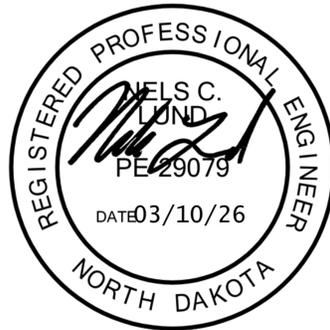


PROJECT MANUAL
for

KINDRED-ROBERT ODEGAARD FIELD
KINDRED, NORTH DAKOTA

AIP #3-38-0068-025-2026 & IIJA/AIG #3-38-0068-026-2026
FEDERAL AVIATION ADMINISTRATION

PROCURE SNOW REMOVAL EQUIPMENT



THE ABOVE HEREBY CERTIFY THAT THESE SPECIFICATIONS
WERE PREPARED BY THEM OR UNDER THEIR DIRECT SUPERVISION
AND THEY ARE DULY REGISTERED PROFESSIONAL ENGINEER(S) IN
THE STATE OF NORTH DAKOTA



Procure Snow Removal Equipment
Kindred, North Dakota
AIP #3-38-0068-025-2026 & IIA/AIG #3-38-0068-026-2026
Federal Aviation Administration

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Notice

Please direct questions to John Glesne at KLJ at 701-271-5026 or john.glesne@kljeng.com.

Advertisement for Bids
Kindred-Robert Odegaard Field
Kindred, North Dakota
AIP #3-38-0068-025-2026 & IJJA/AIG #3-38-0068-026-2026

Bids for furnishing Goods and Special Services to the site of Kindred-Robert Odegaard Field, Kindred, North Dakota will be received by the Kindred-Davenport Regional Airport Authority, Kindred, North Dakota on-line through the QuestCDN vBid platform until 2:00 PM CT on April 1, 2026. All bids will then be publicly opened and read aloud at 2:30 PM CT at an on-line bid opening meeting. The public is welcome to view the on-line bid opening from their computer, tablet, or smartphone by using the following options:

Join from the meeting link
<https://tinyurl.com/ym4v659w>

Join by Teams meeting ID
Meeting ID: 256 967 089 526 93
Passcode: iA94yT9q

Join by phone
1-701-526-4434
Phone conference ID: 438 236 469#

The proposed work includes the following:

Procure Snow Removal Equipment (Articulating Wheel Loader with Snow Pusher, Power Snowplow, Power Broom, and Snowblower Attachments)

Specifications are on file and may be seen at the office of City Hall, 31 5th Avenue North, Kindred, North Dakota and at the office of KLJ, 300 23rd Avenue East, Suite 100, West Fargo, North Dakota.

Complete digital project bidding documents are available at www.kljeng.com "Projects for Bid" or www.questcdn.com. You may download the digital documents for \$28.00 by inputting Quest project # 10099510 on the website's Project Search page. Please contact QuestCDN.com at 952-233-1632 or info@questcdn.com for assistance in free membership registration, downloading and working with this digital project information. An option paper set of project documents is also available for a non-refundable price of \$92.00 per set at KLJ, 300 23rd Avenue East, Suite 100, West Fargo, North Dakota, 58078 for each set obtained. Contact KLJ at 701-355-8400 if you have any questions.

Bidders shall submit their bids on-line via the Quest CDN vBid platform for a submission fee of \$42.00. Bidders that have not already downloaded the bidding documents from Quest CDN will be required to download the digital bidding documents at a fee of \$28.00 in order to submit a bid via the Quest CDN vBid platform. No on-line bid will be opened, read, or considered if it does not fully comply with the document submission requirements of the vBid system, including acknowledgement of all addenda and submission of a Bid Bond in a sum equal to five percent (5%) of the maximum bid price, executed by the Bidder as principal and by a surety company authorized to do business in the State of North Dakota, payable to the Kindred-Davenport Regional Airport Authority, conditioned that if the principal's bid be accepted and the contract awarded to him, he, within ten (10) days after Notice of Award has been executed, will execute and effect a contract in accordance with the terms of his bid and a contractor's bond as required by law and regulations and determinations of the governing board. The bid security of the two lowest bidders will be retained until the Notice of Award has been executed, but no longer than sixty (60) days. The bid security is a guarantee that the bidder will enter into contract for work described in the Proposal.

The successful Bidder will be required to furnish a Contract Performance Bond and Payment Bond in the full amount of the Contract.

The Kindred-Davenport Regional Airport Authority, Kindred, North Dakota, reserves the right to hold all bids for a period of sixty (60) days after the date fixed for the opening thereof to reject any and all bids and waive defects and to accept any bids should it be deemed for the public good and also reserves the right to reject the bid of any party who has been delinquent or unfaithful in the performance of any former contract to the Owner.

The successful Bidder will have to obtain a statement from the Office of the State Tax Commissioner showing that all taxes due and owing to the State of North Dakota have paid before the contract can be executed.

TITLE VI SOLICITATION NOTICE

As a condition of a grant award, the Kindred-Davenport Regional Airport Authority shall demonstrate that it complies with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq) and implementing regulations (49 CFR part 21) including amendments thereto, the Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), the Age

Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), U.S. Department of Transportation and Federal Aviation Administration (FAA) Assurances, and other relevant civil rights statutes, regulations, or authorities, including any amendments or updates thereto. This may include, as applicable, providing a current Title VI Program Plan to the FAA for approval, in the format and according to the timeline required by the FAA, and other information about the communities that will be benefited and impacted by the project. A completed FAA Title VI Pre-Grant Award Checklist is required for every grant application, unless excused by the FAA. The Sponsor shall affirmatively ensure that when carrying out any project supported by this grant that it complies with all federal nondiscrimination and civil rights laws based on race, color, national origin, sex, creed, age, disability, genetic information, in consideration for federal financial assistance. The Department's and FAA's Office of Civil Rights may provide resources and technical assistance to recipients to ensure full and sustainable compliance with Federal civil rights requirements. Failure to comply with civil rights requirements will be considered a violation of the agreement or contract and be subject to any enforcement action as authorized by law.

DISADVANTAGED BUSINESS ENTERPRISE

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 responsibility, every Bidder or Offeror must submit the following information on the forms provided herein 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;
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR Part 26 including any amendments thereto. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, et seq, 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.

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 § 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

PROHIBITION OF COVERED UNMANNED AIRCRAFT SYSTEMS (UAS)

The Bidder or Offeror certifies that they are aware of and comply with relevant Federal statutes and regulations, including those from the Federal Aviation Administration (FAA), for operating unmanned aircraft systems (UAS) in accordance, and in compliance with all related requirements in the FAA Reauthorization Act of 2024 (Public Law 118-63), section 936 (49 U.S.C. § 44801 note).

Contractor warrants that all UAS operations will be conducted in full compliance with all applicable Federal Aviation Administration (FAA) regulations, including but not limited to 14 CFR Part 107, and any other applicable local, state, or Federal laws and regulations.

Sponsors and subgrant recipients cannot use AIP grant funds to enter into, extend, or renew a contract related to covered unmanned aircraft systems (UAS). This includes both procurement and operational contracts, as well as contracts with entities that operate such systems.

FEDERAL CONTRACT PROVISIONS

A full list of Federal Provisions by which the Bidder must comply, are incorporated by reference and contained within the specifications. Federal Contract Provisions are also available at http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/ and include the following:

1. Buy American Preferences – Title 49 USC § 50101; Executive Order 14005, Ensuring the Future is Made in All of America by All of America’s Workers; Infrastructure Investment and Jobs Act (IIJA) (P.L. No. 117-58), Build America, Buy America (BABA)
2. Civil Rights – Title VI Assurances - 49 USC § 47123 and FAA Order 1400.11
3. Davis Bacon Requirements – 2 CFR Part 200, Appendix II(D); 29 CFR Part 5; 49 USC § 47112(b); 40 USC §§ 3141-3144, 3146, and 3147; *(Applicable to contracts exceeding \$2,000)*
4. Debarment and Suspension – 2 CFR Part 180 (Subpart B); 2 CFR Part 200, Appendix II(H); 2 CFR Part 1200; DOT Order 4200.5; Executive Orders 12549 and 12689; *(Applicable to contracts exceeding \$25,000)*
5. Lobbying Federal Employees – 31 USC § 1352 – Byrd Anti-Lobbying Amendment; 2 CFR Part 200, Appendix II(I); 49 CFR Part 20, Appendix A; *(Applicable to contracts exceeding \$100,000)*
6. Procurement of Recovered Materials – 2 CFR § 200.323; 2 CFR Part 200, Appendix II(J); 40 CFR Part 247; 42 USC § 6901, et seq (Resource Conservation and Recovery Act (RCRA)); *(Applicable to contracts exceeding \$10,000)*

No pre-bid meeting will be held for this project.

Dated this 11 of March 2026.

/s/Kelly Perhus, Chairman

Publication Dates: March 11, 2026
 March 18, 2026
 March 25, 2026

Kelly Perhus, Chairman
 Kindred-Davenport Regional Airport Authority
 Kindred, North Dakota

INSTRUCTIONS TO BIDDERS FOR PROCUREMENT CONTRACT

ARTICLE 1—DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below.
- A. *Issuing Office*—The office from which the Procurement Bidding Documents are to be issued and where the bidding procedures are to be administered.

ARTICLE 2—PROCUREMENT BIDDING DOCUMENTS

- 2.01 Bidder may obtain complete sets of the Procurement Bidding Documents, in the number and for the sum, if any, stated in the advertisement or invitation to bid, from the Issuing Office. Bidders must obtain a complete set of the Procurement Contract Documents as listed in the Procurement Agreement.
- 2.02 Bidder must use a complete set of the Procurement Bidding Documents in preparing the Bid; neither Buyer nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Procurement Bidding Documents.
- 2.03 Buyer and Engineer make copies of Procurement Bidding Documents available on the above terms only for obtaining Bids for furnishing Goods and Special Services, and do not authorize or confer a license for any other use.

ARTICLE 3—QUALIFICATIONS OF BIDDERS

- 3.01 Buyer may at any time conduct such investigations as Buyer deems necessary to establish the responsibility, qualifications, and financial ability of Bidder, and after the opening of Bids may require a Bidder to submit documentation of its qualifications, including but not limited to financial data and documentation of previous experience providing goods and services comparable to the specified Goods and Special Services.
- 3.02 Bidder is to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

ARTICLE 4—SITE VISIT; PRE-BID CONFERENCE

- 4.01 Buyer recommends that Bidder visit the Point of Destination and the site where the Goods are to be installed and Special Services will be provided, taking into account observable local and site conditions that may affect the delivery, cost, progress, and furnishing of the Goods and Special Services. Arrangements for such a visit may be made through Engineer.
- 4.02 A pre-bid conference will not be held for this procurement.

ARTICLE 5—INTERPRETATIONS AND ADDENDA

- 5.01 All questions about the meaning or intent of the Procurement Bidding Documents are to be submitted to Engineer in writing (email is acceptable).

- 5.02 Interpretations or clarifications considered necessary by Engineer in response to such written questions will be issued by Addenda mailed or delivered to all parties recorded as having received the Procurement Bidding Documents. Questions received less than five (5) days prior to the date for opening of Bids may not be answered. Only answers in the Addenda will be binding. Oral statements, interpretations, and clarifications may not be relied upon in the preparation of a Bid, and will not be binding or legally effective. No addenda shall be issued within 72 hours (3 days) of the Bid opening.
- 5.03 Addenda may be issued to clarify, correct, or change the Procurement Bidding Documents as deemed advisable by Buyer or Engineer.

ARTICLE 6—BID SECURITY

- 6.01 A Bid must be accompanied by Bid security made payable to Buyer in an amount of five percent (5%) of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a Bid bond issued by a surety meeting the requirements of Paragraph 5.01 of the General Conditions. Bid bonds must be issued by a surety authorized to do business in the State of North Dakota.
- 6.02 The Bid security of the apparent Successful Bidder will be retained until Buyer (Project Owner) awards the Procurement Contract to such Bidder, and such Bidder has executed the Procurement Contract, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Procurement Contract and furnish the required contract security within 10 days after the Notice of Award, Buyer (Project Owner) may consider Bidder to be in default and annul the Notice of Award, and the Bid security of that Bidder will be forfeited, in whole in the case of a penal sum bid bond, and to the extent of Buyer's damages in the case of a damages-form bond. Such forfeiture will be Buyer's exclusive remedy if Bidder defaults.
- 6.03 The Bid security of other Bidders that Buyer believes to have a reasonable chance of receiving the award may be retained by Buyer until the earlier of 7 days after the Effective Date of the Procurement Contract or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 6.04 Bid security of other Bidders that Buyer believes do not have a reasonable chance of receiving the award will be released within 7 days after the Bid opening.

ARTICLE 7—PROCUREMENT CONTRACT TIMES

- 7.01 See applicable provisions in the Procurement Agreement.

ARTICLE 8—LIQUIDATED DAMAGES

- 8.01 Any provisions for liquidated damages, such as those for Seller's failure to attain a specified Milestone such as the delivery of the Goods, are set forth in the Procurement Agreement.

ARTICLE 9—RESERVED

ARTICLE 10—“OR-EQUAL” ITEMS

10.01 The Procurement Contract, if awarded, will be based on material and equipment specified in the Procurement Bidding Documents without consideration of possible “or-equal” items. Whenever it is specified or described in the Procurement Bidding Documents that an “or-equal” item of material or equipment may be furnished or used by Seller if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Procurement Contract. The procedure for submittal of any such application by Seller and consideration by Engineer is set forth in the General Conditions and may be supplemented in the Procurement Specifications.

ARTICLE 11—PREPARATION OF BID

- 11.01 The Bid Form included with the Procurement Bidding Documents is for reference only. Additional copies of Procurement Bidding Documents may be obtained from the Issuing Office.
- 11.02 Bidder must complete the vBid Bid Worksheet located in the vBid Project Qualification Information tab for the Project being bid. All prices must fully cover all items for which bids are herein asked. Any Bid submitted on items not included in the bid form shall be grounds for rejection of the entire Bid. Bidders shall submit their Bids online via the Quest CDN vBid system as described in the advertisement. Paper Bids will not be considered or accepted.
- 11.03 Addenda will be acknowledged when Bidder properly downloads the Addenda posted to the vBid Project Qualification Information tab. All Bids submitted prior to the issuance of addenda will be unsubmitted, and an email notification will be sent to the Bidder advising that the previously submitted Bid has been removed and is no longer valid. No Bid will be considered unless Bidder re-submits the bid after downloading the addenda.
- 11.04 Bidder must upload an equipment quote sheet to the QuestCDN vBid system. The equipment quote sheet shall include equipment models, type, make, accessories, and features used in the formulation of the Bid. Failure to meet or exceed a minimum requirement listed in the equipment specification must be fully documented on an attached page to the equipment quote sheet. Failure to note exceptions to the bid requirements on the equipment quote sheet and describe exceptions in detail may cause rejection of a Bid. The Buyer shall solely determine if any exception to a bid requirement is acceptable, and this determination will be final.
- 11.05 Bidder shall:
- A. Sign the Bid Form as indicated in the Bid Form and upload to the QuestCDN vBid system.
 - B. Include evidence of authority to sign.
 - C. Provide information on the individual to be contacted for any communications regarding the Bid.
 - D. Provide evidence of the Bidder’s authority and qualification to do business in the locality of the Project, to the extent required, or indicate the ability to obtain such authority and qualification prior to award of the Procurement Contract.
- 11.06 The responsibilities of each Bidder submitting a Bid are described in the Bidder’s representations and certifications set forth in Article 6 of the Bid Form.

- 11.07 It is the responsibility of the Bidder to confirm all of the correct documents have been uploaded to the QuestCDN vBid system. No bid may be read or considered if it does not fully comply with these requirements. vBids that do not comply will be marked as rejected, and the Bidder will receive notification by email the vBid was rejected.

ARTICLE 12—BASIS OF BID; COMPARISON OF BIDS

12.01 *Base Bid with Alternates*

- A. The “Base Bid” is the sum stated in the Bid for which the Bidder offers to furnish the Goods and Special Services described in the Procurement Bidding Documents as the base, to which work may be added for sums stated in Alternate Bids. An “Alternate Bid” (or Alternate) is an amount stated in the Bid to be added to the amount of the Base Bid if the corresponding change in the Goods and Special Services, as described in the Procurement Bidding Documents, is accepted.
- B. As set forth in the Bid Form, Bidder shall enter an amount for the Lump Sum Base Bid, and enter a separate amount for each Alternate Bid described in the Procurement Bidding Documents.
- C. The apparent low Bid will be determined on the basis of the total amount of the Base Bid, plus (in the order listed on the Bid Form) the Alternate Bids providing the most features within the funds determined by the Buyer to be available. If the addition of another Alternate Bid item listed in the Bid Form would make the total amount exceed the available funds, it will be skipped and the next subsequent Alternate Bid in a lower amount will be added, provided the total amount does not exceed the available funds.
- D. Award will be made to the responsible Bidder that provides the lowest Bid amount for any combination of Base Bid plus selected additive Alternate Bids which Buyer determines provides the most beneficial combination of alternatives within the funds available. Only one (1) contract shall be awarded.

ARTICLE 13—SUBMITTAL OF BID

- 13.01 Bidder shall refer to the advertisement and Article 11 for specific identification of the date, time, and place where Bids are to be submitted.
- 13.02 A Bid must be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid. Bids must be accompanied by the Bid security and other required documents. Paper Bids will not be accepted. Only Bids submitted through the online QuestCDN vBid system will be accepted. It is recommended that Bids be submitted a minimum of two hours prior to the deadline to allow time to resolve any issues.

ARTICLE 14—MODIFICATION OR WITHDRAWAL OF BID

- 14.01 An unopened Bid submitted to the QuestCDN vBid system may be withdrawn by the Bidder at any time prior to the date and time for the opening of Bids.
- 14.02 If a Bidder wishes to modify its Bid prior to the opening of Bids, Bidder must withdraw its initial Bid and submit a new Bid prior to the date and time for the opening of Bids.

- 14.03 If, within 24 hours after Bids are opened, any Bidder files a duly signed written notice with Buyer and promptly thereafter demonstrates to the reasonable satisfaction of Buyer that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned.

ARTICLE 15—OPENING OF BIDS

- 15.01 Bids will be publicly opened at the time and place indicated in the advertisement or invitation to bid and read aloud, unless obviously non-responsive. An abstract of the amounts of the Base Bids and Alternate Bids, if any, will be made available to Bidders after Bids have been opened and reviewed by the Buyer.

ARTICLE 16—BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 16.01 All Bids will remain subject to acceptance for the period stated in the Bid Form, but Buyer may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 17—EVALUATION OF BIDS AND AWARD OF PROCUREMENT CONTRACT

- 17.01 Buyer reserves the right to reject any and all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Buyer also reserves the right to waive all informalities not involving price, time, or changes in the Goods and Special Services.
- 17.02 Buyer will reject the Bid of any Bidder that Buyer finds, after reasonable inquiry and evaluation, to not be responsible.
- 17.03 In evaluating Bids, Buyer will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data as may be requested in the Bid Form or may be requested from Bidders prior to a Notice of Award.
- 17.04 If Buyer awards the Procurement Contract, such award will be to the responsible Bidder submitting the lowest responsive Bid.

ARTICLE 18—BONDS AND INSURANCE

- 18.01 Article 5 of the General Conditions and Article 5 of the Supplementary Conditions set forth Buyer's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the signed Procurement Agreement to Buyer, it must be accompanied by such bonds and acceptable evidence of insurance.

ARTICLE 19—SIGNING OF PROCUREMENT AGREEMENT

- 19.01 When Buyer issues a Notice of Award to the Successful Bidder, it will be accompanied by the unsigned counterparts of the Procurement Agreement along with the other Procurement Contract Documents identified in the Procurement Agreement. Within 10 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Procurement Agreement and any bonds and insurance documentation required to be delivered by the Procurement Contract Documents to Buyer. Within 15 days thereafter, Buyer will deliver one fully executed counterpart of the Procurement Agreement to Successful Bidder, together

with printed and electronic copies of the Procurement Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 20—SALES AND USE TAXES

20.01 The Bid shall include all applicable State and Municipal Sales and Use Taxes on materials, State and Municipal Excise Taxes, and all other State and Federal Taxes that would affect the amount of the Bid.

ARTICLE 21—FEDERAL CONTRACT PROVISIONS (ADDED)

21.01 A full list of Federal Provisions by which the Bidder must comply, are incorporated by reference and contained within the specifications. Federal Contract Provisions are also available at http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/.

ARTICLE 22—BUY AMERICAN / BUY AMERICA, BUILD AMERICA (ADDED)

22.01 Makes and models of equipment, parts, supplies, materials, etc. indicated on the specifications and Procurement Contract Documents are to solely indicate performance requirements and not all have been investigated to meet the Buy American / BABA requirements. It is the Bidder's responsibility to meet Buy American / BABA requirements as indicated in the specifications and Procurement Contract Documents.

ARTICLE 23—DBE SMALL BUSINESS ELEMENT (ADDED)

23.01 The Engineer shall review each prime contract and subcontract to see if they are considered a Small Business as defined by the Small Business Administration. The Bidder and all subcontractors shall provide the following within five (5) business days after the opening of Bids and prior to award of the contract:

- A. A notarized affidavit that the company has generated less than \$31.84 million in average annual gross receipts over the last 5 years.
- B. A Personal Net Worth Statement from the owner of the business.
 - 1. <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/new-dbe-personal-net-worth-statement>

BID FORM FOR PROCUREMENT CONTRACT

The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 1—BUYER AND BIDDER

- 1.01 This Bid is submitted to:
Kindred-Davenport Regional Airport Authority
- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Procurement Contract with Buyer in the form included in the Procurement Bidding Documents, and to furnish the Goods and Special Services as specified or indicated in the Procurement Bidding Documents, for the prices and within the times indicated in this Bid, and in accordance with the other terms and conditions of the Procurement Bidding Documents.

ARTICLE 2—BASIS OF BID

- 2.01 *Lump Sum Bids*
- A. Bidder will furnish the Goods and Special Services in accordance with the Procurement Contract Documents for the following Procurement Contract Price(s):
1. Lump Sum Bid Price (Base Bid and Alternates)

Base Bid – Articulating Loader with Quick Attach System and Loader Bucket	\$
Alternate A Add – Snow Pusher	\$
Alternate B Add – Power Snowplow	\$
Alternate C Add – Power Broom	\$
Alternate D Add – Snow Blower (Self-Powered)	\$

ARTICLE 3—TIME OF COMPLETION

- 3.01 Bidder agrees that the furnishing of Goods and Special Services will conform to the schedule of Procurement Contract Times set forth in Article 2 of the Procurement Agreement.
- 3.02 Bidder accepts the provisions of the Procurement Agreement as to liquidated damages.

ARTICLE 4—ATTACHMENTS TO THIS BID

- 4.01 The following documents shall be submitted via upload to the Quest CDN vBid system and made a condition of this Bid:
- A. Required Bid security in the form prescribed in the Instructions to Bidders.
 - B. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such authority within the time for acceptance of Bids.

