

INVITATION FOR BID (IFB)

**Project No. 571703
June 14, 2017**

Wildlife Hazard Assessment (WHA) Wildlife Hazard Management Plan (WHMP) Southwest Washington Regional Airport Kelso, Washington

The City of Kelso, owner of the Southwest Washington Regional Airport, is soliciting bids for a Wildlife Hazard Assessment (WHA) and a Wildlife Hazard Management Plan (WHMP) for the Southwest Washington Regional Airport. This project is anticipated to be funded with a Federal Aviation Administration grant, so familiarity with FAA policies and practices is important.

All bids must be sealed and are due no later than 10:00 AM on Thursday, July 6, 2017 to the City of Kelso / Southwest Washington Regional Airport, Attention: Chris Paolini, 203 South Pacific Ave., Kelso, WA 98626. Immediately thereafter, bids will be publicly opened and read aloud. Please submit bids to:

City of Kelso / Southwest Washington Regional Airport
Attention: Chris Paolini
203 South Pacific Ave.
Kelso, WA 98626

Should you desire a tour of the airport, please contact Chris Paolini at cpaolini@kelso.gov or (360) 431-2264 during the hours of 8am – 5pm, Monday through Friday.

Enclosures for IFB Project No. 571703 dated 6/14/2017.

- Invitation for Bid (7 pages)
- Bid Form (2 pages)
- Protocol for the Conduct of a Wildlife Hazard – Attachment A (13 pages)
- Protocol for the Preparation of a Wildlife Hazard Management Plan – Attachment B (9 pages)
- Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors – Attachment C (68 pages)

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Background Information. Southwest Washington Regional Airport is located in southwest Washington in Kelso, Cowlitz County, Washington. The airport is situated on approximately 126 acres of land. The airport has one runway (Rwy 12/30) which holds an airport reference code (ARC) of B-II. The airport supports general aviation, corporate business, aerial application, and military aircraft activity.

I. PRE-SUBMITTAL MEETING

A job walk is offered to those interested in physically seeing the Southwest Washington Regional Airport property. This job walk will allow for access to the restricted side of the airport property and allow for photographing and/or familiarization of those areas not visible from the public view. This job walk is not mandatory to attend. The date for this job walk is set for Wednesday, June 21, at 10:00 am. Those interested will meet at the Southwest Washington Regional Airport FBO (Kelso Aviation) Building located at 2215 Parrott Way, Kelso, WA 98626. All questions and/or feedback to airport staff on specifics will be addressed immediately following the job walk back at the airport office.

All interested bidders are encouraged to attend the job walk and the time afterward for feedback.

II. OBJECTIVE

In general, this project will consist of the awarded consultant conducting a Wildlife Hazard Assessment (WHA) and creation of a Wildlife Hazard Management Plan (WHMP), after the Assessment.

Funding for this project will be available under a Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Planning Grant to the Airport. The FAA qualified Airport Wildlife Biologist, qualified team and professional services performed under this project will occur in accordance with the most current applicable FAA Advisory Circulars (AC) 150/5200-33B, 150/5200-36A (including change 1), related FAA documents and manuals, referenced documents, and applicable United States Department of Agriculture (USDA) Airport Wildlife Hazards Program and WHA resources.

Awarded bidder will conduct the following phased tasks:

- Conduct a comprehensive Wildlife Hazard Assessment (WHA).
- Identify factors contributing to each wildlife hazard.
- Create a Wildlife Hazard Management Plan (WHMP).
- Training of airport employees regarding their responsibilities under the WHMP as required.

The Wildlife Hazard Assessment must be conducted by a qualified wildlife biologist who meets the requirements in Advisory Circular 150/5200-36A, *Qualifications for Wildlife Biologists Conducting Wildlife Hazard Assessments and Training Curriculums for Airport Personnel Involved in Controlling Wildlife Hazards at Airports*.

The City of Kelso and the Southwest Washington Regional Airport have voluntarily chosen to comply with Part 139 requirements as described in Attachment A and attachment B only as they pertain to the protocol for the conduct of a wildlife hazard assessment and protocol for the preparation of a wildlife hazard management plan. The selected firm must conduct the wildlife hazard assessment and preparation of the wildlife hazard management plan as described in the draft Advisory Circular referenced in Attachment A and Attachment B.

The Wildlife Hazard Assessment must be conducted in accordance with PROTOCOL FOR THE CONDUCT OF A WILDLIFE HAZARD ASSESSMENT, (**Attachment A**).

The Wildlife Hazard Management Plan must be must meet criteria listed under PROTOCOL FOR THE PREPARATION OF A WILDLIFE HAZARD MANAGEMENT PLAN, (**Attachment B**).

Awarded bidder will meet all applicable requirements listed under FAA Document: Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors, (**Attachment C**)

III. SCOPE OF SERVICES

1. The City of Kelso, owner of the Southwest Washington Regional Airport, is requesting bids from qualified individuals or firms to conduct a WHA and develop a WHMP.
2. The Wildlife Hazard Assessment must contain at least the following:
 - (1) An analysis of the events or circumstances that prompted the assessment.

(2) Identification of the wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences.

(3) Identification and location of features and attractants on and near the airport that attract wildlife.

(4) A description of wildlife hazards to aircraft operations.

(5) Recommended actions for reducing wildlife hazards to aircraft operations.

3. The Wildlife Hazard Management Plan must include at least the following:

(1) A list of the individuals having authority and responsibility for implementing each aspect of the plan.

(2) A list prioritizing the projects and/or actions identified in the wildlife hazard assessment and target dates for their initiation and completion. Projects and/or actions listed should include a project/action description and justification. At a minimum, the list of projects/actions will address:

(i) Wildlife population management;

(ii) Habitat modification; and

(iii) Land use changes.

(iv) Justification for Project/action (ex. wetland mitigation) shall identify other methods attempted and duration that were unsuccessful to reduce wildlife hazards and shall clearly define those attempted methods, tracking system, and duration required.

(3) Requirements for and, where applicable, copies of local, State, and Federal wildlife control permits.

(4) Identification of resources that the airport sponsor should provide to implement the plan.

(5) Provisions and procedures to conduct physical inspections of the aircraft movement areas and other areas critical to successfully manage known wildlife hazards to aircraft operations.

(iii) Wildlife hazard control measures; and

(iv) Ways to communicate effectively between personnel conducting wildlife control or observing wildlife hazards and aircraft at and in the vicinity of the airport.

- (6) Procedures to review and evaluate the wildlife hazard management plan every 12 consecutive months or following a significant event.
 - (i) The plan's effectiveness in dealing with known wildlife hazards on and in the airport's vicinity and
 - (ii) Aspects of the wildlife hazards described in the wildlife hazard assessment that should be reevaluated.
 - (7) A training program conducted by a qualified wildlife damage management biologist to provide airport personnel with the knowledge and skills needed to successfully carry out the wildlife hazard management plan.
 - (8) Identify proposed AIP projects vs. other required projects in the WHMP.
 - (i) Provide a rationale for each project.
 - (9) Identify non-AIP projects and maintenance/administration requirements.
2. The WHA shall be conducted by a qualified wildlife biologist who meets the requirements of Advisory Circular 150/5200-36A. These requirements are:
- (1) Have the necessary academic coursework from accredited institutions and work experience to meet the qualifications of a GS-0486 series wildlife biologist as defined by the U.S. Office of Personnel Management classification standards (Appendix A of AC 150/15200-36A), or, be designated as a Certified Wildlife Biologist by the Wildlife Society (<http://www.wildlife.org>), and,
 - (2) Have taken and passed an airport wildlife hazard management training course acceptable to the Administrator, and,
 - (3) While working under the direct supervision of a qualified wildlife biologist, have conducted at least one WHA acceptable to the FAA Administrator, and,
 - (4) Have successfully completed at least one of the following within the past 3 years:
 - a. An airport wildlife hazard management training course that is acceptable to the FAA Administrator, or,
 - b. Attendance, as a registered participant, at a joint Bird strike Committee-USA/Bird Strike Committee-Canada annual meeting, or
 - c. Other training acceptable to the FAA Administrator.
 - (5) Individuals who work under the direct supervision of a qualified airport wildlife biologist are allowed to conduct Wildlife Hazard Assessments if the

airport sponsor and the qualified airport wildlife biologist agree in writing to determine how the qualified airport wildlife biologist will:

- a. Supervise how the individual(s) will conduct the Wildlife Hazard Assessment; and
- b. Report progress of the Wildlife Hazard Assessment, and
- c. Supervise the Wildlife Hazard Assessment report production.

IV. STATEMENT OF QUALIFICATIONS

All Invitation for Bids (IFB) must include the following information. The responses shall be considered technical offers of what firms propose to provide and shall be incorporated in the contract award as deemed appropriate by the City of Kelso. Failure to respond to any of the following technical submittal requirements may be grounds for considering any IFB non-responsive.

IFB will only be considered from firms that have documented experience of similar projects and qualified personnel who are capable of providing the required services.

IFB shall include:

1. Statement of Qualifications (SOQ) documentation verifying the wildlife biologist conducting the WHA meets the requirements of AC 150/5200-36A as delineated in Paragraph (2) (above). Provide relevant references and evidence of experience in assessing and managing wildlife hazards. In lieu of this documentation, the wildlife biologist may show evidence they have been deemed "qualified" by inclusion in Embry-Riddle Aeronautical University's Qualified Airport Biologists Listing (<http://wildlifecenter.pr.erau.edu/biologists.php>).
2. A proposed Statement of Work (SOW) - The response to this IFB shall include a detailed SOW delineating the work to be performed in conducting the WHA to meet the requirements listed in this IFB to include all applicable advisory circulars, FAA reference documents and manuals, and attachments A and B referenced in section II. The SOW shall include statements as to how the biologist intends to meet the "Duration of Wildlife Hazard Assessment and Basic Survey Techniques" described in Paragraph 6.2.c of the Wildlife Hazard Management Manual at Airports. The latter document is available free of charge at the FAA's Wildlife Hazard Mitigation Website (<http://wildlife-mitigation.tc.faa.gov>). The SOW shall also include the listing of the qualifications/aviation wildlife hazard management experience of the individual conducting the surveys and level/description of direct supervision given to the surveyor by the qualified airport biologist in accordance with Scope of Services, paragraph 5, above.
3. Schedule - Responder shall submit a project schedule to include, at a minimum, commencement and completion of the assessment process, key

meetings and significant events and/or activities, and submission of a preliminary WHA report to the Southwest Washington Regional Airport. The Southwest Washington Regional Airport would be expected to respond either approving the submission or provide comments. A Final WHA will be submitted after receipt of the Southwest Washington Regional Airport comments.

4. Proposed Costs - The submitter shall submit two contract bids. The bids shall cover the period from contract notice to proceed to approval of the final WHA report and the cost to develop the WHMP.
5. Additional Items:
 - (1) On company letterhead, provide the firm's legal name, address, and telephone and fax number.
 - (2) The names, experience and qualifications of the staff to be assigned to the project, including availability, reputation, and knowledge of FAA regulations, policies and procedures;
 - (3) A description of the firm's recent experience, especially with similar projects, and project location.
 - (4) The firm's understanding of the project as advertised;
6. Insurance Certification: Submit current insurance certificates for professional liability insurance with a single occurrence limit of not less than \$1,000,000. If selected, the successful firm shall, at all times during the contract term, provide a current certificate of insurance that also names the City of Kelso and the Southwest Washington Regional Airport as Additional Insureds.

V. ACCEPTANCE OF IFB

- Bid Form is attached hereto.
- Bid Form must be completed in ink or typed. The bid price of each item on the form must be stated in numerals.
- Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- Bids by a Limited Liability Company must be executed in the company's name and signed by the managing member or a member with authority, whose title must appear under the signature and the official address of the company must be shown below the signature.
- All names must be typed or printed below the signature.

- The address to which communications regarding the Bid are to be directed must be shown.
- Additional Information as requested under paragraph IV.

VI. AWARD OF CONTRACT

The award of contract, if it is to be awarded, shall be made within 60 calendar days of the date specified for publicly opening proposals, unless otherwise specified herein.

Award of the contract shall be made by the owner to the lowest, qualified and responsive bidder whose proposal conforms to the cited requirements of the owner.

VII. ADDITIONAL INFORMATION

The Owner has a 2017 draft Disadvantaged Business Enterprise (DBE) race neutral participation goal of 6.9%, in compliance with their 49 CRF Part 26 program. The goal is not a contractual obligation, however, the Owner encourages efforts by the contractor to achieve this goal.

This contract is subject to the Federal Required Contract Provisions for Airport Improvement Programs and for Obligated Sponsors, as included in attachment C.

