CONSULTANT SERVICES

**GENERAL PROVISIONS**

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 **I. GENERAL PROVISIONS**

1. **Definitions**

 **AASHTO** - American Association of State Highway and Transportation Officials, the successor association of AASHO.

 **Agency Agreement** - An agreement between the sponsor and the Wisconsin Department of Transportation Secretary, authorizing the Secretary to act as agent for the sponsor in the receipt and disbursement of funds, the supervision of the preparation and execution of legal documents, the supervision of consultant contracts, the performance of incidental administrative acts, and coordination necessary for the successful accomplishment of the project within the laws of the state and the charters, laws, ordinances and resolution of the sponsor.

 **Agent** - The Wisconsin Department of Transportation Secretary is the sponsor’s authorized agent in accordance with Wis. Stat. §114.32 (1993).

 **ASTM** - American Society for Testing and Materials.

 **Authorization** - The written direction from the bureau, as agent for the owner, delivered to the consultant that references this contract, the specific services to be performed, and the project number to which costs will be charged, and directs the consultant to proceed with the work.

 **Bureau** - Wisconsin Department of Transportation - Bureau of Aeronautics (BOA).

 **Consultant** - The party engaged by the bureau, as agent for the owner, in this contract to provide consultant services for the benefit of the owner.

 **Consultant Representative** - The person designated by the consultant to act as liaison between the consultant and the owner.

 **Contract** - The written agreement between the owner and the consultant setting forth the obligation of the parties, including, but not limited to, the performance of the work, the furnishing of labor and materials and the basis of payments, as described in the contract documents.

 **Department** – Wisconsin Department of Transportation (WisDOT).

 **Disadvantaged Business Enterprise** - Business enterprises owned and controlled by (a) socially and economically disadvantaged person(s) as certified by the Wisconsin Department of Transportation (WisDOT). Individuals who are refutably presumed to be socially and economically disadvantaged include women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, and Sub-continental Asians. An “Eligibility Directory” containing a listing of Disadvantaged Business Enterprises certified by WisDOT and may be obtained by calling the Office of Disadvantaged Business Programs at (608) 266-6961.

 **Engineer** - The Wisconsin Department of Transportation Secretary or their authorized representative limited by the particular entrusted duties. The term “consultant” when used in reference to the “engineer” has the same meaning.

 **FAA** - U.S. Department of Transportation, Federal Aviation Administration (FAA).

 **Federal Specifications** - Federal specifications and standards, supplements, amendments and indices prepared and issued by the General Services Administration of the federal government.

 **Inspector** - The authorized representative of the consultant who has the duties and responsibilities of “inspector” as used in the Wisconsin Department of Transportation - Bureau of Aeronautics Standard Specification for Airport Construction, 1998 Edition.

 **Owner Representative** - BOA employee in immediate charge of this contract with authority to reject defective materials, prohibit the use of inadequate or defective equipment, to suspend any work or services that are improperly performed and to monitor consultant compliance with its terms and conditions.

 **Project** - The agreed scope of work for accomplishing specific airport development with respect to a particular airport.

 **Secretary** – Wisconsin Department of Transportation Secretary.

 **Services** - The consultant services, labor, equipment and materials furnished by a consultant in accordance with this contract.

 **Special Provisions** - Special directions, provisions or requirements peculiar to a project and not otherwise thoroughly or satisfactorily detailed or prescribed in the specifications.

 **Specification** - Body of directions, provisions and requirements contained herein or supplement to, along with written agreements, and all documents of any descriptions made (or to be made) pertaining to the method or manner of performing the work, the quantities and the quality of materials to be furnished under the contract.

 **Sponsor** - The owner of an airport controlling the site on which the improvement work is performed. The term “owner” when used in reference to the airport owner, has the same meaning as “sponsor.”

 **Standard Specifications** - Written directions and requirements approved for general application and repetitive use, as contained in the Standard Specifications for Airport Construction, 1998 edition (or current edition) for airport construction and for administration of the contracts.