- C. Certification of Seller Regarding Tax Delinquency and Felony Convictions (as per Paragraph 6.06)
 - D. Equipment Quote Sheet
 - E. DBE Form A - Disadvantaged Business Enterprise Participation*
 - F. DBE Form B - List of Businesses that Submitted Quotes*
 - G. Certificate of Buy American Compliance for Manufactured Products
 - H. Bid Worksheet
- 4.02 The following documents shall be submitted to the Engineer within five (5) calendar days following the Bid opening:
- A. DBE Form C - Notification of Intent to Use*
 - B. DBE Utilization Statement*
 - C. Contractor Good Faith Efforts Documentation*
 - D. Small Business Documentation (as per Instructions to Bidders Article 23)
 1. A notarized affidavit that the Contractor and each Subcontractor has generated less than \$31.84 million in average annual gross receipts over the last 5 years.
 2. A Personal Net Worth Statement from the owner of the business (<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/new-dbe-personal-net-worth-statement>)
- *Submit forms with as much information as possible if no DBE participation is obtained because of no registered DBE's at the time of bidding. Fill in non-DBE subcontractors where appropriate on the forms.*
- 4.03 If the apparent low bidder cannot meet 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 or Type 4 waiver under 49 USC § 50101(b), the apparent low bidder shall provide a formal waiver request and required documentation that supports the type of waiver being requested within 15 calendar days after the Bid opening directly to the FAA. The apparent low bidder shall work with the Engineer on whom to submit the documentation to at the FAA and notify the Engineer when this documentation is submitted, but not copy them on the actual submittal. The documentation is available on the FAA website at https://www.faa.gov/airports/aip/buy_american/ and may include the following:
- A. Buy American Product Content Percentage Worksheet (Form 5100-136)
 - B. Buy American Final Assembly Questionnaire (Form 5100-137)

ARTICLE 5—BIDDER'S ACKNOWLEDGMENTS

- 5.01 Bidder accepts all terms and conditions of the Instructions to Bidders. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period that Bidder may agree to in writing upon request of Buyer.
- 5.02 Bidder has examined and carefully studied the Procurement Bidding Documents, the related data identified in the Procurement Bidding Documents, and the Addenda, receipt of which is to be acknowledged in the Quest CDN vBid system at the time of submitting the Bid.

ARTICLE 6—BIDDER’S REPRESENTATIONS AND CERTIFICATIONS

6.01 *Bidder’s Representations*

- A. In submitting this Bid, Bidder represents that:
1. Bidder has examined and carefully studied the Procurement Contract Documents.
 2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed or Special Services will be provided, or if, in Bidder’s judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods and Special Services, then Bidder has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided (as applicable) and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, progress, and furnishing of the Goods and Special Services.
 3. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under the Procurement Contract.
 4. Bidder has carefully studied, considered, and correlated the information known to Bidder with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
 5. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Procurement Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Bidder.
 6. The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Contract.
 7. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of the Bidding Requirements, that without exception the Bid (including all Bid prices) is premised upon furnishing the Goods and Special Services as required by the Procurement Contract Documents.

6.02 *Bidder’s Certifications*

- A. Bidder certifies that:
1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
 2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
 3. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
 4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Procurement Contract. For the purposes of this Paragraph 6.02.A.4:
 - a. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;

- b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Buyer, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
 - c. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process.
5. Bidder, or its principals, are presently debarred or suspended by any Federal department or agency from participation in this transaction.

6.03 *DBE Goal*

- A. The Disadvantaged Business Enterprise (DBE) goal for this project is 0.00%. DBE participation percentage for bidding purposes will be based on total bid prices for all Schedules and Divisions, and all possible alternates that may be awarded.
- B. The Bidder is encouraged to provide all subcontractors with a published date and time that subcontractor quotes and supporting documentation are due to the Bidder so that they can be reviewed and incorporated into the submitted Bid.

6.04 Note the Buy American Waiver List and the Buy American Conformance List are the same item. The FAA uses these terms interchangeably.

6.05 A full list of Federal Provisions by which the Bidder must comply, are incorporated by reference and contained within the specifications. Federal Contract Provisions are also available at http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/

6.06 Certification of Seller Regarding Tax Delinquency and Felony Convictions

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

This Bid is offered by:

Bidder:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If Bidder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

Classification:

Limitation:

SECTION 2

List DBE firms not used because the bidder will self-perform or procure specific bid item numbers.

DBE firms not used - bidder self-performing	Bid item numbers or products to be supplied by the bidder
1.	
2.	
3.	
4.	
5.	

SECTION 3

List DBE firms not used due to bid differential and indicate which firm will be performing the work instead.

DBE firms not used – bid differential	Firms to be used instead of DBE
1.	
2.	
3.	
4.	
5.	

DBE Form B

List of Businesses That Submitted Quotes

Submit a completed copy of this form with the bid.

Owner Kindred-Davenport Regional Airport Authority	
Project Name Procure Snow Removal Equipment	
Contractor	Phone
FAA Grant No. AIP #3-38-0068-025-2026 & IJA/AIG #3-38-0068-026-2026	Bid Opening Date

Prime Bidder Name of Business	Contact Person	Telephone Number
Mailing or Email Address		Type of Work
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No	Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAICS Code(s) for work quoted (https://www.census.gov/naics/)		
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Sex of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

List all firms that submitted quotes from all tiers of subcontracting.

Copies of all DBE and non-DBE quotes must be retained for 60 days after the bid opening date, or until the project is awarded, and be provided upon request of the Engineer.

Name of Business	Contact Person	Telephone Number
Mailing or Email Address		Type of Work
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No	Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAICS Code(s) for work quoted (https://www.census.gov/naics/)		
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Sex of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

Name of Business		Contact Person	Telephone Number
Mailing or Email Address		Type of Work	
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No		Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAICS Code(s) for work quoted (https://www.census.gov/naics/)			
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Sex of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million	

Name of Business		Contact Person	Telephone Number
Mailing or Email Address		Type of Work	
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No		Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAICS Code(s) for work quoted (https://www.census.gov/naics/)			
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Sex of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million	

Name of Business		Contact Person	Telephone Number
Mailing or Email Address		Type of Work	
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No		Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAICS Code(s) for work quoted (https://www.census.gov/naics/)			
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Sex of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million	

Name of Business		Contact Person	Telephone Number
Mailing or Email Address		Type of Work	
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No		Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAICS Code(s) for work quoted (https://www.census.gov/naics/)			
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Sex of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million	

Name of Business		Contact Person	Telephone Number
Mailing or Email Address		Type of Work	
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No		Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAICS Code(s) for work quoted (https://www.census.gov/naics/)			
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Sex of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million	

Name of Business		Contact Person	Telephone Number
Mailing or Email Address		Type of Work	
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No		Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAICS Code(s) for work quoted (https://www.census.gov/naics/)			
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Sex of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million	

Use additional pages, following the same format, if necessary.

DBE Form C
Notification of Intent to Use

All bidders shall submit to this completed form to KLJ within five (5) business days after the bid opening.

Email: aviation.admin@kljeng.com

Fax: 855-288-8055

1. **ALL** bidders shall submit an individual Form C for each DBE and non-DBE to be used on the project.
2. The Contractor and DBE or non-DBE shall both sign the form. Faxed, scanned, or photocopied signatures are acceptable. Form C applies to all tiers of subcontractors for DBE achievement credit to be given.
3. If Form C contains additional pages or attachments, both parties must sign each page or attachment.
4. Explain any difference between the information on Form A and Form C in the comments section below.
5. **This form is required for both DBE and Non-DBE subcontractors and suppliers.**

This form is not a contract and does not take the place of any contract. This form indicates that all DBEs listed on Form A will be used on the project.

FAA Grant Number	AIP #3-38-0068-025-2026 & IJJA/AIG #3-38-0068-026-2026
Bid Opening Date	

Prime Contractor Name	
Prime Contractor Address	
Prime Contractor Phone	
Prime Contractor Email	
Prime Contractor Authorized Representative Name & Title	

Intended Subcontractor Name	
Intended Subcontractor Address	
Intended Subcontractor Phone	
Intended Subcontractor Email	
Intended DBE / Non-DBE Status	<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE
Intended Subcontractor Authorized Representative Name & Title	

Bid Item #	NAICS Code	Work Description <i>(For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55)</i>	(DBE) % of work to be done with own forces	Type of Work **	Approx. Quantity	Unit Costs	Amount
				<input type="checkbox"/> Contractor <input type="checkbox"/> Trucking **DBE SUPPLIERS <input type="checkbox"/> Manufacturer <input type="checkbox"/> Regular Dealer / Supplier <input type="checkbox"/> Distributor <input type="checkbox"/> Broker			
				<input type="checkbox"/> Contractor <input type="checkbox"/> Trucking **DBE SUPPLIERS <input type="checkbox"/> Manufacturer <input type="checkbox"/> Regular Dealer / Supplier <input type="checkbox"/> Distributor <input type="checkbox"/> Broker			
				<input type="checkbox"/> Contractor <input type="checkbox"/> Trucking **DBE SUPPLIERS <input type="checkbox"/> Manufacturer <input type="checkbox"/> Regular Dealer / Supplier <input type="checkbox"/> Distributor <input type="checkbox"/> Broker			

Bid Item #	NAICS Code	Work Description <i>(For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55)</i>	(DBE) % of work to be done with own forces	Type of Work **	Approx. Quantity	Unit Costs	Amount
				<input type="checkbox"/> Contractor <input type="checkbox"/> Trucking **DBE SUPPLIERS <input type="checkbox"/> Manufacturer <input type="checkbox"/> Regular Dealer / Supplier <input type="checkbox"/> Distributor <input type="checkbox"/> Broker			
				<input type="checkbox"/> Contractor <input type="checkbox"/> Trucking **DBE SUPPLIERS <input type="checkbox"/> Manufacturer <input type="checkbox"/> Regular Dealer / Supplier <input type="checkbox"/> Distributor <input type="checkbox"/> Broker			
Total							

**For DBE Suppliers only, state how the DBE will perform using one of the 4 available check boxes for DBE SUPPLIERS. Additional information on the definitions is available on DBE Supplier Definitions document in the Project Manual.

**For dealer/distributor/broker, OMB Control #2105-0586 – DBE Regular Dealer / Distributor Affirmation Form must be included. This form is included in the Project Manual.

Are there any agreements not addressed in your quote? Yes No

If yes, explain:

For 1:1 DBE Trucking Participation

Non DBE Company Name	
Number of Trucks Provided	

Total Number of Trucks to Work on Project

DBE Owned / Operated Trucks		Non-DBE Match Trucks		Non-DBE <u>Non</u> -Match Trucks	
Number of Trucks	Total Dollar Amount	Number of Trucks	Total Dollar Amount	Number of Trucks	Total Dollar Amount

Any changes to this 1:1 DBE Trucking Commitment must be reported to the Engineer. (See DBE Trucking Companies document in the Project Manual.)

Total Number of Trucks		Total Dollar Amount	
------------------------	--	---------------------	--

Comments: Use the space below to explain any differences between the amounts, units, work descriptions, spec items, quantities and totals between those indicated on Form A as submitted with the bid and this Form C.

- Women Owned Business
- Men Owned Business

	Total DBE Award Amount by Ethnicity		
	Female	Male	Total
Black American			
Hispanic American			
Native American			
Asian-Pacific American			
Subcontinent Asian American			
Non-Minority			
Total			

The undersigned bidder/offeror is committed to utilizing the above-named DBE / Non-DBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE / Non-DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form, it may not substitute or terminate the DBE / Non-DBE listed above without following the procedures of 49 CFR Part 26, §26.53 and the DBE Replacement Good Faith Efforts.

Prime Contractor / Subcontractor Signature	Title	Date
--	-------	------

The undersigned DBE / Non-DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above. A firm designated as a DBE firm affirms that it is properly certified to be counted for DBE participation therefore.

Intended DBE / Non-DBE Signature	Title	Date
----------------------------------	-------	------

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

North American Industry Classification System (NAICS) code information can be found at <https://www.naics.com/search/>.

DBE Utilization Statement

All bidders shall submit to KLJ five (5) business days after bid opening.

Email: aviation.admin@kljeng.com

Fax: 855-288-8055

The undersigned bidder/offeror has satisfied the requirements of the bid specifications in the following manner. *(Mark the appropriate box.)*

- Bidder/offeror has met the DBE contract goal
The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

- Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts (GFE).

The undersigned hereby further assures that the information included herein is true and correct and that the DBE firm or firms identified within the submitted Letter of Intent forms have agreed to perform a commercially useful function for the indicated work elements.

The undersigned further understand that no changes to this statement may be made without prior approval from the Owner and the Federal Aviation Administration.

Bidder's/Offerors Firm Legal Name

State Registration Number

Representative Name & Title

Representative Signature

Date

DBE UTILIZATION SUMMARY

	Contract Amount		DBE Amount	Contract %
DBE Prime Contractor	\$ _____	x 1.00 =	\$ _____	%
DBE Subcontractor	\$ _____	x 1.00 =	\$ _____	%
Trucking	\$ _____	x 1.00 =	\$ _____	%
DBE Supplier				
Regular Dealer / Supplier	\$ _____	x 0.60 =	\$ _____	%
Broker	\$ _____	x 0.00 =	\$ _____	%
Distributor	\$ _____	x 0.40 =	\$ _____	%
Manufacturer	\$ _____	x 1.00 =	\$ _____	%
Total Amount DBE			\$ _____	%
DBE Goal			\$ _____	%

* If the total proposed DBE participation is less than the established DBE goal, Bidder must provide written documentation of the good faith efforts as required by 49 CFR Part 26. DBE participation percentage for bidding purposes will be based on total bid prices for all Schedules and Division, and all possible alternates that may be awarded.

DBE Regular Dealer/Distributor Affirmation Form



U.S. Department of
Transportation

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? YES NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?
 YES NO (If "YES," Go to Question 2. If "NO" Continue.)
- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?
 YES NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

YES NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)?

YES² NO³

- a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased ?

YES² NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased **may** be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

DBE Suppliers Definitions

Regular Dealer / Supplier (60%)

- Receives 60% DBE credit for the cost of the materials or supplies, including transportation costs.
- Owns (or leases) and operates a store, warehouse, or other establishment in which the contracted materials are routinely sold to the general public outside of a particular contract.
- Maintains sufficient on-hand quantities; at least 51% of the items under a purchase order must be provided from the DBE's inventory.
- Suppliers of "bulk items" (petroleum products, steel, concrete and concrete products, gravel, stone, or asphalt) are not required to maintain a store or warehouse if the firm owns and operates the equipment used to pick up and deliver the products.

Broker (0%)

- Materials or supplies purchased from a DBE that do not meet the requirements of a regular dealer/supplier or a distributor will not be counted as a percentage.
- Only the fees or commissions charged (including transportation charges for the delivery of materials or supplies) may be counted. No portion of the cost of the materials and supplies will be counted.

Distributor (40%)

- Receives 40% DBE credit for the cost of the materials or supplies, including transportation costs. Drop-shipping items is acceptable if the following regulatory requirements are met:
 - DBE engages in the regular sale or lease of the items specified by the contract.
 - DBE assumes complete responsibility and liability for the items once they depart the point of origin, evidenced by documentation transferring liability to the distributor.

Manufacturer (100%)

- Manufacturer credit is appropriate when the DBE maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Alterations or customization of a "stock" product would be eligible for manufacturer credit. DBE credit is awarded at 100% for this type of work. Delivery type is not relevant in this type of credit.
- When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

DBE Trucking Companies

The Owner counts DBE trucking on a one-for-one basis. This means that the total number of DBE trucks or trucks operated by DBE employees (even if the truck is leased from a non-DBE firm) will be matched with the total number of non-DBE trucks and awarded credit for the total value of those transportation services.

Conditions that must be met to validate work:

1. The firm must own and operate at least one fully licensed, insured, and operational truck on the contract.
2. The firm may supplement its fleet by leasing trucks from a reputable dealer as long as there is a signed lease agreement, and the truck displays the name and identification number of the DBE firm.
3. The firm is responsible for management and supervision of the entire trucking operation.

The 1:1 Trucking Ratio is a powerful tool that trucking firms can take advantage of to maximize their DBE participation

Further obligations for participation to be counted:

1. A legitimate subcontract must be in place between the DBE and non-DBE trucking firms. DBEs must also have their trucks on the project at the same time as non-DBE trucks.
2. Non-DBE trucks must display signage identifying they are working with the DBE.
3. The DBE is required to report payments to the non-DBE trucking firm.
4. Additional reporting lines under the DBE on the contract may be necessary to report non-DBE non-match payments and/or brokerage fees for non-DBE non-match trucks if applicable.
5. Certified payroll requirements apply.
6. The DBE must document the non-DBE trucking firms intended for use on DBE Form C. They are also required to annotate the full contract value and total DBE participation on DBE Form C as well.

Remember, it is the responsibility of the DBE firm for management and supervision of the entire trucking operation. DBE firms should capitalize on the opportunity to incorporate the 1:1 Trucking Ratio into their operations but need to know the requirements to do so.

Example 1:

DBE Firm A owns one truck and subcontracts two additional trucks from DBE Firm B. Since all parties are DBE firms, 100% of the transportation services will be counted toward DBE participation.

Example 2:

DBE Firm A owns two trucks and subcontracts two additional trucks from non-DBE Firm B. Since the match is equal, 100% of the transportation services will be counted toward DBE participation.

Example 3:

DBE Firm A owns one truck and subcontracts three additional trucks from non-DBE Firm B. Given the 1:1 Trucking Ratio, only one of the B trucks will count toward the goal, meaning 50% of the transportation services will be counted toward DBE participation (two of four total trucks).

NOTE: No DBE participation will be given for the use of DBE trailers without DBE trucks and DBE employed drivers. A DBE trucking firm cannot count the materials they are hauling unless they are a legitimate DBE supplier or manufacturer of the materials.

Contractor Good Faith Efforts Documentation

All bidders shall submit to KLJ five (5) business days after bid opening.

Email: aviation.admin@kljeng.com

Fax: 855-288-8055

Submit this form and the required attachments to document the contractor's good faith efforts to meet the project goal. All supporting documentation and evidence of good faith efforts must be clearly labeled and submitted as specified in PART A through PART N.

PART A - PRIME CONTRACTOR INFORMATION

Prime Contractor			
Address	City	State	ZIP Code
Telephone Number	Email Address		
Contact Person	Title		

PART B - PROJECT DESCRIPTION

FAA Grant Number AIP #3-38-0068-025-2026 & IIJA/AIG #3-38-0068-026-2026
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PART C - CONTRACTOR PARTICIPATION ACHIEVEMENT DATA

Project DBE Goal Percent 0.00%	Total DBE PARTICIPATION DOLLARS required to meet DBE GOAL (Total prime Bid dollar amount X DBE % Goal) \$
Contractor's DBE Participation Percent	

DBE participation percentage for bidding purposes will be based on total bid prices for all Schedules and Division, and all possible alternates that may be awarded.

PART D - PROJECT SUMMARY AMOUNTS

1. Total Prime Bid	\$
2. Total Dollars Committed to DBE Contractor – include all tiers (From Part E sub-total)	\$
3. Total Dollars Committed to DBE Trucking – include all tiers (From Part F sub-total)	\$
4. Total Supplier Dollars Committed to DBE Regular Dealer / Supplier – include all tiers (From Part G sub-total)	\$
5. Total Supplier Dollars Committed to DBE Regular Dealer / Supplier – include all tiers (From Part G sub-total X 60%) {Calculation for DBE Goal}	\$
6. Total Supplier Dollars Committed to DBE Broker – include all tiers (From Part H sub-total)	\$
7. Total Supplier Dollars Committed to DBE Broker – include all tiers (From Part H sub-total X 0%) {Calculation for DBE Goal} (see DBE Suppliers Definition page in Project Manual)	\$
8. Total Supplier Dollars Committed to DBE Distributor – include all tiers (From Part I sub-total)	\$
9. Total Supplier Dollars Committed to DBE Distributor – include all tiers (From Part I sub-total X 40%) {Calculation for DBE Goal}	\$
10. Total Supplier Dollars Committed to DBE Manufacturer – include all tiers (From Part J sub-total)	\$
11. Total Supplier Dollars Committed to DBE Manufacturer – include all tiers (From Part J sub-total X 100%) {Calculation for DBE Goal}	\$
12. Total Dollars Committed to Non-DBEs (From Part K sub-total)	\$
13. Work NOT Performed by Prime Contractor (Add lines 2, 3, 4, 6, 8, and 10)	\$
14. Work to be Performed by Prime (Subtract line 1 from line 13)	\$
15. Percent of Work Performed by Prime (Divide line 14 by line 1) {FAA General Provision 80-01}	%
16. Total DBE Participation (Add lines 2, 3, 5, 7, 9, and 11)	\$

PART E - DBE CONTRACTOR COMMITMENTS Attach additional sheet if necessary.

DBE Contractors with a Completed Form C (to be used on the project)	Bid Items Quoted	Committed Dollars
Sub-Total Dollars Committed		\$

PART F - DBE TRUCKING COMMITMENTS Attach additional sheet if necessary.

DBE Trucking Contractors with a Completed Form C (to be used on the project)	Bid Items Quoted	Committed Dollars
Sub-Total Dollars Committed		\$

PART G - DBE REGULAR DEALER / SUPPLIER COMMITMENTS Attach additional sheet if necessary.

DBE Regular Dealer / Suppliers with a Completed Form C (to be used on the project)	Bid Items Quoted	Committed Dollars
Sub-Total Dollars Committed		\$

PART H - DBE BROKER COMMITMENTS Attach additional sheet if necessary.

DBE Brokers with a Completed Form C (to be used on the project)	Bid Items Quoted	Committed Dollars
Sub-Total Dollars Committed		\$

PART I - DBE DISTRIBUTOR COMMITMENTS Attach additional sheet if necessary.

DBE Distributors with a Completed Form C (to be used on the project)	Bid Items Quoted	Committed Dollars
Sub-Total Dollars Committed		\$

PART J - DBE MANUFACTURER COMMITMENTS Attach additional sheet if necessary.

DBE Manufacturers with a Completed Form C (to be used on the project)	Bid Items Quoted	Committed Dollars
Sub-Total Dollars Committed		\$

PART K – NON-DBE COMMITMENTS Attach additional sheet if necessary.

Non-DBE Commitments with a Completed Form C (to be used on the project)	Bid Items Quoted	Committed Dollars
Sub-Total Dollars Committed		\$

PART L - DBEs QUOTED BUT NOT SELECTED Attach additional sheet if necessary.

DBE Contractors who quoted but were not selected	Bid Items Quoted	Dollars	Reason Not Selected

PART M - REQUIRED ATTACHMENTS - SUPPORTING DOCUMENTS

Submit complete documentation to support Good Faith Efforts.

