



**Mobile Airport  
Authority**

**REQUEST FOR QUALIFICATIONS (RFQ)**

**RFQ No. 2023-005 (Rebid)**

**Construction Manager at Risk (CMAR)  
Services**

**For the Construction of a Multi-Use Cargo Warehouse at the  
Mobile International Airport**

**U.S. Department of Commerce Economic  
Development Administration**

**EDA Award No. 04-79-07617**

**Date Posted: July 19, 2023**

**Deadline to Respond: Thursday, August 11, 2023**

Rita L. Barren, Procurement Officer

rbarren@mobairport.com  
07/19/2023

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**REQUEST FOR QUALIFICATIONS (RFQ)**  
**RFQ No. 2023-005 (Rebid)**  
**Construction Manager at Risk (CMAR) Services**  
**For the Construction of a Multi-Use Cargo Warehouse**  
**at the Mobile International Airport**

**U.S. Department of Commerce Economic Development Administration**  
**EDA Award No. 04-79-07617**

Mobile Airport Authority (MAA) is seeking a qualified Construction Manager at Risk (CMAR) to establish a contract for Preconstruction services and the ***Construction of a Multi-Use Cargo Warehouse at the Mobile International Airport*** (“Project”), as specifically set forth in the Request for Qualifications package. MAA was awarded a grant from the U.S. Economic Development Administration (EDA) to construct the ***Multi-Use Cargo Warehouse***. The project is an exciting opportunity for a firm to support a high profile, regionally impactful economic development and resilience project.

**I. General Information:**

Qualifications will be received by Mobile Airport Authority (“MAA”), 1891 9<sup>th</sup> Street, Mobile, Alabama 36615, until 2:00 p.m. local time Friday August 11, 2023.

A Pre-Proposal Conference will be held on Tuesday August 1, 2023 @ 2:00PM CST, at the Downtown Terminal at Brookley, 2455 Michigan AVE, Mobile, Alabama.

Any oral response given at the Pre-Proposal Conference that is not confirmed in the written summary, or by a subsequent addendum shall not be official or binding on the MAA. Only written responses shall be official and all other forms of communication with any officer, employee, or agent of the MAA shall not be binding on the MAA. SOQ Proposers, their consultants, sub-consultants, or other parties representing the proposed team for this solicitation may not contact any Mobile Airport Authority Employee, CMAR Selection Committee member, or Architect, with the exception of the Solicitation Coordinator, as identified in this RFQ, concerning this Project from the date of this advertisement until after the date of selection.

Sealed submissions must also be delivered to the following: Mobile Airport Authority, Procurement Officer, 1891 9<sup>th</sup> Street, Mobile, AL 36615. The submissions must be received no later than **August 11, 2023, by 2:00 pm**, at the address shown above. Any SOQ received after this closing time will be returned unopened.

In order to ensure a fair and objective SOQ evaluation, all questions for clarification related to this RFQ shall be made in writing.

## II. Contact for Questions

All questions must be submitted in writing via E-mail prior to 5:00 pm on August 7, 2023 to Russell Stallings ([russell@mobairport.com](mailto:russell@mobairport.com)).

Such clarification will be submitted to all known responding firms simultaneously. Answers to questions will also be posted on MAA's website, as well as any Addenda at [www.mobileairportauthority.com](http://www.mobileairportauthority.com). Vendors are responsible for checking Mobile Airport Authority website for any addendum.

## III. Proposal Submittals

All proposal submittals should be in a sealed envelope and the sealed envelope shall be marked as follows:

**Mobile Airport Authority**  
**ATTN: Rita L. Barren, Procurement Officer**  
**(SEALED BID) - Deadline: August 11, 2023 @ 2:00 pm**  
**Project Name: Construction of a Multi-Use Cargo Warehouse**

Further details are included in the MAA's Request for Qualifications package. MAA reserves the right to reject all submissions and to waive any informalities.

## IV. Project Description & Overview:

Construction of a single-story intermodal facility encompassing approximately 30,000 square feet of large warehouse space which includes future storage, a shipping/receiving area, and administrative space. Grading of the property will be performed and areas to be constructed includes facility entrance road, parking lot and truck loading dock. No airside work is included within this scope of work. See Attachment A for additional details.

The facility will be constructed at Brookley Field Airport (BFM) – Mobile Downtown Airport, located approximately five (5) miles south of downtown Mobile, Alabama. Ideally positioned immediately adjacent to Interstate 10, the Alabama and Gulf Coast Railway and Mobile Bay, BFM offers excellent connectivity to air, land and water in support of Mobile and the Gulf Coast Region. The project is fully compatible with the local and regional plans for BFM to serve as a site for regional economic development.

The proposed project site is currently a portion of the airfield located to the southwest of Runway 14/32. The site is generally flat and unencumbered with existing infrastructure. The project will provide a connection between the off airport public roadway network within the operational area of Brookley Field. As such, design, construction and operation of the facilities will require compliance with the security provisions of the Transportation Security Administration (TSA) requirements and design/construction standards of the Federal Aviation Administration (FAA). Additionally, due to the proximity of the proposed building to Runway

14-32, siting and building height limitations will be met to comply with the airspace clearances provisions for the airport.

All elements of the design and construction process must meet Standard Terms and Conditions of the EDA. Particular attention will be paid to contractors who have experience with, and competence in, architectural design and construction methodology that provide for a rapidly constructed, cost effective, aesthetically pleasing structure suitable for its intended multiple uses in a campus-like facility.

Construction of this facility will be in accordance with all applicable life safety/energy codes and development regulations of the City of Mobile utilizing pre-engineered metal building components.

## **V. Purpose of RFQ**

The purpose for this Request for Qualifications (“RFQ”) is to solicit statements of qualifications and proposals from interested and qualified Construction Manager at Risk (CMAR) firms for services for the Mobile Airport Authority (MAA). The MAA will design and construct this Project using the Construction Management at Risk Project delivery method.

The intent of this CMAR RFQ is to select a qualified Construction Manager at Risk firm to provide Preconstruction Phase and Construction Phase services, which may be combined into a single contract. Contractor shall perform Pre-Construction Services in Phase 1, including preparation of Guaranteed Maximum Price (GMP) Proposal. If approved, Contractor shall perform Construction Phase Services in Phase 2 through the adoption of a Guaranteed Maximum Price Amendment. Phase 2 Services shall include: Construction, Start-up, Testing, Commissioning, and Correction services.

Selection of the CMAR Contractor will be a Best Value selection based on the Criteria Evaluation and Scoring addressed in Section VII of this RFQ. Best Value means the responsible offeror whose proposal is the most advantageous to MAA. Due to the size and complexity of the Project, along with the interface necessary with a diverse set of Project stakeholders, both internal and external, MAA seeks a qualified CMAR Contractor to coordinate the day-to-day facilitation, communication and management of the Construction of this Project as described in this RFQ. It is anticipated that the CMAR Contractor will be responsible and accountable for managing several second-tier contractors. The estimated construction cost for this project is \$5,654,000.00 which includes the cost of the CMAR services.

## **VI. Anticipated Project Schedule**

The mandated construction start date from the EDA is December 29, 2023. The mandated project completion date from the EDA is July 5, 2025. MAA is intending that the project will be completed by July 5, 2025. Please include a schedule in your proposal. The schedule will be finalized in consultation with the selected CMAR Team to ensure project continuity and achieve

the best results in a reasonable period of time. Below is the **preliminary** pre-construction + design timeline.

Task Name	Duration	Start	Finish
▾ Multi-Purpose Bldg. - BFM 2022-07-11	907 days?	Thu 3/31/22	Fri 9/19/25
▸ EDA Approval	48 days	Thu 5/18/23	Tue 7/25/23
▸ EDA REPORTING	907 days?	Thu 3/31/22	Fri 9/19/25
▸ CMAR PROCUREMENT (RFQ thru selection)	106 days	Wed 3/29/23	Wed 8/23/23
▾ CMAR PRECONSTRUCTION + Phase 2	109 days	Wed 8/23/23	Tue 1/23/24
CMAR NTP	0 days	Wed 8/23/23	Wed 8/23/23
▾ Preconstruction Services	109 days	Thu 8/24/23	Tue 1/23/24
CMAR Design Coordination	80 days	Thu 8/24/23	Wed 12/13/23
cGMP Board Approval (06DEC23 MTG)	1 day	Wed 12/6/23	Wed 12/6/23
cGMC Enabling Works (must start 29DEC23)	18 days	Fri 12/29/23	Tue 1/23/24
GMP Drawings Available (see Design)	0 days	Mon 11/20/23	Mon 11/20/23
Guarantee Maximum Price (GMP) Negotiation:	10 days	Thu 12/14/23	Wed 12/27/23
GMP Approved	0 days	Wed 12/27/23	Wed 12/27/23
▾ Step 2 / Contract (Builder)	0 days	Wed 12/27/23	Wed 12/27/23
Preconstruction Complete / Phase 2 Starts	0 days	Wed 12/27/23	Wed 12/27/23
Start Construction	0 days	Wed 12/27/23	Wed 12/27/23
▾ DESIGN	418 days	Thu 6/30/22	Mon 2/5/24
▸ Design Task Order	53 days	Wed 4/19/23	Fri 6/30/23
▸ PRE-DESIGN (Airport)	20 days	Thu 6/30/22	Wed 7/27/22
▸ Design Phase Services	177 days	Fri 6/2/23	Mon 2/5/24
▾ CMAR CONSTRUCTION (18 months)	399 days	Tue 12/19/23	Fri 6/27/25
▸ Phase 1 Site - enabling works (starts 29DEC23)	68 days	Tue 12/19/23	Thu 3/21/24
▸ Building + Sitework	331 days	Fri 3/22/24	Fri 6/27/25

## VII. Project Design Team

Kimley-Horn & Associates has been the chosen firm which will provide professional architectural and engineering services for development and cost estimates of all phases. Phases will align with MAA's budgets, grant funding, and construction feasibility.

