

Metropolitan Washington Airports Authority
PROCUREMENT AND CONTRACTS DEPT.
SOLICITATION OFFER AND AWARD

Metropolitan Washington Airports Authority Procurement and Contracts Dept., MA-440 1 Aviation Circle, Suite 154 Washington, DC 20001-6000		1. FOR INFORMATION CALL NAME: Ramon Paez, Ramon.Paez@mwaa.com TELEPHONE NUMBER: <i>(No Collect Calls)</i> 703-417-8676	
2. SOLICITATION NUMBER	3. TYPE OF SOLICITATION	4. DATE ISSUED	
1-12-C205	REQUEST FOR PROPOSALS (RFP)	August 17, 2012	
SOLICITATION			
5. DESCRIPTION OF SUPPLIES, SERVICES, CONSTRUCTION			
The Contractor shall furnish all necessary labor, materials, tools, equipment and supervision for the demolition and removal of the existing expansion joint, substrate preparation, removal of the existing flooring as required, installation of the new expansion joint systems, restoration of the flooring and all incidentals necessary to complete the East expansion joint replacement at Dulles International Airport.			
All questions concerning this solicitation must be submitted by 3:00 PM September 12, 2012 via the Airports Authority's website at: http://www.mwaa.com/5125.htm			
Note: This solicitation has a 60% LDBE participation requirement.			
NOTE: CONTRACTORS ARE RESPONSIBLE FOR VERIFYING NUMBER AND DATES OF AMENDMENTS PRIOR TO SUBMITTING A PROPOSAL. FAILURE TO ACKNOWLEDGE AN AMENDMENT MAY RESULT IN PROPOSAL BEING DETERMINED NON-CONFORMING.			
6. BOND REQUIREMENTS			
PAYMENT BOND: 100%		PERFORMANCE BOND: 100%	
7. PRE-PROPOSAL CONFERENCE			
DATE: August 30, 2012		TIME: 10:00 AM	
LOCATION: 4 th Floor Conference Room #1, JP Morgan Chase Building, 45025 Aviation Drive, Dulles, VA (Across from the Marriott)			
8. DEADLINE FOR OFFER SUBMISSION			
Sealed offers in original and 1 copies to perform the work or to furnish the supplies or services in the Schedule are due at the place specified at the top of this form by 2:00 P.M. local time, September 27, 2012 . Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time the offers are due. Proposals will not be publicly opened.			
OFFER (Must be fully completed by offeror)			
9. NAME AND ADDRESS OF OFFEROR (Include Zip Code)		11. REMITTANCE ADDRESS (If different than Item9)	
		12A. E-MAIL ADDRESS	
10A. TELEPHONE NUMBER	10B. FAX NUMBER	12B. COMPANY INTERNET WEBSITE	
NOTICE: Offer shall be valid for 60 days			
13. ACKNOWLEDGMENT OF AMENDMENTS (This offeror acknowledges receipt of amendments to this solicitation - give number and date of each)		14A. NAME & TITLE OF PERSON AUTHORIZED TO SIGN OFFER	
AMENDMENT NO.			
DATE		14B. SIGNATURE	14C. DATE
AWARD (To be completed by MWAA)			
15. ACCEPTED AS TO ITEMS NUMBERED		20A. NAME OF CONTRACTING OFFICER	
16. CONTRACT NUMBER	17. AMOUNT	20B. SIGNATURE OF CONTRACTING OFFICER	
18. DATE OF AWARD	19. CONTRACT EFFECTIVE DATE		

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01	SPECIFICATIONS, Entitled “Main Terminal East Expansion Joint Replacement,” Dated May 4, 2012, One Bound Book
02	DRAWINGS SHEET NUMBERS GN00.0001 through AR08.0001
03	CONSTRUCTION SAFETY MANUAL, Revision 15, dated July 2002
04	OWNER CONTROLLED WRAP-UP INSURANCE PROGRAM MANUAL, November 2010 Edition
05	AIRPORT BULLETINS – WASHINGTON DULLES INTERNATIONAL AIRPORT, February 2009 Edition

SECTION III- PRICE SCHEDULE

The Price Schedule for this RFP is in Microsoft Excel format and downloadable at:

<http://www.mwaa.com/5127.htm>

The Price Schedule must be submitted in both electronic and hard copy. The hard copy is due not later than the time specified in Block 9 of the Solicitation Offer and Award form. The electronic copy of the Price Schedule in its original Microsoft Excel format on either a CD-ROM or USB Flash Drive is due no later than 24 hours after the deadline for the hard copy. In the event of a discrepancy between the hard copy and the file on CD-ROM or USB Flash Drive, the hard copy will take precedence.

SECTION IV - REPRESENTATIONS AND CERTIFICATIONS

01 PARENT COMPANY AND IDENTIFYING DATA

A. A "parent" company, for the purpose of this provision, is one that owns or controls the activities and basic business policies of the offeror. To own the offeror's company means that the parent company must own at least 51% of the voting rights in that company. A company may control an offeror as a parent company even though not meeting the requirement for such ownership if the parent company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominant minority voting rights, use of proxy voting, or otherwise.

B. The offeror [] is, [] is not (check applicable box) owned or controlled by a parent company.

C. If the offeror checked "is" in paragraph B. above, it shall provide the following information:

Name and Main Office Address of
Parent Company (include zip code)

Parent Company's Employer's
Identification Number

D. If the offeror checked "is not" in paragraph B. above, it shall insert its own Employer's Identification Number on the following line:

_____.

E. The offeror (or its parent company) [] is, [] is not (check applicable box) a publicly traded company.

F. The offeror shall insert the name(s) of its principal(s) on the following line:

_____.

02 TYPE OF BUSINESS ORGANIZATION

The offeror, by checking the applicable box, represents that:

A. It operates as [] a corporation incorporated under the laws of the State of _____,
[] an individual, [] a partnership, [] a nonprofit organization, or [] a joint venture.