PART N - CERTIFICATION

Prime Contractor Signature	Title	Date Submitted
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Good Faith Efforts Supporting Documents

1. Use a cover letter to describe, in detail, all relevant issues which your firm wants the Owner to consider in determining whether to award. Yes/No answers do not address Good Faith Efforts (GFE) in the appropriate detail required by the Owner to determine a bidder's GFE. If the letter does not detail a bidder's actions (as described below), the Owner may determine that the bidder has not made sufficient efforts toward meeting the project goal.
2. Explain the efforts your firm made in attempting to meet the project DBE goal prior to the bid opening.
 - a. Which lower tier subcontractor(s) and what types of work did your firm ask to obtain DBE participation as a lower tier subcontractor? Describe the outcome of these efforts.
 - b. Which DBE firms and types of work to meet the project goal did your firm identify using the DBE Directory located at:
 - <https://dotnd.diversitycompliance.com/>
 - c. Which other areas of the project plans did your firm review to determine whether DBE participation was available on the project?
3. Provide a copy of any email, fax, or advertisement used to solicit DBE participation prior to the bid opening. Explain how your firm identified additional work that could be subcontracted to a DBE firm.
4. Provide written Bid Differential - Apples to Apples Comparisons- like items must be compared to like items.
 - a. If a **non-DBE was selected over a DBE**, provide the quotes compared, a detailed comparison between the specific bid items quoted by the non-DBE and the DBE, the specific reasons for your selection, and a Form C with each firm selected.
 - b. If the **prime contractor intends to self-perform the work quoted by a DBE**, provide a detailed comparison between the prime's costs for the specific bid items quoted by the DBE along with an explanation of the method of valuation of the prime's costs.
 - c. Bid Differentials are ONLY between non-DBE and DBE firms.
 - d. No bid differential analysis is needed to compare DBE firms' quotes.
 - e. Another format may be used provided all information requested is included.

f. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

<i>BID DIFFERENTIAL ANALYSIS EXAMPLE</i>					DBE XYZ Contracting	Non-DBE ABC Construction	Prime General Construction		
Bid Item	Description	Units	Quantity	Unit Price	DBE Quoted Price	Non-DBE Quoted Price	Self-Performed Price	Percentage Difference	Dollar Difference
1	REMOVAL OF CONCRETE	SY	838						
2	SAW CONCRETE	LF	54						
3	COMMON EXCAVATION-TYPE A	CY	107,262						
4	TOPSOIL-BORROW AREA	CY	31,269						
5	TOPSOIL	CY	83,126						
TOTALS									

Example 1.

Simple comparison between DBE and non-DBE Striping on bid item 101 - Identify difference in amount and percentage.

1 Bid Differential			
Item #		Amount Difference	Percentage Difference
DBE Quote - Striping	45,000.00	\$1,000 higher	2.27%
Non-DBE Quote - Striping	44,000.00		

Bid differential on pavement marking (item 101):

DBE Quote for Item # 101 was \$1,000 greater or 2.27% higher than the Non-DBE Quote. ATTACH the non-DBE Quote and the DBE Quote used in bid differential

Example 2.

DBE tied quote is compared to a combination of two non-DBE quotes to compare like items 99-103 - Identify difference in amount and percentage.

2 Bid Differential							
Item #							
	99	100	101	102	103	Total	Tied or Not-Tied
DBE Quote	500.00	500.00	500.00	600.00	500.00	2,600.00	Tied Quote
Non-DBE Quote #1		400.00	600.00	300.00		1,300.00	Tied Quote
Non-DBE Quote #2	600.00				400.00	1,000.00	Untied Quote

Bid differential on pavement marking (items 99-103):

DBE Quote for Items 99-103 were compared to Non-DBE Quote #1 and Non-DBE Quote #2 on like items.

DBE Quote was tied, Non-DBE Quote #1 was Tied, Non-DBE Quote #2 was untied. Total of DBE Quote was \$2,600; Total of Non-DBE Quotes was \$2,300. DBE Quote was \$300 and 11.54% higher than the combined Quotes

ATTACH the non-DBE Quotes and the DBE Quote used in bid differential

Example 3. – No Bid Differential

DBE tied quote on bid items 99-103 cannot be compared to non-DBE tied quote.

The non-DBE quote did not include items 99 and 103. The prime selected the non-DBE quote on items 100-102. There is NO bid differential to submit in this case.

3 No Bid Differential - - Explain in Good Faith Efforts Documentation Not Comparing Like Items							
	Item #						
	99	100	101	102	103	Total	Tied or Not-Tied
DBE Quote	500.00	500.00	500.00	600.00	500.00	2,600.00	Tied Quote
Non-DBE Quote		400.00	600.00	300.00		1,300.00	Tied Quote
<p>There is no Bid differential on pavement marking (items 99-103) because the DBE Quote was tied. Prime Contractor may call the DBE to discuss "Untying" the Quote. Identify who is performing the items quoted by DBEs if DBEs are not used so that all Bid Items Quoted by DBEs are addressed.</p> <p>DBE Quote for Items 99-103 cannot be compared to Non-DBE Quote on like items.</p>							

Administrative Reconsideration

Within seven (7) days of being informed by the Owner that it is not responsible because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to the Airport Authority or City Commission, as appropriate, based on the airport’s organizational structure. To receive an updated list of each airport’s contact information, the bidder/offeror may contact:

Adam Dillin
Airport Planner
PO Box 5020
Bismarck, ND 58502
701-328-9657
adillin@nd.gov

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

FAA Matchmaker System

The FAA has a DBE Matchmaker System that is available on-line and at no charge to assist contractors with posting DBE opportunities and finding qualified DBE’s who can perform the work. Contractors and DBE contractors are encouraged to utilize this system and provide documentation of its use as part of your Good Faith Efforts. The system is available on-line at [FAA Matchmaker System \(https://faa.dbesystem.com\)](https://faa.dbesystem.com).

Certification of Compliance with FAA Buy American Preference – Equipment / Building Projects

Project	Procure Snow Removal Equipment
Airport Name	Kindred-Robert Odegaard Field
FAA Grant Number	AIP #3-38-0068-025-2026 & IIJA/AIG #3-38-0068-026-2026

Title 49 USC § 50101

Executive Order 14005, Ensuring the Future is Made in All of America by All of America’s Workers

Infrastructure Investment and Jobs Act (IIJA) (P.L. No. 117-58), Build America, Buy America (BABA)

The Buy American Preference incorporates statutory requirements and policies outlined in the in 49 U.S.C. § 50101, Executive Order 14005, and BABA.

Section 50101 of 49 U.S.C. requires that all steel and manufactured goods used on AIP projects be produced in the United States. This section also gives the FAA the ability to issue a waiver to a Sponsor to use non-domestic material on an AIP funded project subject to meeting certain conditions. A Sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

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

Executive Order 14005 advances the Administration’s priority to use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The Order directs, to the extent appropriate and consistent with applicable law, agencies shall partner with the Hollings Manufacturing Extension Partnership (MEP) to conduct supplier scouting in order to identify American companies that are able to produce goods, products, and materials in the United States that meet Federal procurement needs, prior to consideration of using non-domestic products.

The Infrastructure Investment and Jobs Act (IIJA), Build America, Buy America (BABA) Act strengthens Made in America Laws and bolsters America’s industrial base, protects national security, and supports high-paying jobs. Under BABA, iron, steel and certain construction materials are required to be 100% produced in the United States.

Under the Infrastructure Investment and Jobs Act (IIJA) (P. L. No. 117-58), BABA three waivers are available for iron and steel, manufactured products, and construction materials when a Federal agency finds that –

- 1) Applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);
- 2) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- 3) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).

BABA defines construction materials, items that are or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber or drywall.

Items that consist of two or more of the aforementioned materials that have been combined through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

The Buy America Preference requirements flow down from the Sponsor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

Note: The Buy American Preference does not apply to temporary equipment a contractor uses as a tool of its trade, and which does not remain as part of the project.

Note: Section 768 of the FAA Reauthorization Act of 2024 (Public Law 118-63), which became effective on May 16, 2024, establishes specific requirements for the procurement of certain rolling stock using FAA grant funds. The provision prohibits airports from using Federal financial assistance to procure buses or rail car vehicles rolling stock from covered entities.

For additional information on Buy American Preference Requirements, including implementation of the Buy American Build American (BABA) Act, see the following webpage:
https://www.faa.gov/airports/aip/buy_american.

Required Documentation

FAA Buy American Waiver Requests. All applications (requests) for an FAA Buy American Preference Waiver includes, at minimum, a completed Content Percentage Worksheet and Final Assembly Questionnaire. Additional information may be requested from the applicant by the FAA. Airport Sponsors, consultants, construction contractors, or equipment manufacturers are responsible for completing and submitting waiver applications. The FAA is unable to make a determination on waiver requests with incomplete information. Sponsors must confirm with the bidder or offeror to assess the adequacy of the waiver request and associated information prior to forwarding a waiver request to the FAA for action. All FAA waivers forms are available from the FAA Buy American Requirements webpage.

Proprietary Confidentiality. Exemption 4 of the Freedom of Information Act protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential. Proprietary manufacturing and design information submitted to the Federal Aviation Administration for the purposes of receiving a Buy American Waiver shall not be disclosed outside the FAA. The FAA will provide a written notification to the Airport Sponsor, manufacturer(s), contractor(s) or supplier(s) when a waiver determination is complete.

Timing of Waiver Requests. The Sponsor must submit a Type 2, Type 3, or Type 4 waiver request prior to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary and extenuating circumstances exist.

The Buy American Notice of Determination (NOD) Process. The FAA Reauthorization Act of 2024 requires that all approved waivers must be posted to the FAA's website and remain posted for public comment for 10 days, before becoming effective. All FAA waivers must complete the NOD process. Sponsors are encouraged to wait until approved waivers become effective before executing AIP projects.

Buy American Conformance Lists. The FAA Office of Airports maintains listings of projects and products that have received a waiver from the Buy American Preference requirements for project specific and nationwide use. Each of these conformance lists is available online at www.faa.gov/airports/aip/buy_american/. Products listed on the FAA Nationwide Buy American Conformance list do not require additional submittal of domestic content information. Nationwide waivers expire five years from the date issued, unless revoked earlier by the FAA.

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

FAA BUY AMERICAN PREFERENCE

The Contractor certifies that its bid/offer is in compliance with 49 U.S.C. § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

The bidder or offeror must complete and submit the certification of compliance with FAA’s Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA’s Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

The bidder or offeror certifies procurement of certain rolling stock using FAA grant funds will prohibit airports from using Federal financial assistance to procure buses or rail car vehicle rolling stock from covered entities.

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 U.S.C. § 50101, and other Made in America Laws, U.S. statutes, guidance, and FAA policies 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 U.S.C. § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:

- a) Only installing steel and manufactured products produced in the United States;
- b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
- c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
- d) 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:

- a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.

- b) To faithfully comply with providing U.S. domestic product.
- c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
- d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

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

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

Required Documentation

Type 2 Waiver (Nonavailability) - The iron, steel, manufactured goods or construction materials are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire;
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials incl;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

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

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108 (products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- d) 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 (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials, would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire form
- b) At minimum two comparable equal bidders and/or offerors;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

False Statements: Per 49 U.S.C. § 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

AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT CONTRACT

This Procurement Agreement is by and between Kindred-Davenport Regional Airport Authority (“Buyer”) and _____ (“Seller”).

Terms used in this Procurement Agreement have the meanings stated in the General Conditions of the Procurement Contract and the Supplementary Conditions of the Procurement Contract.

Buyer and Seller hereby agree as follows:

ARTICLE 1—PROCUREMENT CONTRACT

1.01 *Goods and Special Services*

- A. Seller shall furnish the Goods and Special Services as specified or indicated in the Procurement Contract Documents. The Goods and Special Services are generally described as follows: Snow Removal Equipment including Articulating Wheel Loader with Snow Pusher, Power Snowplow, Power Broom, and Snowblower Attachments.

1.02 *The Project*

- A. The Project, of which the Goods and Special Services are a part, is generally described as follows: Procure Snow Removal Equipment.

1.03 *Engineer*

- A. Buyer has retained KLJ Engineering LLC ("Engineer"), to prepare Procurement Contract Documents and act as Buyer's representative. Engineer assumes all duties and responsibilities and has the rights and authority assigned to Engineer in the Procurement Contract Documents in connection with Seller's furnishing of Goods and Special Services.

1.04 *Point of Destination*

- A. The Point of Destination is designated as: Kindred-Robert Odegaard Field, 111 1st Ave N, Kindred, North Dakota 58051.

ARTICLE 2—PROCUREMENT CONTRACT TIMES

2.01 *Time of the Essence*

- A. All time limits for Milestones, including the submittal of Shop Drawings and Samples, the delivery of Goods, and the furnishing of Special Services as stated in the Procurement Contract Documents, are of the essence of the Procurement Contract.

2.02 *Schedule of Procurement Contract Times*

- A. The following schedule sets forth the Procurement Contract Times:

Milestone	Date or Days	Notes
Deliver acceptable Goods to Point of Destination	January 31, 2027	Delivery date based on issuing the Notice to Proceed prior to September 1, 2026.

Complete Special Services for Goods	Within 14 Days following delivery	
Readiness for Final Inspection and Acceptance of Goods and Special Services	Within 14 Days following delivery	

2.03 *Shop Drawings and Samples*

- A. *Submittal of Shop Drawings and Samples:* Seller shall submit all Shop Drawings and Samples required by the Procurement Contract Documents to Engineer for its review and approval.
- B. *Engineer’s Review:* It is the intent of the parties that Engineer will conduct its review of Shop Drawings and Samples and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within 10 days after Seller’s submittal of such Shop Drawings and Samples, or within such longer period that is needed because of the quantity and quality of such submittals. Resubmittals will be limited whenever possible.

2.04 *Liquidated Damages*

- A. Buyer and Seller recognize that time is of the essence as stated in Paragraph 2.01, and that Buyer will suffer financial and other losses if the Goods are not delivered to the Point of Destination and ready for receipt of delivery by Buyer within the time specified in Paragraph 2.02, plus any extensions thereof allowed in accordance with this Procurement Contract. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller’s specific compliance with the delivery requirements of Paragraph 2.02. Further, the parties recognize the time, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the loss (whether direct, consequential, or otherwise) suffered by Buyer if complete, acceptable Goods are not delivered on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer \$250.00 for each day that expires after the time specified in Paragraph 2.02 for delivery of acceptable Goods.

ARTICLE 3—PROCUREMENT CONTRACT PRICE

3.01 *Procurement Contract Price and Total Price*

- A. The Procurement Contract Price is comprised of the Lump Sum and Unit Price amounts set forth in the following paragraphs.
- B. Buyer shall pay Seller a Lump Sum of \$_____ for furnishing the Goods and Special Services in accordance with the Procurement Contract Documents. Such Lump Sum amount accounts for the following Buyer-accepted alternates: _____.
- C. Seller, however, acknowledges that the Buyer is wholly dependent upon Federal Funding through the Federal Aviation Administration (FAA) to obtain adequate financing for the cost of said Project and therefore, the Seller agrees as follows:
 - 1. That no payment shall be made until FAA approval of funding is finalized to the Buyer and the Seller is notified thereof.

2. That any rejection or refusal by the FAA to provide all or any part of said funding to the Buyer shall cause this Procurement Agreement to become null and void at the sole discretion of the Buyer should alternate financing not be deemed reasonable or practicable.

ARTICLE 4—PAYMENT PROCEDURES

4.01 *Submittal and Processing of Applications for Payment*

- A. Seller shall submit Applications for Payment in accordance with Article 13 of the General Conditions and the following paragraphs. Engineer and Buyer will process such Applications for Payment in accordance with said Article 13.

4.02 *Progress Payments; Final Payment*

- A. Seller may submit an Application for Payment requesting the stated percentage of Procurement Contract Price upon attainment of each of the following Payment Line Items:

Payment Line Item (Lump Sum)	Percentage of Lump Sum
1. Delivery of Goods to Point of Destination in accordance with the Procurement Contract Documents	85
2. Completion of Special Services in accordance with Procurement Contract Documents	5
3. Final Payment: Correction of non-conformities, provision of final Operations and Maintenance manuals, submittal of warranties and other final documentation required by the Procurement Contract Documents	10
Total Procurement Contract Price (Lump Sum)	100

- B. For Unit Price Goods and Special Services, if any, or for payments owed to Seller as a result of authorizations by Buyer under the Buyer’s Contingency Allowance (if any), Seller shall submit a separate Application for Payment, no more frequently than monthly, that states (1) the actual quantities of such Unit Price Goods and Special Services that have been furnished, and the applicable unit prices; and (2) the services or items performed or furnished under the Buyer’s Contingency Allowance, and the amounts owed. If practical, and at Seller’s option, Seller may apply for such unit price and Buyer’s Contingency Allowance payments in a separate section of an Application for Payment submitted under Paragraph 4.02.A for lump sum items.
- C. Buyer shall pay Seller the amount owed under an Application for Payment within 30 days after Engineer’s presentation to Buyer of the Application for Payment and Engineer’s recommendation.

4.03 *Interest*

- A. All amounts not paid when due will bear interest as the rate of 0 percent per annum.

ARTICLE 5—ASSIGNMENT OF PROCUREMENT CONTRACT

- A. No assignment by a party hereto of any rights under or interests in the Procurement Contract will be binding on another party hereto without the written consent of the party sought to be bound. Specifically, but without limitation, Procurement Contract payments or other money that may become due, and Procurement Contract payments or other money that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Laws and Regulations). Unless specifically stated to the contrary in any written consent to such an assignment, such an assignment will not release or discharge the assignor from any duty or responsibility under the Procurement Contract Documents.

ARTICLE 6—PROCUREMENT CONTRACT DOCUMENTS

6.01 *List of Procurement Contract Documents*

- A. The Procurement Contract Documents consist of the following:
 - 1. This Procurement Agreement.
 - 2. Federal Contract Provisions.
 - 3. General Conditions of the Procurement Contract.
 - 4. Supplementary Conditions of the Procurement Contract.
 - 5. Procurement Specifications as listed in the Procurement Specifications table of contents.
 - 6. Addenda Numbers _____.
 - 7. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - 8. The following which may be delivered or issued on or after the Effective Date of the Procurement Contract and are not attached hereto:
 - a. Change Orders;
 - b. Change Directives; and
 - c. Field Orders.
- B. The documents listed in Paragraph 6.01.A are attached to this Procurement Agreement (except as expressly noted otherwise above).
- C. There are no Procurement Contract Documents other than those listed above.
- D. The Procurement Contract Documents may only be amended or supplemented as provided in Paragraph 11.01 of the Procurement General Conditions.

ARTICLE 7—SELLER’S REPRESENTATIONS AND CERTIFICATIONS

7.01 *Seller’s Representations*

- A. In order to induce Buyer to enter into this Procurement Agreement, Seller makes the following representations:
1. Seller has examined and carefully studied the Procurement Contract Documents.
 2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed or Special Services will be provided, or if, in Seller’s judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods and Special Services, then Seller has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided (as applicable) and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, progress, and furnishing of the Goods and Special Services.
 3. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under the Procurement Contract.
 4. Seller has carefully studied, considered, and correlated the information known to Seller with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
 5. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Procurement Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
 6. The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Contract.
 7. Seller’s entry into this Procurement Contract constitutes an incontrovertible representation by Seller that without exception all prices in the Procurement Agreement are premised upon furnishing the Goods and Special Services as required by the Procurement Contract Documents.

7.02 *Seller’s Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Procurement Contract. For the purposes of this Paragraph 7.02:
1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Procurement Contract execution;
 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Procurement Contract to the detriment of Buyer, (b) to establish bid or contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Procurement Contract.

ARTICLE 8—RESERVED

ARTICLE 9—MUTUAL WAIVER

9.01 *Mutual Waiver of Consequential Damages*

- A. Buyer and Seller waive against each other, and against the other’s officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Procurement Contract. If Buyer (Project Owner) assigns this Procurement Contract to a construction contractor (Contractor/Assignee), then the terms of this Paragraph 9.01.A will be binding upon the Contractor/Assignee with respect to Seller and assignor. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification, (b) liquidated damages, (c) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (d) intentional or reckless wrongful conduct, or (e) rights conferred by any bond provided by Seller under this Procurement Contract.

IN WITNESS WHEREOF, Buyer and Seller have signed this Procurement Agreement. Counterparts have been delivered to Buyer and Seller.

The Effective Date of the Procurement Contract is _____.

Buyer

Seller

Kindred-Davenport Regional Airport Authority
(typed or printed name of organization)

(typed or printed name of organization)

By: _____
(individual's signature)

By: _____
(individual's signature)

Date: _____
(date signed)

Date: _____
(date signed)

Name: Kelly Perhus
(typed or printed)

Name: _____
(typed or printed)

Title: Chairman
(typed or printed)

Title: _____
(typed or printed)

(If Seller is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address for giving notices:

Address for giving notices:

PO Box 83
Kindred, North Dakota 58051

Designated Representative:

Designated Representative:

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address: _____

Address: _____

Phone: _____

Phone: _____

Email: _____

Email: _____

(If Buyer is a corporation, attach evidence of authority to sign. If Buyer is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Federal Contract Provisions

Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors

- *Require the contractor (including all subcontractors) to insert these contract provisions in each lower tier contract (e.g., subcontract or sub-agreement).*
- *Require the contractor (including all subcontractors) to incorporate the requirements of these contract provisions by reference for work done under any purchase orders, rental agreements, and other agreements for supplies or services.*
- *Require that the prime contractor be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor, or service provider.*

A1 ACCESS TO RECORDS AND REPORTS

2 CFR § 200.334

2 CFR § 200.337

FAA Order 5100.38

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.

A2 BREACH OF CONTRACT TERMS

2 CFR Part 200, Appendix II(A)

Applicable to contracts exceeding \$350,000.

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.

A3 BUY AMERICAN PREFERENCE

Title 49 U.S.C. § 50101

Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers Infrastructure Investment and Jobs Act (IIJA) (P.L. No. 117-58), Build America, Buy America (BABA)

The Buy American Preference incorporates statutory requirements and policies outlined in the in 49 U.S.C. § 50101, Executive Order 14005, and BABA.

Section 50101 of 49 U.S.C. requires that all steel and manufactured goods used on AIP projects be produced in the United States. This section also gives the FAA the ability to issue a waiver to a Sponsor to use non-domestic material on an AIP funded project subject to meeting certain conditions. A Sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

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

Executive Order 14005 advances the Administration's priority to use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The Order directs, to the extent appropriate and consistent with applicable law, agencies shall partner with the Hollings Manufacturing Extension Partnership (MEP) to conduct supplier scouting in order to identify American companies that are able to produce goods, products, and materials in the United States that meet Federal procurement needs, prior to consideration of using non-domestic products.

The Infrastructure Investment and Jobs Act (IIJA), Build America, Buy America (BABA) Act strengthens Made in America Laws and bolsters America's industrial base, protects national security, and supports high-paying jobs. Under BABA, iron, steel and certain construction materials are required to be 100% produced in the United States.

Under the Infrastructure Investment and Jobs Act (IIJA) (P. L. No. 117-58), BABA three waivers are available for iron and steel, manufactured products, and construction materials when a Federal agency finds that –

- 1) Applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);
- 2) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- 3) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).

BABA defines construction materials, items that are or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber or drywall.

Items that consist of two or more of the aforementioned materials that have been combined through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

The Buy America Preference requirements flow down from the Sponsor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

Note: The Buy American Preference does not apply to temporary equipment a contractor uses as a tool of its trade, and which does not remain as part of the project.

Note: Section 768 of the FAA Reauthorization Act of 2024 (Public Law 118-63), which became effective on May 16, 2024, establishes specific requirements for the procurement of certain rolling stock using FAA grant funds. The provision prohibits airports from using Federal financial assistance to procure buses or rail car vehicles rolling stock from covered entities.

For additional information on Buy American Preference Requirements, including implementation of the Buy American Build America (BABA) Act, see the FAA website:

https://www.faa.gov/airports/aip/buy_american.

Required Documentation

The FAA Buy American Requests. All applications (requests) for an FAA Buy American Preference Waiver includes, at minimum, a completed Content Percentage Worksheet and Final Assembly Questionnaire. Additional information may be requested from the applicant by the FAA. Airport Sponsors, consultants, construction contractors, or equipment manufacturers are responsible for completing and submitting waiver applications. The FAA is unable to make a determination on waiver requests with incomplete information. Sponsors must confirm with the bidder or offeror to assess the

adequacy of the waiver request and associated information prior to forwarding a waiver request to the FAA for action. All FAA waivers forms are available from the FAA Buy American Requirements webpage.

