



PROJECT NO: FSB2021-531-01 (RFP NO. 2023-022)
 PROJECT DESCRIPTION: BID PACKAGE #4A – DEEP FOUNDATIONS
 PROJECT OWNER: MOBILE AIRPORT AUTHORITY
 CMAR: JESCO, Inc. Construction

ENGINEER OF RECORD: TERMINAL BUILDING - FSB ARCHITECTS + ENGINEERS / KAYLEE ROPER, P.E.
 PARKING GARAGE – WALKER CONSULTANTS / MATTHEW CONLEY, P.E.

DATE OF ISSUE: NOVEMBER 11, 2023
 RECEIPT: All Plan Holders

ADDENDA NO. 1

The information included in Addenda No.1 and attachments hereto shall be considered in preparation of the proposal for the above referenced project and shall be made part of the Contract Documents and Specifications of the above referenced project.

RECEIPT OF THIS ADDENDA SHALL BE ACKNOWLEDGED BY INITIALING THE “ACKNOWLEDGED RECEIPT” SPACE ON PAGE 1 OF THIS DOCUMENT. FAILURE TO ACKNOWLEDGE THIS ADDENDA MAY RESULT IN A NON-RESPONSIVE PROPOSAL.

PROPOSAL MODIFICATIONS, ITEMS OF CLARIFICATION, RESPONSES

CONTRACT SPECIFICATION MODIFICATIONS

- Reference SPECIFICATION SECTION 009113 – ADDENDA for updated requirements and attachments referenced in PART 1 – GENERAL, ARTICLE 1.3 – ATTACHMENTS.
- Miscellaneous:
 - Pre-Bid Meeting:
 - A non-mandatory pre-bid meeting was held on Thursday, November 9, 2023, at 9:00 a.m. CDT building 1891 9th Street, Mobile, AL 36615.
 - A follow-up non-mandatory pre-bid meeting will be held on Monday, November 13, 2023, at 11:00 a.m. CDT via Virtual Only.

Please acknowledge receipt: Addenda No. 1:

 (Signature)

Addenda No. 1 Issued By:



 Lauren Luckowski, IIDA, RCID, NCIDQ
 Senior Project Manager

Enclosure:

- SPECIFICATION SECTION 009113 – ADDENDA 1
- BIDDER QUESTIONS LOG – ADDENDA 1
- DIV I – SECTION A – INVITATION FOR BIDS – ADDENDA 1
- DIV 1 – BID DOCUMENTS – SECTION E – ADDENDA 1
- DIV I – BID DOCUMENTS – SECTION F – ADDENDA 1
- DIV III – GENERAL PROVISIONS – SECTION 90 – ADDENDA 1
- DIV III – GENERAL PROVISIONS – SECTION 100 – ADDENDA 1
- DIV III – GENERAL PROVISIONS – SECTION 150 – ADDENDA 1
- DIV III – GENERAL PROVISIONS – SECTION 151 – ADDENDA 1

DOCUMENT 009113 - ADDENDA NO. 1

PART 1 - GENERAL

1.1 PROJECT INFORMATION

- A. Project Name: Bid Package #4A - Deep Foundations at Mobile International Airport.
- B. Project Location: Mobile International Airport
- C. Owner: Mobile Airport Authority.
- D. Architect: FSB Architects + Engineers
- E. Architect Project Number: FSB2021-531-01.
- F. MAA RFP No.: 2023-022
- G. Construction Manager: JESCO, Inc. Construction
- H. Date of Addendum No. 1.: November 10, 2023

1.2 NOTICE TO BIDDERS

- A. This Addendum is issued to all registered plan holders pursuant to the Instructions to Bidders. This Addendum serves to clarify, revise, and supersede information in the Engineering Narratives, Preliminary Drawings, and previously issued Addenda. Portions of the Addendum affecting the Bid Documents will be incorporated into the Contract by enumeration of the Addendum in the Construction Manager at Risk (CMAR) Agreement.
- B. The Bidder shall acknowledge receipt of this Addendum in the appropriate space on the Bid Form.
- C. The date for receipt of bids is unchanged by this Addendum, at same time and location.
 - 1. Bid Date: Monday, November 20, 2023 at 2:00 p.m. CST.

1.3 ATTACHMENTS

- A. This Addendum includes the following attachments.
 - 1. NEW, Request for Information (RFI) Log.
 - 2. NEW, Document 009113 - Addenda
 - 3. Division I - Bid Documents

- a. Section A - Invitation for Bids, with Addenda No.1, dated 10 November 2023.
 - b. Section E - Subcontractor Information, with Addenda No. 1, dated 10 November 2023.
 - c. Section F - Minority Business Enterprise Program, with Addenda No. 1, dated 10 November 2023.
4. Division III - General Provisions
- a. Section 90 - Measurement and Payment, with Addenda No. 1, dated 10 November 2023.
 - b. Section 100 - Mandatory Contract Requirements, with Addenda No. 1, dated 10 November 2023.
 - c. Section 150 - Disadvantaged Business Enterprise Program, with Addenda No. 1, dated 10 November 2023.
 - d. Section 151 - Minority Business Enterprise Program, with Addenda No. 1, dated 10 November 2023.