 **Standard Specifications for Road and Structure Construction** - Written directions and requirements approved for general application and repetitive use, as contained in the Wisconsin Department of Transportation’s Standard Specifications for Highway and Structure Construction,1996 edition (or current edition), the Supplemental Specifications, 1998 edition (or current edition) and the Interim Supplemental Specifications.

 **State** - State of Wisconsin.

 **Supplemental Specifications** - Written directions and requirements adopted subsequent to the publication of the standard specification that amend them.

 **Others** - The definitions contained in the current Wisconsin Department of Transportation -Bureau of Aeronautics Standard Specifications for Airport Construction, Part I, “General Requirements & Covenants”, Section 10-03, Definition of Terms; will apply unless listed in this contract.

**II. SCOPE OF SERVICES**

1. **General**
2. The services will consist of performing the work units described in the “Special Provisions of the Scope of Services/Payment” section of this contract are necessary or incidental to accomplish the project.
3. The owner and the consultant certify that they have been authorized and empowered the full power and authority to enter into this contract on behalf of the owner. The owner and the consultant further acknowledge they have read and agree to the terms of the contract.
4. The owner and the consultant agree that in any instance where in this contract the general provisions, attachments, and special provisions speak about the same issue; the more specific provisions will prevail over the more general provisions.
5. Changes to this contract need to be made by written agreement or amendment signed by the owner and the consultant.
6. The originals of all plans, surveys, field notes, and other documents prepared by the consultant under this contract remain the property of the owner, but will remain in the custody of the consultant unless the owner requests them. These documents may be used without restriction by the owner for any public purpose. Any such use will be without compensation or liability to the consultant.
7. The consultant will provide all services and labor, materials, equipment, supplies, and incidentals other than those designated in writing as, “to be furnished by the owner,” necessary to conduct and complete the services.
8. The services under this contract will be performed as an accepted standard of the profession. The consultant and sub-consultants reaffirm that their representatives will conform to the professional standards prescribed in Wis. Stat. §443.04 (2011), Wis. Admin. Code A-E §4 (1987), the National Society of Professional Engineers Code of Ethics, and the requirements of the Federal Aviation Administration Regulations.
9. The services will comply with applicable state and federal laws and regulations consistent with the funding for this project.
10. On federally funded contracts, the FAA may participate in all conferences, reviews and meetings.
11. The owner may occasionally request changes in the scope of the services of the consultant to be performed under this contract. Such changes, including any increase or decrease in the amount of compensation, are mutually agreed upon by and between the owner and the consultant will be incorporated in written amendments to this contract.
12. The consultant will occasionally during the progress of the services, confer with the owner and prepare and present information and studies pertinent and necessary, or if requested by the owner, to enable it to reasonably pass judgment on the features of the services. The consultant will make such changes, amendments, or revisions in the detail of the services required by the owner. The owner reserves the right to select the alternative to be used and may request additional alternatives be studied by an amendment, if not part of the original contract.
13. The consultant will furnish maps, portions of plans, supplemental reports or other information relating to services under this contract as may be requested by the owner per the special provisions.
14. This contract serves as providing the authority to the consultant, and any of its approved sub-consultants that they are authorized representatives of the owner for purposes of the right of entry under Wis. Stat. §66.0119 (2007) and §114.31(2) (1993), to enter private lands to make surveys and inspections or otherwise to carry out the services required by this contract.
15. If any term or provision of this contract is declared to be invalid, illegal, or unenforceable; then notwithstanding, the remaining provisions of this contract will remain in full force and effect.