For additional information, please contact:

Chris Paolini
Airport Manager
Southwest Washington Regional Airport
2222 South Pacific Ave.
Kelso, WA 98626

(360) 431-2264
cpaolini@kelso.gov

Bid Form

Project Identification: Bid Project No. 571703
Kelso, WA 98626

This Bid Submitted To: City of Kelso/Southwest Washington Regional Airport
Attention: Chris Paolini
203 South Pacific Ave.
Kelso, WA 98626

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract Agreement with the City of Kelso and to complete all Work as specified or indicated for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the Contract Documents.

2. In submitting this Bid, the Bidder represents that:

(a) The Bidder has examined copies of the Invitation to Bid and any of the following addenda, if issued. Receipt of addenda (if applicable) is hereby acknowledged:

Date:	Addenda #:	Initials
_____	_____	_____

(b) The Bidder has examined the site and locality where the Work is to be performed, the legal requirements (federal, state, and local laws, ordinances, rules and regulations) and the conditions affecting cost, progress or performance of the Work and has made such independent investigations as the Bidder deems necessary.

(c) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; the Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham bid; the Bidder has not solicited or induced any person, firm, or corporation to refrain from bidding; and the Bidder has not sought by collusion to obtain for himself any advantage over any other Bidder or over the OWNER.

3. The Bidder will complete the Work for the prices as set forth in the attached Bid Form.

4. The Bidder agrees that the Work will be completed in accordance with the time schedule stated within Contract Agreement.

Bid Form

City of Kelso (Southwest Washington Regional Airport)

IFB Project No. 571703

<u>Base Bid</u>	<u>Unit</u>	<u>Total Amount</u>
Wildlife Hazard Assessment (WHA)	Lump Sum	\$ _____
Wildlife Hazard Management Plan (WHMP) (if Assessment Requires)	Lump Sum	\$ _____
Total Base Bid (Sales Tax Not Included):		\$ _____

BID SUBMITTED ON _____, 2017.

The bid shall be signed by an authorized representative.

By _____ (Signature)

Type/Print Name _____

Title _____

Company Name _____

Address, City, State, Zip _____

E-Mail Address _____

Phone # _____ Cell # _____

Contractor Registration # _____

Unified Business Identifier # _____

Excise Tax Registration # _____

Employment Security Dept # _____

Industrial Insurance Coverage _____

ATTACHMENT A

*The following excerpt from a draft advisory circular
will serve as Attachment A referenced in the Invitation For Bid*

PROTOCOL FOR THE CONDUCT OF A WILDLIFE HAZARD ASSESSMENT (ASSESSMENT)

2.1. INTRODUCTION. The first step in preparing an airport Plan is to conduct an Assessment. The Assessment, conducted by a Qualified Airport Wildlife Biologist, provides the scientific basis for the development, implementation, and refinement of a Plan. Though parts of the Assessment may be incorporated directly into the Plan, they are two separate documents.

The objective of an Assessment is to provide a baseline of data and understanding of wildlife species considered hazardous on or near an airport and of attractants that provide food, water, and shelter. The Assessment also identifies wildlife trends at the airport (location of wildlife hazards and seasonality of wildlife) and how these fluctuations in behavior and abundance may affect aviation safety, with particular emphasis to wildlife strikes to aircraft. It promotes the use of an integrated approach for wildlife mitigation to effectively modify the environment (e.g., mowing and drainage clearance), exclude wildlife (e.g., install fences and perch excluders), implement harassment procedures (e.g., pyrotechnics and propane cannons), remove wildlife (e.g., lethal and capture/relocate methodologies), communicate wildlife hazard advisories (e.g., through Air Traffic Control voice communications, ATIS, PIREPS, NOTAMS), direct pilot responses to identified hazards, report strikes or hazardous situations, and potentially alter flight routes, traffic patterns, or schedules to avoid locations and times of identified wildlife hazards.

The Assessment provides baseline data for an airport to evaluate the efficacy of its wildlife hazard management program (e.g., determine redundancy of species-specific wildlife hazards, monitor reduction of onsite damaging strikes, monitor wildlife program communication and response efficiency, and improve the overall wildlife program through annual review). Better information regarding wildlife hazards and their attractants should result in better use of resources.

2.2. REQUIREMENTS FOR WILDLIFE HAZARD ASSESSMENTS. Title 14 CFR 139.337(b)(1–4) requires that, in a manner authorized by the Administrator, each certificate holder must ensure that an Assessment is conducted when any of the following events occurs on or near the airport:

- a. An air carrier aircraft experiences multiple wildlife strikes
- b. An air carrier aircraft experiences substantial damage from striking wildlife
- c. An air carrier aircraft experiences an engine ingestion of wildlife
- d. Wildlife of a size, or in numbers, capable of causing an event described in paragraph (b)(1), (2), or (3) of this section is observed to have access to any airport flight pattern or aircraft movement area.

The following provides a point-by-point comment on the regulations concerning the events that trigger a Wildlife Hazard Assessment.

14 CFR 139.337	Clarifications
(b) In a manner authorized by the Administrator, each certificate holder shall ensure that a Wildlife Hazard Assessment is conducted when any of the following events occurs on or near the airport.	A wildlife hazard assessment, conducted by a Qualified Airport Wildlife Biologist, must be conducted if—
(b) (1) An air carrier aircraft experiences a multiple wildlife strike	Aircraft strikes more than one animal (geese, starlings, bats, deer, coyotes, etc.).
(b) (2) An air carrier aircraft experiences substantial damage from striking wildlife. As used in this paragraph, substantial damage means damage or structural failure incurred by an aircraft that adversely affects the structural strength, performance, or flight characteristics of the aircraft and that would normally require major repair or replacement of the affected component	The definition of substantial damage is taken directly from the International Civil Aviation Organization (ICAO) <i>Manual on the International Civil Aeronautics Organization Bird Strike Information System</i> .
(b) (3) An air carrier aircraft experiences an engine ingestion of wildlife; or	Wildlife is ingested into a turboprop, turbofan, or turbojet engine. Engine damage does not have to result from the ingestion.
(b) (4) Wildlife of a size, or in numbers, capable of causing an event described in paragraph (b)(1), (2), or (3) of this section is observed to have access to any airport flight pattern or aircraft movement area.	Airports with a standing Notice to Airmen (NOTAM), announcements on their Automatic Terminal Information Service (ATIS), or comments in Airport/Facility Directory (A/FD) warning pilots of wildlife hazards on or near the airport meet this condition. Permanent or blanket generic advisories should not be issued without actionable mitigation measures provided.

2.3. NECESSARY ELEMENTS OF A WILDLIFE HAZARD ASSESSMENT. Title 14 CFR 139.337 (c)(1–5) provides specific guidance as to what facts must be addressed in a Wildlife Hazard Assessment. The following is a point-by-point comment on each section of the regulations concerning the factors to be addressed in a Wildlife Hazard Assessment.

14 CFR 139.337	Clarifications
(c) The Wildlife Hazard Assessment ... shall be conducted by Qualified Airport Wildlife Biologist... having training or experience in wildlife hazard management at airports ... or working under the direct supervision ...	The Assessment is to be conducted by someone having met the requirements defined in the most recent version of AC 150/ 5200-36 "Qualifications for Wildlife Biologist Conducting Wildlife Hazard Assessments and Training Curriculums for Airport Personnel Involved in Controlling Wildlife Hazards on Airports"
(c) cont. ... the Wildlife Hazard Assessment shall contain:	
(c) (1) Analysis of the event or circumstances that prompted the assessment.	Who, what, when, where, why of the situation prompting the Assessment.
(c) (2) Identification of the wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences.	What wildlife species have access to the airport? What are their legal status, movement patterns, and seasonal patterns?
(c) (3) Identification and location of features on and near the airport that attract wildlife.	Wildlife are attracted to an airport because something exists on or near the airport that they desire. Wood lots near the AOA and large open areas provide relatively safe loafing, nesting and feeding locations. Food and water sources can be highly variable (dependent on hazardous species), seasonal or ephemeral. These attractants and others, such as easily accessible travel corridors, should be analyzed.
(c) (4) A description of wildlife hazards to air carrier operations.	This is a judgment call best made by the Qualified Airport Wildlife Biologist trained in dealing with airport issues. Hitting 3-4 swallows is much less hazardous than hitting one 12-pound Canada goose.
(c) (5) Recommended actions for reducing identified wildlife hazards to air carrier operations.	The Qualified Airport Wildlife Biologist preparing the Assessment must provide prioritized recommendations for mitigating the hazardous wildlife and their attractants as well as recommendations for Operations (e.g., ATC, air carriers, pilots, etc.)

2.4. NECESSARY ELEMENTS OF A WILDLIFE HAZARD ASSESSMENT REPORT. Elements within 14 CFR 139.337 (c) (1-5) must be discussed in the final Assessment report. If there was no event or circumstance that prompted the Assessment then 14 CFR 139.337 (c) (1) may be omitted. Although there are many acceptable formats to present the findings of an Assessment, there are certain key components that must be provided. The required components include sections summarizing methodologies, results and recommendations (if there are any).

Assessment techniques such as point counts, trapping indices, vehicle routes, and avian radar should be conducted and locations described that allows future duplication for consistent, continued monitoring or comparison to previous findings. Maps, imagery and/or detailed descriptions should be incorporated whenever location information is necessary (e.g., Assessment techniques, wildlife hazard attractants, airport layout).

Wildlife strike data should be evaluated regardless of an event or circumstance that may have prompted the Assessment. The National Wildlife Strike Database (<http://faa.gov/go/wildlife>) is available to the public and is the primary repository for wildlife strikes to civil aircraft in the U.S., although strike records may be available from other sources such as the airport, airlines and engine manufacturers. When available, key strike data such as species, number struck, phase of flight, altitude, time of day, time of year, and damage (if any) should be summarized in the Assessment.

Recommended actions for reducing identified wildlife hazards may include detailed, task specific objectives or general measures. Attention should be given both to proactive mitigation such as habitat modification and exclusion techniques and reactive measures that involve harassment, dispersal and removal procedures. When applicable, airports should be strongly encouraged to maintain Federal and State depredation permits.

2.5. MINIMUM NUMBER OF WILDLIFE SURVEYS REQUIRED AND DURATION OF WILDLIFE HAZARD ASSESSMENT. In conducting a Wildlife Hazard Assessment 14 CFR Part 139.337 (c)(2) requires the "identification of the wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences." In most cases, this requirement dictates that a 12-month Assessment be conducted so the seasonal patterns of birds and other wildlife using the airport and surrounding area during an annual cycle can be properly documented. Most regions of the USA have dramatic seasonal differences in numbers and species of migratory birds. Even for non-migratory wildlife, such as deer and resident Canada geese, behavior and movement patterns can change significantly throughout the seasons. Observations of wildlife at an airport and surrounding areas limited to a few days in a single season generally cannot adequately assess hazardous wildlife issues and associated habitat attractants.

In order to adequately identify wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences, the Biologist may choose from several objective procedures that will adequately assess avian and mammalian species. These standardized survey procedures will insure that quality, representative data can

be consistently collected for hazardous wildlife species in the airport environment and that these procedures can be repeated in future years for comparative purposes.

Various wildlife species are active throughout all hours of the day and night. Inventory and monitoring techniques should account for these movement dynamics. Birds should be surveyed diurnally in the morning, midday, and evening hours while appropriate nocturnal surveys and/or tracking indices are incorporated to sample mammals.

a. Avian Surveys

- (1) Minimum of twelve months data collection
- (2) Minimum of two randomly selected sampling trips/month
- (3) Minimum of two survey samples/month for each of the survey points during the diurnal periods of morning, midday and evening²

b. Mammalian Surveys

- (1) Minimum of twelve months data collection
- (2) Minimum of one randomly selected sampling trip/month

c. Data from Other Sources

- (1) Published data
- (2) University studies
- (3) Federal and State studies
- (4) NEPA documents
- (5) Radar studies
- (6) ATC and airport "event logs" or wildlife management, patrol, monitoring logs
- (7) Other acceptable data sources

2.6. BASIC WILDLIFE SURVEY TECHNIQUES FOR WILDLIFE HAZARD ASSESSMENTS. Not all species are equally detectable but an Assessment should strive to assess the presence/absence of known or suspected hazardous species on or near the airport, especially those documented within the facility's strike database. Hazardous avian species on or near airports are typically medium to large birds that exhibit either solitary or flocking behavior or small birds that congregate in large flocks.