1.4 REVISIONS TO DIVISION 00 PROCUREMENT REQUIREMENTS AND CONTRACTING REQUIREMENTS

A. DIVISION I - BID DOCUMENTS:

- 1. SECTION A - INVITATION FOR BIDS.
 - a. Revised pre-bid meeting date from November 9, 2023 at 9:00 a.m. CDT to 'Monday, November 13, 2023 at 11:00 a.m CDT'.
 - b. Included Disadvantaged Business Enterprise and Minority Business Enterprise (DBE + MBE) goal of 1.3%.
- 2. SECTION E - SUBCONTRACTOR INFORMATION.
 - a. Added 'DBE's' to first paragraph for clarity.
- 3. SECTION F - MINORITY BUSINESS ENTERPRISE PROGRAM.
 - a. Added 'Disadvantaged Business Enterprise (DBE)' breakdown for the total amount work work expected to be performed by both MBE and DBE for clarity.
 - b. Added 'DBE LETTER OF INTENT' for clarity.

B. DIVISION III - GENERAL PROVISIONS

- 1. SECTION 90 - MEASUREMENT AND PAYMENT.

- a. Article 90-11: Contractor Final Project Documentation, paragraph 'd',
 - 1) Added 'MBE' percentages.
- 2. SECTION 100 - MANDATORY CONTRACT REQUIREMENTS.
 - a. Article 100-16: Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity paragraph 'b':
 - 1) Removed 'TBD' and added '1.3%' for Goals for minority participation for each trade.
 - 2) Removed 'TBD' and replaced with '1.3%' added Goals for female participation in each trade.
- 3. SECTION 150 - DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
 - a. Article 150-07: DBE Participation Goal:
 - 1) Removed 'TBD' and added '1.3%'.
- 4. SECTION 151 - MINORITY BUSINESS ENTERPRISE PROGRAM
 - a. Article 151-07: MBE Participation Goal:
 - 1) Removed 'TBD' and added '1.3%'.

END OF DOCUMENT 009113

Bid Package #4A - Bidder Questions Report - All

PROJECT: Mobile International Airport, Mobile, AL
 BID PACKAGE: Bid Package #4A - Deep Foundations
 CMAR: JESCO, Inc. Construction
 FSB PROJECT MANAGER: Lauren Luckowski
 PREPARED BY: Lauren Luckowski
 ISSUE DATE: 11/10/2023



ID	Subject	Status	Received	Question	Answer	Status
B1	Pile Capacity	Closed	11/9/2023	For shear/lateral capacities for the piles. Will there be a lateral resistance requirements for these?	<p>Parking Garage: Yes. For the Parking Garage, the pile shall be designed assuming the lateral capacities noted within Division IV - Contract Technical Specifications, Section I, Attachment J - Typical Tension Pile Details, Sheet S-002 - are achieved with a maximum pile head displacement of 0.75-inch service loads assuming in a pin head pile condition. Reference L-pile analysis within the SES Geotechnical Report.</p> <p>Terminal Building: Yes. Reference Division IV - Contract Technical Specifications, Section I, Attachment J - Typical Tension Pile Details, Sheet S-002 - Typical Foundation Details, Table 1 - Required Pile Capacities.</p>	
B2	Pile Types	Closed	11/9/2023	Will augercast piling be considered?	<p>Parking Garage: No. Only Augered <u>Displacement</u> Piles are considered.</p> <p>Terminal Building: No. Only Augered <u>Displacement</u> Piles are considered.</p>	
B3						
B4						
B5						
B6						

**SECTION A
INVITATION FOR BIDS**

Sealed bids will be received by the Mobile Airport Authority at 1891 9th Street, Mobile, AL 36615, until 2:00 p.m. Local Time, November 20, 2023 for the furnishing of all labor and materials and performing all work for constructing the following contract:

**Project No. FSB2021-531-01 – BP#4A
Bid Package #4A – Deep Foundations
At Mobile International Airport
Mobile, Alabama**

At the specified time, all bids will be publicly opened and read aloud and then evaluated in a private setting. Upon selection, the CMAR will notify each bidder with the results of the selection.

A pre-bid meeting will be held on ~~November 9, 2023, at 9:00 a.m. CST~~ **Monday, November 13, 2023 at 11:00 a.m. CDT** via **Virtual Only** for the purpose of briefing prospective bidders and DBE's about this project. All prospective bidders are urged to attend.

Major items of work include the **Bid Package #4A – Deep Foundations** at the Mobile International Airport.

Liquidated Damages for this project shall be **6% annum of original contract** per Calendar Day.

A Disadvantaged Business Enterprise (DBE) goal of ~~TBD~~ **1.3%** has been established for this project. The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53. As a condition of bid responsiveness, the Bidder or Offeror must submit the following information with their proposal on the forms provided herein:

- (1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- (2) A description of the work that each DBE firm will perform;
- (3) The dollar amount of the participation of each DBE firm listed under (1)
- (4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under item (1) to meet the Owner's project goal;
- (5) If Bidder or Offeror cannot meet the advertised project DBE goal; evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR Part 26. *Per 49 CFR Part 26.53(b)(3), the Bidder may submit evidence of a good faith effort within five (5) days after the bid opening.*

Plans and specifications may be inspected at no charge online at <https://www.mobileairportauthority.com/downtown/rfp/>

All prospective bidders MUST notify the CMAR of their intention to bid on the project a minimum of 72 hours before the time specified for receiving bids. Bids must be submitted on the forms included within the contract documents and specifications. Bid shall include all pages included in Division I – Bid Documents. **All bid packages should include two (2) complete sets of the bid documents.** Submission of the entire contract book is not required.