## VIII. Scope of Work for Construction Manager at Risk (CMAR) Services

The scope of services is meant to provide the proposers with an outline of the anticipated services required for this project. The detailed scope of services will be contained in the executed Contract for CMAR Services. The work to be performed by the Contractor will include all CMAR services required for the construction of this facility. The scope of work will be in a single, not to exceed, contract.

Proposals should address the ability of the bidder to comply with the requirements contained in the Building Scope (Attachment A) and the EDA Contracting Provisions requirements – see Attachment H. The Contractor shall identify a detailed scope in the proposal as part of their understanding and approach to the project.

## **IX. Construction Administration**

The CMAR will work with the MAA to ensure compliance with the federal requirements identified in the attached EDA Contracting Provisions for Construction Projects (Attachment H)

The CMAR shall provide administration of the contract for construction as set forth in the above referenced EDA Contracting Provisions for Construction Projects of the Contract for Construction, current as of the date of the CMAR/Owner agreement.

The CMAR shall ensure that the final construction documents for the project comply with all Economic Development Administration (“EDA”) grant requirements. Pursuant to this RFQ, the “Services” shall consist of, and the successful CMAR shall provide, construction management including but not limited to, the following:

### **A. Pre-Construction Services**

1. Review design documents when they are 35% complete, budget, and project schedule and identify key project issues.
2. Research different construction materials and report findings.
3. Develop cost estimates and project schedule; Reconcile from 35% design documents.
4. Develop Construction Documents cost estimate and schedule; Reconcile from previous estimate.
5. Regularly attend meetings with the MAA and Design Team immediately upon selection and through the remainder of design. Consult with the MAA and the Design Team regarding all aspects of the project, including site use, site improvements and selection of building materials, systems, and equipment.
6. Develop a provisional and final Critical Path Method (CPM) schedule using computer software reporting indicating methods and sequencing of procurement, permitting, construction and closeout of project. Include time requirements for sequences and durations, milestones dates for receipt and approval of design documents, receipt of regulatory approvals and permits, preparation and processing of shop drawings and samples, delivery schedule of materials or equipment requiring long-lead time procurement, project procurement schedule, and installation and construction completion. This includes the periodic updates of project schedule for Design Team’s review and MAA approval.
7. Develop and implement procedures for schedule adherence.
8. Perform a “constructability” review of the 35% design documents and the Construction Documents.
9. Provide detailed construction cost estimates, to achieve the Owner’s budget (to be sorted by trade bid packages).
10. Develop value-engineering options.

**B. Bidding Services**

1. Subdivide the Work into bid packages that encourage bids from qualified local and minority contractors.
2. Identify and pre-qualify contractors based upon requirements set forth in this RFQ and all EDA compliance provisions for all bid packages in consultation with the MAA.
3. Develop requirements to ensure time, cost, and quality control during construction.
4. Provide a provisional construction schedule (CPM) for issuance with bid packages.
5. Schedule and conduct pre-bid conferences in conjunction with the Design Team and MAA.
6. Advertise and distribute bidding documents.
7. Monitor bidder activity.
8. Publicly open, review and analyze bids, in conjunction with MAA and Design Team.
9. Update Project schedule.
10. Conduct Minority and Women-Owned Business Enterprise (MWBE) outreach program to encourage participation by minority contractors.
11. Upon receipt and review of the bids for all bid packages, develop a draft Guaranteed Maximum Price (GMP) document(s) for the Project that includes:
  - a. The cost of the Work (the sum of bid amounts of the lowest responsible bidder for all bid packages)
  - b. The Construction Manager's Fee
  - c. The Construction Manager's General Conditions
  - d. The Construction Manager's Contingency
12. Reconcile schedule and costs with MAA against pre-established budget and schedule.
13. Develop Final Guaranteed Maximum Price document for the Project.

**C. Construction Services**

1. Maintain on-site staff for construction management.
2. Establish and maintain coordinating procedures.
3. Develop and maintain a detailed schedule (CPM) including delivery, approvals, inspection, testing, construction and occupancy.
4. Conduct and record weekly job meetings. (Designer will record monthly meetings)
5. Maintain a system for review and approval of shop drawings, samples and product data.
6. Maintain records and submit weekly reports and formal monthly reports to Design Team and Owner.
7. Maintain quality control and ensure conformity to plans.
8. Develop a system and provide cost control through progress payment review and verifications according to the approved schedule and contract amounts.
9. Develop and maintain as-built drawings for the duration of the Project.

10. Coordinate post-completion activities, including the assembly of guarantees, manuals, closeout documents, training, regulatory approvals and Owner's final acceptance.
11. Coordinate and monitor the resolution of remaining "punch-list" items to the satisfaction of the Owner.
12. Work closely with Designer and MAA staff to meet local, state and federal requirements

**D. Project Closeout/Warranty**

1. Submit record drawings for approval of the Designer and the Owner.
2. Assist in transition to occupancy, including deliveries and installation of equipment.
3. Receive record and address all warranty issues.
4. Resolve all warranty issues to the satisfaction of the Owner

**E. Final As-Built Drawings**

The CMAR shall record and maintain a set of "As-Built" drawings that will be finalized into a formal AutoCAD set and delivered electronically, plus an unbound Mylar hard copy to MAA upon completion of the project. An electronic copy of the construction specifications shall also be provided to MAA.

The Department of Commerce Economic Development Agency (EDA) is providing a portion of the overall project funding through a federal grant. The grant introduces additional reference standards and requirements regarding record retention, reporting, audit, insurances, subcontractor, and sub-consultant (lower tier) award, equal employment, Davis Bacon Act, contractor work hours and safety standards, the Byrd Anti-Lobbying Amendment and procurement regulations, etc. per 2 CFR Part 200, 13 CFR Chapter 3, and EDA Standard Terms & Conditions for Construction Projects. The details of these requirements will be listed in Section VII.

**X. Overview of the Process**

Qualified interested parties shall submit a Statement of Qualifications (SOQ) in response to this Request for Qualifications (RFQ). A Selection Review Committee, organized by the MAA, will evaluate and score qualified SOQs received. Oral interviews, by invitation based on SOQ evaluation scoring, may follow the proposal evaluation process. After the deadline for responses to the RFQ, the Selection Review Committee will make a recommendation to the MAA President and the MAA Board of Directors as to which Proposer should be awarded the contract.

Preconstruction phase services performed by the CMAR Contractor include tabulation and submission of a Guaranteed Maximum Price (GMP) proposal addressing final Project cost, scope, and schedule. Additionally, the CMAR Contractor shall provide advice, estimating support, constructability analysis, scheduling support, site logistics, bid trade, construction

strategy, provision of a control estimate, and other services. The Owner may authorize the CMAR Contractor to undertake specific items of construction services, including procurement of long-lead items, prior to an agreement upon a GMP for the benefit of the Project.

The CMAR Contractor shall provide a detailed cost estimate to the Owner when the final design of the Project is not more than sixty percent (60%) complete, and again, when final design of the Project is not more than ninety percent (90%) complete. The CMAR Contractor shall provide the Owner with a GMP for construction of the Project, before or upon completion of the final design.

If the Owner and CMAR Contractor are able to negotiate, and to establish and agree upon a GMP, to render construction services for the Project, and additionally, to agree upon constructability, construction phasing, and sequencing, and the maximum number of contract days to complete the Project, the Owner may then award the contract for construction services to the CMAR Contractor for the construction phase of the contract.

If the Owner and CMAR Contractor are not able to agree upon constructability, construction phasing and sequencing, the GMP for the Project, the maximum number of contract days to complete the Project, and to reach a negotiated agreement, then the Project shall be awarded to the next highest ranked Proposer.

## **XI. Minimum Required Professional Qualifications**

Firms interested in performing the work will be considered on the basis of a written Statement of Qualifications (SOQ). Proposers must be able to document compliance with the following minimum qualifications to be considered for this Project:

- A brief summary of your company's qualifications in undertaking and delivering projects similar to this including construction in the CMAR role, experience with the Mobile Airport Authority, and experience in managing unforeseen challenges and conditions that are problematic in this type of project.
- A minimum of ten (10) years' experience as a licensed General Contractor and/or Construction Manager for a minimum of three (3) Projects of similar size and scope.
- The Proposer shall certify that the legal entity executing any contract emanating from this RFQ is a duly licensed General Contractor in the Building Construction Classification as required by the State of Alabama. If the Proposer is a joint-venture or other combination of two or more firms, each of the firms must hold the proper license.
- Statement of registration of the firm.
- A list of at least three references from previous clients for CMAR services.

- The Proposer shall provide evidence of their capacity to procure payment and performance bonds and insurance required for an estimated \$20 Million in constructed value. If the Proposer is a joint-venture or other combination of two or more firms, Proposer shall explain whether such coverage will be procured singularly or combined and demonstrate how coverage will be procured and maintained.
- Statement of availability and adequacy to perform all other functions needed for the proposed services.
- The proposer shall have full knowledge of Building and Safety building codes as applicable, Alabama building design standards, water and power, and other applicable rules and government regulations. All services and/or phases of assigned projects will require close interaction and coordination with the MAA staff, airport contractors as directed, external agencies, and local and regional EDA offices as required.

## **XII. Proposal Submission Requirements**

Submittals shall be made on 8 1/2" x 11" paper, side bound with Table of Contents and reference tabs for key sections. The total submittal shall not exceed forty (40) single-sided pages. All pages are to be consecutively numbered. All materials not clearly labeled "Trade Secret" or "Confidential" shall become property of Mobile Airport Authority and will be considered public documents (Reference Section XI - Confidentiality of Documents). Submittals must include, at a minimum, the following:

- A cover letter.
- TAB 1 – Organizational chart depicting key staff and their roles proposed for the project with Resumes of key personnel with a brief description of responsibilities, accomplishments, and dates of service. Attachment D - RFQ Signature and Authority Affidavit Form, any addenda signature pages. The Signature and Authority Affidavit submitted in response to this RFQ must be signed by the person in the Proposer's organization who is responsible for the decision as to the prices being offered or by a person who has been authorized in writing to act as agent for the person responsible for the decision on prices and services. Failure to provide this forms/information with your bid submittal may disqualify your proposal.
- TAB 2 - A statement of qualifications as outlined in Section XI.
- TAB 3 - List three (3) similar prior projects and three (3) references.
- TAB 4 - Disadvantaged and minority business participation. See Attachment J – Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity.