**III. PROSECUTION AND PROGRESS**

1. **General**
2. It is understood and agreed that as set forth in the “Agency Agreement,” the Secretary is the duly appointed, qualified and acting agent for the owner named herein, and has full and exclusive authority to act in behalf of the owner in all matters herein set forth wherever the owner is named and to make decisions, consents, election approvals, or requests, and to receive reports and notices, and as such agent, has authority and control over payments, disbursements or intention of funds, in accordance with provisions of Wis. Stat. §114.32 (1993). It is further understood that the bureau will represent the Secretary in these matters.
3. Services under this contract will commence upon written order from the owner to the consultant, which will constitute authorization to proceed.
4. The owner will not be liable for payment of any work or services performed or costs incurred by the consultant, without written approval by the owner.
5. The consultant will complete the services within the time specified for completion in the scope of services and as supplemented for specific items of service in the “Special Provisions” of this contract. The time for completion will be construed to begin upon written order from the owner and will end with the owner’s written notification to the consultant acknowledging formal acceptance of the completed services. The time for completion will not be extended because of any delay attributable to the consultant, but may be extended by the owner in the event of a delay attributable to the owner, or because of unavoidable delays caused by an act of God, war, governmental actions, or other conditions beyond the control of the consultant.
6. Unless the contract has been terminated prior to the completion of the services, the contract will not be considered terminated upon completion and acceptance of the services, or upon final payment. However, will be considered to be in full force and effect for the purposes of requiring the consultant to make revisions or corrections in the services, as are necessary to correct errors or omissions made by the consultant in the services.
7. The contract will be considered complete when the consultant is released prior to such time by written notice from the owner, or if more than three (3) years have elapsed following final payment and acceptance of the services by the owner.
8. **Delays and Extensions**
9. Delays in completing the services within the time provided for completion as specified elsewhere in this contract, for reasons not attributable to the consultant, may constitute justification for additional compensation to the extent of documentable increases in costs of labor, services, or materials as a result thereof. If the consultant fails to submit a formal written request for an extension of time before the expiration of the contract time, the reason will be of delay and the basis for denying any cost adjustments.
10. Delays grossly affecting the completion of the services within the time specified, attributable to or caused by one of the parties hereto, will be considered cause for the termination of this contract by the other party.
11. **Termination of Contract**

1. The Sponsor may, upon not less than ten (10) days written notice to the consultant, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

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

 The consultant will be paid for the completed services as authorized through and including the effective date of termination as set forth. The value of the services performed and delivered and the amount paid will be determined by mutual agreement between the owner and the consultant as a contract amendment. Whenever there is a fixed fee along with an actual cost section of this contract, that portion will be prorated on a percentage completed of the actual cost on the effective date of termination.

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

If the consultant services are terminated by the owner for fault placed on the consultant; the consultant will be paid the reasonable value of the services performed and delivered to the owner up to the termination time. The value of the services performed and delivered, and the amount paid, will be determined by the owner.

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

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

6. In the event of the death of any member or partner of the consultant’s firm, the surviving members will complete the services; unless otherwise mutually agreed upon by the owner and the survivors.

7. In the event the owner and consultant fail to reach a mutual agreement through disagreement of the parties involved, the value of services will be resolved as set forth in dispute resolution of this contract.

8. In all cases of contract termination, all finished and unfinished books, documents, records, maps, surveys, drawings, models, photographs, reports and all copies required by this contract not already in possession of the owner, will upon request be given to the owner by the consultant.