Guarantee of Bid **IS NOT** required.

Contract bond will be required as follows: 100% of the contract price.

Labor and Materials Bond will be required as follows: 100% of the contract price.

No bids will be considered unless the bidder, whether resident or non-resident of Alabama, is properly qualified with the State of Alabama. In addition, non-residents of the State, if a corporation, shall show evidence of having qualified with the Secretary of State to do business in Alabama.

No contract will be awarded unless the contractor holds a current and appropriate license from the State Licensing Board for General Contractors, Montgomery, Alabama.

No bid shall be withdrawn for a period of 60 days subsequent to the opening of bids without the consent of the Owner.

MAA reserves the right to reject any and all proposals submitted; to select one or more responding parties.; to avoid this RFP 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 RFP. Additionally, any and all RFP 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 RFP process, to obtain further information from any and all responding parties, and to waive any defects as to form or content of the RFP or any responses by any party.

This RFP does not commit MAA to award of contract, defray any costs incurred in the preparation of any response to this RFP, or contract for any services. All submitted responses to this RFP become the property of MAA as public records. All proposals may be subject to public view, on request, unless exempted as discussed elsewhere in the RFP. By accepting this RFP 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 RFP, revising this RFP, conducting the selection process and making a final recommendation, selecting a responding party/parties or negotiating or executing an agreement incorporating the commitments of the selected responding party. By submitting responses, each responding party acknowledges having read this RFP in its entirety and agrees to all terms and conditions set out in this RFP.

Prospective bidders must obtain the plans and specifications from the CMAR in order to submit a proposal. Request for plans and specifications shall be sent via email to the following email address no later than 72 hours prior to the time of receiving bids specified: bdwilliams@jescoinc.net

Brian Slaughter, Project Director
JESCO, Inc. Construction
Mobile, Alabama

**SECTION E
SUBCONTRACTOR INFORMATION**

The names and addresses of all persons and parties who will be utilized for subcontract work in the foregoing Bidder's proposal shall be listed below (including DBEs and MBEs). The Contractor shall list all Subcontractors to be utilized on the work. Failure to list Subcontractors may cause the Bidder's proposal to be rejected by the Owner as nonresponsive. The Bidder shall make copies of this page as needed to submit the information of all Subcontractors being utilized on the project.

Subcontractor Name: _____

Address: _____

Subcontract Work Item: _____

Dollar Value of Subcontract Work: _____

Subcontractor Name: _____

Address: _____

Subcontract Work Item: _____

Dollar Value of Subcontract Work: _____

Subcontractor Name: _____

Address: _____

Subcontract Work Item: _____

Dollar Value of Subcontract Work: _____

Subcontractor Name: _____

Address: _____

Subcontract Work Item: _____

Dollar Value of Subcontract Work: _____

Subcontractor Name: _____

Address: _____

Subcontract Work Item: _____

Dollar Value of Subcontract Work: _____

Total Dollar Value of Work to be Performed by Subcontractors: \$ _____

Percentage of Contract to be Performed by Subcontractors: _____ %
(Total Subcontract Work / Total Bid Amount x 100)

SECTION F
MINORITY BUSINESS ENTERPRISE PROGRAM
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

(As Required by Division III, Section 150 and Section 151 of the
Contract Documents and Specifications)

The Contractor shall indicate below the total amount of work expected to be performed by MBE and DBE contractors on this project.

<u>MBE Subcontractors¹</u> Names/Addresses/Identity ²	<u>Subcontract Work Item</u>	<u>Dollar Value of Subcontract Work</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total Dollar Value of Subcontract Work _____

Total Dollar Value of Bid _____

Total MBE Percent (Round to nearest 1/10 percent) _____ %

1. The Contractor shall complete a letter of Intent for each MBE Subcontractor listed.
2. Black, Hispanic, Asian American, American Indian, woman owned, and other economically disadvantaged.

<u>DBE Subcontractors¹</u> Names/Addresses/Identity ²	<u>Subcontract Work Item</u>	<u>Dollar Value of Subcontract Work</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total Dollar Value of Subcontract Work _____

Total Dollar Value of Bid _____

Total DBE Percent (Round to nearest 1/10 percent) _____ %

1. The Contractor shall complete a letter of Intent for each DBE Subcontractor listed.

2. Black, Hispanic, Asian American, American Indian, woman owned, and other economically disadvantaged.

CERTIFICATE OF COMPLIANCE

The Mobile Airport Authority has on file a Disadvantaged Business Enterprise Program which maybe reviewed and inspected at any of the following locations:

- (1) JESCO, Inc. Construction – 107 St. Francis Street, Suite 2270, Mobile, AL 36602
- (2) Mobile Airport Authority – 1891 9th Street, Mobile, AL 36615

The Mobile Airport Authority intends to utilize and implement this program in the awarding of this contract.

This is to certify that I have reviewed the plan, bid evaluation procedure, and MBE and DBE directory and will make all reasonable efforts to include MBE and DBE Contractors as outlined in Division III, Section 150 and Section 151.

If applicable I have included with this bid proposal documentation showing the good faith efforts made to meet the MBE and DBE goal as outlined in Division III, Section 150 and Section 151 (Required if goal is not met).

