



## PROFESSIONAL SERVICE AGREEMENT NO. 4618

### Construction Inspection Staff Augmentation Services

THIS **Construction Inspection Staff Augmentation Services Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and JDT RPR Services, Inc. ("Consultant"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Consultant has agreed to provide construction project monitoring services to monitor compliance with contract requirements at Corpus Christi International Airport.

NOW, THEREFORE, City and Consultant agree as follows:

- 1. Scope.** Consultant shall provide Construction Inspection Staff Augmentation Services in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
- 2. Term.** This Agreement is for 18 months. The parties may mutually extend the term of this Agreement for up to two additional one-year periods ["Option Period(s)"], provided, the parties do so in writing prior to the expiration of the original term or the then-current Option Period.
- 3. Compensation and Payment.** This Agreement is for an amount not to exceed \$478,800.00 subject to approved extensions and changes. Payment will be made for Services completed and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next option period. Invoices must be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi  
Attn: Accounts Payable  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Brett Van Hazel

Department: Engineering

Phone: 361-826-3273

Email: [brettvh@cctexas.com](mailto:brettvh@cctexas.com)

**5. Insurance; Bonds; License.**

(A) Before performance can begin under this Agreement, the Consultant must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event that a payment bond, a performance bond, or both, are required of the Consultant to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

(C) Prior to beginning work, Consultant must provide evidence of any valid professional license necessary for the performance of the work under this Agreement.

- 6. Standard of Care.** Consultant warrants that all Services shall be performed in accordance with the standard of care used by similarly situated Consultants performing similar services under the same professional license.
- 7. Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30<sup>th</sup> annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the

City Council's sole discretion when adopting each budget.

**8. Independent Consultant; Release.**

(A) In performing this Agreement, both the City and Consultant shall act in an individual capacity and not as agents, representatives, employees, employers, partners, joint venturers, or associates of one another. Consultant shall perform all professional services as an independent consultant and shall furnish such Services in his own manner and method, and under no circumstance or condition shall an employee, agent, or representative of either party be considered or construed to be an employee, agent, or representative of the other party.

(B) As an independent consultant, no workers' compensation insurance shall be obtained by City covering the Consultant and employees of the Consultant. The Consultant shall comply with any and all workers' compensation laws pertaining to the Consultant and employees of the Consultant.

**9. Subcontractors.** Consultant may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Consultant must obtain prior written approval from the Contract Administrator unless the subcontractors were named in the bid or proposal or in an Attachment to this Agreement, as applicable. In using subcontractors, the Consultant is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Consultant. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Consultant and its employees had performed the work. The City may, at the City's sole discretion, choose not to accept Services performed by a subcontractor that was not approved in accordance with this paragraph."

**10. Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.

**11. Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.

**12. Taxes.** The Consultant covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.

**13. Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

**IF TO CITY:**

City of Corpus Christi  
Attn: Brett Van Hazel, Assistant Director of Construction Management  
1201 Leopard St.  
Corpus Christi, TX 78401

**IF TO CONSULTANT:**

JDT RPR Services, Inc.  
Attn: Derek Tolmachoff, President  
1800 Summer Lane  
Keller, TX 76262

**14. Consultant shall fully indemnify, hold harmless and defend the City of Corpus Christi and its officers, employees and agents (“indemnitees”) from and against any and all liability, loss, claims, demands, suits, and causes of action of whatever nature, character, or description on account of personal injuries, property loss, or damage, or any other kind of injury, loss, or damage, including all expenses of litigation, court costs, attorneys’ fees and expert witness fees, which arise or are claimed to arise out of or in connection with a breach of this Agreement or the performance of this Agreement by the Consultant or results from the negligent act, omission, misconduct, or fault of the Consultant or its employees or agents. Consultant must, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend all actions based thereon with counsel satisfactory to the City Attorney, and pay all reasonable charges of attorneys and all other costs and expenses of any kind arising or resulting from any said liability, damage, loss, claims, demands, suits, or actions. The indemnification obligations of Consultant under this section shall survive the expiration or earlier termination of this Agreement.**

**15. Termination.**

(A) The City Manager may terminate this Agreement for Consultant's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Consultant written notice of the breach and set out a reasonable opportunity to cure. If the Consultant has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Consultant. The City

Manager may also terminate this Agreement upon 24 hours written notice to the Consultant for failure to pay or provide proof of payment of taxes as set out in this Agreement.

