribe the language for the requirement. The above clause represents sample language that meets the intent of 49 CFR Part 18.36(i)(13)

Reference
49 CFR Part
18.36 Public
Law 94-163

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the contractor or their Sub-contractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

Application

The FAA does not prescribe the exact language to be incorporated. The above clause represents sample language that addresses the requirements of 49 CFR Part 18.36(i)(1). This provision requires grantees to incorporate administrative, contractual or legal remedies in instances where contractors violate or breach contract terms. Grantees should consult with their legal counsel to develop the appropriate clause that meets the minimum requirements of 49 CFR Part 18.36.

This provision is required in all contracts that exceed the simplified acquisition threshold, presently set at $100,000.

Reference
49 CFR Part 18.36

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.

Application
Incorporate into all procurement contracts that funded by AIP funds

Reference
49 CFR Part 18.36(i)(8)
FAA Order 5100.38

TRADE RESTRICTION CLAUSE

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

a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of theUnitedStates Trade Representative (USTR);

b. has not knowingly entered into any contract or sub-contract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor sub-contracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or sub-contractor who is unable to certify to the above. If the contractor knowingly procures or sub-contracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier sub-contracts. The contractor may rely on the certification of a prospective sub-contractor 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 Sub-contractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Sub-contractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or Sub-contractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or sub-contract 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.

Application
Incorporate into all contracts funded by AIP.

Reference
49 CFR Part 30.13
FAA Order 5100.38

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 as defined in Section 515(c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

Application
Incorporate into all construction contracts financed under the AIP program.

Reference
Title 49 U.S.C. 47112(c)
Advisory Circular 150/5100-6d

DAVIS BACON REQUIREMENTS

1. Minimum Wages

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

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

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

2 Withholding.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to David-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 Sub-contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records 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.
(ii)(A) 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 paragraph 5.5(a)(3)(i) above. 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 Sub-contractors.

(B)Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or Sub-contractor 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 paragraph (3)(i) 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 incorporated into the contract.

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

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

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

4. Apprentices and Trainees.

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

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

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

5. Compliance With Copeland Act Requirements.

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

6. Subcontracts.

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

7. Contract Termination: Debarment.

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

8. Compliance With Davis-Bacon and Related Act Requirements.

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

9. Disputes Concerning Labor Standards.

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

10. Certification of Eligibility.

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

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

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

Application
Incorporate into all construction contracts and subcontracts that exceed $2,000 and are financed under the AIP program.

Reference
29 CFR Part 5.5
Advisory Circular 150/5100-6d

EQUAL EMPLOYMENT OPPORTUNITY - 41 CFR PART 60-1.4(b)

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

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

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

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

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

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

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

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

Application
Incorporate in all construction contracts and subcontracts that exceed $10,000

Reference
Executive Order 11246
41 CFR Part 60 -1.4
AC 150/5100-15, Para. 22.a.

CERTIFICATION OF NONSEGREGATED FACILITIES - 41 CFR

PART 60-1.8 Notice to Prospective Federally Assisted Construction

Contractors

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a federally-assisted construction contract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

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

Notice to Prospective Sub-contractors of Requirements for Certification of Non-Segregated Facilities

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a subcontract exceeding $10,000, which is not exempt from the provisions of the Equal Opportunity Clause.

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

CERTIFICATION OF NONSEGREGATED FACILITIES

The federally-assisted construction contractor certifies that she or he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that she or he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies that she or he will not maintain or provide, for his employees, segregated facilities at any of his establishments and that she or he will not permit his employees to perform their services at any location under his 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 areas, restrooms, and washrooms, restaurants and other eating areas, 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 she or he has obtained identical certifications from proposed Sub-contractors for specific time periods) she or he will obtain identical certifications from proposed Sub-contractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that she or he will retain such certifications in his files.

Application

Incorporate in all construction contracts and subcontracts that exceed $10,000. The notices should be placed within the solicitation for proposals. The actual certification should be incorporated in the contract agreement.

Reference

Executive Order 11246
41 CFR Part 60 -1.8

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION - 41 CFR PART 60-2

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade (Vol. 45 Federal Register pg. 65984 10/3/80)

Goals for female participation in each trade (6.9%)

These goals are applicable to all the contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its Federally involved and non-federally involved construction.

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

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

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is [insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any].

Application
Incorporate in all construction contracts and subcontracts that exceed $10,000. This notice should be placed within the solicitation for proposals. The goals for minority participation are dependent upon the Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA). Refer to Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table listed all EA and SMSA and their associated minority goals. The 6.9% for female participation represents a national goal.