1. **Subletting or Assignment of Contract**
2. The consultant will not sublet, assign or transfer all or any part of service or interest of this contract without the prior written approval of the owner.
3. Consent to assign, sublet, transfer, or otherwise dispose of any portion of the contract will not be understood to relieve the consultant of any responsibility for the fulfillment of the contract, unless it is explicitly stated in the contract.
4. When the consultant subcontracts a portion or any phase of the services under this contract, the sub-consultant will provide for the performance of such services to the full scope described in this contract and to the same standards and concept as if performed by the prime consultant.
5. No subletting, sub-consulting, transferring or assignment of any portion of the work under this contract will state, imply, intend or be taken to limit the legal liability of either the prime consultant or the sub-consultant.
6. **Dispute Resolution**
7. If an irreconcilable dispute not resolvable through informal means occurs under this contract, the owner or the consultant may, in writing, notify the other party of its intent to invoke this resolution process.
8. Upon receipt of written notice from one party to invoke the dispute resolution process, all parties have an additional seven (7) calendar days to resolve the dispute informally.
9. After the 7 calendar days, each party will have seven (7) calendar days to designate one representative who has authority to act on this contract. If either party fails within this time to inform the other party in writing of their designation, the other party is free to pursue all other legal and equitable remedies.
10. The representatives will meet within 14 calendar days of their designation and will receive testimony and other evidence as the owner and the consultant may wish to present with respect to the dispute.
11. Within seven (7) calendar days after the close of the presentation, the representatives will resolve the dispute or either party is free to pursue all other legal and equitable remedies. When the representatives resolve the dispute, their decision will be final and conclusive.
12. Each party’s costs including their representatives for the dispute resolution will be assumed by the respective party.

F. **BREACH OF CONTRACT TERMS (Federal Contracts >$100,000)**

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

**IV. BASIS OF PAYMENT**

1. **General**
2. Compensation for services provided by the consultant under terms of the contract will be as described in the “Special Provision Scope of Services/Payment” section for the prescribed amounts in this contract. Payment will be full compensation for services performed and for all labor, material, supplies, equipment and incidentals necessary to complete the services.
3. When compensation is to be made on more than one basis, the payment will be the aggregate sum of the amount.
4. No payment will be made for services performed before issuance of a “Notice to Proceed.” The “Notice to Proceed” may be verbal, followed by a written confirmation.
5. Reimbursement for costs will be limited to those that are allowable under applicable federal acquisition regulations and by owner policy.
6. Where services are provided that are not eligible for federal and state funding; the consultant will clearly identify and separate the costs in their payments.
7. The consultant will submit invoices on the form or a similar format to the owner’s requirement, no more than once a month during the authorized work progress of services. For partial payment on contract items, the consultant must indicate the percentage of work completed for each unit as shown in the contract. The owner may request additional documentation on reimbursement costs. On actual cost work, the consultant will provide the owner with documentation to the owner’s satisfaction before payment is made.
8. The fixed fee amount in the contract will be partially paid with each invoice. The percentage paid to date, will be the “Actual Cost to Date” compared to the “Contract Expected Cost” on which the amount was determined. The remaining fixed fee amount will be paid with the final payment on the contract.
9. No payment will be understood as the owner acceptance of unsatisfactory, defective services or improper materials.
10. The consultant and any sub-consultant will maintain all documents and evidence pertaining to costs incurred under this contract for inspection by the owner, FAA, the Comptroller General of the United States or any of their duly authorized representatives for three (3) years following final contract payment. The consultant agrees when performing services under this contract to maintain careful, complete and detailed records of expenses and hours worked in connection with the services done.
11. The contract is subject to Wis. Stat. §16.528 (1985), Interest on Late Payment.
12. The final invoice should be submitted to the owner for payment within three (3) months of completion of services under this contract. Prior to financial closure of the project, the owner will notify the consultant by certified mail that final billing for all services under this contract must be submitted within 14 days, after which no further payment will be made.
13. Compensation in excess of the total contract amount will not be allowed unless justified and authorized by an approved written amendment.
14. Compensation for improper performance by the consultant will not be allowed.
15. If the project is suspended or the consultant’s services halted, total payment will be based on work completed to the date of suspension or halting of services. The total fee will be based on the percentage of completion of each item for lump sum and fixed fee amounts.
16. **Extra or Decreased Services**
17. Written orders including extra or decreased services can be given by the owner.
18. Orders that do not change the scope of services in the contract, but may increase or decrease the quantity of labor, materials or expenses of the services, will not annul or void this contract. The consultant must proceed with the professional services as directed by furnishing the necessary labor, materials and services to complete the work within the specified time limits in the written orders or as adjusted by a written agreement between the owner and the consultant.
19. If in the consultant’s opinion, the orders involve services not included in the terms of this contract or require the discarding or redoing of services based on earlier direction or approvals, the consultant must notify the owner of its opinion in writing if they desire extra compensation.
20. Any orders given by the owner which would involve services not within the scope of services of this contract require a written order or adjusted by a written agreement between the owner and the consultant.
21. If the consultant’s opinion orders involve services not included in the terms of services of this contract, the consultant must notify the owner in writing if in their opinion extra compensation or time allowance is warranted. Such notification will include a justification for the claim for extra time and compensation, and the additional fee amount requested.
22. The owner will review the consultant’s submittal and approve a change as an amendment to this contract, if acceptable. Services under a change will not proceed until authorized by the owner through a written amendment. The amendment will set forth the terms, scope of work, time for performance and cost, and will be signed by the parties to the contract.