North American Breeding Bird Survey. One objective procedure for assessing bird populations, based on North American Breeding Bird Survey (BBS) methodology, is the establishment of standardized survey points about ½ mile apart throughout the airport. Assigning each bird or bird flock observed during a point count to a grid location can be useful in further refining spatial distributions of birds on the airport. Additional survey points should be established in nearby off-airport areas (e.g., wetlands, open water impoundments, taxicab lot, golf course, City Park, etc.) suspected of attracting hazardous birds that move across the AOA.

Use of this design provides a baseline estimate of bird species and numbers on the airport that can be compared with other airports and the same airport in the future. Data on species and numbers are collected from established observation points along a survey route. A survey is defined as one visit to all observation points along a survey route. A survey day consists of one or more independent (i.e., replicated) surveys conducted during one day.

In many cases, observation points in forested areas on airport property are less critical for identifying hazardous avian species yet important for the systematic or ancillary identification of mammals. Although forested areas can provide attractive perching/roosting locations for some hazardous avian species (e.g., raptors, blackbirds), woodland interior birds are usually of limited concern unless they frequent open habitats which will be surveyed. Data relating to forested areas may also be collected by general observations.

The number of observation points required to obtain adequate coverage of the sample area will depend on the size, complexity, and physical features of the airport. The combined area covered by observation points (about 50 ha/point) should exceed 10% of the airport land area.

To conduct a survey, an observer starts at one end of the survey route and stops the vehicle at each observation point. After turning off the motor and exiting the vehicle, the observer records the numbers and species of all birds heard at any distance and all birds detected visually (with or without binoculars) within a 0.4 km (1/4-mi.) radius (i.e., 50 ha), for a 3-minute period. During the survey, significant birds (e.g., a flock of geese; an endangered species) observed outside the 0.4 km (1/4-mi.) radii around observation points or outside the 3-minute periods (e.g., while driving between stops) should be noted on a separate data form and reported under general observations.

It also may be useful to develop a coding procedure on the data sheet (or a separate data sheet) to record birds observed actually on or over a runway during the 3-minute observation periods. By knowing the percent of total airport runway area covered by the 0.4 km (1/4 mi.) radius observation points, an estimate of the number of birds on or crossing the runways per hour could be estimated. For example, if 10 observation points on an airport survey route covered 25% of the runway area and you recorded an average of 1.5 birds per 3-minute observation on or over a runway, then you would estimate that the airport averaged 120 birds on or crossing runways per hour.

For the area within a 0.4 km (1/4 mi.) radius of each avian observation point, a visual estimate should be made of the proportion of each major habitat type [e.g., pavement, short < 20 cm) grass, tall grass (>20 cm), water, shrub]. It may be useful to analyze data for certain species by observation point to associate that species with a certain habitat type or location on the airport. For example, if waterfowl are consistently observed at one observation point that has aquatic habitat, this should be stated in the analysis and presentation of results.

- b. General Observations.** In addition to the standardized survey, it is important to make general wildlife observations in areas outside the survey points. These observations can provide important information on significant bird hazards and/or zero tolerance species (e.g., Canada geese) and issues (e.g., endangered species) not fully covered by a standardized survey. Observations of wildlife use and movements around and within structures and other unique areas of the airport environment that are not covered in the standardized bird survey should still be recorded. In addition, observation points also should be established at selected areas of high wildlife use within 8 km (5 mi.) of the airport such as reservoirs, roosting sites, feedlots, landfills, and other potentially attractive sites. The FAA has established an 8 km (5 mi.) radius around the airport as the major area of concern.

Additional analysis may also be performed. Each airport is different, and may require special analysis to document bird activity. For example, if a certain flocking species is present in large numbers, some analysis of mean flock size might be presented. If a large number of birds migrate through the airport area over a two-week period, a graphic presentation showing numbers at two week intervals instead of monthly or seasonal intervals might be appropriate. In addition, the general bird observations made outside of the standardized survey need to be incorporated. For example, tables might list the number of goose flocks recorded on the airport by month, the mean number of gulls seen per observation by month at a trash transfer facility approximately 3.2 km (2 mi.) from the airport, or the mean number of pigeons seen in a hangar per observation by season. Descriptive summaries might be included of general observations about flight patterns of a certain species over the airport or the habitat use by another species on the airport.

- c. Data Recording.** An example of the form used for data recording and is similar to the BBS is located in Appendix F and may be used to record survey data. This data form has standardized codes for weather and time. Encoding data will facilitate data analysis and entry into a database. The use of bird species codes is recommended. The American Ornithologists' Union (AOU) has established a standard four letter alphabetic code for most bird species (<http://www.birdpop.org/alphacodes.htm>). You may have to develop bird codes for special situations. For example, in some situations you may not always be able to identify gulls to species and need a code for unknown gull ("UNGU").
- d. Data Analysis and Descriptive Statistics.** Appropriate data analysis and interpretation will provide much of the information necessary to accurately assess

hazards and make management recommendations. Data will also serve as a baseline from which the effectiveness of management actions can be measured.

For each survey, the total birds observed per species and the number of observation points recording the species (frequency of sightings on the airport) should be calculated. The number of birds observed provides a measure of species density on the airport. The frequency of sightings at each location indicates the distribution of the species on the airport. Surveys can then be grouped to calculate mean number and frequency of birds (by species) seen per survey by time of day, month, and season.

If desired, statistical tests used to identify significant differences among months or seasons can be conducted using analysis of variance (ANOVA) and chi-square calculations.

- e. **Seasonal Patterns.** Seasonal patterns or trends for species can be represented by graphing the mean number of birds and mean frequency of sightings per month or season as calculated above. The graph will provide a visual representation of obvious seasonal trends or patterns for each bird species observed in all habitat types (i.e., the entire airport). In many cases it will be useful to simplify presentations by combining species into groups/guilds (e.g., birds of prey, gulls, waterfowl) in these summary graphs, presenting the detailed data for individual species in a table or appendix.
- f. **Mammal Surveys.** The collection of data pertaining to mammal populations is often time consuming and labor intensive. However, these data often are a necessary part of an Assessment and wildlife hazard analysis. Whether to collect data for all or for selected mammal species found on an airport depends on past and present wildlife hazards and the judgment of the Biologist. The Biologist should collect data related to identified and suspected hazardous mammal species, including ungulates, canids, and if necessary, rodents.

A number of survey designs developed for mammal species rely upon trapping and marking animals (e.g., mark-recapture studies). Mark-recapture studies are usually time consuming, labor intensive, and costly. Typically, the Biologist should consider a combination of data collection procedures that best identify a specific airport's hazardous species. Systematic vehicle surveys, tracking indices, catch-per-unit-effort survey, and spot mapping are commonly used techniques. Vehicle surveys should provide adequate data on large mammals such as ungulates, canids, and lagomorphs. Various tracking indices can be used to assess relative abundance or to aid in the identification of mammals beyond the scope of vehicle surveys which have varying degrees of success dependent on method (e.g.,, spotlight, night vision or Forward-Looking Infra-Red [FLIR]). Relative abundance data for small mammals are collected by catch-per-unit-effort sampling (snap traps). Data related to miscellaneous mammals (canids, ungulates, raccoons) can also be collected by spot mapping.

(1) **Vehicle Surveys.** Vehicle surveys at night using a spotlight, night vision equipment, or FLIR unit are performed along predetermined routes. The survey can be one continuous route around the airport or several routes covering different areas. Survey routes should include areas near runways and habitat types where ungulates, predators, or other target species are suspected or known to occur. Routes should sample a minimum of 10% of the total area. Aerial photographs, topographic maps, and maps that contain airport roadway systems can help in establishing survey routes. Preliminary examinations will be helpful to establish appropriate night time survey routes without excessive obstructions that limit viewing. Survey routes should be established carefully and remain constant throughout the study. Coordination with Air Traffic Control is essential during spotlight surveys to ensure no aircraft are in the AOA or traffic pattern in the line of spotlight beams. Additionally, spotlight surveys should ideally be scheduled at times when aircraft operations are limited or not present. **Spotlights must not be pointed at aircraft, other vehicles or the airport tower.** At a minimum, the survey must be conducted at least one time per month for the duration of the study.

Observations may be performed starting one half hour after sunset and ending after two to three hours or delayed, dependent on times of limited scheduled aircraft operations. In general, the survey route(s) are run only once per night although multiple runs can be made if time permits. All mammals and birds observed should be recorded by species and location. The start and end time of each survey and total distance driven should be recorded so that numbers seen per hour and distance can be calculated. Wildlife surveys should be conducted in most types of weather according to schedule, but it may sometimes be necessary to postpone survey periods during severe weather. Surveys should not be conducted in excessive wind or heavy rain as mammal activity may be significantly affected by weather.

(2) **Catch-Per-Unit-Effort (small mammals).** Small mammal populations may be measured if birds of prey or mammalian predators occur in the strike record. As a general guideline, transects with 50 traps each should be placed in at least four habitats or locations on the airport. Each transect should have 50 traps placed at 10-m intervals in one line or 25 traps each in two parallel lines 30 m apart. Traps are set in daylight hours and checked 24 hours later. Transects should be run for two to four consecutive nights in spring and again in autumn.

When checking traps, the following data should be collected for each trap: status of trap (sprung or unsprung) and species, if any, captured. Trapping results are recorded, by species, as the number of animals caught per 100 adjusted trap nights.

(3) **Spot Mapping.** Spot mapping consists of plotting on a grid map the location, date, and time of mammal observations and provides a general overview of mammal activity on the airport. Often, airport operations officers, who are required to perform runway sweeps, can assist in collection of this data as can pilots or other airport personnel. Additionally, mammal observations made while performing designated bird and mammal surveys can be mapped and used to augment spot observations.

2.7. BASIC HABITAT SURVEYS FOR WILDLIFE HAZARD ASSESSMENTS.

Habitat evaluation is an essential part of an Assessment, and is required by 14 CFR Part 139.337 (c) (3). Many natural and artificial habitats are attractive to wildlife, and evaluation of these should provide the Biologist with information about the quantity, quality, and seasonal nature of their use. Wildlife exploit these habitats for food, water or cover, which may vary seasonally and/or throughout an animal's life cycle. Although they may be considered either a direct or indirect attractant³, it remains essential for safe air traffic operations to fully understand their influence.

Land-use practices that attract or sustain hazardous wildlife populations on or near airports, specifically those listed in AC No: 150/5200-33B *Hazardous Wildlife Attractants On or Near Airports* Section 2 can significantly increase the potential for wildlife strikes. FAA criteria include land uses that cause movement of hazardous wildlife onto, into, or across the airport's approach or departure airspace or air operations area (AOA).

The FAA recommends the minimum separation criteria outlined in AC No: 150/5200-33B Section 1 for land-use practices that attract hazardous wildlife to the vicinity of airports. This separation criterion provides predetermined boundaries of concern around airports to be considered while conducting comprehensive, detailed studies and evaluations of wildlife populations and attractants.

a. Pre-existing Habitat Data. Pre-existing habitat inventory and geospatial information can prove useful regarding soils, vegetative species, topography, geography, habitat type, location and size. This data may be found in various locations or with various agencies such as:

- (1) Airport Layout Plan
- (2) Airport Master Plan
- (3) Airport Environmental Assessment
- (4) Airport Environmental Impact Statement
- (5) U.S. Fish and Wildlife Service
- (6) U.S. Geological Survey
- (7) U.S. Army Corps of Engineers
- (8) USDA – Natural Resources Conservation Service
- (9) Department of Natural Resources (state)
- (10) Department of Transportation (state)

³ Direct attractants (i.e., favorable vegetation for foraging) or indirect attractants (e.g., brushy vegetation may result in increased rodent populations which attracts hazardous raptors) can create equally hazardous environment for safe air operations.

b. Descriptive Habitat Data. A general description of the study area needs to be included within the Assessment. This should describe natural and artificial attractants both on-site and off-site within the separation criteria defined in AC No: 150/5200-33B Section 1.

(1) **Natural⁴ Habitat Data.** This may include characteristics such as geographic location, topography, soils, climate, vegetation, agriculture, and wetlands/water features (drainages, ponds, lakes, rivers, and water impoundments).

(2) **Artificial⁵ Environment Data.** This may include items such as airport buildings, jet bridges, towers, antennas, runways, taxiways, ramp, hangars, waste disposal operations and waste containers)..

c. Food. Naturally occurring wildlife foods such as insect and other invertebrate populations should be noted with descriptions, time of year, weather conditions, and environmental factors such as soil type, vegetative cover, and drainage conditions. In addition, management practices that enhance the production of these natural foods should be documented. An evaluation of small mammal populations as a food source for predators can be addressed in the sampling strategy discussed previously.

Plant seeds, fruits, and berries are other food attractants on airports for birds and mammals. Seasonal wildlife hazards may develop when seeds or fruits are abundant. Documentation of these food sources is an important component of the habitat analysis.