If the response is sent by a firm, partnership, or any organization other than an individual, provide the requested information for all individuals who will perform the work.

**XIII. Fee Proposal**

The Fee Proposal shall be submitted in a **separate sealed envelope** marked with “Fee Proposal,” the proposing firm’s name and contact information.

See attached Attachment B - CMAR Fee Summary spread sheet. Submit a completed version of Attachment B with your firm’s proposal in a separate sealed envelope.

**XIV. Submittal of Proposals**

Proposals must be completed and signed in ink in space(s) provided on the enclosed blank bid form(s) or the bid will be subject to rejection. The bid, with original signatures, and two (2) additional copies are to be submitted in a sealed envelope and the sealed envelope shall be marked as follows:

**Mobile Airport Authority**  
**ATTN: Rita Barren, Procurement Officer**  
**(SEALED BID) - Deadline: August 11, 2023 @ 2:00 pm**  
**Project Name: Construction Manager at Risk (CMAR) Services**

Any questions concerning the proposal submittal shall be addressed and submitted in writing to Procurement Officer via email at [rbarren@mobaairport.com](mailto:rbarren@mobaairport.com) no later than close of business, 5:00 PM, July 7, 2023.

**XV. Selection Criteria and Schedule**

Proposals will be reviewed for completeness and qualifications. Final selection of a firm for contract negotiations will be made on the basis of the following criteria, with a maximum of 100 rating points as shown in Table 1:

**Table 1. Proposal Selection Criteria**

Selection Criteria	Maximum Points
The CMAR’s scope of work, methodology, work plan, and budget.	<b>25</b>
The CMAR’s general experience, qualifications, and ability to perform timely execution of the project work as evidenced by previous, similar projects.	<b>25</b>
The CMAR’s professional credentials in architecture, civil engineering, and cost estimating, including the qualifications, expertise, and experience of individuals assigned to the project.	<b>20</b>
The CMAR’s understanding of and experience with Native American theming and/or inclusive design.	<b>10</b>
The CMAR’s references.	<b>10</b>
The CMAR’s bonding/insurance capacity/history.	<b>5</b>
The CMAR’s direct experience with U.S. Department of Commerce, Economic Development Administration (EDA)-funded projects.	<b>5</b>

The final contract for these Services shall be awarded only after negotiations with the selected firm to establish a fair and reasonable price. MAA actively encourages submission of proposals from

disadvantaged business enterprises and companies owned by Native Americans, minorities, women, immigrants, and veterans. MAA does not discriminate on the basis of race, color, religion, creed, sex, sexual orientation, gender identity, age, ancestry, national origin, disability, or veteran status in consideration of this award. Equal Opportunity Employer.

MAA encourages the participation of Section 3, Disadvantaged, and/or Minority/Women Business Enterprise Participation in this RFQ process.

SOQ submissions that have not been received in the required format and quantity by the aforementioned deadline date and time will be rejected. Additionally, failure to submit all of the information stipulated per Section V – Format of Responses, shall result in the submission being considered non-responsive and may result in the SOQ submission being rejected. Unless otherwise stated or required by the instructions, all attachments and/or embellishments other than those required in the RFQ shall be excluded.

The MAA President or their designees shall make the final selection. The selection of any professional services will be subject to negotiation of fair and reasonable compensation.

## **XVI. Terms and Conditions**

The following terms and conditions apply to all proposals:

1. MAA reserves the right to reject any and all proposals submitted; to select one or more responding parties; to void this RFQ and the review process and/or terminate negotiations at any time; to select separate responding parties for various components of the scope of services; and to select a final party/parties from among the proposals received in response to this RFQ. Additionally, any and all RFQ project elements, requirements and schedules are subject to change and modification. MAA also reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of this RFQ process, to obtain further information from any and all responding parties, and to waive any defects as to form or content of the RFQ or any responses by any party.
2. This RFQ does not commit MAA to award a contract, defray any costs incurred in the preparation of a response to this RFQ, or contract for any services. All submitted responses to this RFQ become the property of MAA as public records. All proposals may be subject to public review, on request, unless exempted as discussed elsewhere in this RFQ.
3. By accepting this RFQ and/or submitting a proposal in response thereto, each responding party agrees for itself, its successors and assigns, to hold MAA and its agents, directors, consultants, attorneys, officers, and employees harmless from and against any and all claims and demands of whatever nature or type, which any such responding company, its representatives, agents, contractors, successors or assigns may have against any of them as a result of issuing this RFQ, revising this RFQ, conducting the selection process and

subsequent negotiations, making a final recommendation, selecting a responding party/parties or negotiating or executing an agreement incorporating the commitments of the selected responding party.

4. By submitting responses, each responding party acknowledges having read this RFQ in its entirety and agrees to all terms and conditions set out in this RFQ.
5. Responses shall be open and valid for a period of ninety (90) days from the due date of this RFQ.

## **XVII. Other Requirements**

The CMAR Contractor shall not unlawfully discriminate against any employee, applicant for employment, or subcontractor because of race, color, age, religion, ancestry, sex, national origin, local custom, or sexual orientation. Furthermore, the CMAR Contractor shall be able to produce at any time its documented policy on ensuring that each employee has the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits unlawful discriminatory practices, including harassment and prejudice.

All contracts involving the Owner and CMAR Contractor and/or third persons shall incorporate by reference and shall be in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and orders. The proposer shall be responsible for compliance with all federal, state, and local laws, ordinances, rules, regulations and orders in the management and construction of the Project.

If awarded a contract to provide construction phase services for the Project, CMAR Contractor shall obtain payment and performance bonds from an approved surety, which bonds shall name the Owner (or its designee) as an obligee. The performance bond and the payment bond shall each be in an amount equal to 100% of the contract amount and shall serve as security for the payment of all labor, materials, equipment and supplies as well as the full and complete performance of the entire work and services to be performed by the CMAR Contractor. The performance bond and payment bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by an Alabama domiciled insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide, to write individual bonds up to ten percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Alabama or owned by Alabama residents and is licensed to write surety bonds. The proposer shall include in the SOQ information on its surety including the name, address, telephone number, contact person and duration of relationship.

Proposer shall include in its SOQ evidence of its ability to obtain the required insurance coverage on the Project by CMAR Contractor and all contractors that Proposer identifies as members of its team. If awarded a contract to provide Construction Management at Risk services for the Project, CMAR Contractor shall deliver to the Owner a complete certified copy

of all insurance policies prior to commencing work and as a condition precedent to any payment. The Owner shall be named as an additional insured, without restriction to cross claims, on all policies of insurance except for professional liability.

The proposer shall be required to carry Builders Risk insurance at all times during construction until final acceptance and complete occupancy of the completed facility.

If awarded a contract to provide Construction Management at Risk services for the Project, CMAR Contractor shall provide all insurance requirements for contractors as described in **Attachment E – Insurance Requirements.**

For a time period of at least five (5) years preceding the date of this RFQ and continuing for a period of at least one (1) year after final completion and final acceptance of the Project, Proposer shall be duly licensed and registered as a General Contractor in the Building Construction classification as required by the State of Alabama or another U.S. State. In the event that Proposer consists of more than one entity with the intent to combine to form a joint venture, the years of licensing and registration of the constituent entities of such joint venture may be combined to arrive at the five-year (5) requirement. In the case of acquired or merged companies, the acquired company's prior years of licensing can be counted by the newer acquiring company/Proposer towards fulfillment of this five (5) year requirement. Copies of all professional licenses, current and valid in accordance with all applicable Alabama laws, shall be submitted by the Proposer with its SOQ.

All contractors and subcontractors identified as part of CMAR Contractor's team must, as of the date of this RFQ, and continuing through final completion and final acceptance of the Project, be duly licensed and registered by the Alabama State Licensing Board for Contractors. Copies of all professional licenses, current and valid in accordance with all applicable Alabama laws, shall be submitted by the Proposer in its SOQ.

To avoid any conflict of interest or the appearance of any conflict of interest in connection with this RFQ, Proposer must disclose in its SOQ any relationship Proposer, its parent or subsidiary, its current or former owners, officers, directors, employees, members of Proposer's team and/or others affiliated with Proposer have or in the past have had with:

- (1) current or former board members or employees of Mobile Airport Authority (MAA); or
- (2) anyone who has a contract or other relationship with a current or former MAA board member or employee or relative of said board member or employee who is or was significantly involved in the organization, preparation, or administration of this RFQ or otherwise was in a position to significantly affect the RFQ either through a decision-making capacity or through a review process.

If Proposer is a joint venture or intends to form a joint venture for purposes of this Project, it is not necessary for the joint venture to be registered with the Alabama Secretary of State at

the time of submission of Proposer's SOQ. However, if such Proposer is awarded a contract to provide construction management services for the Project, the joint venture shall be registered at the time of execution of the Contract.

Proposer shall provide evidence within its SOQ showing that Proposer has the legal ability to enter into and perform a contract with the Owner to provide construction and/or construction management services for the Project.

### **XVIII. Insurance Requirements**

Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to MAA, during the entire term of this Agreement including any extension thereof, the following policies of insurance: (See Attachment E)

In the event that the Contractor is authorized to subcontract any portion of the work or services provided pursuant to this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain.

### **XIX. Compliance with Federal Regulations and Other Conditions and Requirements**

To be considered, all Proposers must acknowledge and certify that they will in all respects comply with Federal requirements including Equal Employment Opportunity laws and regulations, the Davis Bacon Wage Act, and all other provisions set forth in CFR Part 200 Appendix 2. Any Proposer that does not acknowledge this in writing will not be considered.