Proprietary Confidentiality. Exemption 4 of the Freedom of Information Act protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential. Proprietary manufacturing and design information submitted to the Federal Aviation Administration for the purposes of receiving a Buy American Waiver shall not be disclosed outside the FAA. The FAA will provide a written notification to the Airport Sponsor, manufacturer(s), contractor(s) or supplier(s) when a waiver determination is complete.

Timing of Waiver Requests. The Sponsor must submit a Type 2, Type 3, or Type 4 waiver request *prior* to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary and extenuating circumstances exist.

The Buy American Notice of Determination (NOD) Process. The FAA Reauthorization Act of 2024 requires that all approved waivers must be posted to the FAA's website and remain posted for public comment for 10 days, before becoming effective. All FAA waivers must complete the NOD process. Sponsors are encouraged to wait until approved waivers become effective before executing AIP projects.

Buy American Conformance Lists. The FAA Office of Airports maintains listings of projects and products that have received a waiver from the Buy American Preference requirements for project specific and nationwide use. Each of these conformance lists is available online at www.faa.gov/airports/aip/buy_american/. Products listed on the FAA Nationwide Buy American Conformance list do not require additional submittal of domestic content information. Nationwide waivers expire five years from the date issued, unless revoked earlier by the FAA.

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

FAA BUY AMERICAN PREFERENCE

The Contractor certifies that its bid/offer is in compliance with 49 U.S.C. § 50101, BABA and other related Made in America Laws,¹ U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for

¹ Per Executive Order 14005 "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

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.

The bidder or offeror must complete and submit the certification of compliance with FAA's Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA's Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

The bidder or offeror certifies procurement of certain rolling stock using FAA grant funds will prohibit airports from using Federal financial assistance to procure buses or rail car vehicle rolling stock from covered entities.

Certificate of Compliance with FAA Buy American Preference – Construction Projects

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 U.S.C. § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, 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 U.S.C. § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing iron, steel and manufactured products produced in the United States;
 - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
 - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - d) 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:

- a) To provide to the Airport Sponsor or the FAA evidence that documents the source and origin of the iron, steel, and/or manufactured product.
 - b) To faithfully comply with providing U.S. domestic products.
 - c) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
 - d) Certify that all construction materials used in the project are manufactured in the U.S.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 U.S.C. § 50101(a) but may qualify for 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:
- a) To the submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
 - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.

- c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
- d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
- e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 2 Waiver (Nonavailability) - The iron, steel, manufactured goods or construction materials or manufactured goods are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

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

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- d) 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 (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) A completed Content Percentage Worksheet and Final Assembly Questionnaire form
- b) At minimum two comparable equal bids and/or offers;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

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 Compliance with FAA Buy American Preference – Equipment / Building 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 U.S.C. § 50101, and other Made in America Laws, U.S. statutes, guidance, and FAA policies 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 U.S.C. § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing steel and manufactured products produced in the United States;
 - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
 - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - d) 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:

- a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.
 - b) To faithfully comply with providing U.S. domestic product.
 - c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
 - d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 U.S.C. § 50101(a) but may qualify for a Type 3 waiver under 49 U.S.C. § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
 - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
 - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.

- d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 2 Waiver (Nonavailability) - The iron, steel, manufactured goods or construction materials are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

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

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108 (products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- d) 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 (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials, would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire form
- b) At minimum two comparable equal bidders and/or offerors;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

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

Date

Signature

Company Name

Title

A4 CIVIL RIGHTS - GENERAL

49 USC § 47123

GENERAL CIVIL RIGHTS PROVISIONS

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

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

A5 CIVIL RIGHTS – TITLE VI ASSURANCE

49 USC § 47123

FAA Order 1400.11

Title VI Solicitation Notice

As a condition of a grant award, the Sponsor shall demonstrate that it complies with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq) and implementing regulations (49 CFR part 21) including amendments thereto, the Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), U.S. Department of Transportation and Federal Aviation Administration (FAA) Assurances, and other relevant civil rights statutes, regulations, or authorities, including any amendments or updates thereto. This may include, as applicable, providing a current Title VI Program Plan to the FAA for approval, in the format and according to the timeline required by the FAA, and other information about the communities that will be benefited and impacted by the project. A completed FAA Title VI Pre-Grant Award Checklist is required for every grant application, unless excused by the FAA. The Sponsor shall affirmatively ensure that when carrying out any project supported by this grant that it complies with all federal nondiscrimination and civil rights laws based on race, color, national origin, sex, creed, age, disability, genetic information, in consideration for federal financial assistance. The Department's and FAA's Office of Civil Rights may provide resources and technical assistance to recipients to ensure full and sustainable compliance with Federal civil rights requirements. Failure to comply with civil rights requirements will be considered a violation of the agreement or contract and be subject to any enforcement action as authorized by law.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964) including amendments thereto;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (P.L. 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR Parts 37 and 38;
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681, *et seq.*).

Compliance with Nondiscrimination Requirements

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

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin), creed, sex, age, or disability in the selection and retention of subcontractors, including procurements of

materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21 including amendments thereto.

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

A6 CLEAN AIR AND WATER POLLUTION CONTROL

2 CFR Part 200, Appendix II(G)

42 USC § 7401, et seq

33 USC § 1251, et seq

Applicable to contracts exceeding \$150,000.

CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

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

A7 DEBARMENT AND SUSPENSION

2 CFR Part 180 (Subpart B)

2 CFR Part 200, Appendix II(H)

2 CFR Part 1200

DOT Order 4200.5

Executive Orders 12549 and 12689

Applicable to contracts exceeding \$25,000.

CERTIFICATION OF OFFEROR / BIDDER REGARDING DEBARMENT

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

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 confirm 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 Offeror /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.

A8 DISADVANTAGED BUSINESS ENTERPRISE

49 CFR Part 26

49 U.S.C. § 47113

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (49 CFR § 26.13)

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

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

Prompt Payment (49 CFR § 26.29)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Kindred-Davenport Regional Airport Authority. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Kindred-Davenport Regional Airport Authority. This clause applies to both DBE and non-DBE subcontractors.

Termination of DBE Subcontracts (49 CFR § 26.53(f))

The prime contractor must not terminate a DBE subcontractor listed in response to the Advertisement for Bids (or an approved substitute DBE firm) without prior written consent of Kindred-Davenport Regional Airport Authority. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent of Kindred-Davenport Regional

Airport Authority. Unless Kindred-Davenport Regional Airport Authority consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Kindred-Davenport Regional Airport Authority may provide such written consent only if Kindred-Davenport Regional Airport Authority agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR § 26.53.

Before transmitting to Kindred-Davenport Regional Airport Authority its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to Kindred-Davenport Regional Airport Authority, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise Kindred-Davenport Regional Airport Authority and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why Kindred-Davenport Regional Airport Authority should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), Kindred-Davenport Regional Airport Authority may provide a response period shorter than five days.

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

A9 DISTRACTED DRIVING

Executive Order 13513

DOT Order 3902.10

Applicable to contracts exceeding \$15,000.

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 \$15,000 that involve driving a motor vehicle in performance of work activities associated with the project.

A10 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

2 CFR § 200, Appendix II(K)

2 CFR § 200.216

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act P.L. 115-232, § 889(f)(1)).

A11 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

29 USC § 201, et seq

2 CFR § 200.430

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR Part 201, et seq, 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.

A12 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

31 USC § 1352 – Byrd Anti-Lobbying Amendment

2 CFR Part 200, Appendix II(I)

49 CFR Part 20, Appendix A

Applicable to contracts exceeding \$100,000.

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 31 U.S.C. § 1352. 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.

A13 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

29 CFR Part 1910

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. 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 (29 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.

A14 PROCUREMENT OF RECOVERED MATERIALS

2 CFR § 200.323

2 CFR Part 200, Appendix II(J)

40 CFR Part 247

42 USC § 6901, et seq (Resource Conservation and Recovery Act (RCRA))

Applicable to contracts exceeding \$10,000.

PROCUREMENT OF RECOVERED MATERIALS

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

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

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

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

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

A15 TAX DELINQUENCY AND FELONY CONVICTIONS

Section 8113 of the Consolidated Appropriations Act, 2022 (Public Law 117-103) and similar provisions in subsequent appropriations acts.

DOT Order 4200.6 – Appropriations Act Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

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 (ü) in

the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

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

A16 TERMINATION OF CONTRACT

2 CFR Part 200, Appendix II(B)

FAA Advisory Circular 150/5370-10, Section 80-09

Applicable to contracts exceeding \$10,000.

TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy

of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

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

Owner agrees to pay Contractor for:

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

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

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

TERMINATION FOR DEFAULT (EQUIPMENT)

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

1. Fails to begin the Work under the Contract within the time specified in the Notice-to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;

4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

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

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

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

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

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

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

A17 TRADE RESTRICTION CERTIFICATION

49 USC § 50104

49 CFR Part 30

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 § 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.

A18 VETERAN'S PREFERENCE

49 USC § 47112(c)

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 49 U.S.C. § 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

A19 DOMESTIC PREFERENCES FOR PROCUREMENTS

2 CFR § 200.322

2 CFR Part 200, Appendix II(L)

CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

A20 PROHIBITION OF COVERED UNMANNED AIRCRAFT SYSTEMS (UAS)

FAA Reauthorization Act of 2024 (Public Law 118-63), Section 936

49 U.S.C. § 44801 note

PROHIBITION OF COVERED UNMANNED AIRCRAFT SYSTEMS (UAS)

The Bidder or Offeror certifies that they are aware of and comply with relevant Federal statutes and regulations, including those from the Federal Aviation Administration (FAA), for operating unmanned aircraft systems (UAS) in accordance, and in compliance with all related requirements in the FAA Reauthorization Act of 2024 (Public Law 118-63), section 936 (49 U.S.C. § 44801 note).

Contractor warrants that all UAS operations will be conducted in full compliance with all applicable Federal Aviation Administration (FAA) regulations, including but not limited to 14 CFR Part 107, and any other applicable local, state, or Federal laws and regulations.

Sponsors and subgrant recipients cannot use AIP grant funds to enter into, extend, or renew a contract related to covered unmanned aircraft systems (UAS). This includes both procurement and operational contracts, as well as contracts with entities that operate such systems.

PERFORMANCE BOND FOR PROCUREMENT CONTRACT

<p>Seller</p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>	<p>Surety</p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>
<p>Buyer</p> <p>Name: Kindred-Davenport Regional Airport Authority</p> <p>Mailing address <i>(principal place of business)</i>: PO Box 83 Kindred, ND 58051</p>	<p>Procurement Contract</p> <p>Description <i>(name and location)</i>: Procure Snow Removal Equipment Kindred-Robert Odegaard Field</p> <p>Procurement Contract Price: _____</p> <p>Effective Date of Procurement Contract: _____</p>
<p>Bond</p> <p>Bond Amount: _____</p> <p>Date of Bond: _____ <i>(Date of Bond cannot be earlier than Effective Date of Procurement Contract)</i></p> <p>Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 15</p>	
<p>Surety and Seller, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.</p>	
<p>Seller as Principal</p>	<p>Surety</p>
<p style="text-align: center;"><i>(Full formal name of Seller)</i></p>	<p style="text-align: center;"><i>(Full formal name of Surety) (corporate seal)</i></p>
<p>By: _____ <i>(Signature)</i></p>	<p>By: _____ <i>(Signature)(Attach Power of Attorney)</i></p>
<p>Name: _____ <i>(Printed or typed)</i></p>	<p>Name: _____ <i>(Printed or typed)</i></p>
<p>Title: _____</p>	<p>Title: _____</p>
<p>Attest: _____ <i>(Signature)</i></p>	<p>Attest: _____ <i>(Signature)</i></p>
<p>Name: _____ <i>(Printed or typed)</i></p>	<p>Name: _____ <i>(Printed or typed)</i></p>
<p>Title: _____</p>	<p>Title: _____</p>
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Seller, Surety, Buyer, or other party is considered plural where applicable.</i></p>	

1. The Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Buyer for the performance of the Procurement Contract, which is incorporated herein by reference.
2. If the Seller performs the Procurement Contract, the Surety and the Seller shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Buyer Default under the Procurement Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Buyer first provides notice to the Seller and the Surety that the Buyer is considering declaring a Seller Default. Such notice may indicate whether the Buyer is requesting a conference among the Buyer, Seller, and Surety to discuss the Seller's performance. If the Buyer does not request a conference, the Surety may, within five (5) business days after receipt of the Buyer's notice, request such a conference. If the Surety timely requests a conference, the Buyer shall attend. Unless the Buyer agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Buyer's notice. If the Buyer, the Seller, and the Surety agree, the Seller shall be allowed a reasonable time to perform the Procurement Contract, but such an agreement does not waive the Buyer's right, if any, subsequently to declare a Seller Default;
 - 3.2. The Buyer declares a Seller Default, terminates the Procurement Contract, and notifies the Surety; and
 - 3.3. The Buyer has agreed to pay the Balance of the Procurement Contract Price in accordance with the terms of the Procurement Contract to the Surety or to a seller selected to perform the Procurement Contract.
4. Failure on the part of the Buyer to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Buyer has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Seller, with the consent of the Buyer, to perform and complete the Procurement Contract;
 - 5.2. Undertake to perform and complete the Procurement Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified sellers acceptable to the Buyer for a contract for performance and completion of the Procurement Contract, arrange for a contract to be prepared for execution by the Buyer and a seller selected with the Buyer's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Procurement Contract, and pay to the Buyer the amount of damages as described in Paragraph 7 in excess of the Balance of the Procurement Contract Price incurred by the Buyer as a result of the Seller Default; or
 - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new seller, and with reasonable promptness under the circumstances:
 - 5.4.1. After investigation, determine the amount for which Surety may be liable to the Buyer and, as soon as practicable after the amount is determined, make payment to the Buyer; or

5.4.2. Deny liability in whole or in part and notify the Buyer, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven (7) days after receipt of an additional written notice from the Buyer to the Surety demanding that the Surety perform its obligations under this Bond, and the Buyer shall be entitled to enforce any remedy available to the Buyer. If the Surety proceeds as provided in Paragraph 5.4, and the Buyer refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Buyer shall be entitled to enforce any remedy available to the Buyer.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Buyer will not be greater than those of the Seller under the Procurement Contract, and the responsibilities of the Buyer to the Surety will not be greater than those of the Buyer under the Procurement Contract. Subject to the commitment by the Buyer to pay the Balance of the Procurement Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Seller for correction of defective or non-conforming Goods and Special Services, and completion of the Procurement Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Seller's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Procurement Contract, actual damages caused by delayed performance or non-performance of the Seller.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Buyer or others for obligations of the Seller that are unrelated to the Procurement Contract, and the Balance of the Procurement Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Buyer or its heirs, executors, administrators, successors, and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Procurement Contract or to related subcontracts, purchase orders, and other obligations.
11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction where the Point of Destination is located and must be instituted within two years after a declaration of Seller Default, or within two years after the Seller ceased working, or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
12. Notice to the Surety, the Buyer, or the Seller must be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Point of Destination, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
14. Definitions
 - 14.1. *Balance of the Procurement Contract Price*—The total amount payable by the Buyer to the Seller under the Procurement Contract after all proper adjustments have been made including

allowance for the Seller for any amounts received or to be received by the Buyer in settlement of insurance or other claims for damages to which the Seller is entitled, reduced by all valid and proper payments made to or on behalf of the Seller under the Procurement Contract.

14.2. *Buyer Default*—Failure of the Buyer, which has not been remedied or waived, to pay the Seller as required under the Procurement Contract or to perform and complete or comply with the other material terms of the Procurement Contract.

14.3. *Goods and Special Services*—The full scope of materials, equipment, other items, and services to be furnished by Seller, as defined in the Procurement Contract.

14.4. *Point of Destination*—The location where delivery of the Goods shall be made, as stated in the Procurement Contract.

14.5. *Procurement Contract*—The contractual agreement between the Buyer and Seller identified on the cover page, including all Procurement Contract Documents and changes made to the Procurement Contract.

14.6. *Seller Default*—Failure of the Seller, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Procurement Contract.

14.7. *Procurement Contract Documents*—All the documents that comprise the contractual agreement between the Buyer and Seller.

15. Modifications to this Bond are as follows: None.

PAYMENT BOND FOR PROCUREMENT CONTRACT

<p>Seller</p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>	<p>Surety</p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>
<p>Buyer</p> <p>Name: Kindred-Davenport Regional Airport Authority</p> <p>Mailing address <i>(principal place of business)</i>: PO Box 83 Kindred, ND 58051</p>	<p>Procurement Contract</p> <p>Description <i>(name and location)</i>: Procure Snow Removal Equipment Kindred-Robert Odegaard Field</p> <p>Procurement Contract Price: _____</p> <p>Effective Date of Procurement Contract: _____</p>
<p>Bond</p> <p>Bond Amount: _____</p> <p>Date of Bond: _____</p> <p><i>(Date of Bond cannot be earlier than Effective Date of Procurement Contract)</i></p> <p>Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 17</p>	
<p>Surety and Seller, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.</p>	
<p>Seller as Principal</p>	<p>Surety</p>
<p>_____</p> <p><i>(Full formal name of Seller)</i></p>	<p>_____</p> <p><i>(Full formal name of Surety) (corporate seal)</i></p>
<p>By: _____</p> <p style="text-align: center;"><i>(Signature)</i></p>	<p>By: _____</p> <p style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></p>
<p>Name: _____</p> <p style="text-align: center;"><i>(Printed or typed)</i></p>	<p>Name: _____</p> <p style="text-align: center;"><i>(Printed or typed)</i></p>
<p>Title: _____</p>	<p>Title: _____</p>
<p>Attest: _____</p> <p style="text-align: center;"><i>(Signature)</i></p>	<p>Attest: _____</p> <p style="text-align: center;"><i>(Signature)</i></p>
<p>Name: _____</p> <p style="text-align: center;"><i>(Printed or typed)</i></p>	<p>Name: _____</p> <p style="text-align: center;"><i>(Printed or typed)</i></p>
<p>Title: _____</p>	<p>Title: _____</p>
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Seller, Surety, Buyer, or other party is considered plural where applicable.</i></p>	

1. The Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Buyer to pay for labor, materials, and equipment furnished for use in the performance of the Procurement Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Seller promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Buyer from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Procurement Contract, then the Surety and the Seller shall have no obligation under this Bond.
3. If there is no Buyer Default under the Procurement Contract, the Surety's obligation to the Buyer under this Bond will arise after the Buyer has promptly notified the Seller and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Buyer or the Buyer's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Procurement Contract, and tendered defense of such claims, demands, liens, or suits to the Seller and the Surety.
4. When the Buyer has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Buyer against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Seller
 - 5.1.1. have furnished a written notice of non-payment to the Seller, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Seller have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Buyer to the Seller, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Buyer, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Seller may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Buyer to the Seller under the Procurement Contract will be used for the performance of the Procurement Contract and to satisfy claims, if any, under any procurement performance bond. By the Seller furnishing and the Buyer accepting this Bond, they agree that all funds earned by the Seller in the performance of the Procurement Contract are dedicated to satisfying obligations of the Seller and Surety under this Bond, subject to the Buyer's priority to use the funds for the completion of the Goods and Special Services.
10. The Surety shall not be liable to the Buyer, Claimants, or others for obligations of the Seller that are unrelated to the Procurement Contract. The Buyer shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Procurement Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the Point of Destination is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Procurement Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Buyer, or the Seller must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement where the Point of Destination is located, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Seller and Buyer shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
 - 16.1. *Buyer Default*—Failure of the Buyer, which has not been remedied or waived, to pay the Seller as required under the Procurement Contract or to perform and complete or comply with the other material terms of the Procurement Contract.
 - 16.2. *Claim*—A written statement by the Claimant including at a minimum:
 - 16.2.1. The name of the Claimant;
 - 16.2.2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 16.2.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Procurement Contract;

- 16.2.4. A brief description of the labor, materials, or equipment furnished;
 - 16.2.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Procurement Contract;
 - 16.2.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.2.7. The total amount of previous payments received by the Claimant; and
 - 16.2.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.3. *Claimant*—An individual or entity having a direct contract with the Seller or with a subcontractor of the Seller to furnish labor, materials, or equipment for use in the performance of the Procurement Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Point of Destination is located or where the Goods and Special Services are to be installed or furnished. The intent of this Bond is to include without limitation in the terms of “labor, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Procurement Contract, architectural and engineering services required for performance of the work of the Seller and the Seller’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.4. *Goods and Special Services*—The full scope of materials, equipment, other items, and services to be furnished by Seller, as defined in the Procurement Contract.
- 16.5. *Point of Destination*—The location where delivery of the Goods shall be made, as stated in the Procurement Contract.
- 16.6. *Procurement Contract*—The contractual agreement between the Buyer and Seller identified on the cover page, including all Procurement Contract Documents and all changes made to the Procurement Contract.
- 16.7. *Procurement Contract Documents*—All the documents that comprise the contractual agreement between the Buyer and Seller.
17. Modifications to this Bond are as follows: **[Describe modification or enter “None”]**

DBE Replacement Good Faith Efforts

The Contractor shall be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the Owner. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if the Owner agrees, for reasons stated in the concurrence document, that the Contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor;
3. The listed DBE subcontractor fails or refuses to meet the Contractor's reasonable, non-discriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. The Owner determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides the Owner written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause that the Owner has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE contractor was engaged or so that the Contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the Owner, a request to terminate and/or substitute a DBE subcontractor, the Contractor must give notice in writing to the DBE subcontractor, with a copy to the Owner, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The Contractor must give the DBE five days to respond to the Contractor's notice and advise the Owner and the Contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the Contractor's action should not be approved. If required in a particular case, as a matter of public necessity (*e.g.*, safety), a response period shorter than five days may be provided.

The Contractor shall utilize the specific DBEs listed in the contractor's bid or solicitation response to perform the work and supply the materials for which each is listed unless the Contractor obtains prior written consent of the Owner as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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

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

The Owner requires that the Contractor not terminate a DBE or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per §26.53(g)) without our prior written consent, unless the Owner causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the Contractor. If the Owner requests documentation under this provision, the Contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the Contractor. The Owner shall provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

Bid Protest Procedures

1. Any bidder may protest the award of a contract. The protest must be submitted in writing to the Owner responsible for the contract or solicitation within five calendar days after the bids are read.
2. If a contract has been awarded, the Engineer shall give notice of such protest within 24 hours to the awarded contractor. In the case of a pending award, a stay of award may be requested. A stay may be granted unless a written determination is made that the award of the contract without delay is necessary to protect the interests of the Owner.
3. The protest must contain the following:
 - Name, address, phone number and email of the protestor.
 - A concise statement of all the material facts alleged and of all the rules, regulations, statutes, and legal provisions entitling the protestor relief.
 - A statement indicating the relief to which the protestor deems they are entitled.
 - All other information as the protestor deems to be material to the issue.
4. If the protest cannot be resolved by mutual agreement within seven calendar days after receipt, the Owner shall within 24 hours, send by certified mail the final decision and the basis for the decision to the protestor.
5. Any bidder who is aggrieved in connection with the award of a contract may appeal the decision. Venue and jurisdiction for any appeals of the final decision are in the North Dakota District Court for Cass County. Such protests and appeals regarding the request for bids and bid are governed by and must be construed with North Dakota Law.
6. Failure to follow the bid protest procedures constitutes a waiver of protest and resulting claims.

Prompt Payment and Timely Return of Retainage Complaints

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

1. If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
2. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Owner to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.
3. Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Prompt Payment Dispute Resolution

The Owner or Engineer will take the following steps to resolve disputes as to whether work has been satisfactorily completed for the purpose of 49 CFR Section 26.29.