B. If the offeror is a foreign entity, it operates as [] an individual, [] a partnership, [] a nonprofit organization, [] a joint venture, or [] a corporation, registered for business in _____ (country).

03 AUTHORIZED NEGOTIATORS

The offeror represents that the following persons are authorized to negotiate on its behalf with the Authority in connection with this request for proposals or quotations:

04 LOCAL DISADVANTAGED BUSINESS ENTERPRISE REPRESENTATION

- A. Representation The offeror represents and certifies as part of its offer that it [] is, [] is not a local disadvantaged business enterprise.
- B. Definitions **"Local Disadvantaged Business Enterprise" (LDBE)** is defined as a disadvantaged business concern which is organized for profit and which is located within a 100-mile radius of Washington, DC's zero mile marker. Those business entities located within counties that fall partially within the aforementioned boundary would also be eligible to participate in the Authority's LDBE Program. **"Located"** means that, as of the date of the contract solicitation, a business entity has an established office or place of business within a city, county, town, or political jurisdiction within the 100-mile radius referenced above. Evidence of whether a business is **"located"** within the region includes, but is not limited to: an address that is not a Post Office Box; employees at that address; business license; payment of taxes; previous performance of work similar to work to be performed under contract, or related work; and other indicia. A **"disadvantaged business"** is defined as a firm which is not dominant in its field, and which meets the Authority's disadvantaged business size standard(s) for this solicitation.
- C. Certification Proposed LDBEs must apply to the Authority's Equal Opportunity Programs Office for certification. For further instruction, see **Section IX on Local Disadvantaged Business Enterprise Participation (LDBE)** in this Solicitation.

05 MINORITY BUSINESS ENTERPRISE REPRESENTATION

- A. Representation. The offeror represents that it [] is, [] is not a Minority Business Enterprise.
- B. Definition. A **Minority Business Enterprise** is:
1. A firm of any size which is at least **51%** owned by one or more minority persons or, in the case of a publicly-owned corporation, at least **51%** of all stock must be owned by one or more minority persons; and whose management and daily business operations are controlled by such persons. A person is considered to be a minority if he or she is a citizen of lawful resident of the United States and is:
 - a. Black (a person having origins in any of the black racial groups in Africa);
 - b. Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - c. Portuguese (a person of Portugal, Brazilian, or other Portuguese culture or origin, regardless of race);
 - d. Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
 - e. American Indian and Alaskan Native (a person having origins in any of the original peoples of North America.)
- C. Certification. As verification of this representation, the offeror is encouraged to attach a copy of a current MBE/WBE certification from any agency to be used for the Authority's monitoring of MBE/WBE participation in its program.

06 WOMEN BUSINESS ENTERPRISE REPRESENTATION

- A. Representation. The offeror represents that it [] is, [] is not a Women Business Enterprise.
- B. Definitions. A **Women Business Enterprise** is:
1. A firm of any size which is at least **51%** owned by one or more women or, in the case of a publicly-owned corporation, at least **51%** of stock must be owned by one or more such women; and
 2. Whose management and daily business operations are controlled by such persons.
- C. Certification. As verification of this representation, the offeror is encouraged to attach a copy of a current MBE/WBE certification from any agency to be used for the Authority's monitoring of MBE/WBE participation in its program.

07 CONTRACTOR IDENTIFICATION

Each offeror is requested to fill in the appropriate information set forth below:

DUNS Identification Number _____ (this number is assigned by Dun and Bradstreet, Inc., and is contained in that company's Data Universal Numbering System (DUNS). If the number is not known, it can be obtained from the local Dun & Bradstreet office. If no number has been assigned by Dun & Bradstreet, insert the word "none."

08 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

- A. The offeror certifies that --
1. The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (a) those prices, (b) the intention to submit a offer, or (c) the methods or factors used to calculate the prices offered;
 2. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
 3. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- B. Each signature of the offeror is considered to be a certification by the signatory that the signatory:
1. Is the person in the offeror's organization responsible for determining the prices being offered in its offer, and that the signatory has not participated and will not participate in any action contrary to subparagraphs A.1. through A.3. above; or
 2. a. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs A.1. through A.3. above

(Insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this offer or proposal, and the title of his or her position in the offeror's organization);

- b. As an authorized agent, does certify that the principals named in subdivision B.2.a. above have not participated, and will not participate, in any action contrary to subparagraphs A.1. through A.3. above.
 - c. As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs A.1. through A.3. above.
- C. If the offeror deletes or modifies subparagraph A.2. above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

09 VIRGINIA LICENSE CERTIFICATION

The offeror certifies that it holds a current Class ___ Virginia State Contractor's License, Number _____.

Notice: It is a violation of Virginia law for any party (prime contractor or subcontractor) to engage in, or offer to engage in, contracting work in the Commonwealth of Virginia unless the party has been licensed under the provisions of Title 54, Section 1103 of the Code of Virginia. Violation of this law constitutes the commission of a Class 1 misdemeanor.

10 CERTIFICATION OF COMPLIANCE WITH EMPLOYMENT ELIGIBILITY VERIFICATION, FORM I-9

The offeror certifies that it [] has [] has not read and [] is [] is not in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under. The offeror also certifies that its subcontractors are in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under.

11 RESERVED

12 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

- A. 1. The Offeror certifies, to the best of its knowledge and belief, that -
 - a. The Offeror and/or any of its Principals -
 - (1) Have [] have not [] been debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal, state, or local agency within the three (3) year period preceding this offer;
 - (2) Have [] have not [] had contractor or business license revoked within the three (3) year period preceding this offer;
 - (3) Have [] have not [] been declared non responsible by any public agency within the three (3) year period preceding this offer;
 - (4) Have [] have not [], within the three (3) year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of

fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or sub-contract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; violation of labor, employment, health, safety or environmental laws or regulations;

- (5) Have [] have not [], within the three (3) year period preceding this offer, been indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subparagraph A.1.a.(4). of this provision; and
- (6) All performance evaluations within the three (3) year period preceding this offer have [] have not [] received a rating of satisfactory or better. If not, please provide a copy of the evaluation with detailed explanation.

b. The Offeror has [] has not [] within the three (3) year period preceding this offer, had one or more contracts terminated for default by any Federal, state or local agency.

2. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

- B. The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- C. A certification that any of the items in paragraph A. of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- D. 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 paragraph A. of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- E. The certification in paragraph A. of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, the Contracting Officer may terminate the contract resulting from this solicitation for default.

SECTION V - SOLICITATION PROVISIONS**01 PRE-PROPOSAL CONFERENCE**

A pre-proposal conference will be held at 45025 Aviation Drive, Dulles, VA, Fourth Floor, Conference Room #1, Dulles Airport (Across from the Marriott) on August 30, 2012 at 10:00 AM Local Time only for the contractors who have the solicitation.

02 SOLICITATION DEFINITIONS

"Offer" means "proposal" in negotiation. "Solicitation" means a request for proposals (RFP) or a request for quotations (RFQ) in negotiation. The Authority means Metropolitan Washington Airports Authority.

03 CONTRACT AWARD

- A. The Authority will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Authority, cost or price and other factors specified elsewhere in this solicitation, considered.
- B. The Authority may (1) request "best and final offers," (2) reject any or all offers if such action is in the Authority's best interest, (3) accept other than the lowest offer, and/or (4) waive informalities and minor irregularities in offers received.
- C. The Authority may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.
- D. In evaluation and consideration of this procurement, the Authority, when deemed in its best interest, reserves the right to make multiple and/or split awards.
- E. The Authority may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Price Schedule, offers may not be submitted for quantities less than those specified. The Authority reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.
- F. A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Authority may accept an offer (or part of an offer, as provided in paragraph D. above), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Authority.
- G. Neither financial data submitted with an offer, nor representations concerning facilities for financing, will form a part of the resulting contract. However, if the resulting contract contains a provision providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.

04 PRE-AWARD SURVEY

The Authority reserves the right to perform or to have performed, an on-site survey of the offeror's facilities or previous work products and to investigate its other capabilities. This survey will serve to verify the data and

representations submitted, and to determine that the offeror has overall capability adequate to meet the contract requirements.

05 SITE VISIT

Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

06 ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATION

Offerors shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose on the Solicitation Offer and Award form; or (c) by letter or facsimile. The Authority must receive the acknowledgment by the time specified for receipt of offers.

07 EXPLANATION TO PROSPECTIVE OFFERORS

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a written reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the receipt of offers will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

08 PREPARATION OF OFFERS

- A. Offers must be (1) submitted on the forms furnished by the Authority or on copies of those forms, and (2) manually signed. The person signing an offer must initial each erasure or change appearing on any offer form.
- B. The offer form may require offerors to submit offer prices for one or more items on various bases, including--
 - 1. Base price offer;
 - 2. Alternate prices;
 - 3. Units of construction; or
 - 4. Any combination of subparagraphs B.1. through B.3 of this provision.
- C. Unless otherwise specified on the Price Schedule, the solicitation requires that offers on all items be reasonable and customary based on industry standards. The Authority has the sole discretion to determine whether the offer is reasonable and customary on all items and failure to do so may disqualify the offer.
- D. Alternate offers will not be considered unless this solicitation authorizes their submission.
- E. This solicitation precludes the submission of exceptions, conditions, qualifications, or exclusions as part of the proposal. The offeror must respond to the solicitation as presented by the Authority without alteration or exception, unless otherwise allowed elsewhere in the solicitation.

- F. For unit priced contracts, offerors shall (1) show the unit price/cost, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price/cost for the quantity of each item offered in the "Amount" column of the Price Schedule. In case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

09 SUBMISSION OF OFFERS

- A. Offers and modifications thereof shall be submitted in sealed envelopes or packages showing the name and address of the offeror, the solicitation number, and the time specified for receipt. Envelopes or packages should be addressed and delivered to the following location:

Metropolitan Washington Airports Authority
Procurement and Contracts Department, MA-440
Ronald Reagan Washington National Airport
1 Aviation Circle, Suite 154
Washington, DC 20001-6000

- B. Offers and modifications thereof which are submitted via any form of electronic transmission such as facsimile (FAX) or telegraph will not be considered unless authorized by this solicitation.
- C. Offers, modifications thereof, and all documentation submitted in support of the offer, including but not limited to, written narrative, enclosures, submittal, examples of past work, financial statements, and videos will become the property of the Authority and will not be returned.

10 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF OFFERS

- A. Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and:
1. Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th); or
 2. Was sent by overnight express delivery service (i.e. FedEx, UPS, Airborne Express, U.S. Postal Service Express Mail, or other similar guaranteed delivery service) in time to have arrived prior to the date and time specified for receipt of offers.
 3. Was sent by mail or by overnight express delivery service (or was electronically transmitted via fax if authorized), and it is determined that the late receipt was due solely to mishandling by the Authority after receipt at the Authority's offices.
 4. Is in the Authority's best interest to accept the offer.
- B. Any modification or withdrawal of an offer except a modification resulting from the Contracting Officer's request for "best and final" offer is subject to the same conditions as in paragraph A.1. through 4. above.
- C. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark"

means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

- D. The only acceptable evidence to establish the time of receipt at the Authority installation is the time/date stamp of that installation on the offer wrapper or other documentary evidence of receipt maintained by the installation.
- E. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service.
- F. Notwithstanding paragraph A. above, a late modification of an otherwise successful offer that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.
- G. Offers may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and that person signs a receipt for the offer.

11 SOLICITATION COSTS

This solicitation does not commit the Authority to pay any costs incurred in the preparation or submission of any offer or to procure or contract for any work.