Review environments within 3,048 m (10,000 ft.) radius of the airport, and record food sources that attract wildlife. Agricultural fields, grain elevators, food product industries, fast food restaurants, livestock operations, wildlife refuges and sanctuaries, and waste handling facilities may attract significant numbers of birds and/or mammals, increasing the hazard to human safety and aircraft. A Wildlife Hazard Assessment should contain information relative to these sites such as the names and locations, and a description of the attractant and the potential hazard.

d. Vegetation. Vegetation and cover requirements vary by species and time of year. Relationships between wildlife species and cover types provide information necessary to develop appropriate wildlife management strategies. In reviewing

⁴ Natural habitat is defined for this purpose as biotic habitats including vegetation (e.g., grass, forest, shrub scrub, wetland, agriculture, desert, etc.) and water features (e.g., ponds, rivers, lakes, marine, retention/detention ponds, drainages, etc.).

⁵ Artificial environment is defined for this purpose as man-made features (e.g., buildings, structures, towers, paved/hard surfaces, waste disposal operations, waste containers, etc.).

vegetative areas on an airport, it is important to record observations of species, management practices, seasonal growth, density, percent cover, and any noted wildlife associations. Use of specific areas by animals in the airport environment may assist the observer in identifying vegetative attractants.

- e. **Water.** Water sources are wildlife attractants, especially fresh water sources in coastal areas. Reservoirs, streams, ponds, drainage basins, seep areas, and ephemeral water sources should be identified and mapped. Gulls, waterfowl, shorebirds, and marsh birds may be attracted to the airport because of abundant food or drinking and resting sites available in existing water resources.
- f. **Structures.** Buildings, areas adjacent to buildings, and equipment on airports are readily used by some wildlife species, such as European starlings, pigeons, gulls, sparrows, crows, raptors, mice, rats, skunks, and woodchucks. Wildlife use of structures can present threats to human safety and aircraft, and may cause unsanitary working conditions or damage to structures.

The reasons for use of most structural features by wildlife are usually easily determined, while others are less obvious. For example, feral pigeons may loaf on just one ledge of a particular building because it provides shelter from the wind or protection from predators. The Qualified Airport Wildlife Biologist should determine what features are attractive to problem species, and why. A strategy can then be developed to reduce or eliminate the problem.

- g. **Soil.** The type(s) and fertility of soils present on an airport is a general indicator of biological productivity. Habitat quality is directly related to soil fertility and other soil conditions. The nutritive value, quantity, and attractiveness of plant and animal food organisms varies widely with soil types and conditions. For example, sandy, well-drained soils that dry quickly after rainfall generally produce less biomass and are less likely to harbor an abundant population of earthworms and other invertebrates.

Identification and documentation of soil types and conditions on the airport and vicinity should be an integral part of an overall assessment or study. In most states, information on soil types and conditions can be acquired from soil survey publications available from the USDA Natural Resource Conservation Service (NRCS) or the Cooperative Extension Service. These publications contain soil maps and descriptions, formations, morphology and soil classifications. However, on airports where large scale soil disturbance, such as grading, leveling, and filling, have been conducted, soil maps may be of limited value.

- h. **Spot Mapping.** Because attractants may vary seasonally and following precipitation, spot mapping the location and date of features such as fruit and seed bearing vegetation, ephemeral pools and temporary ponding of water or puddles throughout the AOA will help identify food sources, drainage problems and grade deficiencies.

2.8. Basic Assessment of Airport and Aircraft Operations. Assessment of airport and aircraft operational procedures is an essential part of an Assessment. Hazardous wildlife only presents a risk to aviation if aircraft and wildlife occupy the airspace or movement areas at the same time and location. Persons conducting Assessments must also gather general observation data and other information related to airport and aircraft operations regarding wildlife hazards. Biologists should monitor NOTAMs, ATIS advisories, and published Airport/Facilities Directory information to ensure specific information and not a blanket advisory is issued. Assessment of ATC's involvement in identifying potential hazards as observed or relayed by pilots or airport operations personnel should include determination that wildlife dispersal is coordinated with ATC such that hazards are not inadvertently increased by dispersing wildlife into the path of aircraft movements. ATC must provide wildlife control teams access to movement areas of the airfield, but also communicate with them during the implementation of mitigation measures to ensure dispersal paths are observed and de-conflicted with aircraft movements.

Biologists should also query users of the airport for their inputs on wildlife observed on and around the airport. For example, pilots should be interviewed about their experience in the local area as they have a perspective not available to ground-based personnel. Congregations of towering raptors or gulls over off-airport facilities such as landfills and food-processing plants are often detected this way as are major roost sites of blackbirds, starlings, vultures, or crows. Time should be dedicated to visit the pilots' lounge or to visit the local airline representative/facility agent for informal interviews. Fixed-base operators (FBO's) should also be visited and personnel interviewed for their experience with hazardous wildlife in the local area. Pilots, especially those operating non-commercial or private aircraft, must be aware that they have the discretion to delay takeoffs or departures, ask for wildlife dispersal action, or requires alternate runways, departure .or approach paths to avoid identified hazards.

Airline and private maintenance personnel should similarly be interviewed for their perspective on local hazardous wildlife and their reporting procedures when strikes are detected on post-or pre-flight inspections of aircraft.

Other airport users must also be interviewed and included in the Assessment process. Aircraft Rescue and Fire Fighting (ARFF) and Airport Security Personnel are always present on airports during operations and have a unique view of the airfield. They must also be notified should major dispersal operations be conducted, such as with pyrotechnics, where the slight chance for grass fires or security concerns are present.

ATTACHMENT B

*The following excerpt from a draft advisory circular
will serve as Attachment B referenced in the Invitation For Bid*

PROTOCOL FOR THE PREPARATION OF A WILDLIFE HAZARD MANAGEMENT PLAN (PLAN)

3.1. INTRODUCTION. When complete, the Assessment is submitted by the airport to the FAA for review and approval. The FAA will also use it to determine if the airport must do a Wildlife Hazard Management Plan. In reaching this decision, the FAA will consider the Assessment, the aeronautical activity at the airport, the views of the certificate holder and airport users, and any other pertinent information (14 CFR 139.337 (d)(1-6)).

The goal of an airport's Plan is to minimize the risk to aviation safety, airport structures or equipment, or human health posed by populations of hazardous wildlife on and around the airport. The Plan accomplishes this through the identification of hazardous wildlife and their attractants, suitable proactive and reactive management techniques, necessary resources and supplies to successfully implement a wildlife hazard management program and personnel responsibilities and training requirements. Appropriate federal, state and possible local wildlife control permits should be identified as well as a schedule and methodology to evaluate and update the Plan.

3.2 WILDLIFE HAZARD MANAGEMENT PLAN REGULATORY REQUIREMENTS AND METHODOLOGY. 14 CFR 139.337 (f)(1-7) provides specific guidance as to what facts must be addressed in a Plan.

a. **14 CFR 139.337 (f)(1).** "A list of the individuals having authority and responsibility for implementing each aspect of the plan." This list shall assign or delegate specific responsibilities for various sections of the Plan to various airport departments and other interested federal, state or local agencies, such as:

- (1) Airport Director
- (2) Operations Dept.
- (3) Maintenance Dept.
- (4) Security Dept.
- (5) Planning Dept.
- (6) Finance Dept.
- (7) Wildlife Coordinator
- (8) Wildlife Hazards Working Group
- (9) Air Traffic Control
- (10) Airlines
- (11) Pilots
- (12) Fixed-base Operators

- (13) Air-side tenants
- (14) Land-side tenants
- (15) State Wildlife Agency
- (16) Local law enforcement authorities
- (17) U.S. Fish and Wildlife Service

b. **14 CFR 139.337 (f)(2).** "A list prioritizing the following actions identified in the **ASSESSMENT** and target dates for their initiation and completion." The Plan should provide a prioritized list of problem wildlife populations and wildlife attractants (food, cover, and water) identified in the Assessment, proposed mitigation actions, and target starting and completion dates. A list of completed wildlife population management projects and habitat modification projects designed to reduce the wildlife strike potential can be included to provide a history of work already accomplished. It is helpful to group attractants by areas and ownership.

AIRPORT PROPERTY	NON-AIRPORT PROPERTY
Air Operations Area (AOA)	Within 2 miles of AOA
Within 2 miles of AOA	Within 5 miles of AOA
Airport structures	

Wildlife mitigation techniques at commercial airports involve integrated and systematic methodologies that typically progress (based on necessity) from proactive measures to reactive measures. The reduction of wildlife threats at an airport is often the unintended or secondary consequence of ongoing habitat management such as mowing, tree removal, drainage reparations, out-of-grade surface restoration and the establishment or maintenance of perimeter fencing.

(1) **14 CFR 139.337 (f)(2)(i).** **Wildlife population management.** Address species-specific population management plans (e.g., deer, gulls, geese, and coyotes). The progression of techniques employed to mitigate hazardous species include habitat modification and resource protection, exclusion devices, repellent / harassment measures, and removal.

- (a) Habitat Management
- (b) Exclusion (fencing, netting, anti-perch/ nesting devices)
- (c) Repellents (chemical, audio, visual)
- (d) Harassment (pyrotechnics, falconry, dogs, radio-controlled models, etc.)
- (e) Capture (chemical, live traps, lethal traps)
- (f) Toxicants (oral and contact); Fumigants
- (g) Shooting

When applicable, airports should identify resident or seasonal “zero-tolerance”⁶ hazardous species based on historical strike records or recognized threat posed by such species at the facility. The ranking of hazard level for birds and terrestrial mammals in Table 1 should also be considered when an airport determines zero-tolerance species and subsequent management protocols. Ungulates (i.e., deer, elk), canids (i.e., coyotes, domestic dogs) and certain avian species (i.e., Canada geese, snow geese) are universal candidates for zero-tolerance management protocols but other hazardous species may require conditional zero-tolerance management. Flocking birds such as European starlings and gulls pose a significant and increasing hazard to aircraft as flock size increases. Therefore, an airport may choose to require zero-tolerance management protocol for these (or similar) species only when an unacceptable flock size has been reached. Determination of action based on flock size is often difficult and requires experienced consideration of variables such as hazard relative to species, airport operation type, and current aircraft activity.

(2) **14 CFR 139.337 (f)(2)(ii). Habitat modification.** Address natural and artificial habitats that may provide a food, water or cover source to hazardous species to reduce their attractiveness. Advisory Circular 150/ 5200-33B (AC-33B) *Hazardous Wildlife Attractants On or Near the Airport* provides in-depth discussion on acceptable/unacceptable habitats and land-use practices on and near airports. Management of the vegetative/prey food items for hazardous species is often season or weather related and may include rodent control, garbage storage, landscaping, and management of standing water.

- (a) Vegetative/prey food items for hazardous species
 - (i) Prey items (rodents, earthworms, insects)
 - (ii) Vegetative food items (grain/seeds, fruit, desirable grasses)
 - (iii) Garbage (handling, storage)
 - (iv) Handouts (feeding wildlife)
- (b) Vegetation management may include:
 - (i) AOA vegetation
 - (ii) Drainage ditch vegetation
 - (iii) Landscaping
 - (iv) Agriculture
- (c) Water management may include:
 - (i) Permanent Water
 - (ii) Wetlands

⁶ Zero-tolerance designation in the airport environment denotes wildlife species that represent an unacceptable high risk to safe aircraft operations. Their presence in the airport environment cannot be tolerated and warrants immediate management action to remove them from the AOA using appropriate techniques (i.e., harassment, lethal take, capture/ relocate, etc.).

- (iii) Canals / ditches / streams
- (iv) Holding ponds
- (v) Sewage (glycol) treatment ponds
- (vi) Ephemeral water
- (vii) Runways, taxiways, aprons
- (viii) Other wet areas

(d) Airport buildings may include:

- (i) Airfield structures
- (ii) Abandoned structures
- (iii) Terminal
- (iv) Airport construction
- (v) Leased facilities

(3) **14 CFR 139.337 (f)(2)(iii). Land use changes.** Eliminate agricultural activities and standing water on the airport. When feasible, off-site attractants within the defined separation criteria such as agricultural activities, waste handling facilities that are not fully enclosed, surface mining, urban development, wildlife refuges and storm water management systems should be eliminated as well. See Advisory Circular 150/ 5200-33B for an in-depth discussion on acceptable/ unacceptable land-use practices on and near airports.

c. **14 CFR 139.337 (f) (3). "Requirements for and, where applicable, copies of local, State, and Federal wildlife control permits."** Certain species of wildlife are protected at all levels of government—local, state, and federal. Address the specific species involved and their legal status in this section. Describe the wildlife management permitting requirements and procedures for all levels of government having jurisdiction.