1. The subcontractor shall attempt to resolve the discrepancy with the prime contractor.
2. If the subcontractor is unable to resolve the discrepancy with the prime contractor, the subcontractor shall present and attempt to resolve the discrepancy with the Engineer.
3. If the subcontractor is unable to resolve the discrepancy after meeting with the prime contractor and the Engineer, the subcontractor shall present its complaint to the DBELO. In addition to the complaint, subcontractor shall provide documentation stating their efforts to resolve the discrepancy with the prime contractor and Engineer.
4. If the subcontractor is unable to resolve the discrepancy through the DBELO the subcontractor shall contact the Airport Authority.

Enforcement Actions for Noncompliance of Participants

The Owner will provide appropriate means to enforce the requirements of §26.29. These means include:

The Owner has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract.
2. Breach of contract action, pursuant to North Dakota Century Code 44-04-18.4.

In addition, the Federal Government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.

The Owner will actively implement the enforcement actions detailed above.

Record of FAA Contractor Project Payments and DBE Commitments

Instructions:

- Complete and submit 7 days following periods ending March 31st, June 30th, September 30th, and December 31st and at the end of the project.
- Attach additional sheets as necessary.
- Prime contractors and subcontractors are required to submit a quarterly record of project payments. If no payments have been made, indicate “none” on the form.
- **This form is required for both DBE and Non-DBE subcontractors and suppliers.**
- Prime contractor is responsible for reporting all payments to all tiers of subcontracting to count toward the DBE achievement.
- If additional DBE participation is realized during the course of the project, “not intended” should be entered into the “Contract Amount”.
- North American Industry Classification System (NAICS) code information can be found at <https://www.naics.com/search/>.

Airport Name	Kindred-Robert Odegaard Field
FAA Grant #	AIP #3-38-0068-025-2026 & IIJA/AIG #3-38-0068-026-2026
Project Description	Procure Snow Removal Equipment
Bid Opening Date	
Reporting Period	
Overall DBE Goal	0.00%
DBE Conscious Goal	0.00%
DBE Neutral Goal	0.00%
Prime Contractor Name	
Prime Contractor Address	
Prime Contractor Telephone	
Contract Amount	

Subcontractor / Supplier Name	
Subcontractor / Supplier Address	
Subcontractor / Supplier Telephone	
Subcontractor / Supplier Amount	
DBE	<input type="checkbox"/> Yes <input type="checkbox"/> No
Final Payment	<input type="checkbox"/> Yes <input type="checkbox"/> No

Bid Item Number	Item Description	NAICS Code (https://www.naics.com/search/)	Amount Indicated on DBE Form C	Amount Paid this Quarterly Report (A)	Total Previous Amount Paid (B)	Total Amount Paid to Date (A + B)	Remaining Amount to be Paid
Total							

	Total DBE Award Amount by Ethnicity			Total Number of DBE Contractors by Ethnicity		
	Female	Male	Total	Female	Male	Total
Black American						
Hispanic American						
Native American						
Asian-Pacific American						
Subcontinent Asian American						
Non-Minority						
Total						

The undersigned prime contractor / subcontractor listed above hereby certifies that payments have been made to the DBE and non-DBE firm listed above in the amounts shown for work performed and/or materials furnished under the respective contract(s).

Prime Contractor Signature

Date

Final Review and Acceptance

Seller	
Address	
Project	Procure Snow Removal Equipment
Buyer	Kindred-Davenport Regional Airport Authority

On this Date, _____, a final review of the furnished Goods and Special Services was made.

The Seller hereby certifies that the Goods and Special Services have been furnished in accordance with the specifications, approved Change Orders, and terms of the contract. The Seller further certifies that there are no unpaid bills of material or labor disputes in connection with this contract, and that the amount of \$ _____ shown on the final estimate, is the total amount due for all work completed.

The undersigned Buyer does hereby agree that all Goods and Special Services furnished on the project is complete and does satisfy all terms of appropriate construction or engineering agreements.

Owner and Contractor do hereby acknowledge that the one-year warranty period will begin on _____.

KLJ

(ENGINEER)

By: _____

Date: _____

(SELLER)

By: _____

Date: _____

Kindred-Davenport Regional Airport Authority

(BUYER)

By: _____

Date: _____

Unconditional Final Waiver and Release
(Pursuant to NDCC Code §35-27-01 et seq)

Seller	
Seller's Address	

Claimant (Subcontractor / Supplier)	
Claimant's Address	

Total final amount <u>due</u> to Claimant for all work completed on this Project	\$
Total final amount <u>paid</u> to Claimant for all work completed on this Project	\$
Total amount of <u>disputed</u> Claims by Claimant on this Project	\$

Furnished to the following described Project and Property:

Project Description	Procure Snow Removal Equipment
FAA Grant #	AIP #3-38-0068-025-2026 & IIJA/AIG #3-38-0068-026-2026
Property Name	Kindred-Robert Odegaard Field
Property Location	111 1st Ave N, Kindred, North Dakota 58051
Owner	Kindred-Davenport Regional Airport Authority
Owner's Address	PO Box 83, Kindred, North Dakota 58051

Unconditional Final Waiver and Release

For goods and valuable consideration, the Claimant certifies that they have been paid in full and waives, discharges, and releases forever and unconditionally any and all liens, stop payment notice, claims on damages, and payment bond rights the Claimant has for all work, materials, or equipment furnished by the Claimant to the Property under any similar ordinance, rule, or statute related to payment rights that the Claimant has on the above-described Property. The Claimant warrants that they have already paid in full all laborers, subcontractors, materialmen, and suppliers for all work, materials, or equipment that are the subject of this waiver and release.

This document waives and releases lien, stop payment notice, and payment bond rights unconditionally and states that the Claimant has been paid in full for giving up those rights. This document is enforceable against the Claimant if the Claimant signs it, even if the Claimant has not been paid in full. The Claimant should not sign this document if the Claimant has not been paid in full.

*** CONTINUED ON NEXT PAGE***

Claimant's Authorized Signature

Claimant's Printed Name and Title

Date of Signature

Phone Number

STANDARD GENERAL CONDITIONS OF THE PROCUREMENT CONTRACT

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ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Whenever used in the Procurement Bidding Requirements or Procurement Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated, which are applicable to the singular or plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Procurement Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Procurement Contract Documents.
 2. *Application for Payment*—The document prepared by Seller, in a form acceptable to Buyer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Procurement Contract Documents.
 3. *Bid*—An offer or proposal of a prospective Seller submitted on the prescribed form setting forth the prices for the Goods and Special Services to be provided.
 4. *Bidder*—An individual or entity that, as a prospective Seller, submits a Bid to Buyer.
 5. *Buyer*—The individual or entity purchasing the Goods and Special Services.
 6. *Change Directive*—A written directive from Buyer to Seller issued on or after the Effective Date of the Procurement Contract, ordering an addition, deletion, or revision in the Goods and Special Services.
 7. *Change Order*—A document which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Procurement Contract Documents or an adjustment in the Procurement Contract Price or the Procurement Contract Times, issued on or after the Effective Date of the Procurement Contract. Change Orders may be the result of mutual agreement by Buyer and Seller, or of resolution of a Claim.
 8. *Claim*—A demand or assertion by Buyer or Seller seeking an adjustment of Procurement Contract Price or Procurement Contract Times, or both, or other relief with respect to the terms of the Procurement Contract. A demand for money or services by a third party is not a Claim.
 9. ~~*Contractor/Assignee*—A construction contractor with which Project Owner enters into a construction contract, and to which Project Owner, as initial Buyer, assigns this Procurement Contract.~~
 10. *Effective Date of the Procurement Contract*—The date indicated in the Procurement Agreement on which the Procurement Contract becomes effective.
 11. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

12. *Electronic Means*—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: the transmission or communication of Electronic Documents; the documentation of transmissions, including sending and receipt; printing of the transmitted Electronic Document by the recipient; the storage and archiving of the Electronic Document by sender and recipient; and the use by recipient of the Electronic Document for purposes permitted by this Procurement Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
13. *Engineer*—The individual or entity designated as such in the Procurement Agreement.
14. *Field Order*—A written order issued by Engineer which requires minor changes in the Goods or Special Services, but which does not involve a change in the Procurement Contract Price or Procurement Contract Times.
15. *Goods*—The tangible and movable personal property that is described in the Procurement Contract Documents, regardless of whether the property is to be later attached to realty.
16. *Goods and Special Services*—The full scope of materials, equipment, other items, and services to be furnished by Seller, including Goods, as defined herein, and Special Services, if any, as defined herein. This term refers to both the Goods and the Special Services, or to either the Goods or the Special Services, and to any portion of the Goods or the Special Services, as the context requires.
17. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
18. *Milestone*—A principal event specified in the Procurement Contract that Seller must attain by the date or within the number of days indicated, including but not limited to the delivery of the Goods and the furnishing of Special Services.
19. *Notice of Award*—The written notice, by Buyer to a Bidder, of Buyer’s acceptance of the Bid.
20. *Point of Destination*—The specific address of the location where delivery of the Goods will be made, as stated in the Procurement Agreement.
21. *Procurement Agreement*—The written instrument, executed by Buyer and Seller, that sets forth the Procurement Contract Price and Procurement Contract Times, identifies the parties and the Engineer, and designates the specific items that are Procurement Contract Documents.
22. *Procurement Bidding Documents*—The Procurement Bidding Requirements and the proposed Procurement Contract Documents (including all Addenda).
23. *Procurement Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and Bid Form with any supplements.
24. *Procurement Contract*—The entire and integrated written agreement between Buyer and Seller concerning the Goods and Special Services.

25. *Procurement Contract Documents*—Those items so designated in the Procurement Agreement, and which together comprise the Procurement Contract. Shop Drawings and other Seller submittals are not Procurement Contract Documents, even if accepted, reviewed, or approved by Engineer or Buyer.
26. *Procurement Contract Price*—The money that Buyer has agreed to pay Seller for furnishing the Goods and Special Services in accordance with the Procurement Contract Documents.
27. *Procurement Contract Times*—The times stated in the Procurement Agreement by which the Goods must be delivered, Special Services must be furnished, and other Milestones must be attained.
28. *Procurement Drawings*—That part of the Procurement Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Goods and Special Services to be furnished by Seller. Shop Drawings and other Seller submittals are not Procurement Drawings as so defined.
29. *Procurement Specifications*—That part of the Procurement Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the furnishing of the Goods and Special Services, and certain administrative requirements and procedural matters applicable thereto.
30. *Project*—The total undertaking to be accomplished for Project Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Goods and Special Services are a part.
31. *Project Owner*—The entity that has retained (or will retain) engineers, contractors, and others for the planning, study, design, construction, testing, commissioning, and start-up of facilities and improvements. As of the Effective Date of the Procurement Contract, the Project Owner is the Buyer.
32. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and Special Services and which establish the standards by which such portion of the Goods and Special Services will be judged.
33. *Schedule of Submittals*—A schedule, prepared and maintained by Seller, of required Submittals and the time requirements for Engineer’s review of the Submittals.
34. *Seller*—The individual or entity furnishing the Goods and Special Services.
35. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Seller and submitted by Seller to illustrate some portion of the Goods and Special Services. Shop Drawings, whether approved or not, are not Procurement Drawings and are not Procurement Contract Documents.
36. *Special Services*—Services to be performed by Seller (or its agents or subcontractors) in association with the Goods to be furnished by Seller, as required by the Procurement Contract Documents.
37. *Submittal*—A written or graphic document, prepared by or for Seller, which the Procurement Contract Documents require Seller to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals

may include Shop Drawings and Samples; schedules; product data; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or site quality-control testing and inspections; warranties and certifications; suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; record documents; and other such documents required by the Procurement Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Procurement Contract Documents. Change proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

38. *Successful Bidder*—The Bidder whose Bid the Buyer accepts, and to which Buyer makes an award of the Procurement Contract.
39. *Supplementary Conditions*—The part of the Procurement Contract that amends or supplements these General Conditions.
40. *Unit Price Goods and Special Services*—Goods and Special Services to be paid for on the basis of unit prices (if any).

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B and 1.02.C are not defined, but have the indicated meanings when used in the Bidding Requirements or Procurement Contract Documents.
- B. *Intent of Certain Terms or Adjectives*
 1. The Procurement Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Goods and Special Services. It is intended that such exercise of professional judgment, action, or determination will be commercially reasonable and will be solely to evaluate, in general, the Goods and Special Services for compliance with the requirements of and information in the Procurement Contract Documents and conformance with the design concept of the completed Project as a functioning whole, as shown or indicated in the Procurement Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective will not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Procurement Contract Documents.
 2. The word “non-conforming” when modifying the words “Goods and Special Services,” “Goods,” or “Special Services,” refers to Goods and Special Services that are unsatisfactory, faulty, or deficient in that they:
 - a. do not conform to or comply with the requirements of the Procurement Contract Documents;
 - b. do not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Procurement Contract Documents; or

- c. in the case of Special Services, have not been completed.
 - 3. The word “receipt” when referring to the Goods, means the physical taking and possession by the Buyer under the conditions specified in Paragraph 9.02.B.2.
 - 4. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
 - 5. The word "furnish," when used in connection with the Goods and Special Services means to supply and deliver said Goods to the Point of Destination (or some other specified location) and to perform said Special Services fully, all in accordance with the Procurement Contract Documents.
- C. *Procurement Contract Price or Procurement Contract Times*: References to a change in “Procurement Contract Price or Procurement Contract Times” or “Procurement Contract Times or Procurement Contract Price” or similar, indicate that such change applies to (1) Procurement Contract Price, (2) Procurement Contract Times, or (3) both Procurement Contract Price and Procurement Contract Times, as warranted, even if the term “or both” is not expressed.
- D. Unless stated otherwise in the Procurement Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Procurement Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Seller delivers the executed counterparts of the Procurement Agreement to Buyer, the Seller also shall deliver to Buyer the performance bond and payment bond (if the Procurement Contract requires Seller to furnish such bonds).
- B. *Evidence of Seller’s Insurance*: When Seller delivers the signed counterparts of the Procurement Agreement to Buyer, the Seller also shall deliver to Buyer, with copies to each additional insured (as identified in the Procurement Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Seller in accordance with Article 5. Evidence of insurance to be obtained at a later date, such as insurance relating to transit or storage of the Goods, will be provided to Buyer at the time of such insurance is obtained.
- C. *Evidence of Buyer’s Insurance*: After receipt of the signed counterparts of the Procurement Agreement and all required bonds and insurance documentation, Buyer shall promptly deliver to Seller, with copies to each additional insured (as identified in the Procurement Contract), certificates and other evidence of insurance (if any) required to be provided by Buyer.

2.02 *Copies of Documents*

- A. Buyer shall furnish to Seller four printed copies of the Procurement Contract (including one fully executed counterpart of the Procurement Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

2.03 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Procurement Contract, the Buyer, Seller, and Engineer may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Procurement Contract does not establish protocols for Electronic Means, then Buyer, Seller, and Engineer shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

2.04 *Preliminary Schedules*

- A. Within 15 days after the Effective Date of the Procurement Contract, Seller shall submit to Buyer and Engineer for timely review:
 - 1. a progress schedule of activities, consistent with the Procurement Contract Times, including at a minimum, Shop Drawing and Sample submittals, tests, and deliveries as required by the Procurement Contract Documents.
 - a. The progress schedule will be acceptable to Buyer and Engineer if it provides an orderly progression of the Submittals, tests, and deliveries to completion within the specified Milestones of the Procurement Contract Times.
 - b. Such acceptance will not impose on Buyer or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of Seller's performance of its obligations under the Procurement Contract, nor interfere with or relieve Seller from Seller's full responsibility therefor.
 - c. Such acceptance will not be deemed as an acknowledgment of the reasonableness and attainability of the schedule.
 - 2. a preliminary schedule of Submittals.
- B. No progress payment will be made to Seller until an acceptable progress schedule and acceptable schedule of Submittals are submitted to Buyer and Engineer (and other conditions applicable to progress payments are met).

2.05 *Preliminary Conference*

- A. Within 20 days after the Procurement Contract Times start to run, a conference attended by Seller, Buyer, Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Goods and Special Services and to discuss the schedules referred to in Paragraph 2.04.A, procedures for handling Shop Drawings and other Submittals, processing Applications for Payment, and maintaining required records.

2.06 *Safety*

- A. Buyer and Seller shall comply with all applicable Laws and Regulations relating to the safety of persons or property, and to the protection of persons or property from damage, injury, or loss.

- B. When Seller's personnel, or the personnel of any subcontractor to Seller, are present at the Point of Destination or any work area or site controlled by Buyer, the Seller shall be responsible for the compliance by such personnel with any applicable requirements of Buyer's safety programs that are made known to Seller.
- C. If Buyer or its representatives visit the Seller's manufacturing or storage facilities, for testing, inspection, or other purposes, Seller shall inform Buyer in advance of any safety preparations, standards, or programs with which Buyer and its representatives must comply.

ARTICLE 3—PROCUREMENT CONTRACT DOCUMENTS

3.01 *Intent*

- A. The Procurement Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Procurement Contract Documents or from prevailing custom or trade usage as being required to produce or furnish the indicated Goods and Special Services will be provided, whether or not specifically called for, at no additional cost to Buyer.
- C. Unless otherwise stated in the Procurement Contract Documents, if there is a discrepancy between the electronic or digital versions of the Procurement Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version will govern.
- D. The Procurement Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Procurement Contract Documents, as provided in Paragraph 3.04.
- F. Any provision or part of the Procurement Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Buyer and Seller.

3.02 *Reference Standards*

- A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, means the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Bids (or on the Effective Date of the Procurement Agreement if there were no Bids), except as may be otherwise specifically stated in the Procurement Contract Documents.
- B. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a supplier, will be effective to change the duties or responsibilities of Buyer, Seller, or Engineer from those set forth in the part of the Procurement Contract Documents prepared by or for Engineer. No such provision or instruction will be effective to assign to Buyer or Engineer any duty or authority to supervise or direct the performance of Seller's obligations, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Procurement Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Seller's Review of Procurement Contract Documents:* If, before or during the performance of Seller's obligations, Seller discovers any conflict, error, ambiguity, or discrepancy within the Procurement Contract Documents, or between the Procurement Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any supplier to Seller, then Seller shall promptly report it to Engineer (or if the Procurement Contract is assigned, then directly to Contractor/Assignee) in writing. Seller shall not proceed with the Goods and Special Services affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer (or if the Procurement Contract is assigned, then by Contractor/Assignee) or by an amendment or supplement to the Procurement Contract Documents issued pursuant to Article 11.
2. Seller shall not be liable to Buyer or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Procurement Contract Documents unless Seller had actual knowledge thereof.

B. *Resolving Discrepancies:* Except as may be otherwise specifically stated in the Procurement Contract Documents, the provisions of the Procurement Contract Documents will take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Procurement Contract Documents and:

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Procurement Contract Documents); or
2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods and Special Services (unless such an interpretation of the provisions of the Procurement Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Procurement Drawings and Procurement Specifications*

A. During the performance of Seller's obligations and until final payment, Seller and Buyer shall submit to the Engineer all matters in question concerning the requirements of the Procurement Drawings and Procurement Specifications (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Goods and Special Services, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Procurement Drawings and Procurement Specifications, and judge of the acceptability of the Goods and Special Services thereunder.

1. After assignment (if any) Seller shall submit such matters directly to Contractor/Assignee for response or administration, and the Procurement Contract provisions in Paragraphs 3.04.B and C will not apply.

B. Engineer will issue with reasonable promptness a written clarification, interpretation, or decision on the issue submitted, and if necessary, initiate an amendment or supplement to the Procurement Drawings or Procurement Specifications. Engineer's written clarification, interpretation, or decision will be consistent with the overall intent of the Procurement Contract Documents, and will be final and binding on Seller and Buyer. If either Buyer or Seller believes that a written clarification or interpretation justifies an adjustment in the

Procurement Contract Price or Procurement Contract Times, either may make a Claim for such adjustment as provided in Article 12.

- C. If a submitted matter in question concerns terms and conditions of the Procurement Contract Documents that do not involve (1) the performance or acceptability of the Goods and Services, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation.

3.05 *Reuse of Documents*

- A. Seller and its subcontractors and suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Procurement Drawings, Procurement Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Procurement Drawings, Procurement Specifications, other documents, or copies thereof, on extensions of the Project or any other project, without written consent of Buyer and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Procurement Contract Documents, reuse any such Procurement Contract Documents for any purpose without Buyer's express written consent, or violate any copyrights pertaining to such Procurement Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Procurement Contract. Nothing herein precludes Seller from retaining copies of the Procurement Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND SCHEDULE

4.01 *Commencement of Procurement Contract Times*

- A. The Procurement Contract Times will commence to run on the Effective Date of the Procurement Contract.

4.02 *Continuing Performance*

- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.04.A., as duly adjusted, and the Goods will be delivered and the Special Services furnished within the Procurement Contract Times.
- B. Seller shall carry on furnishing of the Goods and Special Services and adhere to the progress schedule during all disputes or disagreements with Buyer. No furnishing of Goods and Special Services will be delayed or postponed pending resolution of any disputes or disagreements, except as expressly permitted herein, or as Buyer and Seller may otherwise agree in writing.

4.03 *Adjustments to Progress Schedule*

- A. The progress schedule established in accordance with Paragraph 2.04 may be adjusted from time to time as provided below.

1. Seller shall submit to Buyer for acceptance (to the extent indicated in Paragraph 2.04) proposed adjustments in the progress schedule that will not result in changing the Procurement Contract Times. Such adjustments will comply with any applicable provisions of the Procurement Specifications.
2. Proposed adjustments in the progress schedule that will change the Procurement Contract Times must be submitted in accordance with the requirements of Article 11. Adjustments in Procurement Contract Times may only be made by a Change Order.

4.04 *Delays*

- A. If Buyer, Engineer, or anyone for whom Buyer is responsible, delays, disrupts, or interferes with Seller's performance or progress, then Seller shall be entitled to an equitable adjustment in Procurement Contract Price or Procurement Contract Times.
- B. Seller shall not be entitled to an adjustment in Procurement Contract Price or Procurement Contract Times for delay, disruption, or interference caused by or within the control of Seller or anyone for whom Seller is responsible.
- C. If Seller's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Buyer, Seller, and those for which they are responsible, then Seller shall be entitled to an equitable adjustment in Procurement Contract Times. Such an adjustment will be Seller's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Procurement Contract Times under this paragraph include but are not limited to the following:
 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. inspection delays by governmental authorities, and custom delays;
 4. international shipping delays;
 5. acts or failures to act of third-party entities; and
 6. acts of war or terrorism.
- D. *Adjustments of Procurement Contract Times or Procurement Contract Price—General Provisions:* Seller's entitlement to an adjustment of Procurement Contract Times or Procurement Contract Price is limited as follows:
 1. Seller's entitlement to an adjustment of the Procurement Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of Seller's obligations, as of the time of the delay, disruption, or interference.
 2. Seller shall not be entitled to an adjustment in Procurement Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Seller. Such a concurrent delay by Seller does not preclude an adjustment of Procurement Contract Times to which Seller is otherwise entitled.

3. Adjustments of Procurement Contract Times or Procurement Contract Price are subject to the provisions of Articles 11 and 12.
- E. Each Seller request seeking a delay-related increase in Procurement Contract Times or Procurement Contract Price must be supplemented by supporting data that sets forth in detail the following: (1) the circumstances that form the basis for the requested adjustment; (2) the date upon which each cause of delay, disruption, or interference began to affect Seller's progress; (3) the date upon which each cause of delay, disruption, or interference ceased to affect Seller's progress; (4) the number of days' increase in Procurement Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and (5) the impact on Procurement Contract Price. Seller shall also furnish such additional supporting documentation as Buyer or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion.