**V. MISCELLANEOUS PROVISIONS**

1. **Standards**
2. Services performed and documents prepared under this contract to be finished with federal aid, will be in accordance with all applicable federal standards and requirements with no deviation from or modification to standards set forth in FAA Advisory Circulars.
3. Services performed and documents prepared under this contract to be finished with state aid, will be in compliance with applicable state laws and bureau policies and procedures.
4. Services performed and documents prepared under this contract will conform to applicable local ordinances and rules.
5. Modifications and changes to standards under this contract will require written approval by the owner.

**B. Revision of Specifications and Plans**

1. The owner, by written notice and without invalidating this contract, may require changes in the specifications, construction contract plans or special provisions resulting in the revision or abandonment of services already performed by the **consultant** or resulting in services by the **consultant** not contemplated in the **contract** and for which full compensation is not provided.

2. Claims by the consultant for compensation for services resulting from these revisions will be submitted and processed in accordance with **extra or decreased services**.

**C. Acess to Records and Reports**

1. The Consultant must maintain an acceptable cost accounting system. The Consultant 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 consultant which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Consultant 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.
2. The consultant agrees to furnish as many copies of all documents prepared as the owner reasonably requires and will be reimbursed reasonable expenses for the documents not specifically required under this contract.

**D. Rights to Inventions**

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

1. **Conflicts of Interest**
2. The consultant warrants it has no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this contract.
3. The consultant will not employ any person currently employed by the owner or the bureau for any services included under the provisions of the contract.
4. **Errors and Omissions**
5. The consultant will be responsible for the accuracy of their services performed under the contract, and promptly make necessary revisions or corrections to its services resulting from its negligent acts, errors or omissions without additional compensation.
6. The consultant will give immediate attention to these revisions or corrections to prevent or minimize delay to the project.
7. The consultant will be responsible to the owner for any losses to or costs to repair or remedy the consultant's negligent acts, errors or omissions.
8. **Owner Procedure for Handling Errors**
9. The owner may recover those additional costs incurred by the owner and FAA as the result of errors determined to be the responsibility of the consultant as described in “Errors and Omissions”. Each consultant error and facts about the error will be reviewed by the owner to establish responsibility for additional costs incurred as a result of a particular consultant error in accordance with the contract.
10. When the owner pursues reimbursement, the consultant will be notified of the decision and options for repayment. The owner’s options listed in priority order are:
11. Repayment in full.
12. Deductions from other payments due and payable to the consultant by equitable right of set off.
13. Legal action by the owner to collect the costs, if the consultant has no other agreements with the owner or no payments due and payable, and refuses repayment in full.
14. Any combination of the above.
15. **Legal Relations**
16. The consultant will be familiar with, and at all times comply with all applicable federal, state, and local laws, ordinances and regulations that in any manner affect the services or consultant’s conduct.
17. Nothing in this contract will be construed as imposing any personal liability upon the owner, the Secretary, FAA, and their authorized representatives.
18. The consultant will be responsible for any and all injuries or damages to property or persons arising out of a negligent act, error and/or omission in the consultant’s performance of the services under this contract.
19. The consultant will indemnify and save harmless the owner, the Secretary, FAA, and all of their authorized representatives from all suits, actions, or claims of any character brought forth on account of any injuries or damages to persons or property resulting from negligence of the consultant or any of the sub-consultants in the performance of the services under this contract.