12 OFFEROR'S QUALIFICATIONS

- A. Offers will be considered only from responsible individuals, partnerships, joint ventures, corporations or other private organizations demonstrating that they have the ability, experience and demonstrated resources to complete work in a timely manner and maintain a staff of regular employees adequate to ensure continuous performance of the work. Labor relations measured by standards of compensation, promptness in meeting obligations, and frequency of personnel changes, among other things, will be considered in determining whether an offeror has an established operating organization.
- B. Prior to award of contract, the Contracting Officer may require the apparent successful offeror to submit the following:
 - 1. List of the equipment to be used to perform the contract work.
 - 2. Number of employees and hours each will work per day.
 - 3. List of work to be subcontracted.
 - 4. Qualifications and experience of key project individuals.
 - 5. Documentation showing that the offeror has provided reasonable and customary pricing based on industry standards.

13 ESTIMATED COST OF CONSTRUCTION

The estimated cost of construction is between \$250,000 and \$500,000.

14 TYPE OF CONTRACT

The Authority contemplates award of a Firm Fixed Price contract resulting from this solicitation.

15 PLACE OF PERFORMANCE

All work will be performed at:

Metropolitan Washington Airports Authority
Washington Dulles International Airport
Loudoun County
Chantilly, Virginia

16 RESTRICTION ON DISCLOSURE AND USE OF DATA

Offerors who include in their offers data that they do not want disclosed to the public for any purpose or use by the Authority except for evaluation purposes, shall--

A. Mark the title page with the following legend:

"This offer includes data that shall not be disclosed outside the Authority and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this offer. If, however, a contract is awarded to this offeror as a result of-or in connection with-the submission of this data, the Authority shall have the right to duplicate, use or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Authority's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]"; and

B. Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this offer."

17 OFFER DOCUMENTS

Offerors shall include in their offer submission all documents required by this solicitation including, but not limited to, the following:

- A. Solicitation Offer and Award
- B. Price Schedule (Section III)
- C. Representations and Certifications (Section IV)
- D. Section VII - Contract Provision 42, Brand Name or Approved Equal, Comparability of products of other manufacturers
- E. LDBE Certification Exhibits as applicable:
 - Exhibit A, Voluntary Efforts to Obtain MBE/WBE Participation
 - Exhibit D, Contract Participation Form
 - Exhibit F, LDBE Certification Application or proof of certification
 - Exhibit G, Application for Joint Venture Eligibility
 - Exhibit H, Request for Waiver
 - Exhibit I, LDBE Unavailability Certification
- F. Copy of Virginia State Contractor's License

- G. For projects of comparable scope and price only, that have been completed during the five (5) years preceding this offer, provide a summary of the project, limited to one (1) page in length only, which includes the project description, location, owner contact, and information regarding Offeror's compliance with material contractual terms, including cost, schedule, quality and safety.

18 PROTESTS

- A. Protests must be typewritten and hand-delivered or mailed to the Manager of the Procurement and Contracts Department, (MA-440), Metropolitan Washington Airports Authority, 1 Aviation Circle, Washington, DC 20001-6000. If a protest is mailed, it should be sent by registered or certified mail, return receipt requested. Protests sent by facsimile machine will not be considered to meet the applicable deadline unless the original is hand-delivered or mailed and received by the Procurement and Contracts Department Manager prior to the applicable deadline.
- B. If a potential offeror believes it has grounds to protest any terms or conditions contained in or omitted from a solicitation issued by the Authority or an amendment to that solicitation, the potential offeror must file its protest with the Authority's Procurement and Contracts Department Manager. The protest must be received by the manager by the earlier of the following two dates: (1) Fourteen (14) days after issuance date of the solicitation or the date of the solicitation amendment containing the terms and conditions that are the subject of the protest, or (2) the due date for bids or proposals.
- C. If an unsuccessful offeror on an Authority solicitation believes it has grounds to protest the rejection of its bid or proposal, or the award of a contract (other than grounds relating to the terms or conditions contained in or omitted from a solicitation or solicitation amendment), that offeror must file its protest with the Procurement and Contracts Department Manager. The protest must be received by the manager within seven (7) calendar days after the date of the Authority's letter notifying the offeror that its bid or proposal was unsuccessful or not accepted.
- D. The Procurement and Contracts Department Manager will attempt to respond to a protest within seven (7) days from receipt of the protest. If the manager determines that additional time will be required to respond to the protest, the manager will, within seven (7) days, notify the protestor of the time period within which a response will be made.
- E. The Authority's President and Chief Executive Officer may proceed with Award of the contract and notice-to-proceed while a protest is pending if he determines it to be in the Authority's best interest to do so.

19 PERFORMANCE AND PAYMENT BONDS

A. Performance Bond

If the Base Price exceeds \$100,000, the Contractor shall furnish, within a maximum of ten (10) calendar days of request by the Authority, a performance bond in an amount equal to 100% of the contract price with a surety or sureties acceptable to the Authority. Acceptable sureties are listed in U.S. Treasury Department Circular 570 published annually. Failure to provide proper bonds within this time limit may result in rejection of the offer.

B. Payment Bond

If the Base Price exceeds \$100,000, the Contractor shall furnish, within a maximum of ten (10) calendar days of request by the Authority, a payment bond in an amount equal to 100% of the contract price with a surety or sureties acceptable to the Authority. Acceptable sureties are listed in U.S. Treasury

Department Circular 570 published annually. Failure to provide proper bonds within this time limit may result in rejection of the offer.