Bidder's Signature

Date

Title

Notary Public

MBE LETTER OF INTENT

Name of bidder /offeror’s firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of MBE Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Descriptions of work to be performed by MBE firm:

The bidder /offeror is committed to utilizing the above named MBE firm for the work described above. The estimated dollar value of this work is \$_____

Certification Process Information

Date of On-Site: _____

Certifying Agency/Firm: _____

Certifying Official: _____

Date of Certificate: _____

Affirmation

The above named MBE firm affirms that it will perform the portion of the contract for the estimated dollar value stated above.

By: _____
(Signature) (Title)

If the bidder /offeror does not receive award of the prime contract, any and all representations in the Letter of Intent and Affirmation shall be null and void.

(Submit this page to each MBE subcontractor.)

DBE LETTER OF INTENT

Name of bidder /offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Descriptions of work to be performed by DBE firm:

The bidder /offeror is committed to utilizing the above named DBE firm for the work described above. The estimated dollar value of this work is \$_____

Certification Process Information

Date of On-Site: _____

Certifying Agency/Firm: _____

Certifying Official: _____

Date of Certificate: _____

Affirmation

The above named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value stated above.

By: _____
(Signature) (Title)

If the bidder /offeror does not receive award of the prime contract, any and all representations in the Letter of Intent and Affirmation shall be null and void.

(Submit this page to each DBE subcontractor.)

SECTION 90

MEASUREMENT AND PAYMENT

90-01 MEASUREMENT OF QUANTITIES. Measurement of quantities will be in accordance with the specifications associated with the items of work included in the project.

90-02 SCOPE OF PAYMENT. The Contractor shall receive and accept compensation provided for in the contract as full payment for furnishing all materials, for performing all work under the contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the execution thereof, subject to the provisions of Section 70, paragraph 70-18, NO WAIVER OF LEGAL RIGHTS.

When the “basis of payment” subsection of a technical specification requires that the contract price (price bid) include compensation for certain work or material essential to the item, this same work or material will not also be measured for payment under any other contract item which may appear elsewhere in the contract, plans, or specifications.

90-03 COMPENSATION FOR ALTERED QUANTITIES. When the accepted quantities of work vary from the quantities in the proposal, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract price for the accepted quantities of work actually completed and accepted. No allowance, except as provided for in Section 40, paragraph 40-02, ALTERATION OF WORK AND QUANTITIES, will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly from such alterations or indirectly from their own unbalanced allocation of overhead and profit among the contract items, or from any other cause.

90-04 PAYMENT FOR OMITTED ITEMS. As specified in Section 40, paragraph 40-03, OMITTED ITEMS, the CMAR shall have the right to omit from the work (order nonperformance) any contract item, except major contract items, in the best interest of the Construction Manager at Risk (CMAR).

Should the CMAR omit or order nonperformance of a contract item or portion of such item from the work, the Contractor shall accept payment in full at the contract prices for any work actually completed and acceptable prior to the CMAR’s order to omit or non-perform such contract item.

Acceptable materials ordered by the Contractor or delivered on the work prior to the date of the CMAR’s order will be paid for at the actual cost to the Contractor and shall thereupon become the property of the CMAR.

In addition to the reimbursement hereinbefore provided, the Contractor shall be reimbursed for all actual costs incurred for the purpose of performing the omitted contract item prior to the date of the CMAR’s order. Such additional costs incurred by the Contractor must be directly related to the deleted contract item and shall be supported by certified statements by the Contractor as to the nature the amount of such costs.

90-05 PAYMENT FOR EXTRA WORK. Extra work, performed in accordance with Section 40, paragraph 40-04, EXTRA WORK, will be paid for at the contract prices or agreed prices specified in the change order or supplemental agreement authorizing the extra work.

90-06 PARTIAL PAYMENTS. Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the CMAR, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials

stockpiled and stored in accordance with paragraph 90-07, PAYMENT FOR MATERIALS ON HAND. No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars.

- a. From the total of the amount determined to be payable on a partial payment, 10 percent (10%) of such total amount will be deducted and retained by the CMAR for protection of the CMAR's interests through 50% completion of the project. Unless otherwise instructed by the CMAR, the amount retained by the CMAR will be in effect until the final payment is made except as follows:
 - (1) Contractor may request release of retainage on work that has been partially accepted by the CMAR in accordance with Section 50-14. Contractor must provide a certified invoice to the CMAR that supports the value of retainage held by the CMAR for partially accepted work.
 - (2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.
- b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the CMAR evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the CMAR. When the CMAR has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- c. When at least 95% of the work has been completed to the satisfaction of the CMAR, the CMAR shall, in its discretion and with the consent of the Surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The CMAR may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the CMAR to be a part of the final quantity for the item of work in question.

No partial payment shall bind the CMAR to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in paragraph 90-09, ACCEPTANCE AND FINAL PAYMENT.

The Contractor shall deliver to the CMAR a complete release of all claims for labor and material arising out of this contract before the final payment is made. If any subcontractor or supplier fails to furnish such a release in full, the Contractor may furnish a bond or other collateral satisfactory to the CMAR to indemnify the CMAR against any potential lien or other such claim. The bond or collateral shall include all costs, expenses, and attorney fees the CMAR may be compelled to pay in discharging any such lien or claim.

90-07 PAYMENT FOR MATERIALS ON HAND. Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the contract, plans, and specifications and are delivered to acceptable sites on the airport property or at other sites in the vicinity that are acceptable to the CMAR. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- a. The material has been stored or stockpiled in a manner acceptable to the CMAR at or on an approved site.

