

Northwestern Regional Airport Commission  
Electric Utility Vehicle Specifications

Issued: April 9, 2020

The Northwestern Regional Airport Commission (NRAC) is seeking bids for **TWO (2)** identical electric utility vehicles for use in operations and maintenance activities at the Cherry Capital Airport (TVC) in Traverse City, Michigan.

Vehicles must include the features identified in the “Base Features” list below, and the price received for the vehicles must be inclusive of these features. The NRAC requests itemized add-on pricing for the features identified in the “Alternate Features” list. The NRAC may or may not choose to proceed with any of the Alternate Features based on pricing. If you cannot provide a specific Base Feature please submit a suitable alternative to achieve the goal of the vehicle.

In addition, bidders must complete and return the forms contained in the following sections of the enclosed Federal Contract Provisions:

- A4 BUY AMERICAN PREFERENCE
- A24 TAX DELINQUENCY AND FELONY CONVICTIONS

Please return total bid price including all fees (airport is tax exempt), vehicle & warranty information, and federal forms by **Wednesday April 22, 2020**. Bids must be submitted electronically to

Dan Sal  
Assistant Airport Director – Operations and Maintenance  
Cherry Capital Airport  
dan.sal@tvcairport.com

Bids must be valid for a period of ninety (90) days. Bids will be opened in a virtually-hosted public meeting.

Base Features:

1. Vehicle class: Utility vehicle
  2. Engine type: 48V AC induction electric
  3. Must meet FAA Buy American requirements
  4. Maintenance free battery
  5. 1 kW onboard charger with at least a 25 foot charging cord that plugs into any 110 V outlet
  6. Range per full charge: 30-40 Miles on flat terrain
  7. Horsepower: Greater than 8
  8. Hard side cab with full doors and roll down windows
  9. Cabin heat
  10. Flat Rear bed (at least 70 x 48 in) equipped with removable box sides
  11. GVWR: Minimum 3,000 pounds
  12. Street legal (e.g., headlights, brake lights, taillights, turn signals, horn, windshield, windshield wipers and washers, independent parking brake, street-legal tires, and all other on-road equipment required by the Michigan Vehicle Code)
  13. Color: White
  14. LED Beacon light
  15. Front wheel drive, all-wheel drive, or 4-wheel drive
  16. Adjustable seats with weather resistant fabric
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17. Legroom: Minimum 43 inches
18. Cubic Feet of Cab: At least 70 cubic feet
19. 3-point safety belts
20. Integrated backup camera
21. Interior dome light
22. Grab handles
23. Accessory outlet
24. Automotive safety glass
25. Front wheel disc brakes
26. Regenerative braking
27. Rack and pinion steering
28. Automobile style suspension
29. Non-slip flooring
30. Minimum two-year / 8,000-Mile warranty (inclusive of battery)

Alternate Features (Itemized Pricing Requested):

31. Extended battery range
  32. Rubber floor mats
  33. In-dash defrost
  34. Stereo
  35. Tilt steering
  36. Electronic power steering
  37. 3 kW charger
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## FEDERAL CONTRACT PROVISIONS

### Required contract provisions for Airport Improvement Program (AIP) and for obligated sponsors.

#### 1. REQUIRED CONTRACT PROVISIONS

Federal laws and regulations require that specific contract provisions be included in certain contracts, requests for proposals, or invitations to bid *whether or not* the contracts are federally-funded. This requirement is established within the grant assurances. Other contract provisions are required to be in federally-funded contracts, including all subcontracts. For purposes of determining requirements for contract provisions, the term *contract* includes subcontracts.

The type and magnitude of a project determines whether a provision is required. Some Federal provisions have dollar thresholds that define when they are applicable. The majority of the Federal provisions may be incorporated within the contract itself. However, certain Federal notices are required to be identified within the Notice-to-Bidders.