The awarded Proposer will be required to be registered with the System for Award Management (SAM), with an "active" status. Proposers are strongly encouraged to review their firm's SAM status prior to SOQ submission. There is NO fee to register on the SAM website at <https://www.sam.gov>. The MAA will allow ten (10) business days for the contractor and/or subcontractor to register and be approved in the SAM. If the contractor and/or subcontractor fails to register and receive approval in the SAM within ten (10) business days, the MAA will notify the Proposer in writing that they are deemed to be not responsible, and negotiations will terminate, and the MAA may then pursue negotiations with the next highest ranked Proposer.

### **XX. Disclosures**

MAA shall have no financial interest in the business of and shall not be liable for any debts or obligations incurred by the CMAR nor shall MAA be deemed or construed to be a partner, joint venture or otherwise interested in the assets of the CMAR, or in the sums earned or derived

by CMAR, nor shall the CMAR at any time or times use the name or credit of MAA in purchasing or attempting to purchase any car, equipment, supplies or other thing or things whatsoever.

CMAR, in the performance of its operations and obligations hereunder, shall not be deemed to be an agent of MAA, but shall be deemed to be an Independent Contractor in every respect and shall take all steps at its own expense, as MAA may from time-to-time request, to indicate that it is an Independent Contractor. MAA does not and will not assume any responsibility for the means by which or the manner in which the services by CMAR are performed; but on the contrary, CMAR shall be wholly responsible, therefore.

CMAR shall acknowledge that its identity and peculiar capacity to provide the services described hereinabove shall constitute a material consideration for the MAA's execution of a contract with CMAR. Therefore, CMAR shall not transfer or assign an awarded contract or any of the rights or privileges granted therein without the prior written consent of MAA; such consent shall be granted or denied solely at MAA's discretion.

If selected, CMAR shall agree to comply strictly with all ordinances of the City of Mobile, Alabama, and the laws of the State of Alabama and of the United States while performing its obligations.

CMAR agrees that, if selected, it will comply with Title 6 of the Civil Rights Act of 1964, which provides that no person will be excluded from participation in, or be denied benefits of, or otherwise be subjected to discrimination on the grounds of race, sex, color, national origin or disability, in connection with federally funded programs.

MAA may take all necessary and affirmative steps to assure that minority firms and women's business enterprises compete.

CMAR shall not collude in any manner or engage in any practices with any other CMAR which may restrict or eliminate competition or otherwise restrain trade. Violation of this instruction will cause MAA to reject the proposer's submittal.

## **XXI. ATTACHMENTS**

Attachment A – Preliminary Building Scope

Attachment B – CMAR Fee Summary

Attachment C – Vendor Data Form

Attachment D – Signature & Authority Affidavit

Attachment E – Insurance Requirements

Attachment F – Non-Collusion Affidavit

Attachment G – Sample Contract Agreement

Attachment H – EDA Contracting Provisions for Construction Projects

Attachment I – Lobbying Restriction Form

Attachment J – Notice of Requirements for Affirmative Action  
Attachment K – EDA Site Sign Specifications

**- END -**

## **Attachment A**

### **Preliminary Building Scope / Basic of Design:**

Construction of a single-story intermodal facility encompassing approximately 30,000 square feet of large warehouse space which includes future storage, a shipping/receiving area, and administrative space. Grading of the property will be performed and areas to be constructed includes facility entrance road, parking lot and truck loading dock. No airside work is included within this scope of work.

To proceed with the Multi-Purpose project, taking advantage of the grant awarded by EDA and meeting the grant schedule requirement of having the construction contract in place before the end of the year, the project the project has been split into (at least) two phases. The initial phase would be a shell building to be fit out subsequently by others. Included in Phase 1 is the construction of the building shell, landside access drive(s) with parking, site grading and stormwater conveyance/management, and utility infrastructure connecting to existing facilities and routed to the building. No airside work or interior construction would be included.

For the ultimate use for the shell building and to maximize flexibility for the Phase 2 Fit-Out, the concept proposed is a single, undifferentiated 150-foot x 200-foot rectangle with the long side facing the future apron. This orientation provides room for a large hangar door and building frontage both to air and landsides for potential future development as a hangar and associated office/lobby. The sketch included within Exhibit A illustrates the concept plan and can be described as follows:

1. 30,000 GSF shell building
  - a) Simple Pre-engineered building frame
  - b) 32-foot overhead clearance to facilitate potential use as hangar
  - c) 150-foot-wide hangar door opening for 6-panel horizontal sliding door
  - d) Hangar door can be included in Phase 1 or deferred to Phase 2 in which case the hangar door opening would be closed with in-fill exterior wall construction that can be removed in Phase 2
  - e) Interior floor slab can be included in Phase 1 or deferred to Phase 2, providing flexibility for installation of underfloor utilities in Phase 2
  - f) Minimal electrical and HVAC to be included in Phase 1 (ventilating fans only, and electrical distribution to support fans and minimal stumble lighting)
  - g) City of Mobile has agreed that the two-phase construction strategy is acceptable.
  - h) Mobile Airport Authority will seek tenant(s) to occupy the building, but the timing of future Phase 2 Interior Fit-Out is unknown.

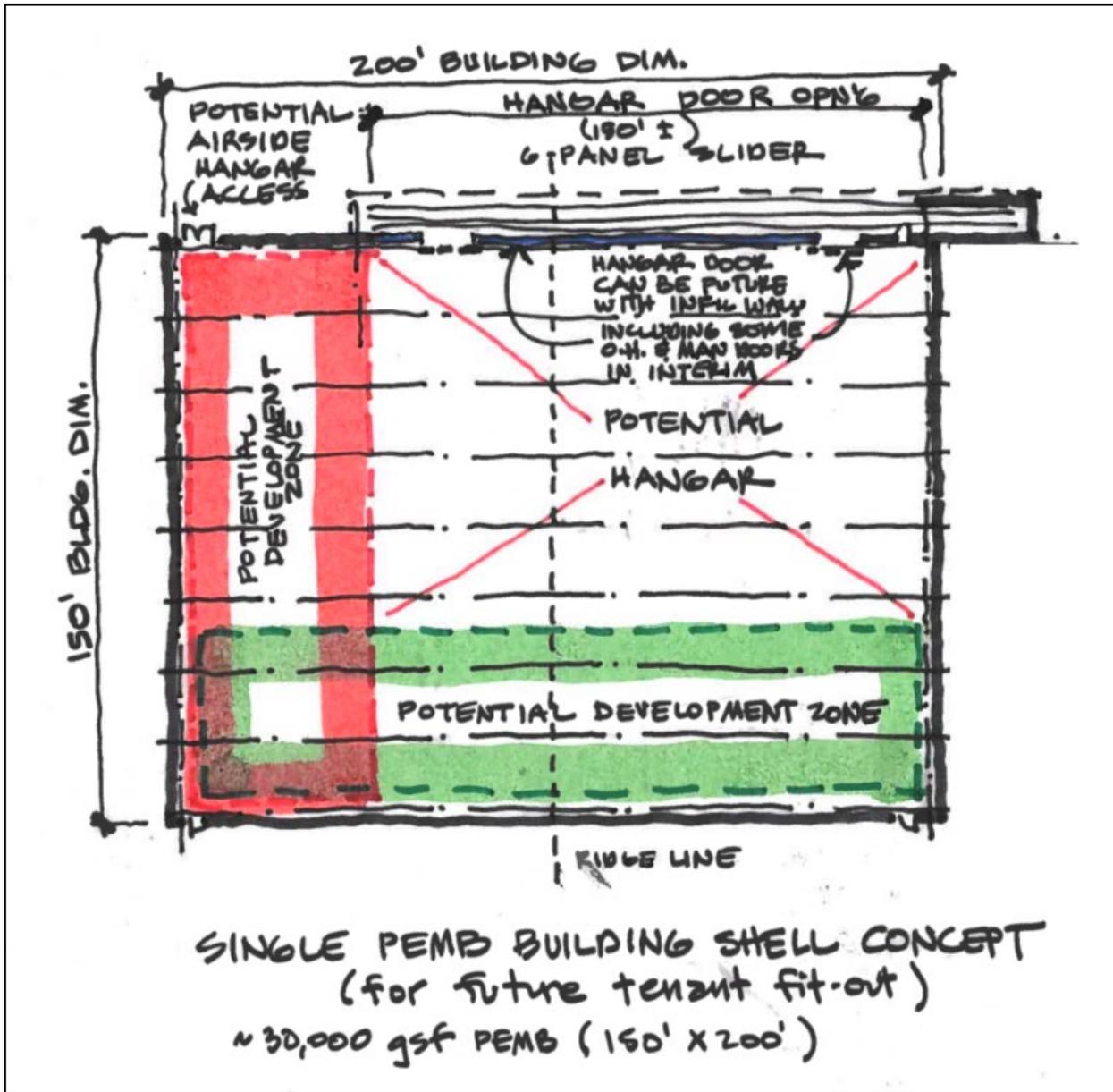
**(Attachment A - Proposed Site Location)**

(Figure 1)



**(Attachment A - Preliminary BLDG Footprint)**

(Figure 2)



(End of attachment A)

**Attachment B**

***Please use a separate sealed envelope marked "Fee Proposal"***

**Construction Manager at Risk RFQ No. 2023-005 (Rebid)  
CMAR Fee Summary**

**Proposing Firm's Name:** \_\_\_\_\_

**Contact Name & Email:** \_\_\_\_\_

*Please complete the cells highlighted in yellow.*

Estimated Construction Budget **\*\*see below**  
**CM to enter a lump sum fee ONLY for Pre-Con and CM management fees below.**

<b>Pre-Construction Services Fee</b>	\$ .
--------------------------------------	------

<b>Construction Management Fee</b>	\$ .
------------------------------------	------

<b>Office Personnel</b>	
<i>Including but not limited to project coordinator, drawings, shop drawings, samples, office supplies, copy, UPS, mailing</i>	

<b>On-site Personnel</b>	
<i>Including but not limited to on-site superintendent, safety personnel, project manager</i>	