- b. The Contractor has furnished the CMAR with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- c. The Contractor has furnished the CMAR with satisfactory evidence that the material and transportation costs have been paid.
- d. The Contractor has furnished the CMAR legal title (free of liens or encumbrances of any kind) to the material so stored or stockpiled.
- e. The Contractor has furnished the CMAR evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.

It is understood and agreed that the transfer of title and the CMAR's payment for such stored or stockpiled materials shall in no way relieve the Contractor of their responsibility for furnishing and placing such materials in accordance with the requirements of the contract, plans, and specifications.

In no case will the amount of partial payments for materials on hand exceed the contract price for such materials or the contract price for the contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this subsection.

90-08 PAYMENT OF WITHHELD FUNDS. NOT APPLICABLE

90-09 ACCEPTANCE AND FINAL PAYMENT. When the contract work has been accepted in accordance with the requirements of Section 50, paragraph 50-15, FINAL ACCEPTANCE, the CMAR will prepare the final estimate of the items of work actually performed. The Contractor shall approve the CMAR's final estimate or advise the CMAR of the Contractor's objections to the final estimate which are based on disputes in measurements or computations of the final quantities to be paid under the contract as amended by change order or supplemental agreement. The Contractor and the CMAR shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Contractor's receipt of the CMAR's final estimate. If, after such 30-day period, a dispute still exists, the Contractor may approve the CMAR's estimate under protest of the quantities in dispute, and such disputed quantities shall be considered as a claim in accordance with Section 50, paragraph 50-16, CLAIMS FOR ADJUSTMENT AND DISPUTES.

After the Contractor has approved, or approved under protest, the CMAR's final estimate, and after the CMAR's receipt of the project closeout documentation required in paragraph 90-11, CONTRACTOR FINAL PROJECT DOCUMENTATION, final payment will be processed based on the entire sum, or the undisputed sum in case of approval under protest, determined to be due the Contractor less all previous payments and all amounts to be deducted under the provisions of the contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

If the Contractor has filed a claim for additional compensation under the provisions of the Section 50, paragraph 50-16, CLAIMS FOR ADJUSTMENTS AND DISPUTES, or under the provisions of this paragraph, such claims will be considered by the CMAR in accordance with local laws or ordinances. Upon final adjudication of such claims, any additional payment determined to be due the Contractor will be paid pursuant to a supplemental final estimate.

90-10 CONSTRUCTION WARRANTY.

- a. In addition to any other warranties in this contract, the Contractor warrants that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, workmanship, or design furnished, or performed by the Contractor or any subcontractor or supplier at any tier.
- b. This warranty shall continue for a period of one year from the date of final acceptance of the work, except as noted. If the Owner takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date the Owner takes possession. However, this will not relieve the Contractor from corrective items required by the final acceptance of the project work.
- c. The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Owner real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements; or any defect of equipment, material, workmanship, or design furnished by the Contractor.
- d. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.
- e. The CMAR will notify the Contractor, in writing, within seven (7) days after the discovery of any failure, defect, or damage.
- f. If the Contractor fails to remedy any failure, defect, or damage within fourteen (14) days after receipt of notice, the CMAR shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- g. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall: (1) Obtain all warranties that would be given in normal commercial practice; (2) Require all warranties to be executed, in writing, for the benefit of the CMAR, as directed by the CMAR, and (3) Enforce all warranties for the benefit of the CMAR.
- h. This warranty shall not limit the CMAR's rights with respect to latent defects, gross mistakes, or fraud.

90-11 CONTRACTOR FINAL PROJECT DOCUMENTATION. Approval of final payment to the Contractor is contingent upon completion and submittal of the items listed below. The final payment will not be approved until the CMAR approves the Contractor's final submittal. The Contractor shall:

- a. Provide two (2) copies of all manufacturer's warranties specified for materials, equipment, and installations.
- b. Provide weekly payroll records (not previously received) from the general Contractor and all subcontractors.
- c. Complete final cleanup in accordance with Section 40, paragraph 40-08, FINAL CLEANUP.
- a. Complete all punch list items identified during the Final Inspection.
- b. Provide complete release of all claims for labor and material arising out of the Contract.
 - (1) The Contractor must execute copies of CONTRACTOR'S AFFIDAVIT OF PAYMENT OF CLAIMS AND DEBTS on the form furnished by the Engineer and included in Division VI – Appendix, herein.

- (2) The Contractor must have his surety execute copies of CONSENT OF SURETY TO FINAL PAYMENT on the form furnished by the Engineer and included in Division VI – Appendix, herein.
- c. Provide a certified statement signed by the subcontractors, indicating actual amounts paid to the Minority Business Enterprise (MBE) and Disadvantaged Business Enterprise (DBE) subcontractors and/or suppliers associated with the project.
- d. Complete and submit page III-66 of the contract documents, indicating actual final amounts paid to the DBE subcontractors and/or suppliers along with the corresponding total MBE and DBE percentage related to the final construction cost.
- e. When applicable per state requirements, return copies of sales tax completion forms.
- f. Manufacturer's certifications for all items incorporated in the work.
- g. All required record drawings, as-built drawings or as-constructed drawings.
- h. Project Operation and Maintenance (O&M) Manual(s).
- i. Security for Construction Warranty.
 - (1) The Contractor must furnish a written guarantee on his letterhead covering all defects in material and workmanship for a period of one (1) year commencing on the date of final acceptance.
 - (2) If any purchase items have been incorporated in the work, the Contractor must furnish a letter on his letterhead assigning those warranties to the CMAR. Copies of said warranties shall be bound in one binder and submitted along with the letter assignment.
- j. Equipment commissioning documentation submitted, if required.
- n. The Contractor must publicly advertise the NOTICE OF COMPLETION a minimum of once a week for four consecutive weeks.