- (1) Federal (50 CFR, Parts 1 to 199)
- (2) State (Fish and Game Code - or equivalent)
- (3) City and County ordinances
- (4) If pesticides are to be used, the following are also needed:
 - (a) Pesticide-use regulations and licensing requirements
 - (b) Federal regulations and licensing: Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
 - (c) State regulations and licensing (varies by state)

For the purpose of the Plan, summaries are generally adequate. It is not necessary to quote chapter and verse of federal, state, and local laws and regulations.

d. **14 CFR 139.337 (f) (4). "Identification of resources that the certificate holder will provide to implement the plan."** Provide information identifying what resources the airport will supply in terms of personnel, time, equipment (e.g., radios, vehicles, guns, traps, propane cannons, etc.), supplies (e.g., pyrotechnics), pesticides (restricted/non-restricted use) and application equipment and supply sources for equipment and supplies.

e. **14 CFR 139.337 (f) (5)** “Procedures to be followed during air carrier operations *that at a minimum includes—*”

(1) **14 CFR 139.337 (f) (5) (i)** “Designation of personnel *responsible for implementing the procedures.*” This section corresponds with the aforementioned 14 CFR 139.337 (f)(1) and describes who is required for successful mitigation of wildlife hazards in the airport environment.

- (a) Wildlife Control Personnel
- (b) Wildlife Coordinator
- (c) Operations Dept.
- (d) Maintenance Dept.
- (e) Security Dept.
- (f) Air Traffic Control
- (g) Pilots
- (h) Airlines
- (i) Fixed-base Operators
- (j) Airside/landside tenants

(2) **14 CFR 139.337 (f) (5) (ii)** “Provisions to conduct physical inspections of *the aircraft movement areas and other areas critical to successfully manage* known wildlife hazards before air carrier operations begin.” This section provides a description of known or anticipated locations that should be monitored for successful mitigation of wildlife hazards in the airport environment.

- (a) Runway, taxiway
- (b) AOA
- (c) Perimeter fence
- (d) Other areas attractive to wildlife

(3) **14 CFR 139.337 (f) (5) (iii)** “Wildlife hazard control measures.” This section corresponds to the aforementioned 14 CFR 139.337 (f)(2)(i) and details current or anticipated techniques that may be implemented for successful mitigation of wildlife hazards in the airport environment. Techniques discussed in this section typically represent an integrated approach and include exclusion, repellent, harassment, capture, lethal control or even relocation measures in specific instances. In addition, operational control measures such as scheduling of flights, air traffic control advisories, Pilot Reports (PIREPS), UNICOM advisories, avoidance procedures, delayed takeoffs and approaches, use of alternate runways or traffic direction, must be considered.

(4) **14 CFR 139.337 (f) (5) (iv)** “Ways to communicate effectively between *personnel conducting wildlife control or observing wildlife hazards and the air traffic control tower.*” This section provides a description of regulated and site-specific protocols for the communication and/ or notification of wildlife control activities, identified and current wildlife hazards on or near the airport environment or imminent wildlife threats to aircraft operations on or near the airport. Protocols may include training in airport communication and the development of notification procedures for airport personnel and Air Traffic Control when wildlife control

procedures are implemented or in response to immediate wildlife threats to safe air operations to ensure dispersal activities do not inadvertently increase wildlife hazards. Communication and/ or notification procedures within the Plan should recognize pilot reports and ATC advisories and establish responsibilities for reporting wildlife strikes. This section may also provide equipment requirements that include radios, cellular phones, and lights and an official call list with numbers.

- f. **14 CFR 139.337 (f) (6) "Procedures to review and evaluate the wildlife hazard management plan every 12 consecutive months or following an event described in paragraphs (b)(1), (b)(2), and (b)(3) of this section," including:** At a minimum, the Plan should be reviewed once annually and anytime a triggering event occurs as defined in 139.337(b)(1–3). The review(s) should include representatives from all airport departments involved in wildlife hazard management efforts and the Biologist who did the original Assessment. It is often helpful for the airport manager to appoint a Wildlife Hazards Working Group that periodically reviews the airport's Plan and the plan's implementation to make recommendations for further refinements or modifications.
- (1) **14 CFR 139.337 (f) (6) (i) "The plans effectiveness in dealing with known wildlife hazards on and in the airport's vicinity and:"** Input should be provided from all airport departments, Air Traffic Control, and the Biologist as to the effectiveness of the Plan. Good records are necessary to properly evaluate the effectiveness of a program.
- (2) **14 CFR 139.337 (f) (6) (ii) "Aspects of the wildlife hazards described in the wildlife hazard assessment that should be reevaluated."** For example—
- (a) Number of times wildlife seen on AOA
 - (b) Requests for wildlife dispersal from air traffic control, pilots, or others
 - (c) Increased number of strikes

Regulations 14 CFR 139.337 (f) (6) (i) and (ii) cannot be effectively implemented or evaluated without documentation of wildlife strikes. The effectiveness of a Plan to reduce wildlife hazards both on and near an airport and the reevaluation of all facets of damaging/nondamaging strikes from year to year requires accurate and consistent reporting. Therefore, every Plan should include a commitment to document all wildlife strikes that occur within the separation distances described in sections 1-2 and 1-3 of Advisory Circular 150/5200-33B *Hazardous Wildlife Attractants On or Near Airports* to better identify, understand and reduce threats to safe aviation.

- g. **14 CFR 139.337 Comments (f) (7) "A training program conducted by a *Qualified Airport Wildlife Biologist to provide airport personnel with the knowledge and skills needed to successfully carry out the wildlife hazard management plan required* by paragraph (d) of this section."** Recurrent training requirements as described in 14 CFR 139.303 should equip personnel actively involved in an airports wildlife hazard management program with sufficient resources needed to

comply with the requirements in their Airport Certification Manual and the requirements of 14 CFR 139.337. Personnel identified in 14 CFR 139.337 (f) (5) (i) should be considered for inclusion within this recurrent training. Pesticide user training and certification requires its own regulated training and certification schedule and should be closely followed.

3.3. FEDERAL AND STATE-LISTED THREATENED AND ENDANGERED SPECIES, AND SPECIES OF SPECIAL CONCERN. The Endangered Species Act (ESA) directs all Federal agencies to work to conserve *endangered* and *threatened* species and to use their authorities to further the purposes of the Act. Section 7 of the Act, called "Interagency Cooperation," is the mechanism by which Federal agencies ensure the actions they take, including those they fund or authorize, do not jeopardize the existence of any listed species. This section also describes procedures for responding to requests by state wildlife agencies to facilitate and encourage habitats for state-listed threatened and endangered species or species of special concern that occur on airports and may pose a threat to aviation safety.

The FAA's action in requiring an airport operator to develop, submit for approval, and implement a Plan is considered a Federal action, as defined in the Endangered Species Act, and therefore, subject to section 7 consultation with the U.S. Fish and Wildlife Service (USFWS).

- a. Procedures for Federal Threatened and Endangered Species on Airports.** Section 7 of the ESA, as amended, applies to Federal agency actions and sets forth requirements for consultation to determine if the proposed action "may affect" an endangered or threatened species. If an agency determines that an action "may affect" a threatened or endangered species, then Section 7(a)(2) requires each agency, generally the lead agency, to consult with the USFWS or the National Marine Fisheries Service (NMFS), as appropriate, to ensure that any action the agency authorizes, funds, or carries out is not likely to jeopardize the continued existence of any Federally listed endangered or threatened species or result in the destruction or adverse modification of critical habitat. (The effects on fish, wildlife, and plants include the destruction or alteration of habitat and the disturbance or elimination of fish, wildlife, or plant populations.) If the Secretary of the Interior has developed a recovery plan for an affected species pursuant to section 4(f) of the ESA, that plan should be reviewed by FAA NEPA practitioners to ensure that assessments of impacts from FAA actions consider the management actions and criteria for measuring recovery identified in the plan. If a species has been proposed for Federal listing as threatened or endangered, or a critical habitat has been proposed, section 7(a) (4) states that each agency shall confer with the Services. Refer to the FWS and NMFS *"Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act,"* March 1998.

Section 9 prohibits a Federal agency from taking, without an incidental take permit, any endangered species. Where a conservation plan has been developed pursuant to a section 10 permit (incidental take permit), the FAA NEPA practitioner should

ensure that the impact analysis contained in the NEPA document for the affected species is consistent with the predicted impacts described in the conservation plan. Under the Magnuson-Stevens Act, Federal agencies must consult with the NMFS with regard to any action authorized, funded, or undertaken that may adversely affect any essential fish habitat identified under the Act. The consultation procedures are generally similar to ESA consultation requirements.

Under Title 14, Code of Federal Regulations, part 139.337(e), the FAA may direct an airport operator to develop a Wildlife Hazard Management Plan or to update an existing plan. In these instances, the airport operator shall contact and request information from the local USFWS Ecological Services Field Office regarding the presence of Federally-listed or proposed species or designated or proposed critical habitat occurring on or near the airport.

(1) No Further Coordination is Required.

If the USFWS indicates there are no Federally-listed or proposed species or designated or proposed critical habitat occurring on or near the airport, no further action is required regarding the section 7 consultation.

(2) Further Coordination is Required.

If the USFWS indicates that Federally-listed or proposed species or designated or proposed critical habitat occur on or near the airport, the following additional actions must be taken.

(a) The airport operator shall take this information into consideration when developing its Wildlife Hazard Management Plan.

(i) The airport operator must prepare a Biological Assessment (50 CFR 402.13) assessing the effects of the Wildlife Hazard Management Plan on the Federally-listed or proposed species or designated or proposed critical habitat. The Biological Assessment must be submitted to FAA along with the draft plan.

(ii) The airport operator may request early consultation if it has reasons to believe some of the actions proposed under the Wildlife Hazard Management Plan may affect federally-listed or proposed species or designated or proposed critical habitat.

(b) When the plan is submitted to the FAA for review and approval, the FAA Regional Coordinator must contact the local USFWS Ecological Services Field Office responsible for section 7 consultations and request consultation on the plan.

(c) The section-7 consultation must be completed before the Wildlife Hazard

Management Plan is given final FAA approval and returned to the airport operator for inclusion in its Airport Certification Manual and implementation.

- (d) The signature level for both letters is at the discretion of the FAA Regional Office.

- b. **Requests by State Wildlife Agencies to Facilitate and Encourage Habitat for State-Listed Threatened and Endangered Species and Species of Special Concern on Airports.** The airport's AOA is an artificial environment that has been created and maintained for aircraft operations. Because an AOA can be markedly different from the surrounding native landscapes, it may attract wildlife species that do not normally occur, or that occur only in low numbers in the area. Some of the grassland species attracted to an airport's AOA are at the edge of their natural ranges, but are attracted to habitat features found in the airport environment. Also, some wildlife species may occur on the airport in higher numbers than occur naturally in the region because the airport offers habitat features the species prefer. Some of these wildlife species are State-listed threatened and endangered species or have been designated by State resource agencies as species of special concern.

Many State wildlife agencies have requested that airport operators facilitate and encourage habitat on airports for state-listed threatened and endangered species or species of special concern. State-Listed threatened and endangered species and species of special interest are not afforded the level of protection of federally-listed species. These species, or the habitat needed to support them should not be allowed on airport property if direct or associated hazards are caused by their promotion in the airfield environment. Managing the on-airport environment to facilitate or encourage the presence of hazardous wildlife species can create conditions that are incompatible with, or pose a threat to, aviation safety.

3.4. NATIONAL ENVIRONMENTAL POLICY ACT REVIEW. The FAA's approval of a draft Plan is covered by the categorical exclusion in FAA Order 1050.1E, paragraph 308e. Before the FAA approves a draft Plan, the FAA must determine whether or not the draft involves extraordinary circumstances (see FAA Order 1050.1E, paragraphs 303c and 304).

- a. If a draft does not involve extraordinary circumstances, the FAA may categorically exclude the Plan under FAA Order 1050.1E, paragraph 308e.
- b. If a draft involves extraordinary circumstances, the FAA may require the airport sponsor to prepare an Environmental Assessment, or the FAA may prepare an Environmental Impact Statement.

Once a draft Plan is approved, the plan is returned to the airport sponsor for inclusion in the airport's Airport Certification Manual and is enforceable.