<b>General Conditions / General Requirements</b>	
<i>Including but not limited to job trailer, phones/data, temp toilets, fire extinguishers, trucking and yard costs, temporary utility costs, mobilization/demobilization, dumpsters, barriers/enclosures, progress cleaning</i>	

<b>Tools</b>	
<i>Including but not limited to small tools, equipment rentals, crane, other needs</i>	

<b>Insurance</b>	\$ .
------------------	------

<b>Bonds</b>	
--------------	--

<b>Miscellaneous Costs</b>	\$ .
<i>Any and all additional costs to the Owner that are not specifically identified above and are not included in any CSI Division/subcontractor contract.</i>	

<b>Total Construction Management Cost</b>	\$ .
---	------

**\*\* Construction Budget is provided as an estimate only, based on concept project decisions to date. It is provided herein for comparative purposes between CM proposals. Owner takes no responsibility for the accuracy of these Excel spreadsheet formulas. CM shall ensure their math is correct.**

**Attachment C**

**VENDOR DATA FORM**

**RFQ No. 2023-005 (Rebid)**

**Construction Manager at Risk (CMAR)**

*THIS PAGE MUST BE COMPLETED AND SUBMITTED WITH YOUR PROPOSAL RESPONSE*

Signature of Authorized Representative: \_\_\_\_\_

Representative's Name: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone Number \_\_\_\_\_ Date: \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

**Attachment D**

**SIGNATURE & ACKNOWLEDGEMENT  
AFFIDAVIT FORM  
RFQ No. 2023-005 (Rebid)  
Construction Manager at Risk (CMAR)**

*THIS PAGE MUST BE COMPLETED AND SUBMITTED WITH YOUR PROPOSAL RESPONSE*

I, the undersigned duly authorized representative of the Bidder, understand that the Proposal must be signed by the Bidder or an authorized representative of the Bidder. Further, I acknowledge that I have read and understand all the proposal instructions, specifications, terms and conditions, and agree, on behalf of myself and the Bidder to be bound by them.

Receipts of the following Addenda are hereby acknowledged: (List all / any Addenda)

ADDENDUM NO. \_\_\_\_\_

ADDENDUM NO. \_\_\_\_\_

ADDENDUM NO. \_\_\_\_\_

<b>ILLEGAL IMMIGRANT CONFIRMATION</b>
By signing and submitting a response to this solicitation, a Prospective Bidder agrees and certifies that they do not employ or contract with illegal immigrants. If selected, the Prospective Bidder certifies that they will not employ or contract with illegal immigrants during the aggregate term of a contract.
<b>SUBMITTAL ACKNOWLEDGEMENT</b>
<input type="checkbox"/> Prospective Bidder acknowledges proposal includes one (1) complete original and three (3) copies.

\_\_\_\_\_  
Name Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

( ) \_\_\_\_\_  
Telephone

\_\_\_\_\_  
Address City/State/Zip

**Attachment E****INSURANCE REQUIREMENTS**

The company **MUST** agree to insurance requirements as outlined below, as well a complete vendor agreement. Evidence of all required coverage to be furnished in the form of a Certificate of Insurance stating that policy shall not be canceled, changed, allowed to lapse, or allowed to expire without 30 days written notice. The policies shall be endorsed to stipulate that the insurance afforded by the additional insureds shall apply as primary insurance and that any other insurance or self-insurance maintained by MAA shall be excess only. The company shall ensure that its subcontractors of any tier shall procure and maintain insurance that complies with the requirements set forth.

A copy of each endorsement shall be attached to the Certificate of Insurance. The Certificate shall indicate the Certificate Holder as:

**Mobile Airport Authority  
1891 9<sup>th</sup> Street  
Mobile, AL 36615**

Where appropriate, copies of endorsements should be attached to the Certificate of Insurance (COI).

- \*\* Waiver of Subrogation must be indicated "YES"
- \*\* "Mobile Airport Authority" must be listed on the bottom left of the COI form
- \*\* Must specify Mobile Airport Authority as insured
- \*\* MAA must always keep a current policy on file

The following is a list of the minimum requirements for the Mobile Airport Authority. Please note that each project is different and the minimum insurance requirements may change without notice.

	Commercial General Liability	General Aggregate	Auto Liability	Umbrella	Worker's Compensation
Non-Airside <\$100,000	\$1,000,000	\$2,000,000	\$500,000	\$0	State Law
Non-Airside \$100,001-\$500,000	\$1,000,000	\$2,000,000	\$1,000,000	\$0	State Law
Non-Airside \$500,001-\$2,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$2,000,000	\$1,000,000
Non-Airside >\$2,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$5,000,000	\$1,000,000
Service Vendor	\$1,000,000	\$2,000,000	Exposure Dependent	\$0	State Law
Terminal/Non-Airside	\$1,000,000	\$2,000,000	\$1,000,000	\$5,000,000	\$1,000,000
FAA Projects/Airside	\$1,000,000	\$2,000,000	\$1,000,000	\$9,000,000	\$1,000,000

The company shall indemnify, defend, and hold harmless Mobile Airport Authority and its affiliates, and all their employees, officers, directors, shareholders, etc. (collectively "Indemnitees") from and

against any and all claims, demands, losses, damages, liabilities, expenses, obligations, judgments, recoveries and deficiencies, arising out of or resulting from the performance of the services provided.

Mobile Airport Authority has the right to terminate the contract for non-compliance with insurance requirements.

### **Waiver of Subrogation**

The contractor shall waive its right to subrogation on each of the policies herein. If any of the policies do not permit the insured to enter a pre-loss waiver, or voids coverage because of same, there this Waiver of Subrogation requirement shall not apply and Subcontractor shall obtain a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.

Insurance required by this Agreement shall be as broad as necessary to support the indemnification requirement in said contract or as broad as the indemnitor's insurance coverage, whichever is broader.

**Attachment F**

**NON-COLLUSION AFFIDAVIT**

The undersigned proposal or agent, being duly sworn on oath, declares that he / she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him / her, entered into any combination, collusion, or agreement with any person relative to the price to be bid by anyone at such letting, nor to prevent any person from bidding, nor to include anyone to refrain from proposing, and that this proposal is made without reference to any other proposals and without any agreement, understanding or combination with any other person in reference to such proposals/bidding.

He / She further states that no person or persons, firms, or corporations, has, have or will receive directly or indirectly, any rebate, fee gift, commission or item of value on account, or in return for such sale.

**OATH AND AFFIRMATION**

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID/PROPOSAL FOR PUBLIC WORKS ARE TRUE AND CORRECT.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name of Organization

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title of Person Signing

**THE STATE OF \_\_\_\_\_**  
**\_\_\_\_\_ COUNTY**

I, \_\_\_\_\_, a Notary Public, hereby certify that \_\_\_\_\_ whose name is signed to the foregoing instrument or conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she/they executed the same voluntarily on the day the same bears date.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_

My commission expires: \_\_\_\_\_

**Attachment G****RFQ No. 2023-005 (Rebid)  
Construction Manager at Risk (CMAR)****Sample Contract Cover Page**

**DO NOT FILL OUT OR SIGN THE ATTACHED  
SAMPLE CONTRACT TEMPLATE.**

The attached document is a sample only. The selected bidder will receive a draft copy of the final contract and will be expected to sign it. Therefore, you should review the attached sample contract template in its entirety and make sure that you are able to comply with all terms and conditions.

STATE OF ALABAMA                    )  
 MOBILE COUNTY                    )

## CONSTRUCTION MANAGER AT RISK AGREEMENT

This Construction Manager at Risk Agreement (the “Agreement”) by and between Mobile Airport Authority, an Alabama quasi-governmental public corporation (“MAA”) and \_\_\_\_\_ (“Contractor”) is effective as of the \_\_ day of \_\_\_\_\_ 2023 (the “Effective Date”).

### RECITALS

WHEREAS, MAA issued a Request for Qualifications (“RFQ”) for the Work (as defined in the RFQ);

WHEREAS, MAA selected the Contractor as the most qualified bidder on \_\_\_\_\_, 2023;

WHEREAS, MAA desires to engage the Contractor to perform the Work, subject to the terms and conditions of this Agreement and the Contract Documents;

WHEREAS, the Contractor desires to provide pre-construction and construction services defined in the RFQ under the terms and conditions of this Agreement and the Contract Document; and

WHEREAS, Capitalized terms used, but not defined herein shall have the meaning attributed to them in the Contract Documents.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Contract Documents; Interpretation. The Contract Documents described in the RFQ and the General Terms and Conditions (the “Terms”) shall include this Agreement. In the event of a conflict between this Agreement and the provisions of any other Contract Document, this Agreement shall control. The Recitals are incorporated by this reference as if fully set forth herein and are made a part of this Agreement.

2. Work. Contractor shall perform all of the Work described in the RFQ and in any changes issued in accordance with Sections GC-53 through GC-60 of the General Terms and Conditions (the “Terms”).

(a) Work Phases

- Phase 1 – Preliminary Phase: As set forth in more detail in Project Requirement PR-01, Contractor shall perform **Pre-Construction Services** in Phase 1, including the preparation of a Guaranteed Maximum Price Proposal.
- Phase 2 – Completion Phase: If MAA, in its sole discretion, decides to advance to the Completion Phase or **Construction Services Phase** in Phase 2 through the adoption of a Guaranteed Maximum Price Amendment entered into pursuant to the General Conditions and Project Requirements, the Contractor shall perform the following services in Phase 2 (which are set forth in more detail in the Contract Documents): Construction, Start-up,

Testing, Commissioning, and Correction services. MAA, at its sole discretion, may choose not to execute Phase 2 of the Work.

3. Price and Payment.

- (a) Phase 1 Price. The Contractor will provide complete Pre-Construction services for Phase 1 for a Lump Sum of \$ \_\_\_\_\_.
- (b) Phase 2 Price. If MAA, in its sole discretion, elects to proceed to Phase 2 (Construction Phase Services), the Phase 2 Price will be set in accordance with the terms of the applicable section of the General Conditions and Project Requirements through the adoption of a Guaranteed Maximum Price Amendment, as agreed upon by the parties, including the following commitments:
- General Conditions: The Contractor's General Conditions costs will be capped at \$ \_\_\_\_ (lump sum).
  - Contractor's Fee: The Contractor's Overhead and Profit is \$ \_\_\_\_ (lump sum).