END OF SECTION 90

SECTION 100

MANDATORY CONTRACT REQUIREMENTS

100-01 ACCESS TO RECORDS AND REPORTS

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

100-02 BUY AMERICAN PREFERENCE

See Division I, Section F, Buy American Preference and Certificates.

100-03 GENERAL CIVIL RIGHTS PROVISIONS

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

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

This provision binds the contractor and subcontractors from the bid solicitation period through the completion of the contract.

100-04 CIVIL RIGHTS – TITLE VI ASSURANCE

a. Title VI Solicitation Notice:

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

b. Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- (1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- (2) 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

- (3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- (5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- (6) Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- (7) The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- (8) Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- (9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- (11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- (12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, *et seq.*).

c. Title VI Clauses for Compliance with Nondiscrimination Requirements

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

- (1) **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they

may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

- (2) **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- (3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
- (4) **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - (a) Withholding payments to the contractor under the contract until the contractor complies; and/or
 - (b) Cancelling, terminating, or suspending a contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

100-05 DISADVANTAGED BUSINESS ENTERPRISE

- a. **Contract Assurance (§ 26.13)** - The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements

is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the Contractor from future bidding as non-responsible.
- b. **Prompt Payment (§26.29)** - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the Owner. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Owner. This clause applies to both DBE and non-DBE subcontractors.
- c. See Division III, Section 150 for additional requirements.

100-06 MINORITY BUSINESS ENTERPRISE

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

- (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the Contractor from future bidding as non-responsible.
- b. **Prompt Payment (§26.29)** - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the Owner. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Owner. This clause applies to both MBE and non-MBE subcontractors.
- d. See Division III, Section 151 for additional requirements.

100-07 ENERGY CONSERVATION REQUIREMENTS

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

100-08 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

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

The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor - Wage and Hour Division

100-09 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

100-10 TRADE RESTRICTION CERTIFICATION

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

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

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

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

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

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

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

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

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

100-11 VETERAN'S PREFERENCE

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

100-12 SEISMIC SAFETY

- a. The contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.
- b. The above clause is applicable in contracts including construction of new buildings or structural additions to existing buildings.

100-13 COPELAND "ANTI-KICKBACK" ACT

Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the CMAR, a weekly statement on the wages paid to each employee performing on covered work during the prior week. CMAR must report any violations of the Act to the Federal Aviation Administration.

100-14 DAVIS BACON REQUIREMENTS

See Division III, Section 130 for Davis-Bacon Requirements.

100-15 DISTRACTED DRIVING (TEXTING WHEN DRIVING)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by

distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

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

100-16 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY

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

Timetables

Goals for minority participation for each trade: ~~TBD~~ [1.3%]
Goals for female participation in each trade: ~~TBD~~ [1.3%]

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

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

100-17 EQUAL EMPLOYEMENT OPPORTUNITY (E.E.O.)

See Division III, Section 140 for EEO Contract Requirements

100-18 PROHIBITION OF SEGREGATED FACILITIES

See Division III, Section 140 for Prohibition Of Segregated Facilities Contract Requirements

100-19 PROCUREMENT OF RECOVERED MATERIALS

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- a. The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or,
- b. The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

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

100-20 TERMINATION OF CONTRACT

- a. **Termination for Convenience (Construction Contracts Only)**
The CMAR may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of CMAR. Upon receipt of a written notice of termination, except as explicitly directed by the CMAR, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:
 - (1) Contractor must immediately discontinue work as specified in the written notice.
 - (2) Terminate all subcontracts to the extent they relate to the work terminated under the notice.
 - (3) Discontinue orders for materials and services except as directed by the written notice.
 - (4) Deliver to the CMAR all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work and as directed in the written notice.
 - (5) Complete performance of the work not terminated by the notice.
 - (6) Take action as directed by the owner to protect and preserve property and work related to this contract that CMAR will take possession.

Owner agrees to pay Contractor for:

- (a) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- (b) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- (c) reasonable and substantiated claims, costs and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- (d) reasonable and substantiated expenses to the contractor directly attributable to CMAR's termination action

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

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

b. Termination for Default (Construction Contracts)

See Division III, Section 80, Paragraph 80-09.

100-21 DEBARMENT AND SUSPENSION

a. Certification Of Offeror/Bidder Regarding Debarment

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

b. Certification Of Lower Tier Contractors Regarding Debarment

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

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

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

100-22 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS (CONTRACT EXCEEDING \$100,000)

This provision applies to all contracts and lower tier contracts that exceed \$100,000, and employ laborers, mechanics, 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, including watchmen and guards, in any workweek in which he or she is employed on

such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (a) of this clause, 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 clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this clause.

c. Withholding for Unpaid Wages and Liquidated Damages.

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

d. Subcontractors.