ARTICLE 5—BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Seller shall furnish a performance bond and a payment bond, each in an amount at least equal to the Procurement Contract Price, as security for the faithful performance and payment of Seller's obligations under the Procurement Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 9.04, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Procurement Contract.
- B. Seller shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Procurement Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Buyer prior to execution of the Procurement Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Seller shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Seller is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Seller shall promptly notify Buyer and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements of this Procurement Contract.

- F. If Seller has failed to obtain a required bond, Buyer may exercise Buyer's termination rights under Article 14.
- G. Upon request to Buyer from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller's obligations, Buyer shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Seller from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller's obligations, Seller shall provide a copy of the payment bond to such person or entity.

5.02 *Insurance*

- A. Seller shall provide insurance of the types and coverages and in the amounts stipulated in the Supplementary Conditions.
- B. Failure of Buyer to demand certificates of insurance or other evidence of Seller's full compliance with these insurance requirements or failure of Buyer to identify a deficiency in compliance from the evidence provided will not be construed as a waiver of Seller's obligation to maintain such insurance.
- C. Upon assignment of this Procurement Contract, Seller shall name the Contractor/Assignee as an additional insured and comply with the written request of Contractor/Assignee to provide evidence of insurance.
- D. Buyer does not represent that insurance coverage and limits established in this Procurement Contract necessarily will be adequate to protect Seller.
- E. The insurance and insurance limits required herein will not be deemed as a limitation on Seller's liability under the indemnities and other rights granted to Buyer in the Procurement Contract.

5.03 *Surety or Insurance Companies*

- A. All bonds and insurance required by the Procurement Contract Documents to be purchased and maintained by Buyer or Seller shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies must also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

ARTICLE 6—LICENSES AND FEES

6.01 *Intellectual Property and License Fees*

- A. Except to the extent stated elsewhere in the Procurement Contract Documents, Seller is not transferring any patent rights, copyrights, or other intellectual property rights for the Goods delivered.
- B. To the extent Seller is manufacturing to Buyer's design, Buyer retains all patent rights, copyrights, and other intellectual property rights in such design.
- C. If an invention, design, process, product, or device is specified in the Procurement Contract Documents for incorporation in the Goods or for the performance of Special Services, and if, to the actual knowledge of Buyer or Engineer, its use is subject to patent rights, copyrights,

or other intellectual property rights calling for the payment of a license fee or royalty to others, then the existence of such rights and payment obligations will be disclosed to Seller in the Procurement Contract Documents.

- D. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Procurement Contract Documents.

6.02 *Seller's Infringement*

- A. Subject to Paragraph 6.01, to the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, from and against all claims, costs, losses, damages, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any patent, copyright, or other intellectual property right by any of the Goods as delivered or Special Services as performed.
- B. Buyer will promptly notify Seller in writing of any claim, suit, or threat of suit by a third party for any infringement or alleged infringement of any patent, copyright, or other intellectual property right with respect to the Goods as delivered or Special Services as performed.
- C. Seller shall promptly defend or settle the claim or suit. Seller shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
 - 1. If Seller fails to defend such suit or claim after written notice by Buyer, Seller will be bound, in any subsequent suit or claim against Seller by Buyer, by any factual determination in the prior suit or claim.
 - 2. If Buyer fails to provide Seller the opportunity to defend such suit or claim, Buyer shall be barred from any remedy against Seller for such suit or claim.
- D. If a determination is made that Seller has infringed upon the intellectual property rights of another, Seller may, at Seller's own expense, obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction, consistent with the requirements of the Procurement Contract Documents, to avoid the infringement.

6.03 *Buyer's Infringement*

- A. Subject to Paragraph 6.01, and to the fullest extent permitted by Laws and Regulations, Buyer shall be responsible to Seller for any infringement or alleged infringement of any patent, copyright, or other intellectual property right caused by Seller's compliance with the Procurement Drawings or Procurement Specifications, and will reimburse Seller for any license fee or royalties paid by Seller to others if such payment resulted from any invention, design, process, product, or device specified to be furnished or performed in the Procurement Drawings or Procurement Specifications, but not identified as being subject to payment of such license fee or royalty.
- B. Seller will promptly notify Buyer in writing of any claim, suit, or threat of suit by a third party for intellectual property infringement arising from Seller's compliance with the Procurement Drawings or Procurement Specifications.

- C. Buyer shall defend or settle the claim or suit. Buyer shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
 - 1. If Buyer fails to defend such suit or claim after written notice by Seller, Buyer will be bound, in any subsequent suit or claim against Buyer by Seller, by any factual determination in the prior suit or claim.
 - 2. If Seller fails to provide Buyer the opportunity to defend such suit or claim, Seller shall be barred from any remedy against Buyer for such suit or claim.

ARTICLE 7—SELLER’S RESPONSIBILITIES

7.01 *Performance of Obligations*

- A. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures necessary to perform its obligations in accordance with the Procurement Contract Documents.
- B. Seller shall supervise, inspect, and direct the furnishing of the Goods and Special Services competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform its obligations in accordance with the Procurement Contract Documents.
- C. Seller shall coordinate the provision of Special Services to avoid or limit interference or disruption of other activities at the location where the Special Services are to occur, including but not limited to ongoing facility operations and construction activities.

7.02 *Labor, Materials and Equipment*

- A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Procurement Contract.
- B. All Goods, and all equipment and material incorporated into the Goods, must be as specified, and unless specified otherwise in the Procurement Contract Documents, must be:
 - 1. new, and of good quality;
 - 2. protected, assembled, connected, cleaned, and conditioned in accordance with the original manufacturer’s instructions; and
 - 3. shop-assembled to the greatest extent practicable.

7.03 *Laws and Regulations*

- A. Seller shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of its obligations in accordance with the Procurement Contract Documents. Except where otherwise expressly required by such Laws and Regulations, neither Buyer nor Engineer shall be responsible for monitoring Seller’s compliance with any Laws or Regulations.
- B. If Seller furnishes Goods and Special Services knowing or having reason to know that such furnishing is contrary to Laws or Regulations, Seller shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such performance. It will not be Seller’s responsibility to make certain

that the Procurement Specifications and Procurement Drawings are in accordance with Laws and Regulations, but this provision will not relieve Seller of Seller's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Procurement Contract if there were no Bids) that have a direct effect on the cost or time of Seller's performance will be the subject of an adjustment in Procurement Contract Price or Procurement Contract Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Article 12.

7.04 "Or Equals"

- A. Whenever an item of material or equipment to be incorporated into the Goods is specified or described in the Procurement Contract Documents by using the names of one or more proprietary items or specific suppliers or manufacturers, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, other items of material or equipment or material or equipment of other suppliers or manufacturers may be submitted to Buyer for Engineer's review.
 - 1. If in Engineer's sole discretion, such an item of material or equipment proposed by Seller is functionally equal to that named and sufficiently similar so that no change in related work will be required, it may be considered by Engineer as an "or equal" item.
 - 2. For the purposes of this paragraph, a proposed item of material or equipment may be considered functionally equal to an item so named only if in the exercise of reasonable judgment, Engineer determines that: 1) it is at least equal in quality, durability, appearance, strength, and design characteristics; 2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; 3) it has an acceptable record of performance and availability of responsive service; and (4) Seller certifies that if approved: a) there will be no increase in any cost, including capital, installation or operating costs, to Buyer; and b) the proposed item will conform substantially to the detailed requirements of the item named in the Procurement Contract Documents.
- B. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or Submittal made pursuant to Paragraph 7.04.A. Engineer will be the sole judge of whether to accept or reject such a proposal or Submittal. No "or equal" will be ordered, manufactured or utilized until Engineer's review is complete, which will be evidenced by an approved Shop Drawing. Engineer will advise Buyer and Seller in writing of any negative determination. Notwithstanding Engineer's approval of an "or-equal" item, Seller shall remain obligated to comply with the requirements of the Procurement Contract Documents.
- C. *Special Guarantee:* Buyer may require Seller to furnish at Seller's expense a special performance guarantee or other surety with respect to any such proposed "or-equal."
- D. *Data:* Seller shall provide all data in support of any such proposed "or equal" at Seller's expense.

7.05 *Taxes*

- A. Seller shall pay all taxes and duties arising out of the sale of the Goods and the performance of Special Services. All taxes and duties are included in the Procurement Contract Price, except as noted in the Supplementary Conditions.

7.06 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Seller shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Procurement Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal; and
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of Seller's obligations.
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Seller has satisfied its obligations under the Procurement Contract Documents with respect to Seller's review of that Submittal, and that Seller approves the Submittal.
- 3. With each Shop Drawing or Sample, Seller shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Procurement Contract Documents. This notice will be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

- B. *Submittal Procedures for Shop Drawings and Samples:* Seller shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

- a. Seller shall submit the number of copies required in the Procurement Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Seller proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.06.C.

2. *Samples*

- a. Seller shall submit the number of Samples required in the Procurement Specifications.

- b. Seller shall clearly identify each Sample as to material, supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.06.C.
3. Where a Shop Drawing or Sample is required by the Procurement Contract Documents or the Schedule of Submittals, any related work performed by Seller prior to Engineer's review and approval of the pertinent Submittal will be at the sole expense and responsibility of Seller.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Goods, comply with the requirements of the Procurement Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Procurement Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Seller from responsibility for any variation from the requirements of the Procurement Contract Documents unless Seller has complied with the requirements of Paragraph 7.06.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Procurement Contract Documents in a Field Order or other appropriate Procurement Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Seller from responsibility for complying with the requirements of Paragraphs 7.06.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Procurement Contract Documents, will not, under any circumstances, change the Procurement Contract Times or Procurement Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing or Sample will result in such item becoming a Procurement Contract Document.
8. Seller shall furnish Goods that comply with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.06.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Seller shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review

and approval. Seller shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

2. Seller shall furnish required Shop Drawing and Sample Submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Seller shall be responsible for Engineer's charges to Buyer for such time. Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges.
3. If Seller requests a change of a previously approved Shop Drawing or Sample, Seller shall be responsible for Engineer's charges to Buyer for its review time, and Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges, unless the need for such change is beyond the control of Seller.

E. *Submittals Other than Shop Drawings and Samples*

1. The following provisions apply to all Submittals other than Shop Drawings and Samples:
 - a. Seller shall submit all such Submittals to the Engineer in accordance with the schedule of Submittals and pursuant to the applicable terms of the Procurement Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Procurement Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Seller shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.04 and 2.05.

7.07 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, Project Owner, and any assignee of Buyer, including Contractor/Assignee, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of Seller's obligations under the Procurement Contract, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Goods themselves), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Seller, or any individual or entity directly or indirectly employed by Seller or anyone for whose acts Seller may be liable.

- B. In any and all claims against Buyer, Engineer, Project Owner, or any assignee of Buyer, including Contractor/Assignee, or their officers, directors, members, partners, employees, agents, consultants, contractors, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Seller, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to furnish any of the Goods and Special Services, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.07.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Seller or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.08 *Concerning Subcontractors and Suppliers*

- A. Seller may retain subcontractors and suppliers for the performance of parts of the furnishing of the Goods and Special Services. The Seller's retention of a subcontractor or supplier will not relieve Seller's obligation to Buyer to perform and complete the furnishing the Goods and Special Services in accordance with the Procurement Contract Documents.

ARTICLE 8—SHIPPING AND DELIVERY

8.01 *Shipping*

- A. Seller shall select the carrier and bear all costs of packaging, transportation, insurance, special handling, and all other costs associated with shipment and delivery.

8.02 *Delivery*

- A. Seller shall deliver the Goods free on board (FOB) to the Point of Destination, freight prepaid, in accordance with the Procurement Contract Times set forth in the Procurement Agreement, or other date agreed to by Buyer and Seller.
- B. At least 10 days before shipment, Seller shall provide written notice to Buyer of the manner of shipment and the anticipated delivery date. The notice must also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods. Seller shall also require the carrier to give Buyer at least 24 hours' notice by telephone prior to the anticipated time of delivery.
- C. Buyer will be responsible and bear all costs for unloading the Goods from carrier.
- D. Buyer will assure that adequate facilities are available to receive delivery of the Goods at the time established for delivery, or on another date agreed to by Buyer and Seller.
- E. No partial deliveries will be allowed, unless permitted or required by the Procurement Contract Documents or agreed to in writing by Buyer.
- F. Provisions governing inspection on delivery are set forth in Paragraph 9.02.

8.03 *Risk of Loss*

- A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's receipt of the Goods.
- B. Notwithstanding the provisions of Paragraph 8.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods will remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods. If rejected Goods remain at the Point of

Destination pending modification and acceptance, then Seller shall be responsible for arranging adequate protection and maintenance of the Goods at Seller's expense.

ARTICLE 9—BUYER'S RIGHTS

9.01 *Seller's Warranties and Guarantees*

- A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed will be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance. Seller shall defend, indemnify, and hold Buyer harmless against any liens, claims, or demands contesting or affecting title of the Goods conveyed.
- B. Seller warrants and guarantees to Buyer that all Goods and Special Services will conform with the Procurement Contract Documents, and with the standards established by any Samples approved by Engineer. Engineer shall be entitled to rely on Seller's warranty and guarantee. If the Procurement Contract Documents do not otherwise specify the characteristics or the quality of the Goods, the Goods must comply with the requirements of Paragraph 7.02.B.
- C. Seller's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, improper modification, improper maintenance, or improper operation by persons other than Seller;
 - 2. excessive corrosion or chemical attack, unless corrosive or chemically-damaging conditions were disclosed by Buyer in the Procurement Contract Documents and the Procurement Contract Documents required the Goods to withstand such conditions;
 - 3. use in a manner contrary to Seller's written instructions for installation, operation, and maintenance; or
 - 4. normal wear and tear under normal usage.
- D. Seller's obligation to furnish the Goods and Special Services in accordance with the Procurement Contract Documents will be absolute. None of the following will constitute an acceptance of Goods and Special Services that are non-conforming, or a release of Seller's obligation to furnish the Goods and Special Services in accordance with the Procurement Contract Documents:
 - 1. observations by Buyer, Engineer, or Project Owner;
 - 2. recommendation by Engineer or payment by Buyer of any progress or final payment;
 - 3. use of the Goods by Buyer or Project Owner;
 - 4. any acceptance by Buyer, Engineer, or Project Owner, or any failure to do so;
 - 5. the end of the correction period established in Paragraph 9.04;
 - 6. the issuance of a notice of acceptance;
 - 7. any inspection, test or approval by others; or
 - 8. any correction of non-conforming Goods and Special Services by Buyer or Project Owner.
- E. Buyer shall promptly notify Seller of any breach of Seller's warranties or guarantees.

9.02 *Inspections and Testing*

A. *General Provisions*

1. The Procurement Contract Documents specify required inspections and tests. Buyer shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Goods at Seller's facility, and at the Point of Destination. Seller shall allow Buyer a reasonable time to perform such inspections or tests.
2. Seller shall reimburse Buyer for all expenses, except for travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, for inspections and tests specified in the Procurement Contract Documents. If as the result of any such specified testing the Goods are determined to be non-conforming, then Seller shall also bear the travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, and all expenses of re-inspection or retesting.
3. Buyer shall bear all expenses of inspections and tests that are not specified in the Procurement Contract Documents (other than any re-inspection or retesting resulting from a determination of non-conformity, as set forth in Paragraph 9.03); provided, however, that if as the result of any such non-specified inspections or testing the Goods are determined to be non-conforming, then Seller shall bear all expenses of such inspections and testing, and of any necessary re-inspection and retesting.
4. Seller shall provide Buyer timely written notice of the readiness of the Goods for all inspections, tests, or approvals which the Procurement Contract Documents specify are to be observed by Buyer prior to shipment.
5. Buyer will give Seller timely notice of all specified tests, inspections, and approvals of the Goods which are to be conducted at the Point of Destination, and a representative of Seller will attend such tests, inspections, and approvals.
6. If, on the basis of inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of inspections or testing, the Goods appear to be non-conforming, Buyer will give Seller prompt notice thereof and will advise Seller of the remedy Buyer elects under the provisions of Paragraph 9.03.
7. Neither payments made by Buyer to Seller prior to any tests or inspections, nor any tests or inspections, will constitute acceptance of non-conforming Goods, or prejudice Buyer's rights under the Procurement Contract.

B. *Visual Inspection on Delivery*

1. Buyer will visually inspect the Goods upon delivery solely for purposes of identifying the Goods, general verification of quantities, and observation of apparent condition. Such visual inspection will not be construed as final or as receipt of any Goods and Special Services that, as a result of subsequent inspections and tests, are determined to be non-conforming.
2. If, on the basis of the visual inspection specified in Paragraph 9.02.B.1, the Goods appear to comply with the requirements of the Procurement Contract Documents as to quantities and condition, then within 10 days of delivery Buyer shall issue to Seller Buyer's acknowledgment of the receipt of Goods.

C. *Final Inspection*

1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as required, and Seller has performed and completed all Special Services, Buyer will make a final inspection.
2. If, on the basis of the final inspection, Buyer determines that the Goods and Special Services are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods and Special Services, subject to any limitations stated in the notice.
3. If, on the basis of the final inspection, the Goods and Special Services are non-conforming, Buyer will identify the non-conformity in writing.

9.03 *Non-Conforming Goods and Special Services*

- A. If, on the basis of inspections and testing prior to delivery, the Goods and Special Services are found to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 9.04, Buyer determines that the Goods and Special Services are non-conforming, then Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either correct such non-conforming Goods and Special Services, or, if Goods are rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.
- B. *Buyer's Rejection of Non-Conforming Goods*
1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been delivered to Buyer, Seller shall promptly, and within the Procurement Contract Times, remove and replace the rejected Goods.
 2. Seller shall bear all costs, losses and damages attributable to the removal, replacement, reinspection, and retesting of the non-conforming Goods.
 3. Upon rejection of the Goods, Buyer retains a security interest in the Goods to the extent of any payments made and expenses incurred in their testing and inspection.
- C. *Buyer's Rejection of Non-Conforming Special Services*
1. If at any time Buyer elects to reject the Special Services in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Special Services.
 2. Seller shall promptly provide conforming Special Services acceptable to Buyer.
 3. If Seller fails to provide conforming Special Services, Buyer may remove the Special Services from the scope of the Procurement Contract, and equitably reduce the Procurement Contract Price.
- D. *Remedying Non-Conforming Goods:* If Buyer elects to permit the Seller to modify the Goods to correct the non-conformance, then Seller shall promptly provide a schedule for such modifications and shall make the Goods conforming within a reasonable time.
- E. *Buyer's Acceptance of Non-Conforming Goods:* Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment,

Buyer may accept the non-conforming Goods. Seller shall bear all reasonable costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods.

- F. *Seller Obligations*: Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods and Special Services. Seller's obligations will include the costs of the correction or removal and replacement of the non-conforming Goods and the replacement of property of Buyer and others destroyed by the correction or removal and replacement of the non-conforming Goods, and obtaining conforming Special Services from others.
- G. *Buyer's Rejection of Conforming Goods*: If Buyer asserts that Goods and Special Services are non-conforming and such Goods and Special Services are determined to be conforming, or if Buyer rejects as non-conforming Goods and Special Services that are later determined to be conforming, then Seller shall be entitled to reimbursement from Buyer of costs incurred by Seller in inspecting, testing, correcting, removing, or replacing the conforming Goods and Special Services, including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs associated with the incorrect assertion of non-conformance or rejection of conforming Goods and Special Services.

9.04 *Correction Period*

- A. Seller's responsibility for correcting all non-conformities in the Goods and Special Services will extend for a period of one year after the acceptance of the Goods and Special Services in accordance with Paragraph 9.02.C.2.
- B. Where non-conforming Goods and Services (and damage to other work resulting therefrom) have been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Goods and Services will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- C. Seller's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph may not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 10—ENGINEER'S STATUS

10.01 *Engineer's Role Defined*

- A. Engineer will be Buyer's representative until assignment (if any) of the Procurement Contract.
- B. The duties and responsibilities and the limitations of authority of Engineer prior to assignment, if any, of the Procurement Contract, are set forth in the Procurement Contract Documents.
- C. Engineer's responsibilities, if any, after an assignment (if any) of the Procurement Contract, are set forth in the Procurement Agreement.

10.02 *Duties and Responsibilities; Authority; Limitations*

- A. As set forth in Article 3, Engineer will be the initial interpreter of the Procurement Contract Documents and judge of the acceptability of the Goods and Special Services, and will issue clarifications, interpretations, and decisions regarding such issues.
- B. Acting on behalf of Buyer under the provisions of Article 9, Engineer has the authority to disapprove or reject Goods and Special Services that Engineer believes to be non-conforming. Engineer also has the authority to require special inspection or testing of the Goods or Special Services as provided in Paragraph 9.02, whether or not the Goods are fabricated or installed, or the Special Services are completed.
- C. Engineer may authorize minor deviations or variations in the Procurement Contract Documents by: 1) written approval of specific variations set forth in Shop Drawings when Seller has duly noted such variations as required in Paragraph 7.06.A.3, or 2) a Field Order.
- D. As set forth in Article 12, Engineer will review Claims, and render decisions on Claims.
- E. In rendering any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, and judgments, Engineer will not show partiality to Buyer or Seller. Engineer will not be liable to Buyer, Seller, or others in connection with any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, or judgments conducted or rendered by Engineer in good faith.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for the means, methods, techniques, sequences, or procedures used by Seller to perform its obligations under this Procurement Contract, or the safety precautions and programs incident thereto, or for any failure of Seller to comply with Laws and Regulations applicable to the performance of its obligations. Engineer will not be responsible for Seller's failure to furnish the Goods and Special Services in accordance with the Procurement Contract Documents.

ARTICLE 11—CHANGES

11.01 *Amending and Supplementing the Procurement Contract*

- A. The Procurement Contract may be amended or supplemented by a Change Order, a Change Directive, or a Field Order.
- B. If an amendment or supplement to the Procurement Contract includes a change in the Procurement Contract Price or the Procurement Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Procurement Contract that involve (1) the conformance or acceptability of the Goods and Special Services, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Buyer and Seller may amend other terms and conditions of the Procurement Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Buyer and Seller shall execute appropriate Change Orders covering:
 - 1. Changes in Procurement Contract Price or Procurement Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Goods and Special Services furnished in accordance with a Change Directive;
 - 2. Changes in Procurement Contract Price resulting from a Buyer set-off, unless Seller has duly contested such set-off;
 - 3. Changes in the Goods and Special Services which are: (a) ordered by Buyer pursuant to Paragraph 11.05, (b) required because of Buyer's acceptance of non-conforming Goods and Services under Paragraph 9.03 or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Goods and Special Services involves the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Change Directive; Article 12, Claims; and similar provisions.
- B. If Buyer or Seller refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Change Directives*

- A. A Change Directive will not change the Procurement Contract Price or the Procurement Contract Times but is evidence that the parties expect that the modification ordered or documented by a Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Change Directive's effect, if any, on the Procurement Contract Price and Procurement Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Procurement Contract Documents governing adjustments, expressly including Paragraph 11.08 regarding change of Procurement Contract Price.
- B. If Buyer has issued a Change Directive and Buyer or Seller believes that an adjustment in Procurement Contract Times or Procurement Contract Price is necessary, then such party shall submit a Claim seeking such an adjustment no later than 30 days after the completion of the Goods and Services set out in the Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Goods and Services if the changes do not involve an adjustment in the Procurement Contract Price or the Procurement Contract Times and are compatible with the design concept as indicated by the Procurement Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Buyer and also on Seller, which shall perform the Goods and Special Services involved promptly.
- B. If Seller believes that a Field Order justifies an adjustment in the Procurement Contract Price or Procurement Contract Times, then before proceeding with the Goods and Special Services at issue, Seller shall submit a Claim as provided herein.