4. Period of Performance.

- (a) Time of the Essence: All time limits for the Contractor's attainment of Milestones, Substantial Completion, and completion and readiness for final payments, as stated in the Contract are of the essence of the Contract. Contract milestones, inclusive of interim milestones are set forth in Attachment C to this Agreement.
- (b) Contract Times: The Contractor will ensure that the Work under Phase 2 will be Substantially Completed no later than \_\_\_\_\_ (\_\_\_\_) days from the receipt of the Phase 2 Notice to Proceed to Proceed. The Contractor will ensure that the Work under Phase 2 will be to Final Completion no later than one hundred twenty (120) days from Substantial Completion.
- (c) By executing this Agreement, The Contractor represents and warrants to MAA that: i) the Contract Time is reasonable for completion of the Work; and ii) the Contractor will complete the Work in accordance with the schedule set forth in this Section 4.

5. Liquidated Damages.

- (a) Construction: The Contractor and MAA recognize that time is of the essence as stated above and that MAA will suffer financial and other losses if the Work is not completed within the times specified in Article 4 as such may be revised in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving, in a lawsuit or arbitration proceeding, the actual loss suffered by MAA if the Work is not completed on time. Accordingly, instead of requiring any such proof, MAA and the Contractor agree that as liquidated damages for delay (but as a penalty):
- Substantial Completion: The Contractor shall pay MAA liquidated damages in the amount of **\$9,790.00** for each calendar day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4(b) above for Substantial Completion, until the Work is substantially complete.

- *Final Completion:* After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment as required in the Contract within the dates specified in Paragraph 4(b) above, then the Contractor shall pay MAA liquidated damages in the amount of **\$3,250.00** for each calendar day that expires after such until the Work is completed and ready for final payment. Final Completion should be no later than one hundred and twenty (120) days from Substantial Completion.

6. Due Authorization. The person or persons signing this Agreement on behalf of the Contractor hereby represent and warrant to MAA that this Agreement is duly authorized, signed, and delivered by the Contractor.

7. Contractor's Covenants and Representations. Without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, the Contractor makes the following covenants and representations to MAA:

- (a) Contractor and all of its Sub-contractors are properly certificated, licensed and qualified to perform the Work required by the Contract Documents.
- (b) Contractor accepts the relationship of trust and confidence with the MAA established by the Contract Documents. Contractor will cooperate with MAA.
- (c) Contractor has carefully examined the site of the Project and the adjacent areas, have suitably investigated the nature and location of the construction Work, and have satisfied themselves as to the general and local conditions which will be applicable, including but not limited to: (1) conditions related to site access and to the transportation, disposal, handling and storage of materials; (2) the availability of labor, water, power and roads; (3) normal weather conditions; (4) observable physical conditions at the site and existing site conditions including: size, utility capacities and connection options of external utilities; (5) the surface conditions of the ground; and (6) the character and availability of the equipment and facilities which will be needed prior to and during the performance of construction Work.
- (d) Contractor has carefully reviewed the following exhibits to the Contract: (1) scope of the Work (including applicable codes, ordinances, rules and regulations); and (2) the Contract Documents, including all MAA furnished documents, specifications, schematics, and drawings. Contractor acknowledges that the Contract Documents establish the scope, level of quality, design intent and the procedures for the development of the design to a state of 100% completion.
- (e) Contractor agrees to manage and timely construct the Project in consideration for the MAA's payment of the Contract price.
- (f) Contractor agrees that time is of the essence for the performance of the Work.
- (g) Contractor agrees to follow and abide by all federal contracting provisions (See attachment A).

8. Scope of the Agreement. This Agreement is comprised of the following documents listed below:

- Attachment A – General Conditions
- Attachment B – Monthly Payment Application Waiver

- Attachment C – MAA Rules & Regulations
- Attachment D – Insurance Requirements

All documents contained in, or that constitute, the above Attachments, Attachment A, Attachment B, Attachment C, and Attachment D, (collectively, the “Attachments”), are by this reference incorporated into this Agreement as if fully set forth herein and are made a part of this Agreement.

9. Entire Agreement. This Agreement, including all Attachments, contains the entire agreement between the parties, which supersedes any prior oral or written agreements, commitments, understandings, or communications with respect to the subject matter of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date.

MOBILE AIRPORT AUTHORITY

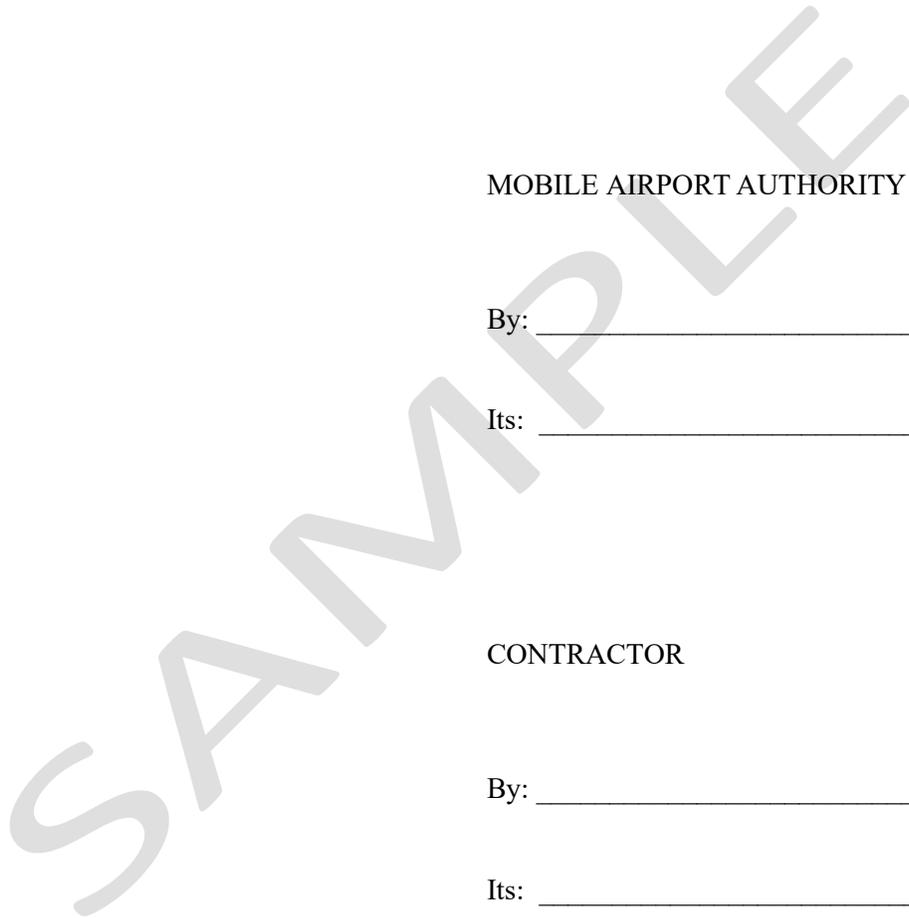
By: \_\_\_\_\_

Its: \_\_\_\_\_

CONTRACTOR

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

Its: \_\_\_\_\_



**U. S. DEPARTMENT OF COMMERCE  
ECONOMIC DEVELOPMENT ADMINISTRATION**



**EDA CONTRACTING PROVISIONS  
FOR CONSTRUCTION PROJECTS**

These EDA Contracting Provisions for Construction Projects (EDA Contracting Provisions) are intended for use by recipients receiving federal assistance from the U. S. Department of Commerce - Economic Development Administration (EDA). They contain provisions specific to EDA and other federal provisions not normally found in non-federal contract documents. The requirements contained herein must be incorporated into all construction contracts and subcontracts funded wholly or in part with federal assistance from EDA.

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2. Applicability
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27. Debarment, Suspension, Ineligibility and Voluntary Exclusions
28. EDA Project Sign
29. Buy America

## 1. **DEFINITIONS**

*Agreement* – The written instrument that is evidence of the agreement between the Owner and the Contractor overseeing the Work.

*Architect/Engineer* - The person or other entity engaged by the Recipient to perform architectural, engineering, design, and other services related to the work as provided for in the contract.

*Contract* – The entire and integrated written agreement between the Owner and the Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

*Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

*Contractor* – The individual or entity with whom the Owner has entered into the Agreement.

*Drawings or Plans* – That part of the Contract Documents prepared or approved by the Architect/Engineer that graphically shows the scope, extent, and character of the Work to be performed by the Contractor.

*EDA* - The United States of America acting through the Economic Development Administration of the U.S. Department of Commerce or any other person designated to act on its behalf. EDA has agreed to provide financial assistance to the Owner, which includes assistance in financing the Work to be performed under this Contract. Notwithstanding EDA's role, nothing in this Contract shall be construed to create any contractual relationship between the Contractor and EDA.

*Owner* – The individual or entity with whom the Contractor has entered into the Agreement and for whom the Work is to be performed.

*Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

*Recipient* – A non-Federal entity receiving a Federal financial assistance award directly from EDA to carry out an activity under an EDA program, including any EDA-approved successor to the entity.

*Specifications* – That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

*Subcontractor* – An individual or entity having direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

*Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## 2. **APPLICABILITY**

The Project to which the construction work covered by this Contract pertains is being assisted by the United States of America through federal assistance provided by the U.S. Department of Commerce - Economic Development Administration (EDA). Neither EDA, nor any of its departments, entities, or employees is a party to this Contract. The following EDA Contracting Provisions are included in this Contract and all subcontracts or related instruments pursuant to the provisions applicable to such federal assistance from EDA.

## 3. **FEDERALLY REQUIRED CONTRACT PROVISIONS**

(a) All contracts in excess of the simplified acquisition threshold - currently fixed at \$150,000 (*see* 41 U.S.C. §§ 134 and 1908) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(b) All contracts in excess of \$10,000 must address termination for cause and for convenience by the Recipient including the manner by which it will be effected and the basis for settlement.