- C. The Offeror's actual premium costs for the performance bond and payment bond (including premium costs for subcontractors of any tier) shall be reimbursed by the Authority. In order to be eligible for payment under this provision of the contract, premiums must be found by the Authority to be reasonable and customary to the industry and proof of actual payment along with the surety's invoice must be provided to the Authority. **Premium costs shall not be included by the Offerors in any proposed pricing shown on Section III, "Price Schedule" and they will not be considered by the Authority in evaluating the Offeror's proposal amount.**

20 INSURANCE COSTS

Premium costs for Contractor provided insurance coverage as specified in Section VII Contract Provision 20, Paragraph B, including premium costs for subcontractors of any tier, shall be reimbursed by the Authority if found to be reasonable and customary to the industry and proof of actual payment along with the insurance carrier's invoice(s) are provided to the Authority. Offerors will not be reimbursed for any insurance costs for coverage provided by the Authority under the Owner Controlled Wrap-Up Insurance Program (OCWIP) which is described in Section VII, Contract Provision 20, Paragraph A. **Offerors shall not include in their proposals any costs for Contractor provided insurance or for coverage provided under the OCWIP.**

21 CONTRACTOR NOTIFICATION OF OFFER RESULTS

At least three working days after the date and time specified in the solicitation for receipt of offers, Contractors submitting an offer may inquire of the cognizant Contracting Officer concerning whether or not their firm is the apparent lowest priced or highest scored offeror. Unsuccessful offerors shall be informed of the successful offeror and the contract amount after award.

SECTION VI - SPECIAL PROVISIONS

01 PLANS AND SPECIFICATIONS

Six (6) copies of the plans and specifications shall be given to the Contractor at or shortly after the award of the contract. Thereafter, the responsibility of obtaining additional copies of the original contract drawings and specifications shall be the Contractor's. If any changes are made to these documents, the Contractor shall be furnished six (6) copies of any revised or additional specifications. The Contractor is responsible for obtaining the latest issue of all other documents referenced in the specifications.

Pursuant to the provision entitled, "Specifications and Drawings for Construction," within ten (10) calendar days after the effective date of the Notice to Proceed and before ordering any materials or performing any work, the Contractor shall verify the dimensions shown on the contract documents as compared to the actual dimensions at the site and be responsible for same. All discrepancies which will have a material impact on the work shall be reported immediately to the Contracting Officer for resolution.

Omissions from the specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the specifications or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the specifications.

02 PROHIBITION ON POSTING OF PLANS AND SPECIFICATIONS ON WEB SITES

The posting of Metropolitan Washington Airports Authority (Authority) construction plans and specifications to individual web sites is prohibited, unless proper controls are instituted as identified below. Firms wishing to make these documents available to potential subcontractors/suppliers may do so by providing hard copies, downloading onto CDs, or posting them onto web sites behind a secure firewall with a password for subcontractors' access. Regardless of the format used to make the documents available to potential subcontractors/suppliers, a record must be kept of who receives the documents. While the documents may not be classified per se, for security reasons, Authority construction project plans and specifications should always be considered sensitive and not made available to others without controls in place.

03 SPECIAL SITE CONDITIONS

The area as specified will be occupied and operational during the period of the contract and all contract work in the area shall be accomplished in such a manner as to cause minimum interruptions to the facilities and activities of the area, and must comply with all safety criteria and rules.

04 ACCESS TO AIRPORT SECURED AREA WORK SITES

Access to the Airport Secured Area work sites for the contractor's vehicles is restricted to specific gate locations. These gate locations will be specified in the Contract Documents or at the pre-construction conference. The Contractor shall be responsible for making all traffic arrangements for vehicle activity outside the Airport's boundaries, and when necessary, the Contractor must provide/coordinate for traffic control assistance if the traffic volume interferes with normal traffic flow.

All gates used by the Contractor for access to the secured area of the Airport shall be closed and locked at all times except for passage for an authorized vehicle or pedestrian.

For gates **without** direct access from the public area to a security-controlled area, at least one dedicated person must be assigned (or contracted) to the gate. This person must be familiar with the safety and security requirements for the work site area and must have a means of direct contact with Airport Operations and the

Public Safety Communications Center, and adequate communication skills to clearly converse with Authority personnel.

For manned gates **with** direct access from the public area to a security-controlled area, the Airports Authority will provide a guard at no cost during the normal scheduled gate operational hours. The contractor shall provide a credit of \$400/day to reimburse the Airports Authority outside of these hours or if the gate is normally unmanned. A \$600/day credit is required for weekend and holiday. . Use of the Airport's Security contractor requires scheduling plans with advance notice of not less than 72 hours.

Note: The Airport requires at least three (3) business days notice to obtain Transportation Security Administration (TSA) approval of the security plan before permission to commence may be granted.

05 VALUE ENGINEERING CHANGE PROPOSALS

A. General

The Contractor is encouraged to voluntarily develop, prepare, and submit in writing, value engineering change proposals (VECP) for modifying the plans, specifications or other requirements of the contract for the purpose of reducing the cost of construction. The Contractor shall share equally with the Authority in any contract savings realized from accepted VECPs in accordance with paragraph C. below.

B. VECP Requirements

The Contractor's VECP shall clearly demonstrate that changing the contract requirements would:

1. Result in a net reduction in the total contract amount;
2. Not impair, in any manner, the essential functions or characteristics of the project, including, but not limited to, service life, economy of operation, ease of maintenance, desired appearance, design and safety standards; and
3. Not detrimentally affect the project completion schedule.

As a minimum, the Contractor shall submit the following information to the Contracting Officer's Technical Representative with each VECP:

1. A description of both existing contract requirements for performing the work and the VECP, with a discussion of the comparative advantages and disadvantages of each;
2. An itemization of the contract requirements that must be changed if the VECP is adopted;
3. A detailed estimate of the cost of performing the work under the existing contract and under the VECP;
4. A statement of the date by which the Authority must notify the Contractor that a contract modification adopting the VECP will be issued. Said date shall be selected so as to preclude all schedule impacts to the project regardless of whether work proceeds as specified in the contract or as specified in the VECP;
5. A statement of the effect adoption of the VECP will have on the time for completion of the contract;

6. The contract items of work affected by the proposed changes, including any quantity variation attributable to them; and
7. A description and estimate of costs the Authority may incur in implementing the VECP, such as redesign, evaluation, tests, and operating and support costs.