- 16. Assignment.** No assignment of this Agreement by the Consultant, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Consultant is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.
- 17. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
- 18. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

  - A. this Agreement (excluding all attachments and exhibits);
  - B. its attachments; then,
  - C. its exhibits, if any.
- 19. Certificate of Interested Parties.** Consultant agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement, if required to do so by law.
- 20. Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 21. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties

**(SIGNATURE PAGE FOLLOWS)**



## **Attachment A - Scope of Work**

### **1.1 General Requirements and Qualifications**

- A. Contract Inspector is expected to be ambassador for the City and as such it is critical that the inspector work closely with the Aviation Department and the airport tenants to ensure the City is well represented. Contract Inspector is for the CCIA Terminal Rehabilitation Project No. 22302 at the Corpus Christi International Airport (CCIA).
- B. Aviation projects and inspector assignments typically include facility construction to include mechanical, electrical, and plumbing (MEP), architectural enhancements and other facility improvements. Contract Inspector must have experience and knowledge of City, Texas Commission on Environmental Quality (TCEQ), and Texas Department of Licensing and Regulation (TDLR) requirements and procedures.
- C. Past Performance and Safety Record: Contract Inspector must have a proven record of having satisfactorily provided the same or similar services as outlined in this scope of work. The City reserves the right to perform investigations as may be deemed necessary to ensure that competent and qualified personnel and management will be utilized in the performance of the contract.
- D. The City requires the services of firms to provide construction inspection staff augmentation services for the Airport project. The construction inspector will be managed by the City's Engineering Services Construction Management Division.
- E. In addition to the specific requirements presented, inspectors will be responsible for completing other tasks as assigned.

### **1.2 Scope of Work**

- A. Contract Inspector will work directly under the supervision of City Engineering Services Construction Management Division in providing Quality Assurance services and to assist in expediting the contractor's progress by minimizing conflicts and conflict resolution, identifying change order potential, detailing deficient work and repairs and other support related services.
- B. Contract Inspector shall be available to start immediately upon award of contract.

- C. Contract Inspector will be required to keep detailed daily inspection reports on provided City forms. Requirements will include producing, organizing, and filing the following documentation:
1. Construction Contractor Progress including installed and completed work, construction crew and equipment available on site, and contract specific conversations held on site concerning construction issues.
  2. Daily and weekly construction photos including proper labeling/filing of same.
  3. Testing lab results with immediate alerts to City Staff of failures.
  4. Rain days lost time due to heavy rains, completion of monthly time statements.
  5. Any site related activity which may impact future/past progress or activity which may significantly impact the construction quality.
- D. Some of the required tasks may include the following:
1. Review of all contract documents, specifications, plans, drawings, addendums, and other project-related reports.
  2. Schedule and coordinate the location and frequency of required tests per the specifications with the City's approved materials testing lab.
  3. Work closely with City department personnel in coordination of construction related activities.
  4. Attend and organize project and coordination meetings to include but not limited to: Project update meetings, pre-construction conference, inter-departmental coordination meetings, leadership update meetings, and on-site construction meetings.
  5. Review construction contractor payment requests, including coordination and acceptance of quantities.
  6. Review and coordinate all approved change orders, field orders and changes.
  7. Communicate with local businesses and residents including meeting with and documenting any citizen or business-related concerns or requests.
- F. The Contract Inspector will be responsible for providing any and all resources necessary to accomplish this Scope of Work, including personal



protective equipment (PPE), computers, cell phones and local transportation.