(c) All construction contracts awarded in excess of \$10,000 by recipients of federal assistance and their contractors or subcontractors shall contain a provision requiring compliance with Executive Order 11246 of September 24, 1965, *Equal Employment Opportunity*, as amended by Executive Order 11375 of October 13, 1967, and Department of Labor implementing regulations at 41 C.F.R. part 60.

(d) All prime construction contracts in excess of \$2,000 awarded by Recipients must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148) as supplemented by Department of Labor regulations at 29 C.F.R. part 5. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) as supplemented by Department of Labor regulations at 29 C.F.R. part 3.

(e) All contracts awarded by the Recipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704 (the Contract Work Hours and Safety Standards Act) as supplemented by Department of Labor regulations at 29 C.F.R. part 5.

(f) All contracts must include EDA requirements and regulations that involve a requirement on the contractor or sub-contractor to report information to EDA, the Recipient or any other federal agency.

- (g) All contracts must include EDA requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- (h) All contracts must include EDA requirements and regulations pertaining to copyrights and rights in data.
- (i) All contracts and subgrants in excess of \$150,000 must contain a provision that requires compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1251 *et seq.*), and Executive Order 11738, *Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans*.
- (j) Contracts must contain mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).
- (k) Contracts must contain a provision ensuring that contracts are not to be made to parties on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180.
- (l) Contracts must contain a provision ensure compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) under which contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- (m) If the Recipient is a state agency or agency of a political subdivision of a state, any contract awarded must contain a provision ensuring compliance with section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), as amended by the Resource Conservation and Recovery Act related to the procurement of recovered materials.

#### 4. **REQUIRED PROVISIONS DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion of correction.

5. **INSPECTION BY EDA REPRESENTATIVES**

The authorized representatives and agents of EDA shall be permitted to inspect all work, materials, payrolls, personnel records, invoices of materials, and other relevant data and records.

6. **EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

(a) The Owner, EDA, or the Comptroller General of the United States, or any of their duly authorized representatives shall, generally until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders that do not exceed \$10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Owner, EDA, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

7. **CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES**

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in a form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due to the Contractor in accordance with the progress schedule. The Contractor also shall furnish the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only to determine the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

8. **CONTRACTOR'S TITLE TO MATERIAL**

No materials, supplies, or equipment for the work shall be purchased by the Contractor or by any subcontractor that is subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants and guarantees that he/she has good title to all work, materials, and equipment used by him/her in the Work, free and clear of all liens, claims, or encumbrances.

9. **INSPECTION AND TESTING OF MATERIALS**

All materials and equipment used in the completion of the Work shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses.

10. **"OR EQUAL" CLAUSE**

Whenever a material, article, or piece of equipment is identified in the Contract Documents by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard. Any material, article, or equipment of other manufacturers and vendors that will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. However, such substitution material, article, or equipment shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

11. **PATENT FEES AND ROYALTIES**

(a) Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Architect/Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents.

(b) To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner and the Architect/Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

12. **CLAIMS FOR EXTRA COSTS**

No claims for extra work or cost shall be allowed unless the same was done in pursuance of a written order from the Architect/Engineer approved by the Owner.

### 13. **CONTRACTORS AND SUBCONTRACTORS INSURANCE**

(a) The Contractor shall not commence work under this Contract until the Contractor has obtained all insurance reasonably required by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved.

(b) Types of insurance normally required are:

- (1) Workers' Compensation
- (2) Contractor's Public Liability and Property Damage
- (3) Contractor's Vehicle Liability
- (4) Subcontractors' Public Liability, Property Damage and Vehicle Liability
- (5) Builder's Risk (Fire and Extended Coverage)

(c) **Scope of Insurance and Special Hazards:** The insurance obtained, which is described above, shall provide adequate protection for the Contractor and his/her subcontractors, respectively, against damage claims that may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him/her and also against any of the special hazards that may be encountered in the performance of this Contract.

(d) **Proof of Carriage of Insurance:** The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates, and dates of expiration of applicable insurance policies.

### 14. **CONTRACT SECURITY BONDS**

(a) If the amount of this Contract exceeds \$150,000, the Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and also a payment bond in an amount equal to one hundred percent (100%) of the Contract price or in a penal sum not less than that prescribed by State, Territorial, or local law, as security for the payment of all persons performing labor on the Work under this Contract and furnishing materials in connection with this Contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law. Before final acceptance, each bond must be approved by EDA. If the amount of this Contract does not exceed \$150,000, the Owner shall specify the amount of the payment and performance bonds.

(b) All bonds shall be in the form prescribed by the Contract Documents except as otherwise provided in applicable laws or regulations, and shall be executed by such sureties as are named in the current list of *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies* as published in Treasury Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's

authority to act. Surety companies executing the bonds must also be authorized to transact business in the state where the Work is located.

15. **LABOR STANDARDS - DAVIS-BACON AND RELATED ACTS**  
**(as required by section 602 of PWEDA)**

(a) **Minimum Wages**

(1) All laborers and mechanics employed or working upon the site of the Work in the construction or development of the Project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act at 29 C.F.R. part 3, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the 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 that 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 29 C.F.R. § 5.5(a)(1)(iv); 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 C.F.R. § 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 determined under 29 C.F.R. § 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics to be employed under the Contract, but not listed in the wage determination, shall be classified in conformance with the wage determination. EDA shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

(C) The proposed wage rate, including any bona fide fringe benefits, bears a

reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and EDA or its designee 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 EDA or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and EDA or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), EDA or its designee shall refer the questions, including the views of all interested parties and the recommendation of EDA or its designee, to the Administrator for determination.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(2)(ii) or (iii) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(3) 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.

(4) 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.

(b) **Withholding**

EDA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper employed or working on the site of the Work in the construction or development of the Project, all or part of the wages required by the Contract, EDA or its designee 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. EDA or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

(c) **Payrolls and basic records**

(1) 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 in the construction or development of the Project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 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, the plan or program is financially responsible, and the plan or program has been communicated in writing to the laborers or mechanics affected, and provide records that show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (i) For each week in which Contract work is performed, the Contractor shall submit a copy of all payrolls to the Owner for transmission to EDA or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose. It may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402; or downloaded from the U.S. Department of Labor's website at <https://www.dol.gov/whd/forms/wh347.pdf>. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors

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

(A) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. § 5.5(a)(3)(i) and that such information is correct and complete;

(B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 C.F.R. part 3; and

(C) 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.

(iii) 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 15(c)(2)(ii) of this section.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 3729 of Title 31 of the U.S. Code.

(3) The Contractor or subcontractor shall make the records required under paragraph 15(c)(1) of this section available for inspection, copying, or transcription by authorized representatives of EDA or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, EDA or its designee may, after written notice to the Contractor 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 C.F.R. § 5.12.

(d) **Apprentices and Trainees.**

(1) **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 (Bureau), or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any

apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) **Trainees.** Except as provided in 29 C.F.R. § 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 that 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's 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.

(3) **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, *Equal Employment Opportunity*, as amended, and 29 C.F.R. part 30.

(e) **Compliance with Copeland Anti-Kickback Act Requirements.** The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States”). The Act provides that the Contractor and any subcontractors shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The Owner shall report all suspected or reported violations to EDA.

(f) **Subcontracts.** The Contractor and any subcontractors will insert in any subcontracts the clauses contained in 29 C.F.R. §§ 5.5(a)(1) through (10) and such other clauses as EDA or its designee may require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. § 5.5.

(g) **Contract termination; debarment.** The breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

(h) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this contract.

(i) **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 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and EDA or its designee, the U.S. Department of Labor, or the employees or their representatives.

(j) **Certification of Eligibility.**

(1) By entering into this Contract, the Contractor certifies that neither it nor any person or firm that 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 C.F.R. § 5.12(a)(1).

(2) 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 C.F.R. § 5.12(a)(1).

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

16. **LABOR STANDARDS - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.

(a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which that person 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.

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

(c) **Withholding for unpaid wages and liquidated damages.** EDA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such Contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

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

17. **EQUAL EMPLOYMENT OPPORTUNITY**

(a) The Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. chapter 60, which is paid for in whole or in part with funds obtained from EDA, the following equal opportunity clause:

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

Economic Development Administration  
Contracting Provisions for Construction Projects

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

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

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

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

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

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

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of

this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph 17(a)(1) and the provisions of paragraphs 17(a)(1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as EDA or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by EDA or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(9) The Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally-assisted construction work. Provided, however, that if the Recipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the Contract.

(10) The Recipient agrees that it will assist and cooperate actively with EDA and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish EDA and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist EDA in the discharge of the EDA's primary responsibility for securing compliance.

(11) The Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by EDA or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Recipient agrees that if it fails or refuses to comply with these undertakings, EDA may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this EDA financial assistance; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case

to the Department of Justice for appropriate legal proceedings.

(b) Exemptions to Above Equal Opportunity Clause (41 C.F.R. chapter 60):

(1) Contracts and subcontracts not exceeding \$10,000 (other than Government bills of lading, and other than contracts and subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes) are exempt. The amount of the Contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding \$10,000 for standard commercial supplies or raw materials are exempt.

18. **CONTRACTING WITH SMALL, MINORITY AND WOMEN'S BUSINESSES**

(a) If the Contractor intends to let any subcontracts for a portion of the work, the Contractor shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services.

(b) Affirmative steps shall consist of:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

(4) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises;

(5) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies;

(6) Requiring each party to a subcontract to take the affirmative steps of this section; and

(7) The Contractor is encouraged to procure goods and services from labor surplus area firms.

19. **HEALTH, SAFETY, AND ACCIDENT PREVENTION**

(a) In performing this contract, the Contractor shall:

(1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;

(2) Protect the lives, health, and safety of other persons;

(3) Prevent damage to property, materials, supplies, and equipment; and

(4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

(1) Comply with regulations and standards issued by the Secretary of Labor at 29 C.F.R. part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708); and

(2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 C.F.R. part 1904.