C. VECP Savings Sharing Between Contractor and Authority

The Authority may accept in whole, or in part, any VECP submitted by the Contractor pursuant to this provision by issuing a contract modification which will identify the VECP on which it is based. The contract modification will provide for an equitable adjustment in the contract amount and will revise any other affected provisions of the contract documents.

The equitable adjustment in the contract amount shall be determined in accordance with the following:

1. Estimated gross savings shall include Contractor's labor, material, equipment, overhead, profit and bond.
2. New savings shall be determined by (1) deducting from the estimated gross savings, the Contractor's costs of developing and implementing the VECP (including any amount attributable to a subcontractor) and (2) adding the estimated amount of increased costs to the Authority resulting from the change, such as testing, redesign, implementation, inspection, related items, and Authority furnished material.
3. Net savings shall be shared between the Contractor and the Authority on the basis of fifty percent (50%) for the Contractor and fifty percent (50%) for the Authority.
4. The contract amount shall be reduced by the Authority's share of the net savings.

In the event that an accepted VECP will result in a reduction in the Authority's life cycle costs (i.e., annual operation and maintenance expenses), the Contractor shall receive a share of these projected savings. The contract amount shall be increased by twenty percent (20%) of any projected life cycle savings determined to be realized from the VECP for one (1) typical year of use.

The Authority shall be the sole judge of the acceptability of a Contractor submitted VECP and of the estimated net savings from the adoption of all or any part of such proposal. In determining the estimated net savings, the Authority may disregard the contract line item prices if, in the Authority's judgment such prices do not represent a fair measure of the value of the work to be performed or deleted.

The Contractor's costs of preparation and submission of VECPs which are not accepted by the Authority shall be borne entirely by the Contractor. Conversely, the Authority's review and evaluation costs of unaccepted VECPs will be at no cost to the Contractor.

D. VECP Submission and Processing

The Contractor shall submit six (6) copies of the VECP along with all supporting information to the COTR, and send one (1) copy to the Contracting Officer.

The Contracting Officer shall notify the Contractor of the status of the VECP within 21 calendar days after receipt by the Contracting Officer. If additional time is required for evaluation, the Contracting

Officer shall notify the Contractor within the 21-day period and provide the reason for the delay and the expected date of the decision. Unless this notification specifically states otherwise, the provisions of paragraph E. shall prevail, i.e.:

1. The Contractor shall continue to perform the work in accordance with the requirements of the contract; and
2. Failure of the Authority to adopt the VECP by the date specified in the VECP, or the date subsequently specified in writing, shall be deemed rejection of the VECP.

The Authority will process VECPs expeditiously; however, the Authority shall not be liable for any delay in acting upon a VECP.

If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted or rejected by the Authority.

Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this provision. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. The Contracting Officer's decision to accept or reject all or part of any VECP shall be final and not subject to the Disputes provision or otherwise subject to litigation.

The Contractor shall continue to perform the work in accordance with the requirements of the contract until a notice to proceed is issued or a contract modification applied incorporating the VECP into the contract. If a VECP has not been approved by the date upon which the Contractor's VECP submission specifies that a decision should be made, or such other date as the Contractor may subsequently have requested in writing, such VECP shall be deemed rejected.

E. Contractual Obligations

The submission of a VECP by the Contractor to the Authority shall not in itself affect the rights or obligations of either party under this contract.

Authority acceptance of a VECP and performance of the cost-reduction work shall not extend the time of completion of the contract unless specifically provided for in the contract modification.

The Contractor shall include an appropriate value engineering provision in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph C. above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Authority under this contract, but shall exclude any value engineering incentive payment to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments, provided that these payments shall not reduce the Authority's share of the savings resulting from the VECP.

F. Preliminary VECPs

The contractor may submit a Preliminary value engineering proposal (Preliminary VECP) to the Authority to determine whether an idea is considered feasible and to assist the Contractor in determining whether a formal VECP should be developed and submitted.

A Preliminary VECP should be brief, one or two pages if possible, but comprehensive. At a minimum, it should:

1. Describe the technical concept being contemplated;
2. Describe other, non-technical factors critical to analysis of the potential VECP such as schedule impacts, aesthetic considerations, operational or maintenance impacts, etc.;
3. Provide an order-of-magnitude estimate of the net cost savings which might be realized from the potential VECP; and
4. State approximate costs for development of the formal VECP.

Submittal of a Preliminary VECP:

1. Does not establish ownership of a value engineering idea;
2. Does not establish a right to share in any resultant savings;
3. Does minimize the Contractor's risk in those areas where the Authority does not desire VE activity.

Ownership of a value engineering idea is not established until a fully documented formal VECP is submitted.

The Authority will review the Preliminary VECP within ten (10) business days and indicate if the ideas presented therein:

1. Have potential;
2. Could be modified to have potential; or
3. Have little or no chance of being accepted.

Indication by the Authority that a Preliminary VECP has potential does not guarantee that the subsequent formal VECP will be accepted. The Authority shall be the sole judge of the acceptability of a formal VECP and reserves the right to reject a VECP for any reason including technical, non-technical, financial or contractual reasons.

Submittal of Preliminary VECPs is not a requirement and is strictly optional. However, submittal of a Preliminary VECP can reduce the Contractor's risk by identifying those ideas that have little or no chance of being accepted.

06 CONTRACTOR PERFORMANCE EVALUATION

The Airports Authority will conduct periodic written evaluations of the contractor's performance at various intervals throughout the life of this contract. Input for these evaluations will be provided by the Contracting Officer's Technical Representative (COTR), Contracting Officer, and, where appropriate, the end user. The COTR will be responsible for completing the evaluation forms and reviewing their contents with the contractor. The intervals at which these evaluations will be conducted will be established prior to commencement of performance and the contractor advised accordingly.

These evaluations should be looked upon as a partnering tool between the contractor and the Airports Authority. It is hoped that they will help the contractor improve performance and communications when needed, as well as provide an opportunity for the Airports Authority to recognize positive performance. It is the Airports Authority's intent to use these evaluations to help keep communications open between the parties and foster achievement of a quality end product.