ATTACHMENT C

Required Contract Provisions for Airport Improvement Program and for
Obligated Sponsors



**FAA
Airports**

Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors

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RECORD OF CHANGES

No.	Date	Item	Change
1	1/29/2016	Entire Document	Re-structured document to enhance user understanding of use and applicability; added suggested provisions for "Termination for Cause", "Recovered Materials", "Seismic Safety".
2	6/10/2016	Table 1	Item 10, Distracted Driving: Updated "Dollar Threshold" to \$3,500 to reflect current micro-purchase threshold.
2	6/10/2016	A2, Affirmative Action	Update the reference to the Department of Labor online document to be "Participation Goals for Minority and Females"
2	6/10/2016	A12, Disadvantaged Business Enterprise	A12.3: Changed Title to "Required Provisions" A12.3.1: Corrected starting timeframe for submitting written confirmation from "Owner Notice of Award" to "bid opening" A12.3.1: Provided two sets of last paragraphs to reflect change (7 days to 5 days) that occurs on December 31, 2016. A12.3.2: Moved Race/Gender Neutral language up and renamed heading to reflect text is solicitation language. A12.3.3: Moved and renamed contract clause information and clarified it is for prime contract covered by a DBE program.

REQUIREMENTS

1. Required Contract Provisions

Federal laws and regulations require that recipients of federal assistance (Sponsors) include specific contract provisions in certain contracts, requests for proposals, or invitations to bid.

Certain provisions must be included in all sponsor contracts, regardless of *whether or not* the contracts are federally-funded. This requirement was established when a sponsor accepted the Airport Improvement Program (AIP) grant assurances.

To maintain eligibility of their procurement actions, a sponsor must incorporate applicable contract provisions in all federally-assisted procurement and contract documents, including all subcontracts. For purposes of determining requirements for contract provisions, the term *contract* includes subcontracts.

2. Sponsor Requirements

In general, the sponsor must:

- 1) Incorporate applicable contract provisions in each contract funded under AIP;
 - a. Except as noted herein, a sponsor must physically incorporate the text of the provision within the procurement documents.
 - b. Where specifically noted, sponsors may incorporate select provisions by reference provided the sponsor indicates that the reference has the same force and effect as if given in full text.
- 2) Require the contractor (including all subcontractors) to insert these contract provisions in each lower tier contracts (e.g. subcontract or sub-agreement);
- 3) Require the contractor (or subcontractor) to incorporate the 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;
- 5) Verify that any required local or State provision does not conflict with, or alter a Federal law or regulation.

3. Incorporation of Provisions

The statutes and regulations that establish the requirements for contract provisions do not always specify language the sponsor must use to address the requirement. Appendix A of this guide provides information on when a provision or clause has mandatory language that a sponsor must apply. Refer to the subheading *Applicability* for each provision.

Whenever a clause or provision has mandatory text, the sponsor must incorporate the text of the provision without change. The only exception to this restriction is for those instances within the provision text that require the sponsor to insert appropriate information such as name or value. To align with the sponsor's standard contract language, the word "Owner" may also be replaced with "Airport Authority" or their standard method of referring to the sponsor in contracts. Any modification beyond what is specifically permitted is not permitted and may invalidate the clause.

For those provisions that do not have required language, this guidance provides model language acceptable to the FAA in meeting the intent and purpose of the law or regulation. Some sponsors may already have standard procurement language that is equivalent to those Federal provisions that do not

have explicit mandatory language. In these cases, sponsors may use their existing standard procurement provision language provided the text meets the intent and purpose of the Federal law or regulation. Contract clause language must be made available to bidders. The Sponsor does this by including the required language in Requests for Bids, Notices to Bidders, or in the contract.

4. Requests for Bids (Advertisement) and Notice to Bidders

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 to Bidders. The sponsor must incorporate the full text of these provisions within any contract that originates from the procurement action. The provisions that can be incorporated by reference in the Request or Notice are:

- 1) Buy American Preference
- 2) Foreign Trade Restriction
- 3) Davis Bacon
- 4) Affirmative Action
- 5) Government-wide Debarment and Suspension
- 6) Government-wide Requirements for Drug-free Workplace

5. Requirements For All Contracts Entered into by Obligated Sponsors.

A sponsor’s acceptance of previous grant assurances obligates them to include certain notifications in all contracts and procurement actions they undertake regardless of funding source. Contracts and agreements fully funded by the sponsor must incorporate those select provisions.

6. Failure to Comply with Provisions

Sponsor failure to incorporate required provisions will jeopardize AIP eligibility of the sponsor’s project. Contractor 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 for cause;
- 3) Seek suspension/debarment; or
- 4) Take other action determined to be appropriate by the sponsor or the FAA.

7. Applicability Matrix for Contract Provisions

[Table 1](#) summarizes the applicability of contract provisions based upon the type of contract or agreement. The dollar threshold represents the value at which, when equal to or exceeded, the sponsor must incorporate the provision in their contract or agreement. Supplemental information addressing applicability and use for each provision is located in Appendix A.

Meaning of cell values

- REQD - a provision the sponsor must incorporate in their procurement action.
- Limited –a provision with limited applicability depending on circumstances of the procurement.
- n/a – a provision that is not applicable for that procurement type.

Table 1 – Applicability of Provisions

Provision	Dollar Threshold	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
a. Access to Records and Reports	\$ 0	REQD	REQD	REQD	REQD	n/a
b. Buy American Preferences	\$ 0	Limited	REQD	REQD	Limited	n/a
(1) Buy American Statement	\$ 0	Limited	REQD	REQD	Limited	n/a
(2) Buy American – Total Facility	\$ 0	Limited	REQD	REQD	Limited	n/a

Provision	Dollar Threshold	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
(3) Buy American – Manufactured Product	\$ 0	Limited	REQD	REQD	Limited	n/a
c. Civil Rights – General	\$ 0	REQD	REQD	REQD	REQD	REQD
d. Civil Rights - Title VI Assurances	\$ 0	REQD	REQD	REQD	REQD	REQD
(1) Notice - Solicitation	\$ 0	REQD	REQD	REQD	REQD	REQD
(2) Clause - Contracts	\$ 0	REQD	REQD	REQD	REQD	REQD
(3) Clause – Transfer of U.S. Property	\$ 0	n/a	n/a	n/a	REQD	REQD
(4) Clause – Transfer of Real Property	\$ 0	n/a	n/a	n/a	REQD	REQD
(5) Clause - Construct/Use/Access to Real Property	\$ 0	n/a	n/a	n/a	REQD	REQD
(6) List – Pertinent Authorities	\$0	REQD	REQD	REQD	REQD	REQD
e. Disadvantaged Business Enterprise	\$ 0	REQD	REQD	REQD	REQD	n/a
f. Energy Conservation Requirements	\$ 0	REQD	REQD	REQD	REQD	n/a
g. Federal Fair Labor Standards Act	\$ 0	REQD	REQD	REQD	REQD	REQD
h. Occupational Safety and Health Act	\$ 0	REQD	REQD	REQD	REQD	REQD
i. Rights to Inventions	\$ 0	Limited	Limited	Limited	n/a	n/a
j. Trade Restriction Certification	\$ 0	REQD	REQD	REQD	REQD	n/a
k. Veteran’s Preference	\$ 0	REQD	REQD	REQD	REQD	n/a
l. Seismic Safety	\$ 0	Limited	Limited	n/a	n/a	n/a
m. Copeland Anti-Kickback	\$ 2,000	Limited	REQD	Limited	Limited	n/a
n. Davis Bacon Requirements	\$ 2,000	Limited	REQD	Limited	Limited	n/a
o. Distracted Driving	\$3,500	REQD	REQD	REQD	REQD	n/a
p. Affirmative Action Requirement	\$10,000	Limited	REQD	Limited	Limited	n/a
q. Equal Employment Opportunity	\$10,000	Limited	REQD	Limited	Limited	n/a
(1) EEO Contract Clause	\$10,000	Limited	REQD	Limited	Limited	n/a
(2) EEO Specification	\$10,000	Limited	REQD	Limited	Limited	n/a
r. Prohibition of Segregated Facilities	\$10,000	Limited	REQD	Limited	Limited	n/a
s. Recovered Materials	\$10,000	Limited	REQD	REQD	Limited	n/a
t. Termination of Contract	\$10,000	REQD	REQD	REQD	REQD	n/a
u. Debarment and Suspension	\$25,000	REQD	REQD	REQD	Limited	n/a
v. Contract Work Hours and Safety Standards	\$100,000	Limited	REQD	Limited	Limited	n/a
w. Lobbying Federal Employees	\$ 100,000	REQD	REQD	REQD	REQD	n/a
x. Breach of Contract	\$150,000	REQD	REQD	REQD	REQD	n/a
y. Clean Air/Water Pollution Control	\$150,000	REQD	REQD	REQD	REQD	n/a

APPENDIX A – CONTRACT PROVISIONS

A1 ACCESS TO RECORDS AND REPORTS

A1.1 SOURCE

2 CFR § 200.333
2 CFR § 200.336
FAA Order 5100.38

A1.2 APPLICABILITY

2 CFR § 200.333 requires a sponsor to retain records pertinent to a Federal award for a period of three years from submission of final closure documents. 2 CFR § 200.336 establishes that sponsors must provide Federal entities the right to access records pertinent to the Federal award. FAA policy extends these requirements to the sponsor's contracts and subcontracts of AIP funded projects.

Contract Types – The sponsor must include this provision in all contracts and subcontracts of AIP funded projects.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of part 200.

A1.3 CONTRACT CLAUSE

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.

A2 AFFIRMATIVE ACTION REQUIREMENT

A2.1 SOURCE

41 CFR part 60-4
Executive Order 11246

A2.2 APPLICABILITY

Minority Participation. Sponsors are required to set goals for minority participation in AIP funded projects. The goals for minority participation depend on Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA) as established in Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table of all EAs and SMSAs and the associated minority participation goals.

To find the goals for minority participation, a sponsor must either refer to the Federal Register Notice or to the Department of Labor online document, "[Participation Goals for Minorities and Females](#)". EA's and SMSA's cross state boundaries so a sponsor may have to refer to entries for adjacent states to find their project location.

A sponsor must insert the applicable percentage minority goal. Sponsor must not simply insert a reference to the Federal Register Notice.

Female Participation. Executive Order 11246 has set a goal of 6.9% nationally for female participation for all construction contractors. This value does not change per county or state.

Contract Types –

Construction: The sponsor must incorporate this notice in all solicitations for bids or requests for proposals for AIP funded construction work contracts and subcontracts that exceed \$10,000. Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Equipment: The sponsor must incorporate this notice in any equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g. firefighting and snow removal vehicles)

Professional Services: The sponsor must incorporate this notice in any professional service agreement if the professional service agreement includes construction work (as defined above) that exceed \$10,000. Examples include installation of noise monitoring systems.

Property/Land: The sponsor must incorporate this notice in any agreement associated with land acquisition if the agreement includes construction work (defined above) that exceeds \$10,000. Examples include demolition of structures or installation of boundary fencing.

Use of Provision – The sponsor must incorporate the text of this provision without modification. The sponsor must incorporate the established minority participation goal and the covered area by geographic name within the provision text.

A2.3 CONTRACT CLAUSE

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY

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

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

Timetables

Goals for minority participation for each trade: **[sponsor must insert established goal]**

Goals for female participation in each trade: 6.9%

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.

3. 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.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is **[sponsor must insert state, county, and city]**.

A3 BREACH OF CONTRACT TERMS

A3.1 SOURCE

2 CFR § 200 Appendix II(A)

A3.2 APPLICABILITY

This provision requires sponsors to incorporate administrative, contractual or legal remedies if contractors violate or breach contract terms. The sponsor must also include appropriate sanctions and penalties.

Contract Types – This provision is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II (A). This threshold is occasionally adjusted for inflation, and is now equal to \$150,000.

Use of Provision – The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of part 200. Select either “contractor” or “consultant” as applicable.

A3.3 CONTRACT CLAUSE

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* | *Consultant*] written notice that describes the nature of the breach and corrective actions the [*Contractor* | *Consultant*] 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* | *Consultant*] must correct the breach. Owner may proceed with termination of the contract if the [*Contractor* | *Consultant*] fails to correct the breach by 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

A4.1 SOURCE

Title 49 USC § 50101

A4.2 APPLICABILITY

The Buy-American Preference requirement in 49 USC § 50101 requires that all steel and manufactured goods used on AIP projects be produced in the United States. The statute gives the FAA the ability to issue a waiver to a sponsor to use non-domestic material on the AIP funded project. The sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

- 1) Applying the provision is not in the public interest;
- 2) The steel or manufactured goods are not available in sufficient quantity or quality in the United States;
- 3) The cost of components and subcomponents produced in the United States is more than 60 percent of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number (such as specific airport lighting equipment) are considered the equipment.
- 4) Applying this provision would increase the cost of the overall project by more than 25 percent.