### **1.3 Performance Requirements**

- A. Contract Inspector shall inspect to ensure that all work performed by construction contractors is performed in accordance with project bid documents, specifications and/or plans. Any deviations shall be brought immediately to the City's Construction Engineer's attention and Contract Inspector shall work diligently to ensure that such deviations are either corrected timely or reviewed for City approval.
- B. Contract Inspector shall verify, measure and record all work done, in a materials and measurement diary. Measurements and materials shall be compared against construction estimates to ensure work done is in accordance with project bid documents, specifications and/or plans. Re-work quantities shall be documented separately in a re-work logbook. Deviations of greater than 5% in either materials or measurements shall be reported to the City's Construction Engineer.
- C. Contract Inspector shall ensure that all required testing is scheduled and performed as required in the specifications and/or plans. Contract Inspector will be present during all test and shall provide guidance on location and frequency of test as appropriate. All test reports shall be reviewed for compliance with the specification and all failed tests shall be brought to the attention of the Construction Engineer and construction contractor.
- D. Contract Inspector shall review each pay estimate from construction contractor(s) to ensure that invoiced quantities, materials, and work performed correspond to records maintained by Contractor Inspector. Contract Inspector shall ensure that the construction contractor does not invoice, and the City does not pay for correction of errors. Only work performed in accordance with bid documents, specifications and/or plans shall be paid. Any errors in pay estimates shall be directed immediately to the construction contractor's attention for correction and a new pay estimate submitted.
- E. Contract Inspector is the primary point of contact between citizens and the City for any assigned projects. As such, Contract Inspector will maintain continuous communication with each impacted resident or business, keeping them informed on progress, listening to and addressing their concerns. Any significant concerns shall be brought to the attention of the Construction Engineer as soon as possible and progress on resolution communicated to citizens frequently. In addition, a log shall be

kept which documents communication efforts and resolution of concerns.

- F. Construction walls, barricades or other site control devices and ADA compliant routes shall be inspected daily and corrected by the contractor as needed to reflect progression of the project. Contract Inspector shall document any changes to either the construction walls, barricades or other site control devices or ADA compliant routes in the project files and verify approval by the Engineer and City.
- G. Contract Inspector shall provide daily updates to the Construction Engineer or designee via email and shall communicate immediately in the event of any problems or issues in the field.
- H. Contract Inspector is expected to adhere to all relevant safety requirements including PPE in accordance with OSHA guidelines. Said equipment will be provided at Contract Inspector's own expense.
- I. Contract Inspector shall keep a daily record of projects inspected or projects worked on. This log shall be turned in to the Construction Engineer on a weekly basis.
- J. All documents produced or retained by Contract Inspector (dairies, etc.) shall be the property of the City of Corpus Christi and shall be turned in to the City Construction Engineer at the end of each project. Documents shall be immediately turned over to the City upon request.



## Attachment B: Bid/Pricing Schedule

1880 Summer Ln., Keller, TX 76262 - 817 903-1919 - [jdrpr.com](http://jdrpr.com)

August 3, 2023

Mr. Victor Gonzalez  
Corpus Christi International Airport  
1000 International Dr.  
Corpus Christi, TX 78404

**RE: Proposal - RFQ 4618CRP Construction Inspection Staff Augmentation Services**

**Dear Mr. Gonzalez:**

Thank you for the opportunity to provide this proposal for your Airport RPR needs.

Based on the information provided pertaining to the scope of work, the remaining 80 weeks of work on the project prior to substantial completion, and an additional 30 days (4 wks.) for Punch List and closeout items, we would like to propose the following:

Using the current average of 60 hrs./wk. worked by the contractor (project has already commenced) for the approximate 80 weeks remaining, an additional 240 hrs. for post-construction coordination (conferences, punch list, final inspection, & close out), this would give us a total of **5,040 RPR Hrs.** for the project.

Based on our rate negotiations regarding the proposed scope outlined above, we request an hourly rate of **\$95.00**. This hourly rate shall include any and all additional administrative or operating expenses, including vehicle, fuel, mileage, per diem, meals, lodging, camera, computer, cell phone, overtime, insurance, and profit.