SECTION VII - CONTRACT PROVISIONS**01 PRE-CONSTRUCTION REQUIREMENTS****A. Pre-construction Conference**

Within ten (10) calendar days after award of a contract, the Contracting Officer will arrange for a pre-construction conference to be held at the Authority (exact date, time, and place to be specified by a separate communication), and attended by representatives of the Authority and the Contractor.

The Contractor shall deliver the following to the Contracting Officer at the conference.

1. Progress Schedules

Pursuant to the provision entitled, "Schedules for Construction Contracts", the Contractor shall provide progress schedules for the project. The Contractor shall deliver five (5) copies of the schedule to the Contracting Officer at or before the time of the Pre-construction Conference and submit schedule updates showing actual progress in the same number of copies on the first calendar day of each month for the duration of the contract term. Failure to comply with this provision shall be grounds for termination for default.

2. Insurance

Pursuant to the provision entitled "Insurance," the Contractor shall submit an Advice of Insurance evidencing insurance coverage provided under the Owner-Controlled Wrap-Up Insurance Program (OCWIP) and a certificate of insurance evidencing the required insurance coverage obtained at Contractor expense. NOTE: All insurance requirements must be met prior to commencement of work on the job site.

3. Airport Identification Badges

The Contractor shall submit Designated Official Certification documentation and applications for Airport Identification Badges as specified in Section X, Attachment 05.

B. Notice to Proceed

A Notice to Proceed will be issued by the Contracting Officer based on satisfactory receipt of the preceding items.

02 SCHEDULES FOR CONSTRUCTION CONTRACTS

A. The Contractor shall, at or before the time of the pre-construction conference, prepare and submit to the Contracting Officer for approval five (5) copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress schedule of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period.

B. The Contractor shall enter the actual progress on the schedule as directed by the Contracting Officer, and upon doing so shall immediately deliver five (5) copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may

be required by the Contracting Officer, without additional cost to the Authority. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

- C. Failure of the Contractor to comply with the requirements of the Contracting Officer under this provision shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

03 SUSPENSION OF WORK; DELAYS

- A. The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for a period of time that the Contracting Officer determines necessary for the convenience of the Authority.
- B. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this provision for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.
- C. A claim under this provision shall not be allowed (1) for any costs incurred more than 20 days before Contractor notifies the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

04 PAYMENTS - CONSTRUCTION CONTRACTS

A. Payments by the Authority

The Authority shall pay the Contractor the contract price as provided in this contract. Monthly progress payments shall be made as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates provided by the Contractor and approved by the Contracting Officer. The Authority shall make payments within 30 calendar days after receipt of a proper invoice in the office designated in Paragraph B. Billing Instructions.

The Authority strongly recommends that contractors participate in a program whereby payments under this contract are made via electronic funds transfer into the contractor's bank. Contractor requests to initiate such service shall include the bank name, address, account number, contact person, telephone number, and American Bankers Association (ABA) 9-digit identifying number. The initial request and any subsequent changes must be signed by the contractor's signatory of the contract and shall be submitted directly to the Authority's Finance Office (MA-22B).

B. Billing Instructions

1. Invoice Submittal. The Contractor shall submit, no more than once each month, an original and three copies of both its invoice and the Authority's Invoice Attachment Form (see the following paragraph) for payment to the following address:

Metropolitan Washington Airports Authority
Accounting Department, MA-22B
1 Aviation Circle, Suite 230
Washington, DC 20001-6000

2. Invoice Attachment Form. The Invoice Attachment Form (see Exhibit J) shall provide information on **all subcontractors**, each subcontractor's scope of services, and the subcontract dollar amount for those services. When reviewing the Contractor's invoicing for the reporting period, the Authority will use the Invoice Attachment Form as verification of subcontracting activities and payments. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. Failure to include required Exhibit J Attachment may delay payment of your invoice.
3. Basis for Payment of Lump Sum Line Items. Progress payments for Lump Sum Line Items shall be based upon actual progress made toward completion of the line item. Insofar as possible, the Contractor shall measure or estimate progress using a quantifiable/verifiable standard of measurement. The payment amount for a lump sum line item shall be calculated by multiplying the price of the line item times the percentage completed during the billing period. In reviewing estimates, the Contracting Officer may authorize material delivered to or near the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if such consideration is specifically authorized by this contract.
4. Basis for Payment of Unit Priced Line Items. If the quantity of a unit-priced item in this contract is an estimated quantity, progress payments for such item shall be based upon the actual quantities completed/delivered. The payment amount for a unit priced line item shall be calculated by multiplying the unit price (taking into account Contract Provision 04,H entitled, "Variation in Estimated Quantity" as applicable) times the quantity completed during the billing period.
5. Basis for Payment of Cost Reimbursable Items. The total cost of bond and insurance premiums for coverage required by this contract for the Contractor and subcontractors of all tiers shall be reimbursed by the Authority based on actual costs incurred, providing such costs are reasonable and customary based on industry standards and proof of payment along with the surety's and insurance carrier's invoices are provided to the Authority. See Solicitation Provision 19 and Contract Provision 20 for bond and insurance coverage requirements which are eligible for reimbursement. Contractors shall submit consolidated invoices (for the Contractor and subcontractors) for reimbursement of bond and insurance premiums. It is anticipated that the invoice for bond premiums will be submitted soon after the bonds have been purchased and proof of payment is available. Consolidated invoices for insurance premiums may be submitted on an annual basis. The retainage provisions in paragraph (E) below shall not apply to payments attributable to bond premiums and insurance coverage. Because payment of these reimbursable items will require a modification to the contract to provide funding, it is anticipated that thirty days processing time will be required to make payment for these items in addition to the normal invoice processing time.

Bonding costs associated with change order work will be reimbursed upon completion of the contract.