11.05 *Buyer-Authorized Changes in the Goods and Special Services*

- A. Without invalidating the Procurement Contract and without notice to any surety, Buyer may, at any time or from time to time, order additions, deletions, or revisions in the Goods and Special Services. Changes involving the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Goods and Special Services may be accomplished by a Change Order, if Buyer and Seller have agreed as to the effect, if any, of the changes on Procurement Contract Times or Procurement Contract Price; or by a Change Directive. Upon receipt of any such document, Seller shall promptly proceed with the Goods and Special Services involved; or, in the case of a deletion in the Goods and Special Services, promptly cease activities with respect to such deletion. Added or revised Goods and Special Services must be performed under the applicable conditions of the Procurement Contract Documents.

11.06 *Buyer's Contingency Allowance*

- A. The Buyer's Contingency Allowance, if any such is set forth in the Procurement Agreement, is for the sole use of Buyer to cover unanticipated costs.
- B. If Buyer exercises its unilateral right to use all or a portion of the Buyer's Contingency Allowance, Buyer will issue a written directive that documents the costs to which the allowance is applied, Seller's entitlement to compensation, and the consequent reduction in such allowance.
- C. Prior to final payment, the Total Price, as set forth in the Procurement Agreement, will be duly adjusted to account for any unused portion of the Buyer's Contingency Allowance.
- D. The Procurement Agreement, Article 5, addresses the impact on Buyer's Contingency Allowance of an assignment of the Procurement Contract.

11.07 *Unauthorized Changes in the Goods and Special Services*

- A. Seller shall not be entitled to an increase in the Procurement Contract Price or an extension of the Procurement Contract Times with respect to any work performed that is not required by the Procurement Contract Documents, as amended, modified, or supplemented.

11.08 *Change of Procurement Contract Price*

- A. The Procurement Contract Price may only be changed by a Change Order. Any Claim for an adjustment of Procurement Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Procurement Contract Price will be determined as follows:
 - 1. For changes in Unit Price Goods and Special Services, by application of the unit prices to the quantities of the items involved;
 - 2. To the extent the cost of the change is not covered by unit prices, then by a mutually agreed lump sum; or
 - 3. To the extent the cost of the change is not covered by unit prices and the parties do not reach mutual agreement to a lump sum, then on the basis of documented costs plus a Seller's fee for overhead and profit of 15%.

11.09 *Change of Procurement Contract Times*

- A. The Procurement Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Procurement Contract Times must comply with the provisions of Article 12.

11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Goods and Special Services or the provisions of the Procurement Contract (including, but not limited to, Procurement Contract Price or Procurement Contract Times), the giving of any such notice will be Seller's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS, DISPUTES, AND DISPUTE RESOLUTION

12.01 *Claims*

- A. The parties agree to endeavor to avoid or resolve Claims through direct, good faith discussions and negotiations whenever practicable. Such discussions and negotiations should at the outset address whether the parties mutually agree to suspend the Claims process, including the time periods established in this Paragraph 12.01; if so, a written record of such mutual agreement should be made and jointly executed.
- B. Claimant shall deliver to Engineer and the other party to the Procurement Contract written notice of each Claim within 15 days after the occurrence of the event giving rise to the Claim.
- C. Claimant shall deliver written supporting data to Engineer and the other party within 45 days after such occurrence unless Engineer allows an additional period of time.
- D. Engineer will review each such Claim and render a decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- E. If Engineer does not render a formal written decision on a Claim within the time stated in Paragraph 12.01.D., Engineer shall be deemed to have issued a decision denying the Claim in its entirety 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- F. The rendering of a decision by Engineer pursuant to this Paragraph 12.01 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by Buyer or Seller of such rights or remedies as either may otherwise have under the Procurement Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter. If the exercise of such rights or remedies will imminently be time-barred, a party may take actions necessary to preserve such rights and remedies notwithstanding the lack of the condition precedent referred to in this paragraph.
- G. If a submitted matter in question concerns terms and conditions of the Procurement Contract Documents that do not involve (1) the performance or acceptability of Goods and Special Services under the Procurement Contract Documents, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, Addenda, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation. If Buyer and Seller

are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Paragraph 12.02.

- H. Engineer's written decision on such Claim or a decision denying the Claim in its entirety that is deemed to have been issued pursuant to Paragraph 12.01, will be final and binding upon Buyer and Seller 30 days after it is issued unless within 30 days of issuance Buyer or Seller appeals Engineer's decision by initiating the mediation of such Claim in accordance with the dispute resolution procedures set forth in Paragraph 12.02.
- I. If Article 12 has been amended to delete the mediation requirement, then Buyer or Seller may appeal Engineer's decision within 30 days of issuance by following the alternative dispute resolution process set forth in Article 12, as amended; or if no such alternative dispute resolution process has been set forth, Buyer or Seller may appeal Engineer's decision by 1) delivering to the other party within 30 days of the date of such decision a written notice of intent to submit the Claim to a court of competent jurisdiction, and 2) within 60 days after the date of such decision instituting a formal proceeding in a court of competent jurisdiction.
- J. No Claim for an adjustment in Procurement Contract Price or Procurement Contract Times will be valid if not submitted in accordance with Article 12.
- K. The effect on Claims of an assignment of the Procurement Contract by Buyer to a Contractor/Assignee is addressed in the Procurement Agreement, Article 5.

12.02 *Dispute Resolution Method*

- A. Either Buyer or Seller may initiate the mediation of (1) any Claim decided in writing by Engineer under Paragraph 12.01 before such decision becomes final and binding, or (2) any other dispute between the parties, including but not limited to any dispute arising after final inspection of the Goods and Services. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Procurement Contract. The request for mediation must be submitted in writing to the American Arbitration Association and the other party to the Procurement Contract. Timely submission of the request will stay Engineer's decision from becoming final and binding.
- B. Mediation is a condition precedent to seeking final dispute resolution under Paragraph 12.01.C. Buyer and Seller shall participate in the mediation process in good faith. The process must be concluded within 60 days of filing of the request. The date of termination of the mediation will be determined by application of the mediation rules referenced above.
- C. If the mediation process does not result in resolution of the dispute, then Engineer's written Claim decision under Paragraph 12.01.D or a Claim denial pursuant to Paragraph 12.01.E becomes final and binding, or if applicable such other dispute is deemed resolved in favor of respondent, unless, within 30 days after termination of the mediation, Buyer or Seller:
 - 1. elects in writing to invoke any final dispute resolution process provided for in the Supplementary Conditions, or
 - 2. agrees with the other party to submit the Claim or dispute to another final dispute resolution process, or
 - 3. if no final dispute resolution process has been provided for in the Supplementary Conditions, delivers to the other party written notice of the intent to submit the Claim

or dispute to a court of competent jurisdiction, and within 60 days of the termination of the mediation institutes such formal proceeding.

ARTICLE 13—PAYMENT

13.01 *Applications for Progress Payments*

- A. Seller shall submit to Buyer for Engineer's review Applications for Payment filled out and signed by Seller and accompanied by such supporting documentation as is required by the Procurement Contract Documents and also as Buyer or Engineer may reasonably require.
- B. The timing and amounts of progress payments will be as stipulated in the Procurement Agreement.
- C. Any Application for Payment that is based in whole or in part on the delivery of Goods must be accompanied by a bill of sale, invoice, or other documentation reasonably satisfactory to Buyer warranting that Buyer has rightfully received good title to the Goods from Seller and that, upon payment, the Goods will be free and clear of all liens. Such documentation will include releases and waivers from all parties with viable lien rights.
- D. Buyer shall notify Seller promptly of any deficiency in the required documentation.

13.02 *Review of Applications for Progress Payments*

A. *Review of Applications*

- 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Buyer, or return the Application to Seller indicating in writing Engineer's reasons for refusing to recommend payment.
- 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Buyer, based on Engineer's observations of Seller's progress, as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Goods and Special Services or other obligations of Seller have progressed to the point indicated;
 - b. the quality of the Goods and Special Services or other obligations of Seller are generally in accordance with the Procurement Contract Documents; and
 - c. the conditions precedent to Seller being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Seller's progress.
- 3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Goods and Special Services or other obligations of Seller have been exhaustive, extended to every aspect of the Goods and Special Services or other obligations of Seller in progress, or involved detailed inspections of the Goods and Special Services or other

- obligations of Seller beyond the responsibilities specifically assigned to Engineer in the Procurement Contract; or
- b. there may not be other matters or issues between the parties that might entitle Seller to be paid additionally by Buyer, or entitle Buyer to withhold payment to Seller.
4. Neither Engineer's review of Seller's progress for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Seller's performance or furnishing of Goods and Special Services or other obligations of Seller; or
 - b. for the means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or the safety precautions and programs incident thereto; or
 - c. for Seller's failure to comply with Laws and Regulations applicable to Seller's performance under the Procurement Contract; or
 - d. to make any examination to ascertain how or for what purposes Seller has used the money paid for the Procurement Contract Price; or
 - e. to determine that title to any of the Goods or component parts have passed to Buyer free and clear of any Liens.
 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Buyer stated in Paragraph 13.02.A.2.
 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Buyer from loss because:
 - a. the Goods and Services are non-conforming, requiring correction or replacement;
 - b. the Procurement Contract Price has been reduced by Change Orders;
 - c. Buyer has been required to correct non-conforming Goods and Special Services in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods and Special Services pursuant to Paragraph 9.03.E; or
 - d. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Seller and therefore justify termination for cause under the Procurement Contract Documents.

13.03 *Basis and Amount of Progress Payments*

- A. The basis and amounts of the progress payments will be as provided in the Procurement Agreement, subject to the provisions of this Article 13 regarding reductions in payment.

13.04 *Suspension of or Reduction in Payment*

- A. Buyer may temporarily cease making progress payments, or reduce the amount of a progress payment, even though recommended for payment by Engineer, under the following circumstances:

1. Buyer has reasonable grounds to conclude that Seller will not furnish the Goods or the Special Services in accordance with the Procurement Contract Documents, and
 2. Buyer has requested in writing assurances from Seller that the Goods and Special Services will be delivered or furnished in accordance with the Procurement Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.
 3. In addition to any reductions in payment (set-offs) recommended by Engineer, Buyer is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Buyer based on Seller's conduct in the performance or furnishing of the Goods and Special Services, or has incurred costs, losses, or damages resulting from Seller's conduct in the performance or furnishing of the Goods and Special Services, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Seller has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Point of Destination or the worksite;
 - c. Seller has failed to provide and maintain required bonds or insurance;
 - d. Buyer has incurred extra charges or engineering costs related to Submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - e. the Goods and Special Services are non-conforming, requiring correction or replacement;
 - f. Buyer has been required to correct non-conforming Goods and Special Services, in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods and Special Services pursuant to Paragraph 9.03.E;
 - g. the Procurement Contract Price has been reduced by Change Orders;
 - h. an event that would constitute a default by Seller and therefore justify a termination for cause has occurred;
 - i. liquidated or other damages have accrued as a result of Seller's failure to achieve Milestones, Substantial Completion, or final completion of the Goods and Special Services; or
 - j. liens have been filed in connection with the Procurement Contract, except where Seller has delivered a specific bond satisfactory to Buyer to secure the satisfaction and discharge of such liens.
- B. If Buyer refuses to make payment of the full amount recommended by Engineer, Buyer will provide Seller and Engineer immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

13.05 *Final Payment*

- A. After Seller has corrected all non-conformities to the reasonable satisfaction of Buyer and Engineer and furnished all Special Services, Seller may submit its final Application for Payment following the procedures for progress payments.
- B. The final Application for Payment will be accompanied by all documentation called for in the Procurement Contract Documents (including but not limited to all final operations and maintenance manuals, and any special warranties), a list of all unsettled Claims, and the written consent of surety to the making of final payment.
- C. If, on the basis of final inspection and the review of the final Application for Payment and accompanying documentation, Engineer is reasonably satisfied that Seller has furnished the Goods and Special Services in accordance with the Procurement Contract Documents, and that Seller has fulfilled all other obligations under the Procurement Contract Documents, then Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment subject to the provisions of Paragraph 13.02, and present the final Application for Payment to Buyer. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Buyer from loss for the reasons stated in Paragraph 13.02.
- D. If Engineer does not recommend final payment, Engineer will return the final Application for Payment to Seller, indicating the reasons for refusing to recommend final payment, in which case Seller shall make the necessary corrections and resubmit the final Application for Payment.
- E. In support of its recommendation of final payment Engineer will also give written notice to Buyer and Seller that the Goods and Special Services are acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 13.06.
- F. If the final Application for Payment and accompanying documentation are appropriate as to form and substance, Buyer shall, within 30 days after receipt thereof, pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, pursuant to the provisions of Paragraph 13.04.
- G. Buyer will not make final payment, or return or release included retainage (if any) at any time, unless Seller submits written consent of the surety to such payment, return, or release.

13.06 *Waiver of Claims*

- A. By making final payment, Buyer waives its claim or right to liquidated damages or other damages for late completion by Seller, except as set forth in an outstanding Claim, appeal, set-off, or express reservation of rights by Buyer. Buyer reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Seller will constitute a waiver by Seller of all claims and rights against Buyer other than those pending matters that have been duly submitted or appealed under the provisions of Article 12.

ARTICLE 14—CANCELLATION, SUSPENSION, AND TERMINATION

14.01 *Cancellation*

- A. Buyer has the right to cancel the Procurement Contract, without cause, at any time prior to delivery of the Goods by written notice. Cancellation pursuant to the terms of this paragraph will not constitute a breach of contract by Buyer. Upon cancellation:
 - 1. Buyer shall pay Seller for the direct costs incurred in producing any Goods that Seller has specially manufactured for the Project, plus a fair and reasonable amount for overhead and profit.
 - 2. For Goods that are not specially manufactured for the Project, Seller shall be entitled to a restocking charge of 10 percent of the unpaid Procurement Contract Price of such Goods.

14.02 *Suspension of Performance by Buyer*

- A. Buyer has the right to suspend performance of the Procurement Contract for up to 90 days, without cause, by written notice. Upon suspension under this paragraph, Seller shall be entitled to an increase in the Procurement Contract Times and Procurement Contract Price caused by the suspension, provided that performance would not have been suspended or delayed for causes attributable to Seller.

14.03 *Suspension of Performance by Seller*

- A. Seller may suspend the furnishing of the Goods and Special Services only under the following circumstance:
 - 1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Procurement Contract; and
 - 2. Seller has requested in writing assurances from Buyer that future payments will be made in accordance with the Procurement Contract, and Buyer has failed to provide such assurances within ten days of Seller's written request.

14.04 *Breach and Termination*

A. *Buyer's Breach*

- 1. Seller shall have the right to terminate the Procurement Contract for cause by declaring a breach if Buyer fails to comply with any material provision of the Procurement Contract. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.
- 2. If Seller believes Buyer is in breach of its obligations under the Procurement Contract, Seller shall provide Buyer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have 7 days from receipt of the written notice declaring the breach (or such longer period of time as Seller may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.

B. *Seller's Breach*

- 1. Buyer may terminate Seller's right to perform the Procurement Contract for cause by declaring a breach should Seller fail to comply with any material provision of the

Procurement Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.

2. In the event Buyer believes Seller is in breach of its obligations under the Procurement Contract, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have 7 days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.
3. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 5.01, the notice and cure procedures of that bond, if any, will supersede the notice and cure procedures of Paragraph 14.04.B.2.

ARTICLE 15—MISCELLANEOUS

15.01 *Giving Notice*

- A. Whenever any provision of the Procurement Contract requires the giving of written notice to Buyer, Seller, or Engineer, it will be deemed to have been validly given if delivered:
 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

15.02 *Controlling Law*

- A. This Procurement Contract is to be governed by the law of the state in which the Goods are to be installed.
- B. In the case of any conflict between the express terms of this Procurement Contract and the Uniform Commercial Code, as adopted in the state whose law governs, it is the intent of the parties that the express terms of this Procurement Contract will apply.

15.03 *Computation of Time*

- A. When any period of time is referred to in the Procurement Contract by number of days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

15.04 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Procurement Contract, and the provisions of this paragraph will be as effective as if repeated specifically in the Procurement Contract in connection with each particular duty, obligation, right, and remedy to which they apply.

15.05 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Procurement Contract, as well as all continuing obligations indicated in the Procurement Contract, will survive final payment, completion, and acceptance of the Goods and Special Services or termination or completion of the Procurement Contract or of the services of Seller.

15.06 *Entire Agreement*

- A. Buyer and Seller agree that this Procurement Contract is the complete and final agreement between them, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Procurement Contract may not be altered, modified, or amended except in writing signed by an authorized representative of both parties.

15.07 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Procurement Contract.

15.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

15.09 *Successors and Assigns*

- A. Buyer and Seller each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Procurement Contract.

SUPPLEMENTARY CONDITIONS OF THE PROCUREMENT CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE PROCUREMENT CONTRACT

These Supplementary Conditions amend or supplement EJCDC® P-700, Standard General Conditions of the Procurement Contract (2019). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

SC-1.01 Delete Paragraph 1.01A.9 in its entirety and insert the following in its place:

Contractor—For the purpose of this specific Procurement, the term "Contractor" shall be interchangeable with "Seller".

ARTICLE 2—PRELIMINARY MATTERS

SC-2.02 Amend the first sentence of Paragraph 2.02.A. to read as follows:

Buyer shall furnish to Seller up to one (1) printed copy of the Procurement Contract Documents (including one fully signed counterpart of the Procurement Agreement), and one copy in electronic portable document format (PDF).

SC-2.05 Add the following language at the end of Paragraph 2.05:

Said conference, if deemed necessary by the Buyer, will be held at the place and on the date and time established by the Buyer.

ARTICLE 3—PROCUREMENT CONTRACT DOCUMENTS

No Supplementary Conditions in this Article.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF WORK

No Supplementary Conditions in this Article.

ARTICLE 5—BONDS AND INSURANCE

SC-5.01 Add the following paragraphs immediately after Paragraph 5.01.A:

1. *Required Performance Bond Form*: The performance bond that Seller furnishes will be in the form of EJCDC® P-610, Performance Bond (2010 or 2019 edition).
2. *Required Payment Bond Form*: The payment bond that Contractor furnishes will be in the form of EJCDC® P-615, Payment Bond (2010 or 2019 edition).

SC-5.02 Add the following new paragraphs immediately after Paragraph 5.02.E:

- F. Seller shall purchase and maintain such liability and other insurance as is appropriate for the furnishing of Goods and Special Services and as will provide protection from claims set forth below which may arise out of or result from Seller's furnishing of the Goods or Special Services and Seller's other obligations under the Procurement Contract Documents, whether the furnishing of Goods and Special Services or other obligations are to be performed by Seller, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to furnish the Goods and Special Services, or by anyone for whose acts any of them may be liable:
1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Seller's employees;
 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Seller's employees;
 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Seller, or (b) by any other person for any other reason;
 5. claims for damages, other than to the Goods, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- G. The policies of insurance so required by this Paragraph 5.02 to be purchased and maintained must:
1. with respect to insurance required by Paragraphs SC-5.02.F.3 through SC-5.02.F.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) Buyer, Engineer, and their consultants, all of whom must be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds must provide primary coverage for all claims covered thereby;
 2. include at least the specific coverages and be written for not less than the limits of liability provided below or required by Laws or Regulations, whichever is greater;
 3. include completed operations insurance;
 4. include contractual liability insurance covering Seller's indemnity obligations under Paragraph 7.07;
 5. contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder will provide a copy of the notice to the other party, each other insured, and Engineer;

6. remain in effect at least until final payment and at all times thereafter when Seller may be correcting, removing, or replacing non-conforming Goods in accordance with Paragraph 9.03 and 9.04; and
 7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Seller shall furnish Buyer and each other additional insured identified in these Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Buyer and any such additional insured of continuation of such insurance at final payment and one year thereafter).
- H. The limits of liability for the insurance required by Paragraph SC-5.02.F must provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
1. Workers' Compensation, and related coverages under Paragraphs SC-5.02.F.1 and F.2:

Workers' Compensation and Related Policies	Policy limits of not less than
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Employer's Liability	
Policy limit	\$2,000,000

2. Seller's General Liability under Paragraphs SC-5.02.F.3 through F.6 which must include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Seller:

Commercial General Liability	Policy limits of not less than
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

3. Automobile Liability under Paragraph SC-5.02.F.6:

Automobile Liability	Policy limits of not less than
Bodily Injury	
Each Person	\$1,000,000
Each Accident	\$1,000,000
Property Damage	
Each Accident	\$1,000,000

- I. Seller shall deliver to Buyer, with copies to each additional insured identified in these Supplementary Conditions, certificates of insurance (and other evidence of insurance

requested by Buyer or any other additional insured) which Seller is required to purchase and maintain.

ARTICLE 6—LICENSES AND FEES

No Supplementary Conditions in this Article.

ARTICLE 7—SELLER’S RESPONSIBILITIES

No Supplementary Conditions in this Article.

ARTICLE 8—SHIPPING AND DELIVERY

SC-8.02 Amend Paragraph 8.02.C. to read as follows:

Seller will be responsible and bear all costs for shipping and unloading the Goods from carrier.

ARTICLE 9—BUYER’S RIGHTS

SC-9.05 Add the following new paragraph after Paragraph 9.04:

9.05 Limitation of Seller’s Liability

- A. Buyer and Seller agree that the total liability of Seller to Buyer for claims, costs, losses, and damages arising from this Procurement Contract will be limited to the amount established in the Procurement Agreement as the Procurement Contract Price.
- B. Upon assignment the terms of this Paragraph 9.05 will be binding upon both the assignor and assignee with respect to Seller's liability, The terms of this limitation do not apply to or limit any claim by Buyer against Seller based on any of the following: (a) contribution or indemnification with respect to third-party claims, losses, and damages; (b) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (c) intentional or reckless wrongful conduct, or (d) rights conferred by any bond provided by Seller under this Contract.

ARTICLE 10—ENGINEER’S STATUS

No Supplementary Conditions in this Article.

ARTICLE 11—CHANGES

No Supplementary Conditions in this Article.

ARTICLE 12—CLAIMS, DISPUTES, AND DISPUTE RESOLUTION

SC-12.03 Add the following new paragraph immediately after Paragraph 12.02:

12.03 Arbitration

- A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this

Paragraph SC-12.03). This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.

- B. The demand for arbitration will be filed in writing with the other party to the Procurement Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 12, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.
- C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Procurement Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
- D. The arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Procurement Contract permits them to do so.
- E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Procurement Contract provisions deemed applicable and relied on in making the award.
- F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party of the right to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- G. No arbitration arising out of or relating to the Procurement Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Procurement Contract unless:
 - 1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;
 - 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;
 - 3. such other individual or entity is subject to arbitration under a contract with either Buyer or Seller, or consents to being joined in the arbitration; and
 - 4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.

- H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Procurement Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

ARTICLE 13—PAYMENT

No Supplementary Conditions in this Article.

ARTICLE 14—CANCELLATION, SUSPENSION, AND TERMINATION

No Supplementary Conditions in this Article.