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

100-23 CERTIFICATION REGARDING LOBBYING

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

- a.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b.** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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.
- c.** The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under

grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

100-24 BREACH OF CONTRACT TERMS

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

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

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

100-25 CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the CMAR immediately upon discovery. The CMAR assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

100-26 ALABAMA IMMIGRATION LAW

The Contractor agrees to comply with the Alabama Immigration Law, otherwise known as the Beason-Hammon Taxpayer and Citizen Protection Act, Section 31-13-9, Code of Alabama 1975. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

END OF SECTION 100

SECTION 150

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

The following bid condition applies to this Department of Transportation (DOT) assisted contract. Submission of a bid/proposal by a prospective contractor shall constitute full acceptance of these bid conditions.

- 150-01 DEFINITION.** Disadvantaged Business Enterprise (DBE) as used in this contract shall have the same meaning as defined in Paragraph 26.5 of Subpart D to 49 CFR Part 26.
- 150-02 POLICY.** It is the policy of DOT that DBE's as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.
- 150-03 OBLIGATION.** The contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.
- 150-04 COMPLIANCE.** All bidders, potential contractors, or subcontractors for this DOT assisted contract are hereby notified that failure to carry out the DOT policy and the DBE obligation, as set forth above, shall constitute a breach of contract which may result in termination of the contract or such other remedy as deemed appropriate by the Construction Manager at Risk (CMAR).
- 150-05 SUBCONTRACT CLAUSE.** All bidders and potential contractors hereby assure that they will include the above clauses in all subcontracts which offer further subcontracting opportunities.
- 150-06 SOLICITATION LANGUAGE (PROJECT GOAL).** The CMAR's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

As a condition of bid responsiveness, the Bidder or Offeror must submit the following information with their proposal on the forms provided herein:

- a. The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- b. A description of the work that each DBE firm will perform;
- c. The dollar amount of the participation of each DBE firm listed under (a)
- d. Written statement from Bidder or Offeror that attests their commitment to use the DBE and firm(s) listed under (a) to meet the CMAR's project goal;
- e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- f. If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the CMAR to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract.

The CMAR encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

150-07 DBE PARTICIPATION GOAL. The attainment of the goal established for this contract is to be measured as a percentage of the total dollar value of the contract. The DBE goal established for this project is ~~TBD%~~ **1.3%**.

150-08 AVAILABLE DBE'S. The CMAR has on file a DBE program which has been approved by the Federal Aviation Administration. The program contains a listing of DBE's (certified and uncertified). Bidders are encouraged to inspect this list to assist in locating DBE's for the work. Other DBE's may be added to the list in accordance with the CMAR's approved DBE's and MBE's program. Credit toward the DBE goal will not be counted unless the DBE to be used can be certified by the CMAR.

150-09 GOOD FAITH EFFORT. If the contractor fails to meet the contract goal established in 150-07 above, the following information must be submitted with the bid documents to assist the CMAR in determining whether or not the contractor made acceptable good faith efforts to meet the contract goal. This information (when applicable), as well as the DBE information, should be submitted as specified in 150-09 above. Suggested guidance for use in determining if good faith efforts were made by a contractor are included in Appendix A to 49 CFR Part 26 revised as of January 8, 1999.

A list of the efforts that a contractor may make and the CMAR may use in making a determination as to the acceptability of a contractor's efforts to meet the goal as included in Appendix A are as follows:

- a. Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the recipient to inform DBE's of contracting and subcontracting opportunities;
- b. Whether the contractor advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;
- c. Whether the contractor provided written notice to a reasonable number of specific DBE's that their interest in the contract was being solicited in sufficient time to allow the DBE's to participate effectively;
- d. Whether the contractor followed up initial solicitations of interest by contacting DBE's to determine with certainty whether the DBE's were interested;
- e. Whether the contractor selected portions of work to be performed by DBE's in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
- f. Whether the contractor provided interested DBE's with adequate information about the plans, specifications, and requirements of the contract;
- g. Whether the contractor negotiated in good faith with interested DBE's, not rejecting DBE's as unqualified without sound reasons based on a thorough investigation of their capabilities;
- h. Whether the contractor made efforts to assist interested DBE's in obtaining bonding, lines of credit, or insurance required by the recipient or contractor; and
- i. Whether the contractor effectively used the services of available minority community organizations; minority contractors' groups; local and state Federal Minority Business Assistance Offices; and other organizations that provide assistance in the recruitment and placement of DBE's.

Agreements between bidder/proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited. The bidder shall make a good faith effort to replace a

DBE subcontract that is unable to perform successfully with another DBE subcontractor. Substitution must be coordinated and approved by the CMAR.

The bidder shall establish and maintain records and submit regular reports, as required, which will identify and assess progress in achieving DBE subcontract goals and other DBE affirmative action efforts.

150-10 CONTRACTOR ASSURANCE. The bidder hereby assures that he will meet one of the following as appropriate:

- a. The DBE participation goal as established in 150-07 above.
- b. The DBE participation percentage as shown in 150-09 which was submitted as a condition of contract award.