**I. Civil Rights - General**

The consultant agrees that it will 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 handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the consultants 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.

This provision also 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, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

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

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

**J. Civil Rights – Title VI**

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

1. **Compliance with Regulations:** The consultant (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes 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 consultant, 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 subconsultants, including procurements of materials and leases of equipment. The consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, 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 consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by the consultant of the consultant’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports**: The consultant 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 Acts, Regulations, and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish the information, the consultant 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 consultant’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:
	1. Withholding payments to the consultant under the contract until the consultant complies; and/or
	2. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The consultant 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 consultant 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 consultant becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, the consultant may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the consultant may request the United States to enter into the litigation to protect the interests of the United States.

**K. Federal Requirements for Disadvantaged Business Enterprise Program**

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

**Prompt Payment (§26.29)** - The prime consultant agrees to pay each subconsultant under this prime contract for satisfactory performance of its contract no later than ten days from the receipt of each payment the prime consultant receives from department. The prime consultant agrees further to return retainage payments to each subconsultant within ten days after the subconsultant'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 department. This clause applies to both DBE and non-DBE subconsultants

1. The Disadvantaged Business Enterprises (DBE) requirements of 49 C.F.R. §26.21 (2000), apply to this contract only when it is federally funded. DBE, as defined in 49 C.F.R. §26.5 (2011), will have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this contract.

2. The following provisions will apply unless the consultant is a certified DBE:

 a. DBE Participation

 (1) The consultant will aggressively solicit DBE sub-consultant(s) proposals and incorporate them on their proposal for work in this contract by making systematic written and verbal contact with DBEs likely to have an interest in transportation consulting work.

 (2) The consultant will not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts.

 (3) The consultant will procure services or subcontract the percent of the total proposal as specified in this contract. This goal may be accomplished through the use of any combination of ethnic or women owned businesses certified as DBEs by WisDOT.

 (4) The consultant will submit information concerning the DBEs that will participate in the contract prior to execution of the contract. The consultant’s proposal will identify by name, the DBE firm(s) whose utilization is intended to satisfy this provision, the items of work of the subcontract, and the dollar amount of such items of work.

 (5) The consultant will provide or arrange for direct assistance to the DBE(s) in such areas as providing information to prepare proposals, so that the representative of the DBE(s) can interpret the scope of services particularly to the items of work specific to them, assisting in reaching a full understanding of the Wisconsin Department of Transportation – Bureau of Aeronautics Standard Specifications for Airport Construction, 1998 edition and all contract requirements applicable to the DBE(s) portion of the work, and other actions aimed to continued development of the DBE(s) in to a viable transportation consulting business.

 (6) The consultant will maintain records of DBE(s) participation and may be required to furnish periodic reports documenting its performance under this contract.

 (7) The consultant will pay the DBE sub-consultant on a regular basis for all work completed. This would normally be considered payment to the DBE(s) within ten (10) working days after the prime consultant receives payment for such work by the owner. This prescribed work will not be paid for separately by the owner.

 (8) Upon completion of this contract, the consultant will submit to the owner the actual DBE(s) participation accomplished under this contract. This information will identify by name, the DBE firm(s) utilized, the items of work of the subcontract, and the dollar amounts paid to the DBE firm(s).