ARTICLE 15—MISCELLANEOUS

No Supplementary Conditions in this Article.

SECTION 11000

ONE (1) NEW ARTICULATED 4-WHEEL DRIVE LOADER WITH ATTACHMENTS

1. GENERAL

A. SUMMARY:

These specifications cover furnishing and delivery of one (1) NEW, and of the manufacturer's latest current model and design (no prototypes), diesel powered, four-wheel-drive, articulated loader, and attachments.

The minimum Operating Weight of the loader (not including attachments) shall be 30,000 lbs.

The unit shall include all standard equipment and accessories as advertised in manufacturer's specification sheet of model offered, unless otherwise specified herein.

Throughout this specification, all described features and other requirements are the minimum levels acceptable to the Buyer. Any minimum requirement may be exceeded by a Seller if it will enhance the quality and functional value of the equipment. Failure to meet or exceed a minimum requirement must be fully documented on an attached page to the equipment quote sheet. Failure to note exceptions to the bid requirements and describe exceptions in detail may cause rejection of a bid. The Buyer shall solely determine if any exception to a bid requirement is acceptable and this determination will be final. Any reference to specific brands may also include an approved equal. Pre-approval is required a minimum of 10-days prior to the bid opening and will be issued by addendum.

All parts and components of this unit shall be new and of the size, material, and strength to sustain the maximum load limits and severe operating conditions encountered in snow removal operations, while resulting in minimum wear and failure. All materials, parts, and components used shall be heavy duty and manufactured and/or treated to resist rust, corrosion, and wear.

These specifications require the doing of all things necessary or proper for, or incidental to, the furnishing of said unit. All items of design and equipment not listed in these specifications, but involved in carrying out their intent, are required to be furnished by the Seller, the same as if these items were specifically mentioned and described in these specifications.

B. REFERENCES:

49 CFR Part 18.36, Uniform Administrative Requirements for Grant and Cooperative Agreement to State and Local Government.

Federal Aviation Administration Advisory Circular 150/5220-20A, Airport Snow and Ice Control Equipment.

The Buy American Preference under 49 U.S.C. § 50101, Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers, and Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58), Build America, Buy America (BABA) require that all steel and manufactured goods used in Airport Improvement Program (AIP) funded projects be produced in the United States. The FAA has the authority to waive these Buy American Preferences if certain market or product conditions exist.

C. SUBMITTALS:

1. Product and Performance Data: The Seller shall submit PDF shop drawings within 10 days from the issuance of the Notice to Proceed to the Engineer.
2. O&M Manuals: The Seller shall submit within 14 calendar days after delivery two (2) complete hard copies and one (1) complete electronic set of O&M manuals to include:

- a. Operation instructions
 - b. Maintenance and complete parts list
 - c. Service requirements and service part numbers
 - d. Service instructions
 - e. Internet access to chassis parts books
 - f. Copies of electrical schematic.
3. O&M Manuals shall be provided for all attachments.
 4. Warranty: Unless otherwise stated, all equipment shall be new and current model and shall carry full factory warranties. Seller warrants all goods delivered to be free from defects in labor, material, and manufacture and to be in compliance with the specifications.

D. STARTUP AND TRAINING

1. The Seller must be an established authorized dealer of the units bid and employ factory trained service technicians. Shipping cost is the responsibility of the Seller (FOB the Buyer). A qualified factory representative must fully install, start-up, and test the unit prior to training the Buyers staff.
2. Training shall be performed by factory trained, authorized, and certified technicians. The training shall be performed at the Buyer's site and shall be 4 hours for operators training and an additional 4 hours for mechanics training (mechanics shall attend the operating training first). The purpose of the training is to review safe and effective procedures for use and maintenance of the machine, review and test all systems, and assure the full foundation of the machine.
3. Training shall include as a minimum the following:
 - a. Operating procedures per operating manual
 - b. Break-in procedures
 - c. Equipment limitations
 - d. Operator maintenance
 - e. Safety
 - f. Cold weather operations
 - g. Jump starting
 - h. Welding on equipment
 - i. Instruments and controls
 - j. Equipment Operation
 - k. Attachment Operation
4. Delivery information contained in Section 4.C.

E. QUALITY ASSURANCE

1. In the interest of continued and reliable service, parts, and technical support, equipment suppliers shall have exhibited a consecutive history of financial stability and manufacture of similar equipment. No experimental or untried equipment, unit/model, or component may be proposed or utilized in the final unit quoted.
2. The unit must be fully assembled and tested for full functionality prior to delivery by the manufacturer's

qualified representative. If any component of the unit is found to be incomplete, missing, or NOT fully functional then the unit will not be delivered.

3. Proof of tests by an operational and component check list with the date performed and signature of tester(s) is required with the delivery of the unit.

2. PRODUCTS

A. CHASSIS SPECIFICATIONS

1. GENERAL

The chassis shall be designed to permit easy and safe mounting and dismounting of the unit for operators and service personnel. Right side steps to be included. All sheet metal, cowling, steps, and fenders shall be free of sharp edges and protrusions and include ample supports and bracing to prevent distortion and cracking. All steps or walkways shall be raised lug or expanded metal type construction. Grab bars shall be installed as required for safe mounting and dismounting by personnel following OSHA Standards of 3-point contact during all mount and dismount activities from either side of the unit. This shall include a round grab handle at each door location.

- a. Articulated 4-wheel drive loader shall be Manufacturer's Standard Current Year Production Model. **NO PROTOTYPES WILL BE CONSIDERED.**
- b. Articulated 4-wheel drive loader shall be equipment with all standard equipment and features as listed in the Manufacturer's Equipment listing. All items not specified shall conform to the Manufacturer's specifications and include the Manufacturer's standard warranty.
- c. Counterweight to support the attachments specified in Section 2.B shall be built in.
- d. Unit to be provided with hitch with locking pin, articulation locking bar, and loader boom service locking bar.
- e. Unit shall have reinforced articulation joints with double tapered roller bearings.
- f. Overall height of unit (including strobe lights) shall not exceed 13'-0".
- g. The Manufacturer shall provide any specialized tools required for the proper maintenance of the unit and attachments. Manufacturer shall provide a listing of these specialized tool(s) that are to be provided and its intended use.

2. ENGINE

Shall be turbocharged diesel, 4.5 liter, 165 hp (min) displacement and shall be compliant with the most current federal regulations and have an EPA emission rating of Final Tier 4 / EU Stage V.

Fuel system shall be high-pressure compatible with B2-0 diesel. Engine shall have no less than 10-micron rated primary fuel filter with water separator.

Under-hood engine air cleaner shall be dry type and shall have an under-hood pre-screened air intake.

Access to engine shall be from both sides with side opening, full access service doors. Daily check points shall be accessible from the ground level.

The electrical system shall be 24 volt with 140 amp alternator.

Unit shall have automatic glow plugs based on intercooler air temp below 46 degrees Fahrenheit.

Unit shall include a Cold Start Package which shall include; an engine coolant block heater, a grid heater,

transmission oil pump heater, charge pump heater, and an electrical cable for 230V / 110V socket. Should the manufacturer not have these listed Cold Start Package items, an alternate of a coolant heater, a glow plug, low viscosity oil in the transmission, and arctic hydraulic oil is acceptable.

Unit shall have vandal protection with lockable engine enclosure, right counterweight storage, and filler access for radiator/fuel/DEF/hydraulic/transmission.

Unit shall have engine compartment light.

A complete list of all OEM replaceable filters shall be provided at or before delivery of the unit. One replacement filter of each type shall be provided with the unit.

3. COOLING SYSTEM

The cooling system shall consist of a heavy-duty radiator; with permanent type anti-freeze, affording protection to at least minus thirty (-30) degrees Fahrenheit minimum.

Air intake shall be pre-screened for each cooling component.

Unit shall have a coolant recovery tank.

Unit shall have a fan-guard.

Fluid levels should be easily checked by sight gauges or overflow tank.

4. FUEL SYSTEM

The unit shall come with production standard diesel fuel system with no less than 50-gallon capacity and a production standard DEF system.

5. TRANSMISSION

Transmission shall be the Manufacturer's Standard Transmission for the unit being bid, powershift, variable speed, capable of 20 MPH, clutch shall be heavy duty. The Transmission shall include a low range (granny gear) for use with various attachments (i.e. snow blower) and a lock-up torque converter.

6. AXLES

This loader shall be a standard four-wheel drive production model.

The final drives shall be heavy-duty midboard mounted planetary.

The service brake shall be hydraulically actuated, outboard, final drive carrier mounted, forced oil cooled, self-adjusting retractors and multi-disk.

The parking brake shall be automatic spring applied, hydraulically released, driveline mounted, oil cooled, and sealed from water, mud, and dust contamination.

Rear axles shall not have less than 24-degree total oscillation, stop to stop.

Both front and rear axles shall be hydraulically actuated with automatic locking differential.

7. HYDRAULIC SYSTEM

The hydraulic system shall be pressure-compensating load-sensing. Hydraulic tank shall have a capacity of no less than 20 gallons.

Hydraulic pump output for the bucket / attachment system shall be at least minimum required for loader

bucket, snow pusher, power broom, power snowplow (blade), snow blower (self-powered), and quick attachments.

Controls for hydraulically operated attachments shall be with a joystick with a third and/or fourth function.

Hydraulics shall automatically adjust to operating conditions and provide only the flow required by the implement for the loader bucket, snow pusher, power broom, power snowplow (blade), snow blower (self-powered), and quick attachments.

All required hydraulic lines, outlets and flat faced couplers / quick-attach couplers (QACs) shall be provided to the front of the unit for functionality of the front mounted loader bucket, snow pusher, power broom, power snowplow (blade), snow blower (self-powered), and quick attachments.

All auxiliary flow functions shall have the ability to be adjustable and continuous.

Hydraulic pump shall be variable-displacement, axial-piston pump, closed center pressure-compensating system.

Unit shall have at least two programmable multi-function buttons.

8. WHEELS AND TIRES

This unit shall be equipped with the Manufacturer's Standard proper sized wheels and snow tires for the GVW rating of the unit being bid. One spare tire and wheel assembly shall be provided with the unit. The wheel assembly shall be painted to match the other wheel assemblies on the vehicle.

The unit shall have OEM fenders installed over the front and rear wheels.

9. ELECTRICAL

Unit shall have two batteries, 24 volt, 950 CCA.

All electrical wiring shall be either harness, cable, split loomed, or shrink wrapped, and shall be watertight and weatherproof. All junction boxes shall be watertight and weatherproof. Wiring shall be secured by means of clips and/or hangers.

All electrical wiring shall be color-coded; wire numbered, matching schematics and terminal strip; and labeled what it is used for.

Unit to include two (2) Whelan Model L31 LED synchronized strobe lights, or approved equals, which shall be mounted on top of the cab, visible from all directions. To include "High/Off/Low" switch. All lenses shall be amber.

Unit to include cab dome light.

Unit to include variable intensity instrument lighting, display to be easily read during full day light and night time operation. Instrumentation shall be centered and grouped to provide precise and clear information quickly.

Unit to include LED work lights: two (2) rear work lights and minimum of two (2) front work lights.

Unit shall have a solid-state electrical power distribution system.

Unit electrical system to be protected by a sufficient circuit breaker.

Unit shall have a keyless starting system or a keyed starting system with optional security code.

Unit to be equipped with minimum four (4) front, two (2) rearing driving lights with guards, turn signals and flashers, stop and tail lights.

Unit shall be equipped with display for engine coolant temperature, transmission oil temperature, hydraulic oil temperature, and engine oil pressure.

Unit shall be equipped with a separate, dedicated display for the backup camera.

Unit shall have a readout for engine RPM, odometer, transmission gear/direction indicator, speedometer, hour meter, fuel level, average fuel level, and DEF level.

Unit shall have operator warning lights for check engine, engine oil pressure, engine air restriction, battery voltage, transmission filter restriction, brake pressure, hydraulic oil filter, transmission fault, and hydraulic oil temperature.

Unit to have easily accessible remote start battery terminals.

All lighting to be LED.

All gauges to read in US units and shall be lighted.

10. CAB

Enclosed Roll Over Protection System (EROPS).

The cab shall be OEM, fully enclosed, steel, insulated, sound suppressed, pressurized, "ROPS" level 1 cab with safety glass front windshield and safety or tempered glass on sides and rear windows. The cab shall be adequately sealed as to not allow unreasonable cold air or dust into cab.

The cab of this unit shall be provided as follows:

1. Cab shall be the Manufacturer's Premium Cab in Manufacturer's Standard interior colors.
2. Panorama left-hand and right-hand door for clear side visibility.
3. Panorama windshield.
4. Front sun visor.
5. High output, automatic controlled fresh air type heater/defroster/air conditioner.
6. Heated rear window defroster provided to aid in visibility.
7. Air Conditioning: To be OEM.
8. Front and rear window wipers and washers. Wiper motors to be highest capacity available from OEM. To include OEM intermittent feature on front (minimum).
9. Access to the engine components shall be accomplished without the need for tools.
10. Lockable doors, keys to be provided in duplicate.
11. Horn: electric or air operated.
12. Mirrors: To include an interior mounted convex rear-view mirror and outside cab mounted wide angle electrically adjustable, telescopic, and heated mirrors both sides of the unit.
13. Self-canceling turn signals with hazard switch.
14. The operator air suspension seat shall be a six (6) way adjustable, cloth, leather or vinyl covered suspension type with heat, and 3-point type safety belts.
15. Coat hook provided in the cab.
16. Storage bin provided in the cab.
17. Two (2) cup holders conveniently located in the cab within easy reach of the operator.
18. The interior of cab shall be fully insulated. The floor of the cab shall be insulated with thermal-acoustical sound barrier floor mat.
19. A 10-pound ABC rated fire extinguisher shall be mounted in the cab, mounted as to not interfere with access in or out of the vehicle as well as any equipment operations.

20. Steering shall be with a steering wheel, with a tilt and telescoping steering column.
21. Unit shall come with at least two (2) 12v power ports provided in the cab.
22. Joystick control for loader bucket, snow pusher, power broom, power snowplow (blade), snow blower (self-powered), and quick attachments.
23. Premium AM/FM/Weather Band radio with Bluetooth, Aux, and USB Ports.
24. Communications radio as specified in Section 2.C.
25. Three-point contact at all times to the front and rear of the loader and around the roof-line.

11. PAINTING AND MARKING

The paint shall be OEM yellow paint or similar color.

The quality of the finished paint and markings shall be free of “fisheye”, “orange peel”, chips, runs, air bubbles, creases, or other imperfections that detract from the equipment’s corrosion resistance and appearance.

A Slow Moving Vehicle (SMV) emblem shall be attached to the rear of the vehicle.

B. ATTACHMENTS

1. LOADER BUCKET

- a. To be OEM or approved equal loader bucket suitable for clearing snow piles (i.e. light material). Bucket to be minimum 4.5 cubic yard capacity.
- b. To include replaceable and reversible bolt-on cutting edges. Manufacturer to provide one (1) additional spare complete set of cutting edges to include mounting, nuts, bolts, and washers with the loader bucket.
- c. Bucket shall be painted in a similar color scheme to match the loader.
- d. Loader bucket to include an OEM or approved equal quick attachment system compatible to the loader. Pre-approval is required a minimum of 10-days prior to the bid opening.
- e. No separate bid item is included for this item and the cost for this item shall be included in the price for the loader.

2. QUICK ATTACH SYSTEM

- a. To be equipped with a quick attach coupler system that is compatible with unit being bid.
- b. To be an OEM, (ALO, Euro, Global) or approved equal quick attach coupler system for removal/installation of the required attachments (loader bucket, snow pusher, power broom, power snowplow (blade), snow blower (self-powered)). Loader must be balanced appropriately to utilize the listed attachments.

3. SNOW PUSHER

- a. To be OEM or approved equal sectional box type plow attachment with boxed in side plates and all required accessories for a complete and operational unit.
- b. Pre-approved Manufacturers include:

1. Pro-Tech
 2. Or approved equal. Pre-approval is required a minimum of 10-days prior to the bid opening.
- c. Snow pusher to be minimum fourteen (14') feet in width. Sections to be minimum two (2') feet in width with steel edges.
 - d. To include replaceable and reversible bolt on cutting edges and skids. Manufacturer to provide one (1) additional spare complete set of cutting edges and skids including all mounting nuts, bolts, and washers for the specified pusher.
 - e. Shall be painted in a similar color scheme to match the loader.
 - f. Snow pusher to come with an OEM or approved equal quick attach system compatible to the loader.

4. POWER BROOM

- a. To be OEM or approved equal front mounted hydraulically driven power broom attachment and all required accessories for a complete and operational unit.
- b. Pre-approved Manufacturers include:
 1. MB Companies, Inc. (now available from Werk-Brau)
 2. Paladin
 3. Or approved equal. Pre-approval is required a minimum of 10-days prior to the bid opening.
- c. Power broom to be minimum ten (10') feet in width.
- d. Thirty-two (32") inch minimum diameter brushes with combination poly wafer.
- e. Manufacturer to provide one (1) additional spare complete set of replacement brushes as specified for the broom.
- f. Power broom shall include all required / necessary components, hydraulic motors, hydraulic lines and flat faced couplers, valves, and joystick / controls for a fully functional unit.
- g. Broom head shall be painted in a similar color scheme to match the loader.
- h. A set of broom stands shall be included with the broom for storage.
- i. To include an OEM or approved equal quick attachment system compatible to the loader.

5. POWER SNOWPLOW (BLADE)

- a. To be OEM or approved equal variable angle curled moldboard plow attachment and all required accessories for a complete and operational unit.
- b. Pre-approved Manufacturers include:
 1. Henke
 2. Falls
 3. Or approved equal. Pre-approval is required a minimum of 10-days prior to the bid opening.
- c. Power snowplow to be minimum twelve (12') feet in width.
- d. Power snowplow to include full width rubber deflector strip at the top of the blade to prevent

snow from spilling over.

- e. To include replaceable and reversible bolt on cutting edges and skids. Manufacturer to provide one (1) additional spare complete set of cutting edges and skids including all mounting nuts, bolts, and washers for the specified plow.
- f. Power snowplow shall include all required / necessary components, hydraulic lines and flat faced couplers, valves, and joystick / controls for a fully functional unit.
- g. Shall be painted in a similar color scheme to match the loader.
- h. Power snowplow to come with an OEM or approved equal quick attach system compatible to the loader.

6. SNOW BLOWER (SELF-POWERED)

- a. To be OEM or approved equal standard equipped self-powered, two-stage, heavy-duty snow blower and all required accessories, for a complete and operational unit.
- b. Pre-approved Manufacturers include:
 - 1. Larue
 - 2. Or approved equal. Pre-approval is required a minimum of 10-days prior to the bid opening.
- c. Blower to have a minimum nine (9') foot cut width.
- d. Snow casting distance 120 feet, minimum.
- e. Self-powered engine shall be turbo diesel, 300 HP, Tier 4 Final emission standards. Fuel tank capacity of 75 Gal minimum.
- f. Blower shall be equipped with wireless controls which are to be mounted in the cab of the loader.
- g. Chute rotator and deflector shall be operated by hydraulics.
- h. To include replaceable and adjustable hardened skid shoes.
- i. Manufacturer to provide one (1) additional spare complete set of cutting edges and skid shoes to include mounting nuts, bolts, and washers with the blower.
- j. Shall be painted in a similar color scheme to match the loader.
- k. Blower to include OEM or approved equal quick attachment system compatible to the loader.
- l. Auger style conveyor is preferred.

C. COMMUNICATIONS RADIOS:

Radio Equipment shall be provided and installed by the Seller. However, the location of the installed radio and microphones shall be approved by the Buyer. Only one radio is required for the vehicle. The following alternatives for the single radio equipment are pre-approved:

- 1. ICOM IC-A120 transceiver for communication with the air traffic. This radio should be equipped with a noise-canceling microphone.
- 2. Flightline VHF Airband Mobile Radio for communication with the air traffic. This radio should be equipped with a noise-canceling microphone.
- 3. Or approved equal. Pre-approval is required a minimum of 10-days prior to the bid opening.

All installations shall be adequate for the radio and transceiver to suppress interference and permit positive, understandable, voice radio communications under all operating conditions.

Upon delivery of the loader, the radio shall be set to the local Common Traffic Advisory Frequency (CTAF) of 122.90.

No bid item is included for this item and the cost for this item shall be included in the price for the Loader.

All radio equipment must be furnished, installed and operational, complete with all accessories, including antenna and microphones necessary for operation and mounting in the unit. All radio equipment shall turn off with the ignition switch.

3. QUALITY/SAFETY STANDARDS

Each bid must include the vehicle (chassis) manufacturer's certification that the vehicle (chassis) meets or exceeds the following requirements based on documented test results. Documented test results shall be provided upon request.

FMVSS 571-103	Windshield defrosting and defogging systems, in accordance with J1944, J198
FMVSS 571-207	Seating systems
FMVSS 571-210	Seat belt assembly
40 CFR CH.1	Pass by noise levels (in accordance with SAE J366)
FMCSR 393.94	Vehicle interior noise levels
FMVSS 571-101	Controls and displays
FMVSS 571-108	Lamps, reflective devices and associated equipment
FMVSS 571-120	Tire selection and rims for motor vehicles other than passenger cars.
FMVSS 571-206	Door locks and door retention components
FMVSS 271-209	Seat belt assemblies
FMCSR 205	Glazing for windows
FMCSR 302	Flammability of interior materials
SAE J1040	Performance Criteria for Rollover Protection
ISO 3471	Rollover Protective Structures
SAE J386	Operator Restraint System- Off Road Work Machines

4. EXECUTION

A. VERIFICATION

Seller shall carefully study and compare the Contract Documents and check and verify pertinent requirements therein.

B. ASSEMBLY

Seller shall assemble goods in conformance with the Contract Documents and industry standards.

C. DELIVERY

Seller shall deliver Goods to the place specified in the Contract Documents. All equipment and attachments are to be delivered fully complete, assembled, and ready for operation including all hoses, couplings, fluids, lubricants, and

initial fuel.

F.O.B. shall be Kindred-Robert Odegaard Field, Kindred, North Dakota.

D. WARRANTY

A submission of a bid in response to this invitation shall constitute the Seller's warranty of the units offered including all parts and labor for a period matching the manufacturer's standard warranty from the date of delivery of the equipment (minimum of one-year). If any part of this equipment fails by reason of defective design, workmanship, or materials during the warranty period, the bidder shall promptly replace or repair the part or defect without cost to the Buyer. Tires, batteries, electric lamps, plow cutting edges, and other devices subject to normal deterioration shall not be included in this warranty.

5. BASIS OF PAYMENT:

Payment for the completely assembled and tested articulated 4-wheel drive loader as described in these specifications along with attachments specified herein, shall be made at the lump sum contract unit price. The price shall be full compensation for furnishing all materials, freight, preparation, painting, assembling, testing, and delivery of the loader package with all spare parts, tools, and manuals as described herein, and for all labor, equipment, tools, and incidentals necessary to complete the item.

Payment shall be made under:

- | | |
|--------------------|---|
| Item 11000 – 5.1-1 | Articulating Loader with Quick Attach System and Loader Bucket – per Lump Sum |
| Item 11000 – 5.1-2 | Snow Pusher – per Lump Sum |
| Item 11000 – 5.1-3 | Power Broom – per Lump Sum |
| Item 11000 – 5.1-4 | Power Snowplow – per Lump Sum |
| Item 11000 – 5.1-5 | Snow Blower (Self-Powered) – per Lump Sum |

END OF SECTION 11000