##### 1.1. GENERAL REQUIREMENT FOR CONTRACTS.

In general, the sponsor must:

- 1) Physically incorporate these contract provisions (not simply by reference) in each contract funded under AIP;
- 2) Require the contractor (including all subcontractors) to insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all subcontracts;
- 3) Require the contractor (or subcontractor) to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services;
- 4) Require that the prime contractor be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider; and
- 5) Not modify the provisions. Minor additions covering state or sponsor requirements may be included in a separate supplemental specification, provided they do not conflict with federal laws and regulations and do not change the intent of the required contract provision.

Subject to the applicability criteria noted in the specific contract provisions, these contract provisions apply to all work performed on the contract.

##### 1.2. GENERAL REQUIREMENT FOR REQUESTS FOR BIDS (ADVERTISEMENT) AND NOTICE TO BIDDERS

In general, the sponsor may incorporate certain provisions *by reference* in the Request for Bids (the Advertisement) rather than including the entire text of the provision in the Request or Notice. The provisions that can be incorporated by reference in the Request or Notice are:

- 1) Buy American Preference
  - 2) Foreign Trade Restriction
  - 3) Governmentwide Debarment and Suspension
  - 4) Governmentwide Requirements for Drug-free Workplace
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1.3. *GENERAL REQUIREMENTS FOR ALL CONTRACTS ENTERED INTO BY OBLIGATED SPONSORS.*

Where noted, the sponsor must include certain notifications in contracts or solicitations for proposals regardless of funding source.

1.4. *FAILURE TO COMPLY WITH PROVISIONS.*

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- 1) Withhold progress payments or final payment,
- 2) Terminate the contract,
- 3) Seek suspension/debarment, or
- 4) Any other action determined to be appropriate by the sponsor or the FAA.

1.5. *REQUIRED CONTRACT PROVISIONS.*

The following list summarizes the contract provisions and to what types of contracts the provisions apply:

**All Contracts Regardless of Funding Source**

- a. Civil Rights – General
- b. Civil Rights – Title VI

**All AIP Funded Contracts**

- a. Access to Records and Reports
- b. Buy American Preferences
- c. Civil Rights – General
- d. Civil Rights - Title VI
- e. Disadvantaged Business Enterprises
- f. Energy Conservation Requirements
- g. Federal Fair Labor Standards Act (Minimum Wage)
- h. Lobbying and Influencing Federal Employees
- i. Occupational Safety and Health Act
- j. Trade Restriction Clause
- k. Veteran's Preference

**Additional Provisions for AIP Funded Contracts that are \$10,000 and greater**

- a. Termination of Contract

**Additional Provisions for AIP Funded Contracts that are \$25,000 and greater**

- a. Debarment and Suspension

**Additional Provisions for AIP Funded Contracts that are \$100,000 and greater**

- a. Breach of Contract
- b. Clean Air and Water Pollution Controls

**A1 ACCESS TO RECORDS AND REPORTS**

**ACCESS TO RECORDS AND REPORTS**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the

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purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

**A2 AFFIRMATIVE ACTION REQUIREMENT (Section not applicable.)**

**A3 BREACH OF CONTRACT TERMS**

**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.

Owner 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. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Contractor must correct the breach. Owner may proceed with termination of the contract if the Contractor fails to correct the breach by the deadline indicated in the Owner's notice.

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

**A4 BUY AMERICAN PREFERENCE**

**BUY AMERICAN PREFERENCE**

The Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

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### Certificate of Buy American Compliance for Manufactured Products

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States;
  - b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

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

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing U.S. domestic product.
3. To furnish U.S. domestic product for any waiver request that the FAA rejects
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

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

1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
3. To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### Required Documentation

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

- a) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
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- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

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**A5 CIVIL RIGHTS – GENERAL****GENERAL CIVIL RIGHTS PROVISIONS**

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

**A6 CIVIL RIGHTS – TITLE VI ASSURANCE****Title VI Solicitation Notice:**

The Sponsor, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, select disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

**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. **Nondiscrimination:** 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
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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.

#### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
  - 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
  - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
  - The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
  - Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
  - The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or
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- activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
  - The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - 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).

#### **A7 CLEAN AIR AND WATER POLLUTION CONTROL**

##### **CLEAN AIR AND WATER POLLUTION CONTROL**

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

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

#### **A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS (Section not applicable.)**

#### **A9 COPELAND “ANTI-KICKBACK” ACT (Section not applicable.)**

#### **A10 DAVIS-BACON REQUIREMENTS (Section not applicable.)**

#### **A11 DEBARMENT AND SUSPENSION**

##### **CERTIFICATION OF OFFERER/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.

##### **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 Certification of Offerer /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

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

## **A12 DISADVANTAGED BUSINESS ENTERPRISE**

### **Solicitation Language (Solicitations that include a Project Goal)**

The Owner’s award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in its commitment within 5 days after bid opening. **SEE THE CONTRACTORS DBE PLAN FORM AND DBE LETTER OF INTENT FORM FOLLOWING THIS SECTION.**

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1)
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner’s project goal
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

### **Prime Contracts (Projects Covered by a DBE Program)**

#### **DISADVANTAGED BUSINESS ENTERPRISES**

##### **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

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

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

**Prompt Payment (§26.29)** – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 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 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.

The prime contractor is responsible for issuing the Subcontractor’s Prompt Payment Certification to all subcontractors under this contract, and is required to ensure that all subcontractors issue the certificate to each of their subcontractors. Each contractor/subcontractor shall require each of their subcontractors to fill out and submit a copy of the certification to the Sponsor’s representative and the prime contractor prior to each payment application until the subcontractor’s work is complete. Not receiving the certification from the subcontractor will be cause for the Sponsor’s representative to delay processing the payment application.

The following language in this section was taken from various sections of 49 CFR Part 26 titled Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. They are not intended to be all encompassing, nor a comprehensive reiteration of the regulation.

- A. The Sponsor has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Sponsor has received, or will receive, Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Sponsor has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Sponsor to ensure that DBEs as defined in part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also the policy of the Sponsor:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
  2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
  3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
  4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
  5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
  6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.
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- B. The obligation of the bidder is to make good faith efforts. The bidder can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26. Determination whether the bidder has made a good faith effort will be made by the Sponsor's DBE Liaison Officer. The Contractor's DBE Plan must be acceptable to the Sponsor before entering into a contract with the bidder.

Guidance pertaining to good faith efforts is provided in Appendix A to 49 CFR Part 26. In general, the bidder must demonstrate that they have taken all necessary and reasonable steps to achieve the identified DBE goal. The bidder should adequately document all such efforts, including contacts of DBE firms that are not interested.

Good Faith Efforts:

Bidder must demonstrate that they made good faith efforts to achieve participation with DBE firms. This requires that the bidder show that it took all necessary and reasonable steps to secure participation by certified DBE firms. Mere pro forma efforts will not be considered as a good faith effort.

Such actions constituting evidence of good faith efforts include but are not limited to:

- Soliciting DBE participation through all reasonable and available means. This may include public advertisements and phone calls/faxes to known certified DBE firms.
  - Consult State Department of Transportation office to obtain a list of certified DBE firms.
  - Selecting portions of work that increases the likelihood that DBE firms will be available to participate.
  - Providing DBE firms with sufficient information and time to review the project plans and specifications.
  - Documenting all contacts with DBE firms. This includes name, address, phone number, date of contact and record of conversation/negotiation.
- C. Within 7 days of being informed by the Airport that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidder/offerors should make this request in writing to the Sponsor's reconsideration official. The reconsideration official will not have played any role in the original determination that the bidder did not document sufficient good faith efforts. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.
- D. Before transmitting to us its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.
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The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise us and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why we should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

The Airport will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

As stated in Contract Assurance § 26.13, failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that we deem appropriate if the prime contractor fails to comply with the requirements of this section.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

- E. The sponsor will require the contractor to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Sponsor or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The Sponsor will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in The Contractors DBE Plan.