 (9) It is the intent of this contract that the stated percentage goal be fulfilled as indicated. If the consultant can demonstrate to the satisfaction of the owner that such utilization is not feasible, the owner may accept varying percentages in lieu of the designated percentage for the DBE goal.

 b. “Good Faith Efforts”

 (1) The consultant will make “Good Faith Efforts” as defined in 49 C.F.R. §26 app A (1999), Regulations of the Office of the Secretary of Transportation. Failure on the part of the consultant to meet the DBE goal and to meet an adequate level of “Good Faith Efforts” will, at the discretion of the owner, is just cause for rescinding the consultant selection for this contract and such other actions as deemed appropriate.

 (2) It is a condition of this contract that the consultant who does not fulfill established goal(s) for DBE participation must demonstrate, through detailed and comprehensive documentation, that “Good Faith Efforts” have been implemented to solicit, assist, and utilize DBE firms to meet participation goals.

 (3) Any consultant who fails to meet minimum DBE participation goals must complete a certificate to assist WisDOT in determining whether a comprehensive “Good Faith Effort” has been implemented. The certificate and accompanying information must be submitted to the bureau prior to signing the contract. “Good Faith Efforts” will NOT be recognized if the consultant failed to contact the WisDOT DBE Support Services office, prior to submitting their proposal, either in writing or by telephone, to inform them of their firm’s desire to utilize DBEs on a given project and to request assistance (Support services office in Milwaukee phone number is [414] 438-4583).

 (4) In order for the owner to execute a contract with a consultant that has failed to meet the specified DBE contract goal, the owner must determine that the consultant’s “Good Faith Efforts” were those that, given all relevant circumstances, a consultant actively and aggressively seeking to meet the goal would make. In determining whether a consultant has made “Good Faith Efforts”, the owner will look not only at the different kinds of efforts that the consultant has made, but also the quantity and intensity of those efforts. Efforts that are merely pro forma are not “Good Faith Efforts” to meet the goal. Even if the efforts are sincerely motivated, they are not considered to be “Good Faith Efforts” if, given all relevant circumstances, they could reasonably be expected to produce a level of DBE participation sufficient to meet the goal. These efforts may include, but are not limited to:

 (i) Written notification to DBEs that their participation in the contract is solicited;

 (ii) Selection of portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the DBE participation goals;

 (iii) “Good Faith Efforts” with DBEs for specific sub proposals may include, but are not limited to the following:

1. a listing of the names, addresses, and telephone numbers of DBEs contacted; and date of contact;
2. follow up phone calls soliciting DBE participation;
3. a description of the information provided to DBEs regarding the scope of services for portions of the work to be performed;
4. an explanation of why DBEs contacted were not awarded sub contracts.

 (5) The bureau together with the DBE Programs Office will review the certificate ratification to determine whether, in fact, “Good Faith Efforts” have been implemented consistent with WisDOT procedures and appropriate federal regulations governing the DBE Program.

**L. Buy American Certification**

The consultant 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 submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

**Type of Certification is based on Type of Project:**

There are two types of Buy American certifications.

* For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
* For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

**\*\*\*\*\***

**Certificate of Buy American Compliance for Total Facility**

(Buildings such as Terminal, SRE, ARFF, etc.)

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:
1. Only installing steel and manufactured products produced in the United States; or
2. 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
3. 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 the 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 results 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 that 60% of the cost of all components and subcomponents of the “facility”. The required documentation for a type 3 waiver is:

1. 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)
2. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
3. 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:

1. Detailed cost information for total project using US domestic product
2. 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 |

\* \* \* \* \*

**Certificate of Buy American Compliance for Manufactured Products**

(Non-building construction projects, equipment acquisition projects)

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:
1. Only installing steel and manufactured products produced in the United States, or;
2. 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;
3. 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 that 60% of the cost of all components and subcomponents of the “item”. The required documentation for a type 3 waiver is:

1. 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)
2. Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
3. 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:

1. Detailed cost information for total project using US domestic product
2. 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.