Timing of Waiver Requests. The sponsor must submit Type 1 or Type 2 waiver requests *before* issuing a solicitation for bids or a request for proposal for a project.

The sponsor must submit Type 3 or Type 4 waiver requests *prior* to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary only if extenuating circumstances exist. The FAA cannot review incomplete waiver requests or requests that the Sponsor has not reviewed for adequacy. Sponsor must assess the adequacy of the waiver request before forwarding the request to the FAA.

Buy American Conformance List. The FAA Office of Airports maintains a listing of equipment that has received National waivers from the Buy American Preference requirements or that fully meet the Buy American requirements. This Buy American Conformance List is available online at www.faa.gov/airports/aip/buy_american/. Products listed on the Buy American Conformance list do not require a project specific Buy American Preference requirement waiver from the FAA.

Facility Waiver Requests. For construction of a facility, the sponsor may submit the waiver request after bid opening, but prior to contract execution. Examples of facility construction include terminal buildings, terminal renovation, and snow removal equipment buildings.

Contract Types –

Construction and Equipment - The sponsor must meet the Buy American Preference requirements of 49 USC § 50101 for all AIP funded projects that require steel or manufactured goods. The Buy America requirements flow down from the sponsor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

Note: the Buy American Preference does not apply to equipment a contractor uses as a tool of their trade and does not remain as part of the project.

Professional Services – Professional service agreements (PSA) do not normally result in a deliverable that meets the definition of a manufactured product. However, the emergence of different project delivery methods has created situations where task deliverables may include a

manufactured product. If a PSA includes providing a manufactured good as part of the contract, the sponsor must include the Buy American Preference provision in the agreement.

Property – Most land transactions do not involve acquiring a manufactured product. However, under certain circumstances, a property acquisition project could result in the installation of a manufactured product. For example, the installation of property fencing, gates, doors and locks, etc. represent manufactured products acquired under the AIP funded project that must meet the Buy American Preference.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully comply with 49 USC § 50101.

There are two types of Buy American certifications. The sponsor must incorporate the appropriate “Certificate of Buy America Compliance” in the solicitation:

- Projects for a facility (Buildings such as Terminal, SRE, ARFF, etc.) – Insert the Certificate of Compliance Based on Total Facility
- Projects for non-facility development (non-building construction projects such as runway or roadway construction; or equipment acquisition projects) – Insert the Certificate of Compliance Based on Equipment and Materials Used on the Project.

A4.3 CONTRACT CLAUSE

A4.3.1 Buy American Preference Statement

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 FAA 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.

A4.3.2 Certificate of Buy American Compliance – Total Facility

CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR TOTAL FACILITY

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 of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. 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; or
 - b) Installing manufactured products for which the 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 US domestic products.
 3. 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% 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 support 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 that may result in rejection of the proposal.
 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
 4. To furnish US domestic product for any waiver request that the FAA rejects.
 5. 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 components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the “facility”. The required documentation for a type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100% US 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)
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

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

- a) Detailed cost information for total project using US 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

A4.3.3 Certificate of Buy American Compliance – Manufactured Product

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, or;
 - b) Installing manufactured products for which the 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 US domestic product
3. To furnish US 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% 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 support 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 US domestic products at or above the approved US 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% 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% US 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).

- 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 US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using US 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

A5 CIVIL RIGHTS - GENERAL

A5.1 SOURCE

49 USC § 47123

A5.2 APPLICABILITY

Note: This provision is in addition to the Civil Rights – Title VI provisions.

Contract Types – The General Civil Rights Provisions found in 49 USC § 47123, derived from the Airport and Airway Improvement Act of 1982, Section 520, apply to all sponsor contracts regardless of funding source.

Use of Provision – There are two versions of this provision. One applies to sponsor contracts and the other applies to sponsor lease agreements and transfer agreements. The sponsor must incorporate the text of the appropriate provision without modification.

A5.3 CONTRACT CLAUSE

A5.3.1 Sponsor Contracts

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 subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

A5.3.2 Sponsor Lease Agreements and Transfer Agreements

GENERAL CIVIL RIGHTS PROVISIONS

The tenant/concessionaire/lessee and its transferee agree 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 obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program.

In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

- (a) The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) The period during which the airport sponsor or any transferee retains ownership or possession of the property.

A6 CIVIL RIGHTS – TITLE VI ASSURANCE

A6.1 SOURCE

49 USC § 47123
FAA Order 1400.11

A6.2 APPLICABILITY

Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance. Sponsors must include appropriate clauses from the Standard DOT Title VI Assurances in all contracts and solicitations.

The clauses are as follows:

A6.2.1 Applicability of Title VI Solicitation Notice

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Title VI Solicitation Notice	<ol style="list-style-type: none">1) All solicitations for bids, requests for proposals work, or material subject to the nondiscrimination acts and regulations made in connection with Airport Improvement Program grants; and2) All proposals for negotiated agreements regardless of funding source.	A6.3.1
Title VI Clauses for Compliance with Nondiscrimination Requirements	Every contract or agreement, unless the sponsor has determined and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities	A6.3.2
Title VI Required Clause for Property Interests Transferred from the United States	As a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.	A6.3.3

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Title VI Required Clause for Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program	As a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the sponsor with other parties for all transfers of real property acquired or improved under the activity, facility, or program	A6.3.4
Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program	As a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program	A6.3.5
Title VI List Of Pertinent Nondiscrimination Acts And Authorities	Insert this list in every contract or agreement, unless the sponsor has determined and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities	A6.3.6

A6.3 CONTRACT CLAUSE

A6.3.1 Title VI Solicitation Notice

Title VI Solicitation Notice:

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, 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.

A6.3.2 Title VI Clauses for Compliance with Nondiscrimination Requirements

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.

A6.3.3 Title VI Clauses for Deeds Transferring United States Property

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Sponsor*) will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (*Title of Sponsor*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Sponsor*), its successors and assigns.

The (*Title of Sponsor*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the (*Title of Sponsor*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of

Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

**A6.3.4 Title VI Clauses for Transfer of Real Property
Acquired or Improved Under the Activity, Facility, or
Program**

**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE
ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (*Title of Sponsor*) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (*Title of Sponsor*) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A6.3.5 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will there upon revert to and vest in and become the absolute property of (*Title of Sponsor*) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A6.3.6 Title VI List of Pertinent Nondiscrimination Acts and Authorities

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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 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 non-discrimination 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 U.S.C. 1681 *et seq.*).

A7 CLEAN AIR AND WATER POLLUTION CONTROL

A7.1 SOURCE

2 CFR § 200, Appendix II(G)

A7.2 APPLICABILITY

Contract Types – This provision is required for all contracts and lower tier contracts that exceed \$150,000.

Use of Provision – The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of Appendix II to 2 CFR §200.

A7.3 CONTRACT CLAUSE

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 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

A8.1 SOURCE

2 CFR § 200, Appendix II(E)

A8.2 APPLICABILITY

Contract Workhours and Safety Standards Act Requirements, (CWHSSA) requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. CWHSSA prohibits unsanitary, hazardous, or dangerous working conditions on federally assisted projects. The Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this Act, while DOL's Occupational Safety and Health Administration (OSHA) enforces the safety and health requirements

Contract Types –

Construction - This provision applies to all contracts and lower tier contracts that exceed \$100,000, and employ laborers, mechanics, watchmen and guards.

Equipment - This provision applies to any equipment project exceeding \$100,000 that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g. ARFF and SRE vehicles)

Professional Services - This provision applies to professional service agreements that exceed \$100,000 and employs laborers, mechanics, watchmen and guards. This includes members of survey crews and exploratory drilling operations.

Property – While most land transactions do not involve employment of laborers, mechanics, watchmen and guards, under certain circumstances, a property acquisition project could require such employment. Examples include the installation of property fencing or testing for environmental contamination

Use of Provision – Sponsors must incorporate this text without modification.

A8.3 CONTRACT CLAUSE

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

1. 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.

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

In the event of any violation of the clause set forth in paragraph (1) of this clause, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District

of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner 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 2 of this clause.

4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) 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 (1) through (4) of this clause.

A9 COPELAND “ANTI-KICKBACK” ACT

A9.1 SOURCE

2 CFR § 200, Appendix II(D)
29 CFR Parts 3 & 5

A9.2 APPLICABILITY and PURPOSE

The Copeland (Anti-Kickback) Act (18 U.S.C. 874 and 40 U.S.C. 3145) makes it unlawful to induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

Contract Types –

Construction – This provision applies to all construction contracts and subcontracts financed under the AIP program that exceeds \$2,000.

Equipment – This provision applies to all equipment installation projects (e.g. electrical vault improvements) financed under the AIP program that exceeds \$ 2, 000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g. SRE and ARFF vehicles)

Professional Services - The emergence of different project delivery methods has created situations where Professional Service Agreements (PSA) includes tasks that meet the definition of construction, alteration or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration or repair and it exceeds \$2,000, the PSA must incorporate the Copeland Anti-kickback provision.

Property - Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the Copeland Anti-Kickback provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

Use of Provision – 29 CFR Part 5 establishes specific language a sponsor must use in construction contracts. The sponsor may not make any modification to the standard language. A/E firms that employ laborers and mechanics on a task that meets the definition of construction, alteration or repair are acting as a contractor. The sponsor may not substitute the term “contractor” for “consultant” in such instances.

A9.3 CONTRACT CLAUSE

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 Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

A10 DAVIS-BACON REQUIREMENTS

A10.1 SOURCE

2 CFR § 200, Appendix II(D)
29 CFR Part 5

A10.2 APPLICABILITY

The Davis-Bacon Act ensures that laborers and mechanics employed under the contract receive pay no less than the locally prevailing wages and fringe benefits as determined by the Department of Labor.

Contract Types –

Construction - Incorporate into all construction contracts and subcontracts that exceed \$2,000 and include funding from the AIP program.

Equipment – This provision applies to all equipment installation projects (e.g. electrical vault improvements) financed under the AIP program that exceeds \$ 2, 000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g. SRE and ARFF vehicles)

Professional Services - The emergence of different project delivery methods has created situations where Professional Service Agreements (PSA) includes tasks that meet the definition of construction, alteration or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration or repair and it exceeds \$2,000, the PSA must incorporate this clause.

Property - Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

Fencing Projects - Fencing projects that exceed \$2,000 must include this provision.

Use of Provision – 29 CFR Part 5 establishes specific language a sponsor must use. The sponsor may not make any modification to the standard language. A/E firms that employ laborers and mechanics on a task that meets the definition of construction, alteration or repair are acting as a contractor. The sponsor may not substitute the term “contractor” for “consultant” in such instances.

A10.3 CONTRACT CLAUSE

DAVIS-BACON REQUIREMENTS

1. Minimum Wages

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

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

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

2 Withholding.

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship

programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

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

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

4. Apprentices and Trainees.

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually

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

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

5. Compliance with Copeland Act Requirements.

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

6. Subcontracts.

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

7. Contract Termination: Debarment.

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

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

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

9. Disputes Concerning Labor Standards.

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

10. Certification of Eligibility.

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

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

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

A11 DEBARMENT AND SUSPENSION

A11.1 SOURCE

2 CFR part 180 (Subpart C)
2 CFR part 1200
DOT Order 4200.5

A11.2 APPLICABILITY

The sponsor must verify that the firm or individual that it is entering into a contract with are not presently suspended, excluded or debarred by any Federal department or agency from participating in federally-assisted projects. The sponsor accomplishes this by: (1) checking the System for Award Management (SAM.gov) to verify that the firm or individual is not listed in SAM.gov as being suspended, debarred or excluded, (2) collecting a certification from the firm or individual that they are not suspended, debarred or excluded, and (3) incorporating a clause in the contract that requires lower tier contracts to verify that no suspended, debarred or excluded firm or individual are included in the project.

Contract Types – This requirement applies to *covered transactions*, which are defined in 2 CFR part 180. AIP funded contracts are non-procurement transactions, as defined by §180.970. Covered transactions include any AIP-funded contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000. This includes contracts associated with land acquisition projects.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 2 CFR part 180. For professional service agreements, sponsor may substitute bidder/offeror with consultant.

A11.3 CONTRACT CLAUSE

A11.3.1 Bidder or Offeror Certification

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.

A11.3.2 Lower Tier Contract Certification

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.

A12 DISADVANTAGED BUSINESS ENTERPRISE

A12.1 SOURCE

49 CFR part 26

A12.2 APPLICABILITY and PURPOSE

A sponsor that anticipates awarding \$250,000 or more in AIP funded prime contracts in a federal fiscal year must have an approved Disadvantaged Business Enterprise (DBE) program on file with the FAA Office of Civil Rights (§26.21). The approved DBE program will identify a 3-year overall program goal that the sponsor bases on the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on the project (§26.45).