Reference
Executive Order 11246
41 CFR Parts 60 - 4

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS - 41 CFR Part 60.4.3

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;

d. "Minority" includes:

(1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

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

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 18.7a through 18.7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained

from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

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

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

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

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such a superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and Sub-contractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (18.7a through 18.7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 18.7a through 18.7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

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

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

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

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

13.The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 18.7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14.The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

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

Application
Incorporate in all construction contracts and subcontracts that exceed $10,000. This provision shall be included in the solicitation and the contract agreement.

Reference
Executive Order 11246
41 CFR Parts 60 – 4.3 AC
150/5100-15, Para. 22.c.

TERMINATION OF CONTRACT

a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.

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

Application
Incorporate into all procurement contracts that funded by AIP funds that exceed $10,000.

Reference
49 CFR Part 18.36(i)(2)
FAA Order 5100.38

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

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.

Application
Incorporate into all contracts that exceed $25,000, which funded under the AIP. Incorporate in all contracts for auditing services regardless of the contract amount.

Reference
49 CFR Part 29 FAA
Order 5100.38

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS 29 CFR PART 5

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

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

3. Withholding for Unpaid Wages and Liquidated Damages.
The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or Sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or Sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

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

Application
Incorporate into all construction contracts and subcontracts that exceed $100,000 and are financed under the AIP program.

Reference
29 CFR Part 5.5
Advisory Circular 150/5100-6d

CLEAN AIR AND WATER POLLUTION CONTROL

Contractors and Sub-contractors 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. 1857 et seq. and Section 308 of the Federal Water Pollution

Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued hereunder;

c. That, as a condition for the award of this contract, the contractor or Sub-contractor 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.

Application
Incorporate in all contracts and subcontracts that exceed $100,000.

Reference
49 CFR Part 18.36(i)(12)
Section 306 of the Clean
Air Act Section 508 of the
Clean Water Act

<u>Consultant Insurance Certificate(s)</u>

Appendix C

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/1/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Ames & Gough
859 Willard Street
Suite 320
Quincy, MA 02169

CONTACT NAME:
PHONE (A/C, No, Ext): (617) 328-6555 FAX (A/C, No): (617) 328-6888
E-MAIL ADDRESS: boston@amesgough.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Continental Casualty Company (CNA) A, XV	20443
INSURER B : National Fire Insurance Company of Hartford A(XV)	20478
INSURER C : Transportation Insurance Company A(XV)	20494
INSURER D : Lexington Insurance Company A, XV	19437
INSURER E :	
INSURER F :	

INSURED
Gale Associates, Inc.
6 Bedford Farms Drive, Suite 101,
Bedford, NH 03110-6042

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER:			6020017533	5/1/2022	5/1/2023	EACH OCCURRENCE	$ 2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 2,000,000
							GENERAL AGGREGATE	$ 4,000,000
							PRODUCTS - COMP/OP AGG	$ 4,000,000
								$
B	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY			6020017614	5/1/2022	5/1/2023	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
C	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 0			6020068143	5/1/2022	5/1/2023	EACH OCCURRENCE	$ 5,000,000
							AGGREGATE	$ 5,000,000
								$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		6020017578	5/1/2022	5/1/2023	X PER STATUTE OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
D	Professional Liab			031711024	5/1/2022	5/1/2023	Per Claim	3,000,000
D				031711024	5/1/2022	5/1/2023	Aggregate	5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
All Coverages are in accordance with the policy terms and conditions.

Evidence of Insurance

CERTIFICATE HOLDER

City of Biddeford
Attn: James Bennett, City Manager
205 Main Street
Biddeford, ME 04005

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Jared Maxwell

City Council

Meeting Date: November 15, 2022
Meeting Time: 6:00 PM

Agenda Item No: 2022.
Item Description: Authorization/Contract w/Gale Associates, Inc./Consultant for Biddeford Municipal Airport

Submitted by: Jeff Demers, Public Works Director
John Taylor, Airport Manager

Supporting Information/Documentation:

Updated Agreement with Gale Associates, Inc.

Key Terms:

N/A

Executive Summary:

Every five years, the City enters into a planning and engineering contract with a qualified Airport Consultant who assists with all major projects at the Biddeford Municipal Airport. The current Consultant contract was approved in 2017 and will expire at the end of the year.

Detailed Review:

An RFQ was put out in August 2022 with submissions due September 16, 2022. There were two inquiries to the RFQ, and only one submission. Gale Associates, Inc. is the City's current Airport Consultant and both Staff and the Airport Commission agree that they are the best choice.

Funding Source:

Consultant fees are included in any project costs that are eligible for grants.