At completion of work, the contractor will report to the Sponsor the actual amount paid to each DBE firm utilized for this contract. **SEE THE DBE PARTICIPATION SUMMARY FORM FOLLOWING THIS SECTION.**

- F. Fostering Small Business Participation (49 CFR Part 26, §26.39).

In accordance with 49 CFR Part 26.39, the Sponsor has created a Small Business Element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. For clarification purposes, 49 CFR Part 26.5 states "Small business concern means, with

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respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).”

49 CFR Part 26 §26.65(b) states “Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$23.98 million. 13 CFR 121.402 defines the size standards that are applicable to Federal Government Contracting programs.

In compliance with this policy, the Sponsor’s DBE Program in regard to §26.39 Fostering Small Business Participation may include, but is not limited to, the following strategies:

1. **Set asides:** Where feasible, the Sponsor will establish a percentage of the total value of all prime contract and subcontract awards to be set aside for participation by small businesses on FAA-assisted contracts. A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. This requires that the Sponsor and its prime contractors/consultants set aside a portion of the value of each contract for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner’s gender, race or geographic location. The DBELO, along with the project engineer will review FAA-assisted purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the set aside percentage. This set aside is in addition to the DBE contract goals which may be required pursuant to applicable law or policy. In the event that a set-aside is not established on an FAA-assisted contract, the project manager and small business officer will document why a small business set-aside is inappropriate.
2. **Unbundling:** The Sponsor, where feasible, may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The Sponsor will conduct contract reviews on each FAA-assisted contract to determine whether portions of the project could be “unbundled” or bid separately. Similarly, the Sponsor will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses.

The Sponsor has determined that an SBE program is not feasible for this Contract.

## **A13 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 Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted

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drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

**A14 ENERGY CONSERVATION REQUIREMENTS**

**ENERGY CONSERVATION REQUIREMENTS**

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

**A15 DRUG FREE WORKPLACE REQUIREMENTS (Section not applicable.)**

**A16 EQUAL EMPLOYMENT OPPORTUNITY (EEO) (Section not applicable.)**

**A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

**SOLICITATION CLAUSE**

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.

**A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit
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Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

**A19 PROHIBITION OF SEGREGATED FACILITIES (Section not applicable.)**

**A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

**CONTRACT CLAUSE**

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

**A21 PROCUREMENT OF RECOVERED MATERIALS**

**PROCUREMENT OF RECOVERED MATERIALS**

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

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 2) 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](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products).

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

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

**A22 RIGHT TO INVENTIONS (Section not applicable.)**

**A23 SEISMIC SAFETY (Section not applicable.)**

**A24 TAX DELINQUENCY AND FELONY CONVICTIONS**

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

**Certifications**

- 1) The applicant represents that it is (  ) is not (  ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 1) The applicant represents that it is (  ) is not (  ) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

**Note**

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

**Term Definitions**

**Felony conviction:** Felony conviction means a conviction within the preceding twentyfour (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies

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the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

**Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

## **A25 TERMINATION OF CONTRACT**

### **TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)**

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

- 1) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- 2) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- 3) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- 4) reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

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

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

### **TERMINATION FOR DEFAULT (CONSTRUCTION)**

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Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated with Owner termination of this contract due to default of the Contractor.

### **TERMINATION FOR DEFAULT (EQUIPMENT)**

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract if the Contractor:

1. Fails to commence the Work under the Contract within the time specified in the Notice-to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within 10 days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

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

### **A26 TRADE RESTRICTION CERTIFICATION**

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

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

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

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

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

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

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

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

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

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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* | *Consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*Contractor* | *Consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

## **A27 VETERAN'S PREFERENCE**

### **VETERAN'S PREFERENCE**

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

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