Contract Types – Sponsors with a DBE program on file with the FAA must include the three following provisions, if applicable:

Clause in all solicitations for proposals for which a contract goal has been established.

Clause in each prime contract

Clause in solicitations that are obtaining DBE participation through race/gender neutral means.

Use of Provision –

1. Solicitations with a DBE Project Goal - 49 CFR §26.53 requires a sponsor's solicitation to address what a contractor must submit on proposed DBE participation. This language is not required for projects where DBE participation is by race-gender neutral means.

The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's revised language must fully these requirements.

The sponsor may require the contractor's submittal on proposed DBE participation either with the bid or within a specified timeframe after bidding.

2. Contracts Covered by DBE Program - Sponsors must incorporate this language if they have a DBE program on file with the FAA. This includes projects where DBE participation is obtained through race-gender neutral means (i.e. no project goal). Sections §26.13 and §26.29 establish mandatory language for contractor assurance and prompt payment. The sponsor must not modify the language.
3. The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's revised language must fully these requirements for a sponsor that is not applying a project specific contract goal but is covered by a DBE program on file with the FAA.
4. Sponsors that do not have a DBE program on file with the FAA are not required to include DBE provisions and clauses.

A12.3 REQUIRED PROVISIONS

A12.3.1 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.

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 (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.

[Note: Contract bid dates on or prior to December 31, 2016, use the following language]

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in their commitment. This Bidder or Offeror must submit the DBE's written confirmation of participation ["within 7 days after bid opening or "with the proposal documents as a condition of bid responsiveness"]

[Note: Contract bid dates after December 31, 2016, use the following language]

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in their commitment. This Bidder or Offeror must submit the DBE's written confirmation of participation ["within 5 days after bid opening or "with the proposal documents as a condition of bid responsiveness"]

A12.3.2 Solicitation Language (Race/Gender Neutral Means)

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the [Insert Name of Owner] to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

A12.3.3 Prime Contracts (Projects covered by DBE Program)

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§ 26.13) - The contractor 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.

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 {specify number} days from the receipt of each payment the prime contractor receives from {Name of recipient}. The prime contractor agrees further to return retainage payments to each subcontractor within {specify the same number as above} 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 {Name of Recipient}. This clause applies to both DBE and non-DBE subcontractors.

A13 DISTRACTED DRIVING

A13.1 SOURCE

Executive Order 13513
DOT Order 3902.10

A13.2 APPLICABILITY

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.

Contract Types – Sponsors must insert this provision in all AIP funded contracts that exceed the micro-purchase threshold of 2 CFR §200.67 (currently set at \$3,500).

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully these requirements. .

A13.3 CONTRACT CLAUSE

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 Owner 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 \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

A14 ENERGY CONSERVATION REQUIREMENTS

A14.1 SOURCE

2 CFR § 200, Appendix II(H)

A14.2 APPLICABILITY

The Energy Conservation Requirements found in 2 CFR § 200 Appendix II(H) requires this provision on energy efficiency.

Contract Types – The sponsor must include this provision in all AIP funded contracts and lower-tier contracts.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's revised language must fully these requirements. Sponsor may substitute "contractor and subcontractor" with "consultant and sub-consultant" for professional service agreements.

A14.3 CONTRACT CLAUSE

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*).

A15 EQUAL EMPLOYEMENT OPPORTUNITY (E.E.O.)

A15.1 SOURCE

2 CFR 200, Appendix II(C)
41 CFR § 60-1.4
41 CFR § 60-4.3
Executive Order 11246

A15.2 APPLICABILITY

The purpose of this provision is to provide equal opportunity for all persons, without regard to race, color, religion, sex, or national origin who are employed or seeking employment with contractors performing under a federally assisted construction contract. There are two provisions – a construction clause and a specification clause.

The equal opportunity contract clause must be included in any contract or subcontract when the amount exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract or subcontract must include the clause for the remainder of the year, regardless of the amount or the contract.

Contract Types –

Construction – The sponsor must incorporate contract and specification language in all construction contracts and subcontracts as required above.

Equipment - The sponsor must incorporate contract and specification language into all equipment contracts as required above that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g. ARFF and SRE vehicles)

Professional Services - The sponsor must include contract and specification language into all professional service agreements as required above. *Property* – The sponsor must include contract and specification language into all land acquisition projects that include work that qualifies as construction work as defined by 41 CFR part 60 as required above. An example is installation of boundary fencing.

Use of Provision – 41 CFR § 60-1.4 provides the mandatory contract language. 41 CFR § 60-4.3 provides the mandatory specification language. The sponsor must incorporate these clauses without modification.

A15.3 MANDATORY CONTRACT CLAUSE

A15.3.1 E.E.O. Contract Clause

EQUAL OPPORTUNITY CLAUSE

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and

selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

A15.3.2 EEO Specification

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. As used in these specifications:

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

- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
 - (1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

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

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

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

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

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

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

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

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

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

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

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by

publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

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

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

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

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

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

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

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

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

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

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

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

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

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

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

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

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the

indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

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

A16 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

A16.1 SOURCE

29 U.S.C. § 201, et seq

A16.2 APPLICABILITY

The United States Department of Labor (DOL) Wage and Hour Division administers the Fair Labor Standards Act (FLSA). This act prescribes federal standards for basic minimum wage, overtime pay, record keeping and child labor standards.

Contract Types – Per the Department of Labor, all employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person, are covered by the FLSA.

All consultants, sub-consultants, contractors and subcontractors employed under this federally assisted project must comply with the FLSA.

Professional Services – 29 CFR § 213 exempts employees in a bona fide executive, administrative or professional capacity. Because professional firms employ individuals that are not covered by this exemption, the sponsor's agreement with a professional services firm must include the FLSA provision.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 29 U.S.C. § 201. The sponsor must select *contractor* or *consultant*, as appropriate for the contract.

A16.3 CONTRACT 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* | *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

A17 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

A17.1 SOURCE

31 U.S.C. § 1352 – Byrd Anti-Lobbying Amendment
2 CFR part 200, Appendix II(J)
49 CFR part 20, Appendix A

A17.2 APPLICABILITY

Consultants and contractors that apply or bid for an award of \$100,000 or more must certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or another award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

Contract Types – The sponsor must incorporate this provision into all contracts exceeding \$100,000.

Use of Provision – Appendix A to 49 CFR Part 20 prescribes language the sponsor must use. The sponsor must incorporate this provision without modification.

A17.3 CONTRACT CLAUSE

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:

- (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 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, 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.

A18 PROHIBITION of SEGREGATED FACILITIES

A18.1 SOURCE

41 CFR § 60

A18.2 APPLICABILITY

The contractor must comply with the requirements of the E.E.O. clause by ensuring that facilities they provide for employees are free of segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. This clause must be included in all contracts that include the equal opportunity clause, regardless of the amount of the contract.

Contract Types – AIP sponsors must incorporate the Prohibition of Segregated Facilities clause in any contract containing the Equal Employment Opportunity clause of 41 CFR §60.1. This obligation flows down to subcontract and sub-tier purchase orders containing the Equal Employment Opportunity clause.

Construction - Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Equipment – On site installation of equipment such as airfield lighting control equipment meets the definition of construction and thus this provision would apply. This provision does not apply to equipment projects involving manufacture of the item at a vendor’s manufacturing plant. An example would be the manufacture of a SRE or ARFF vehicle.

Professional Services - Professional services that include tasks that qualify as construction work as defined by 41 CFR part 60. Examples include the installation of noise monitoring equipment.

Property/Land - Land acquisition contracts that include tasks that qualify as construction work as defined by 41 CFR part 60. Examples include demolition of structures or installation of boundary fencing.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 41 CFR § 60.

A18.3 CONTRACT CLAUSE

PROHIBITION of SEGREGATED FACILITIES

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

A19 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

A19.1 SOURCE

20 CFR part 1910

A19.2 APPLICABILITY

Contract Types – All contracts and subcontracts must comply with the Occupational Safety and Health Act of 1970 (OSH). The United States Department of Labor Occupational Safety & Health Administration (OSHA) oversees the workplace health and safety standards wage provisions from OSH.

Use of Provision – The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 20 CFR part 1910.

A19.3 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. 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.

A20 PROCUREMENT OF RECOVERED MATERIALS

A20.1 SOURCE

2 CFR § 200.322
40 CFR part 247

A20.2 APPLICABILITY

Sponsors of AIP funded development and equipment projects must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 emphasizes maximizing energy and resource recovery through use of affirmative procurement actions for recovered materials identified in the EPA guidelines.

The requirements of § 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Contract Types – This provision applies to any contracts that include procurement of products where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.

Construction and Equipment – Include this provision in all construction and equipment projects
Professional Services and Property – Include this provision if the agreement includes procurement of a product that exceeds \$10,000

Use of Provision – The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 2 CFR § 200.

A20.3 CONTRACT CLAUSE

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/epawaste/consERVE/tools/cpg/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.

A21 RIGHT TO INVENTIONS

A21.1 SOURCE

2 CFR § 200, Appendix II(F)

37 CFR §401

A21.2 APPLICABILITY

Contract Types – This provision applies to all contracts and subcontracts with small business firms or nonprofit organizations that includes performance of *experimental, developmental, or research work*. This clause is not applicable to construction, equipment or professional service contracts unless the contract includes *experimental, developmental or research work*.

Use of Provision – The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR part 200.

A21.3 CONTRACT CLAUSE

RIGHTS TO INVENTIONS

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within in the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

A22 SEISMIC SAFETY

A22.1 SOURCE

49 CFR part 41

A22.2 APPLICABILITY

Contract Types – This provision applies to construction of new buildings and additions to existing buildings financed in whole or in part through the Airport Improvement Program.

Professional Services and Construction – Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

Equipment – Sponsor must include this provision if the project involves construction or structural addition to a building such as an electrical vault project.

Land – This provision will not typically apply to a property/land project.

Use of Provision – The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 49 CFR part 41.

A22.3 CONTRACT CLAUSE

A22.3.1 Professional Service Agreements for Design

Seismic Safety

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

A22.3.2 Construction Contracts

Seismic Safety

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.

A23 TERMINATION OF CONTRACT

A23.1 SOURCE

2 CFR § 200 Appendix II(B)
FAA Advisory Circular 150/5370-10, Section 80-09

A23.2 APPLICABILITY

Contract Types – All contracts and subcontracts in excess of \$10,000 must address *termination for cause* and *termination for convenience* by the sponsor. The provision must address the manner (i.e. notice, opportunity to cure, and effective date) by which the sponsor’s contract will be affected and the basis for settlement (i.e. incurred expenses, completed work, profit, etc.).

Use of Provision –

Termination for Default - Section 80-09 of FAA Advisory Circular 150/5370-10 establishes standard language for Termination for Default under a construction contract. The sponsor must not make any changes to this standard language.

Termination for Convenience – The sponsor must include a clause for termination for convenience. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR part 200.

Equipment, Professional Services and Property – The sponsor may use their established clause language provided that it adequately addresses the intent of Appendix II(B) to Part 200, which addresses termination for fault and for convenience.

A23.3 CONTRACT CLAUSE

A23.3.1 Termination for Convenience

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:

- 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 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 Convenience (Professional Services)

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

A23.3.2 Termination for Default

Termination for Default (Construction)

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

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.

Termination for Default (Professional Services)

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
 2. Make adequate progress so as to endanger satisfactory performance of the Project;
 3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs,

estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

- b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:
1. Defaults on its obligations under this Agreement;
 2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
 3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

A24 TRADE RESTRICTION CERTIFICATION

A24.1 SOURCE

49 USC § 50104
49 CFR part 30

A24.2 APPLICABILITY

Unless waived by the Secretary of Transportation, sponsors may not use AIP funds on a product or service from a foreign country included in the current list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R)

Contract Types – The trade restriction certification and clause applies to all AIP funded projects.

Use of Provision – 49 CFR part 30 prescribes the language for this model clause. The sponsor must include this certification language in all contracts and subcontracts without modification.

A24.3 CONTRACT CLAUSE

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 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 U.S.T.R. or
- (2) 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

(3) 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 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 Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

A25 VETERAN'S PREFERENCE

A25.1 SOURCE

49 USC § 47112(c)

A25.2 APPLICABILITY

Contract Types – This provision applies to all AIP funded projects that involve labor to carry out the project. This preference, which excludes executive, administrative and supervisory positions, applies to covered veterans (as defined under §47112(c)) only when they are readily available and qualified to accomplish the work required by the project.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 49 U.S.C. § 47112.

A25.3 CONTRACT CLAUSE

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.