In summary, for the 60 hrs. per week average for the remaining 80 weeks and 240 hrs. for post-construction/closeout, we propose 5,040 RPR Hrs. @ \$95.00 for a Grand Total of **\$478,800.00** for the referenced project.

If you have any questions or comments, please let me know. Thank you again for letting JDT RPR Services submit this proposal for your RPR needs.

Sincerely,

A handwritten signature in black ink, appearing to read 'Derek Tolmachoff', is written over a light blue horizontal line.

**Derek Tolmachoff**  
817 903-1919  
[jdtolmachoff@jdrpr.com](mailto:jdtolmachoff@jdrpr.com)

## Attachment C: Insurance and Bond Requirements

### A. CONTRACTOR'S LIABILITY INSURANCE

1. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.
2. Contractor must furnish to the City's Risk Manager and Contract Administer a copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
PROFESSIONAL LIABILITY (Errors and Omissions)	\$1,000,000 Per Claim \$2,000,000 Aggregate (Defense costs not included in face value of the policy) If claims made policy, retro date must be at or prior to inception of agreement, have extended reporting period provisions and identify any limitations regarding who is insured.

3. In the event of accidents of any kind related to this contract, Contractor shall furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

### B. ADDITIONAL REQUIREMENTS

1. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of at least A- with a Financial Size Category of Class VII or higher.
2. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi  
 Attn: Risk Manager

P.O. Box 9277  
Corpus Christi, TX 78469-9277

3. Certificate of insurance shall specify that at least 30 calendar days advance written notice will be provided to City of any, cancellation, non-renewal, material change or termination in coverage and not less than 10 calendar days advance written notice for nonpayment of premium.
4. Within 5 calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
5. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
6. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
7. Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
8. The insurance required is in addition to and separate from any other obligation contained in this contract.

**No Bond is required for this service agreement.**

2022 Insurance Requirements  
Ins. Req. Exhibit **3-H**  
Professional Services - Other Professional Services  
08/29/23 Risk Management – Legal Dept.

## **Attachment D: Federal Regulations**

## **A1 ACCESS TO RECORDS AND REPORTS**

### **A1.3 CONTRACT CLAUSE ACCESS TO RECORDS AND REPORTS**

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

## **A3 BREACH OF CONTRACT TERMS**

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

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



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

### **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 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

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

## **A11 DEBARMENT AND SUSPENSION**

### **A11.3 SOLICITATION 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 Certification of Offerer /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

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

## **A12 DISADVANTAGED BUSINESS ENTERPRISE**

### **A12.3 REQUIRED PROVISIONS**

#### **A12.3.1 Solicitation Language (Solicitations that include a Project Goal)**

Information Submitted as a matter of bidder responsiveness: 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 its 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; and
- 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.

Information submitted as a matter of bidder responsibility:

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

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in its commitment within five days after bid opening.

- 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; and
- 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.

#### **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.

## **A13 DISTRACTED DRIVING**

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

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

## **A14 ENERGY CONSERVATION REQUIREMENTS**

### **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 USC 6201*et seq*).

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

### **A17.3 SOLICITATION CLAUSE**

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

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

## **A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

### **A18.3 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, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

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

### **A20.3 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. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.



## **A24 TAX DELINQUENCY AND FELONY CONVICTIONS**

### **A24.3 CONTRACT CLAUSE**

#### **CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

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

#### **Certifications**

The applicant represents that it is ( ☐ ) is not ( ☐ ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

The applicant represents that it is ( ☐ ) is not ( ☐ ) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

#### **Note**

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

#### **Term Definitions**

**Felony conviction:** Felony conviction means a conviction within the preceding twentyfour (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

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

## **A25 TERMINATION OF CONTRACT**

### **A25.3 CONTRACT CLAUSE**

#### **A25.3.1 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.

#### **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; or
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.

## **A26 TRADE RESTRICTION CERTIFICATION**

### **A26.3 SOLICITATION CLAUSE TRADE RESTRICTION CERTIFICATION**

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

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

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

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

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

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

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

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

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

## **A27 VETERAN'S PREFERENCE**

### **A27.3 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 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.