Staff Recommendation:

Staff, and the Airport Commission, recommend renewing the Consultant contract with Gale Associates, Inc.

Finance Committee Meeting

Meeting Date: November 15, 2022
Meeting Time: 5:00 p.m.

Agenda Item No: 4.2
Item Description: Website Redesign

Submitted by: Danica Lamontagne, Assistant to the City Manager

Supporting Information/Documentation:

CivicPlus Quote for Website Redesign

Key Terms:

N/A

Executive Summary:

The Communications Division is requesting approval for an aesthetic upgrade to the website to keep its appearance technologically modern and improve its alignment with our branding.

Detailed Review:

Our website was last updated in 2018, when the City decided to use CivicPlus as a host. The standard CivicPlus contract anticipates a website redesign every four years to keep the site looking fresh and modern. The City uses the website as its main portal for communication and it is important to ensure that it appears up-to-date. Our current website design also does not align with any of our visual branding used in other forms of media, such as our City Seal and its color palette.

The "Standard Redesign" that is requested does not add any additional features to the site. It will only allow us to change the visual appearance of the site, such as the layout of the home page and design aspects like colors, fonts and buttons.

CivicPlus was contacted directly for this process as our existing website provider and no RFP was issued. Transferring all of our data to a new website provider would be significantly more expensive and burdensome than completing a redesign with our existing provider.

The annual fee to CivicPlus for the website after the redesign is actually expected to decrease. The most recent annual fee paid to CivicPlus was $2,315.25 and the new annual fee would be $1,615/year (subject to small annual adjustments).

Funding Source:

Funding for the website redesign would come from reserve account 22001-92111-12106 which had been allocated by the City Council for a civic engagement software solution. After purchasing three years of service for our civic engagement software in April 2022, there is $9,940 remaining in the account.

Staff Recommendation:

Staff recommends approving the purchase of the Standard Redesign from CivicPlus and authorizing the expenditure of $6,377.

CivicPlus
302 South 4th St. Suite 500
Manhattan, KS 66502
US

Quote #: Q-20441-1
Date: 10/29/2021 7:54 AM
Expires On: 12/29/2022

Client:
BIDDEFORD, MAINE

Bill To:
BIDDEFORD, MAINE

SALESPERSON	Phone	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Maddie Hansel	x	maddie.hansel@civicplus.com		Net 30

QTY	Product Name	DESCRIPTION	PRODUCT TYPE	TOTAL
1.00	4yr Redesign Standard Annual - CivicEngage Central	4yr Redesign Standard Annual - CivicEngage Central	Renewable	USD 1,615.00
1.00	CivicEngage Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable	USD -403.75
1.00	Standard Redesign Implementation - CivicEngage	Standard Redesign Implementation	One-time	USD 5,166.40

~~List Price - Year 1 Total~~	~~USD 8,073.00~~
Total Investment - Year 1	USD 6,377.65
Annual Recurring Services (Subject to Uplift)	USD 1,615.00

Total Days of Quote:365

1. This Statement of Work ("SOW") shall go into effect November 15, 2022 and shall be subject to the terms and conditions of the Biddeford ME - CivicEngage Statement of Work signed by and between the Parties (“the Agreement”). By signing this SOW, Client expressly agrees to the terms and conditions of the Agreement, as though set forth herein.

2. Client will be invoiced for the Total Investment - Year 1 (the sum of one-time costs and a prorated portion of the Annual Recurring Services) on November 15, 2022. The Annual Recurring Services subscription fee for the Products (as described above) included in this SOW are prorated and co-termed to align with the Client’s current billing schedule and the Annual Recurring Services amount will subsequently be added to Client's Term and regularly scheduled annual invoices under the terms of the Agreement.

3. Each year this SOW is in effect, a technology investment and benefit fee, as agreed to in the Agreement, will be applied to the Annual Recurring Services subscription fee.

Signature Page to follow.

Acceptance

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW and the Agreement terms and conditions

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client	CivicPlus
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

Contact Information

*all documents must be returned: Master Service Agreement, Statement of Work, and Contact Information Sheet.

Organization URL

Street Address

Address 2

City State Postal Code

CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays). Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for ensuring CivicPlus has current updates.

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Billing Contact E-Mail

Phone Ext. Fax

Billing Address

Address 2

City State Postal Code

Tax ID # Sales Tax Exempt #

Billing Terms Account Rep

Info Required on Invoice (PO or Job #)

Are you utilizing any external funding for your project (ex. FEMA, CARES): Y [ ] or N [ ]

Please list all external sources: ______________________________

Contract Contact Email

Phone Ext. Fax

Project Contact Email

Phone Ext. Fax