(d) The Owner shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the Work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Owner may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as EDA, or the Secretary of Labor shall direct as a means of enforcing such provisions.

20. **CONFLICT OF INTEREST AND OTHER PROHIBITED INTERESTS**

- (a) No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof.
- (b) No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.
- (c) The Contractor may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the Contract Documents has a corporate or financial affiliation with the supplier or manufacturer.
- (d) The Owner's officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, may be involved. Such a conflict may arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in the Contractor. The Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from the Contractor or subcontractors.
- (e) If the Owner finds after a notice and hearing that the Contractor, or any of the Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the Owner or EDA in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, the Owner may, by written notice to the Contractor, terminate this Contract. The Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which the Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.
- (f) In the event this Contract is terminated as provided in paragraph (e) of this section, the Owner may pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, the Owner may pursue exemplary damages in an amount (as determined by the Owner) which shall not be less than three nor more than ten times the costs the Contractor incurs in providing any such gratuities to any such officer or employee.

## 21. **RESTRICTIONS ON LOBBYING**

(a) This Contract, or subcontract is subject to 31 U.S.C. § 1352, regarding lobbying restrictions. The section is explained in the common rule, 15 C.F.R. part 28 (55 FR 6736-6748, February 26, 1990). Each bidder under this Contract or subcontract is generally prohibited from using federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this EDA Award.

(b) **Contract Clause Threshold:** This Contract Clause regarding lobbying must be included in each bid for a contract or subcontract exceeding \$100,000 of federal funds at any tier under the EDA Award.

(c) **Certification and Disclosure:** Each bidder of a contract or subcontract exceeding \$100,000 of federal funds at any tier under the federal Award must file Form CD-512, *Certification Regarding Lobbying – Lower Tier Covered Transactions*, and, if applicable, Standard Form-LLL, *Disclosure of Lobbying Activities*, regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the Contractor or subcontractor at the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.

(d) **Continuing Disclosure Requirement:** Each Contractor or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.

(e) **Indian Tribes, Tribal Organizations, or Other Indian Organizations:** Indian tribes, tribal organizations, or any other Indian organizations, including Alaskan Native organizations, are excluded from the above lobbying restrictions and reporting requirements, but only with respect to expenditures that are by such tribes or organizations for lobbying activities permitted by other federal law. An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide EDA with the citation of the provision or provisions of federal law upon which it relies to conduct lobbying activities that would otherwise be subject to the prohibitions in and to the Certification and Disclosure requirements of 31 U.S.C. § 1352, preferably through an attorney's opinion. Note, also, that a non-Indian subrecipient, contractor, or subcontractor under an award to an Indian tribe, for example, is subject to the restrictions and reporting requirements.

## 22. **HISTORICAL AND ARCHAEOLOGICAL DATA PRESERVATION**

The Contractor agrees to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction. Any excavation by the Contractor that uncovers an historical or archaeological artifact shall be immediately reported to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the State Historic

Preservation Officer (SHPO) for recovery of the items. *See* the National Historic Preservation Act of 1966 (54 U.S.C. § 300101 *et seq.*, formerly at 16 U.S.C. § 470 *et seq.*) and Executive Order No. 11593 of May 31, 1971.

23. **CLEAN AIR AND WATER**

Applicable to Contracts in Excess of \$150,000

(a) **Definition.** “Facility” means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the United States Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

(b) In compliance with regulations issued by the EPA, 2 C.F.R. part 1532, pursuant to the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); and Executive Order 11738, the Contractor agrees to:

(1) Not utilize any facility in the performance of this contract or any subcontract which is listed on the Excluded Parties List System, part of the System for Award Management (SAM), pursuant to 2 C.F.R. part 1532 for the duration of time that the facility remains on the list;

(2) Promptly notify the Owner if a facility the Contractor intends to use in the performance of this contract is on the Excluded Parties List System or the Contractor knows that it has been recommended to be placed on the List;

(3) Comply with all requirements of the Clean Air Act and the Federal Water Pollution Control Act, including the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all applicable clean air and clean water standards; and

(4) Include or cause to be included the provisions of this clause in every subcontract and take such action as EDA may direct as a means of enforcing such provisions.

24. **USE OF LEAD-BASED PAINTS ON RESIDENTIAL STRUCTURES**

(a) If the work under this Contract involves construction or rehabilitation of residential structures over \$5,000, the Contractor shall comply with the Lead-based Paint Poisoning Prevention Act (42 U.S.C. § 4831). The Contractor shall assure that paint or other surface coatings used in a residential property does not contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight. For purposes of this section, “residential property” means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not

including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

- (b) As a condition to receiving assistance under PWEDA, recipients shall assure that the restriction against the use of lead-based paint is included in all contracts and subcontracts involving the use of federal funds.

25. **ENERGY EFFICIENCY**

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201) for the State in which the Work under the Contract is performed.

26. **ENVIRONMENTAL REQUIREMENTS**

When constructing a Project involving trenching and/or other related earth excavations, the Contractor shall comply with the following environmental constraints:

- (1) **Wetlands.** When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert wetlands.
- (2) **Floodplains.** When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency (FEMA) Floodplain Maps, or other appropriate maps, i.e., alluvial soils on Natural Resource Conservation Service (NRCS) Soil Survey Maps.
- (3) **Endangered Species.** The Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of the Contractor, the Contractor will immediately report this evidence to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the U.S. Fish and Wildlife Service.

27. **DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSIONS**

As required by Executive Orders 12549 and 12689, *Debarment and Suspension*, 2 C.F.R. Part 180 and implemented by the Department of Commerce at 2 C.F.R. part 1326, for prospective participants in lower tier covered transactions (except subcontracts for goods or services under the \$25,000 small purchase threshold unless the subrecipient will have a critical influence on or substantive control over the award), the Contractor agrees that:

- (1) By entering into this Contract, the Contractor and subcontractors certify, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared Economic Development Administration Contracting Provisions for Construction Projects

ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

(2) Where the Contractor or subcontractors are unable to certify to any of the statements in this certification, the Contractor or subcontractors shall attach an explanation to this bid.

*See also 2 C.F.R. part 180 and 2 C.F.R. § 200.342.*

28. **EDA PROJECT SIGN**

The Contractor shall supply, erect, and maintain in good condition a Project sign according to the specifications provided by EDA. To the extent practical, the sign should be a free standing sign. Project signs shall not be located on public highway rights-of-way. Location and height of signs will be coordinated with the local agency responsible for highway or street safety in the Project area, if any possibility exists for obstructing vehicular traffic line of sight. Whenever the EDA site sign specifications conflict with State law or local ordinances, the EDA Regional Director will permit such conflicting specifications to be modified so as to comply with State law or local ordinance.

29. **BUY AMERICA**

To the greatest extent practicable, contractors are encouraged to purchase American-made equipment and products with funding provided under EDA financial assistance awards.

ATTACHMENT I

FORM CD-512  
(REV 12-04)

U.S. DEPARTMENT OF COMMERCE

**CERTIFICATION REGARDING LOBBYING  
LOWER TIER COVERED TRANSACTIONS**

Applicants should review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 28, "New Restrictions on Lobbying."

**LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

**Statement for Loan Guarantees and Loan Insurance**

The undersigned states, to the best of his or her knowledge and belief, that:

In any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

**As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.**

NAME OF APPLICANT

AWARD NUMBER AND/OR PROJECT NAME

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE

**ATTACHMENT J**

**NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION  
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY  
(EXECUTIVE ORDER 11246 AND 41 CFR PART 60-4)**

The following Notice shall be included in, and shall be a part of all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000.

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.

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:

<b>Timetables</b>	<b>Goals for minority participation for each trade</b>	<b>Goals for female participation for each trade</b>
	%	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 must be substantially uniform throughout the length of the contract, and in each trade and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

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

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

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

City of \_\_\_\_\_

**EDA PROJECT SIGN**

The Contractor shall supply, erect, and maintain in good condition a project sign according to the specifications set forth below:

**EDA SITE SIGN SPECIFICATIONS**

Size: 4' x 8' x ¾"

Materials: Exterior grade/MDO plywood (APA rating A-B)

Supports: 4" x 4" x 12' posts with 2" x 4" cross branching

Erection: Posts shall be set a minimum of three feet deep in concrete footings that are at least 12" in diameter.

Paint: Outdoor enamel

Colors: Jet Black, Blue (PMS300), and Gold (PMS7406). Specifically, on white background the following will be placed:

The U. S. Department of Commerce seal in blue, black, and gold;

“EDA” in blue;

“U. S. DEPARTMENT OF COMMERCE ECONOMIC DEVELOPMENT

ADMINISTRATION” in black;

“In partnership with” in blue;

(Actual name of the) “EDA Grant Recipient” in black;

Lettering: Specific fonts are named below; positioning will be as shown on the attached illustration.

“U. S. DEPARTMENT OF COMMERCE ECONOMIC DEVELOPMENT  
ADMINISTRATION” use Bank Gothic Medium - **BANK GOTHIC MED**

“In partnership with” use Univers™ 55 Oblique - **Univers 55**

(Name of) “EDA Grant Recipient” use Univers™ Extra Black 85 **Univers 85**

Project signs will not be erected on public highway rights-of-way. If any possibility exists for obstruction to traffic line of sight, the location and height of the sign will be coordinated with the agency responsible for highway or street safety in the area.

The EDA Regional Director may permit modifications to these specifications if they conflict with state law or local ordinances.







**EDA**

Black  
Blue= PMS300  
Gold= PMS7406

**U.S. DEPARTMENT OF COMMERCE ECONOMIC DEVELOPMENT ADMINISTRATION**

*In partnership with*

**Recipient Name**

*Joseph R. Biden, Jr., President of the United States*

2.25"  
13.5"  
2.0"  
1.5"  
4.0"  
3.0"  
3.0"  
3.75"  
3.0"  
4.25"  
3.75"  
4.0"

48"