END OF SECTION 150

SECTION 151

MINORITY BUSINESS ENTERPRISE PROGRAM

NOTE: The development of the new Airport Terminal will be supported with mixed funding sources, i.e. local, state, and federal. Different funding sources may carry different requirements for participation by small, disadvantaged or minority business, e.g. DBE (federal), or MBE (non-federal). When the Mobile Airport Authority (MAA) utilizes funds from the Federal Aviation Administration (FAA), all requirements of regulations 49 CFR Part 26, the Minority Business Enterprise program (MBE) will apply. On the other hand, for projects bid with non-federal funding, i.e., state and local resources, it is the policy of MAA that full consideration be given to the participation of minority and women-owned business in a manner similar to the requirements of the DBE program, including where appropriate, establishing and achieving MBE goals for such participation. Below are bid conditions for non-federal (MBE) participation. The submission of a bid/proposal by a prospective contractor constitutes full acceptance of these bid conditions.

The following bid condition applies to this Department of Transportation (DOT) assistance contract. Submission of a bid/proposal by prospective contractor shall constitute full acceptance of these bid conditions.

151-01 **DEFINITION.** Minority Business Enterprise (DBE) is used in this contract shall have the same meaning in Paragraph 26.5 of Subpart D to 49 CFR Part 26.

151-02 **POLICY.** It is the policy of MAA that MBE's as defined in 49 CFR Part 26 shall have a maximum opportunity to participate in the performance of contracts and subcontracts financed with federal funds. Consequently, the MBE requirements of 49 CFR Part 26 apply to this contract.

151-03 **OBLIGATION.** The contractor agrees to ensure that MBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed with federal funds. In this regard, all contractors shall take all necessary and responsible steps in accordance to ensure MBE's have maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of MAA assisted contracts.

151-04 **COMPLIANCE.** All bidders, potential contractors, or subcontractors for this MAA assisted contract are hereby notified that failure to carry out the MAA policy and the MBE obligation, as set forth above, shall constitute a breach of contract

which may result in termination of the contract, or such other remedy as deemed appropriate by the Construction Manager at Risk (CMAR).

151-05 **SUBCONTRACT CLAUSE.** All bidders and potential contractors hereby assure that they will include the above clauses in all subcontracts which offer further subcontracting opportunities.

151-06 **SOLICITATION LANGUAGE (PROJECT GOAL).** The CMAR's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort required of 49 CFR §26.53.

As a condition of bid responsiveness, the Bidder or Offeror must submit the following information with their proposal on the forms provided herein.:

- a. The names and addresses of Minority Business Enterprise (MBE) firms that will participate in contract.
- b. A description of work that each MBE firm will perform.
- c. The dollar amount of the participation of each MBE firm listed under (a)
- d. Written statement from Bidder or Offeror that attests their commitment to use the MBE firm(s) listed under (a) to meet the CMAR's project goal.
- e. Written confirmation from each listed MBE firm that is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- f. If Bidder or Offeror cannot meet this advertised project MBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror. The document of good faith efforts must include copies of each MBE and non-MBE subcontractor quote submitted to the bidder when a non-MBE subcontractor was selected over a MBE for work on the contract.

It is the policy of the CMAR to participate nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract.

The CMAR encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

151-07 **DBE PARTICIPATION GOAL.** The attainment of the goal established for this contract is to be measured as a percentage of the total dollar value of the contract. The DBE goal established for this project is ~~TBD-%~~ **1.3%**.

151-08 **AVAILABLE DBE's.** To be Developed

151-09 **GOOD FAITH EFFORT.** If the contractor fails to meet the goal established in 150-07 above, the following information must be submitted with the bid documents to assist the CMAR in determining whether or not the contractor made acceptable good faith efforts to meet the contract goal. This information (when applicable), as well as MBE information, should be submitted as specified in 151-09 above.

Suggested guidance for use in determining if good faith efforts were made by a contractor are included in the section below:

A list of the efforts that a contractor may make, and the CMAR may use in making a determination as to the acceptability of a contractor's efforts to meet the goal are as follows:

- a. Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the recipient to inform MBE's of contracting and subcontracting opportunities;
- b. Whether the contractor advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;
- c. Whether the contractor provided written notice to a reasonable number of specific MBE's that their interest in the contract was being solicited in sufficient time to allow MBE's to participate effectively;
- d. Whether the contractor followed up initial solicitations of interest by contracting MBE's to determine with certainty whether the MBEs were interested.
- e. Whether the contractor selected portions of the work to be performed by MBEs in order to increase the likelihood of meeting the MBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE participation).
- f. Whether the contractor provided interested MBEs with adequate information about the plans, specifications, and requirements of the contract.
- g. Whether the contractor negotiated in good faith with interested MBE's, not rejecting MBE's as unqualified without sounding reasons based on a thorough investigation of their capabilities;
- h. Whether the contractor made efforts to assist interested MBE's in obtaining bonding, lines of credit, or insurance required by the recipient or contractor; and
- i. Whether the contractor effectively used the services of available minority community organizations; minority contractor's groups; local and state Federal Disadvantaged Business Assistance Offices; and other organizations that provide assistance in the recruitment of placement of MBE's.

Agreements between the bidder/proposer and a MBE in which the MBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited. The bidder shall make a good faith effort to replace a MBE

subcontract that is unable to perform successfully with another MBE subcontractor. Substitutions must be coordinated and approved by the CMAR.

151-10

CONTRACTOR ASSURANCE. The bidder hereby assures that he will meet one of the following as appropriate:

- a. The MBE participation goals as established in 151-07 above.
- b. The MBE participation percentage as show in 151-09 is submitted as a condition of contract award.

END OF SECTION 151