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| Date  |  | Signature  |
|  |  |  |
| Company Name |  | Title |

**M. CERTIFICATE REGARDING DEBARMENT AND SUSPENSION**

**CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)**

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

**CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)**

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 tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

**N. Trade Restriction Clause**

The consultant or subconsultant, by submission of an offer and/or execution of a contract, certifies that it:

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

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 on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

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

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

Further, the consultant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The consultant may rely on the certification of a prospective subconsultant unless it has knowledge that the certification is erroneous.

The consultant shall provide immediate written notice to the sponsor if the consultant learns that its certification or that of a subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances. The subconsultant agrees to provide written notice to the consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

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

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

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

1. **Insurance** **Requirements**
2. The consultant will maintain the following types and limits of commercial insurance in force until such time as all work under or incidentals to the contract have been completed.

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| **Type of Insurance** | **Minimum Limits Required \*** |
| Commercial General Liability Insurance –is endorsed to include completed operations and blanket contractual liability coverage. | $1 million combined single limits per occurrence, may be subject to an annual aggregate limit of not less than $2 million |
| Worker’s Compensation and Employer’s Liability Insurance | Worker’s compensation: statutory limitsEmployer’s liability: Bodily injury by accident -  $100,00 each accident Bodily injury by disease -  $500,000 each accident $100,000 each employee |
| Commercial Automobile Liability Insurance - covers all consultant owned, non-owned and hired vehicles used in carrying out the contract. | $1 million - combined single limits per occurrence |
| Architect’s and Engineers Errors and Omissions Insurance \*\* | $1 million - each claim, may be subject to an annual aggregate limit of $1 million |
| *\* These requirements may be satisfied either through primary insurance coverage or through excess/umbrella insurance policies.**\*\* This insurance requirement applies only to engineering services and is waived for non-engineering services. Engineering services are defined as project management, construction management and inspection, feasibility studies, preliminary engineering, design engineering, surveying mapping and architectural related services.* |

1. An insurance certificate(s) showing the consultant is covered by the above required types and amounts of insurance together with the effective and expiration date of such insurances will be furnished to the owner prior to the performance of any services under this contract.
2. A 60 day notice of cancellation or change in coverage will be required. All coverage will be placed with insurance companies licensed to do business in the State with an A.M. best rating of A- or better. The owner reserves the right to require other coverage and limits as described in the special provisions of this contract.
3. The above insurance requirements will apply with equal force whether the work under this contract is performed by the consultant, a sub-consultant, or by any entity employed directly or indirectly by either party.
4. Any exceptions to the above insurance requirements require approval from the owner. The approval must be reflected in the special provisions of the contract.
5. **Lobbying and Influencing Federal Employees**

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

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

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.

1. **Occupational Safety and Health Act**

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The consultant has full responsibility to monitor compliance to the referenced statute or regulation. The consultant must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

| **Requirement** | **Federal Agency with Enforcement Responsibilities** |
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| Occupational Safety and Health Act of 1970 (20 CFR Part 1910) | U.S. Department of Labor – Occupational Safety and Health Administration |

1. **Contract Work Hours and Safety Standards (Federal > $100,000)**

1. Overtime Requirements.

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

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

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

3. Withholding for Unpaid Wages and Liquidated Damages.

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

4. Subconsultants.

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

1. **Federal Fair Labor Standards Act – Minimum Wage**

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The consultant has full responsibility to monitor compliance to the referenced statute or regulation. The consultant must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

| **Requirement** | **Federal Agency with Enforcement Responsibilities** |
| --- | --- |
| **Federal Fair Labor Standards Act (29 USC 201)** | **U.S. Department of Labor – Wage and Hour Division** |

1. **Clean Air and Water Pollution Controls (Federal > $100,000)**

Consultants and subconsultants agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

3. That, as a condition for the award of this contract, the consultant or subconsultant will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;

4. To include or cause to be included in any construction contract or subcontract which exceeds $100,000 the aforementioned criteria and requirements.