C. Timely Payments to Subcontractors

The Contractor promises that it will pay its subcontractors within 10 days following receipt of payment from the Authority. The prime contractor also agrees to return any retainage withheld from subcontractors within 10 days after the subcontractor has satisfactorily completed its work. Any delay or postponement of payment may not take place without prior approval of the Authority. A finding of non-payment is a material breach of this Contract. The Authority may, at its option, increase allowable retainage or withhold progress payments unless and until the Contractor demonstrates timely payment of sums due subcontractors. Provided, however, that the presence of a "pay when paid" provision in a subcontract shall not preclude Authority inquiry into allegations of non-payment. Provided, further, that the remedies above shall not be employed when the Contractor demonstrates that failure to pay results from a bona fide dispute with its subcontractor or supplier. The Contractor shall incorporate this provision into all subcontracts in excess of \$5,000 that result from this Contract.

D. DBE Owned Banks

Contractors are encouraged to utilize banks which are owned and controlled by Disadvantaged Business Enterprises (DBE). To obtain a list of Disadvantaged Business Enterprise banks, contact the Equal Opportunity Programs Office at 703-417-8625.

E. Partial Withholding of Progress Payments

If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of ten (10) percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount which the Contracting Officer considers adequate for protection of the Authority and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, portion of work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

F. Contractor Submission Of W-9 Required Prior to Contract Award

As a prerequisite for contract award, the contractor shall complete all parts of the Internal Revenue Service ("IRS") Form W-9 (Request for Taxpayer Identification Number and Certification). Contract award will not be made until the completed W-9 has been received by the Authority. The W-9 form and instructions are available to contractors by accessing the IRS website at www.irs.gov and inserting the form number "W-9".

The W-9 information is requested so that we may determine the need to file IRS Form 1099 in connection with payments made by the Authority to the contractor. To assure accurate maintenance of your firm's status, the submission of the W-9 is required for each contract or purchase order executed by and between the Authority and its contractors. If the term of the contract exceeds one year, the Authority may request periodic resubmission of the W-9. If the contractor fails to submit the form by the deadline stated in the resubmission request, the Authority may refuse to pay invoices until the form has been submitted.

G. Transfer of Title (Ownership)

All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Authority, but shall not be construed as:

1. Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
2. Waiving the right of the Authority to require the fulfillment of all the terms of the contract.

H. Variation in Estimated Quantity

If the quantity of a unit-price item in this contract is an estimated quantity and the actual quantity of the unit-price item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be made upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within ten (10) days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

I. Final Payment

The Authority shall pay the amount due the Contractor under this contract after:

1. Completion and acceptance of all work;
2. Presentation of a properly executed final invoice;
3. Return of all airport identification cards and keys; and
4. Presentation of releases of all claims, liens and encumbrances against the Authority arising by virtue of this contract. The release shall identify other claims, liens and encumbrances, in stated amounts, that the Contractor has specifically accepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract have been assigned. Any assignment must be approved by the Contracting Officer.

05 DIFFERING SITE CONDITIONS

- A. The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
- B. The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a

result of the conditions, an equitable adjustment shall be made under this provision and the contract modified in writing accordingly.

- C. No request by the Contractor for an equitable adjustment to the contract under this provision shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in A. above for giving written notice may be extended by the Contracting Officer.
- D. No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

06 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- A. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance; (6) the proximity to aircraft and its effect in project performance; (7) the proximity to the public that is expected at an operating airport. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Authority, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Authority.
- B. The Authority assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Authority. Nor does the Authority assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

07 MATERIAL AND WORKMANSHIP

- A. All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, or as otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- B. The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit

samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- C. All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

08 SUPERINTENDENCE BY THE CONTRACTOR

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

09 KEY PERSONNEL

If your proposal identifies key personnel who will be working on this project, these individuals are considered to be key to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the program. No diversion of key personnel shall be made by the Contractor without the written consent of the Contracting Officer. The listing of key personnel may be amended from time to time during the course of the contract to either add or delete personnel or positions, as appropriate, subject to prior approval of the Contracting Officer.

The Contractor shall require in each subcontract a provision that requires the subcontractor to advise the Contractor promptly of any significant changes in the organization of such subcontractor, and the Contractor shall promptly advise the Contracting Officer of any such changes reported to the Contractor or otherwise discovered by the Contractor.

Key personnel are defined as follows:

- A. Personnel identified in the proposal as key individuals to be assigned for participation in the performance of the contract;
- B. Personnel whose resumes were submitted and approved; or
- C. Individuals who are designated as key personnel by the Authority.

10 PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work, which may have been accepted under the contract.

11 OTHER CONTRACTS

The Authority may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with other Contractors and with Authority employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by Authority employees.

12 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

- A. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- B. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. Repairs are to be performed as needed or on a 24-hour basis as may be required by the Contracting Officer at no additional cost. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.
- C. The Contractor shall submit the name and phone number of an electrician and plumber to be used on an emergency basis should immediate repairs to damaged utilities be required.

13 OPERATIONS AND STORAGE AREAS

- A. The Contractor shall confine all operations (including storage of materials) on Authority premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Authority, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.
- B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Authority. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- C. The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State or local law or regulation. When it is necessary to cross curbs or sidewalks, the

Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

- D. All temporary buildings required by the Contractor shall be weather and watertight and maintained in a neat orderly appearance for the duration of the work and shall be provided with raised wood floors, solid-sheathed composition roof, adequately screened windows for light and ventilation and substantial wood doors with provision for locking.
- E. The Contractor shall provide temporary chemical toilet structures. Toilet structures shall be provided in numbers as required in adequately sized structures, located as approved, and maintained in a clean and sanitary condition subject to the approval of the Contracting Officer's Technical Representative (COTR).
- F. Surface or subsurface water or other fluids shall not be permitted to accumulate in excavations nor in or about the premises and vicinity thereof. Should such conditions be encountered or develop, the water or other fluid shall be controlled and suitably disposed of at no additional cost by means of temporary pumps, piping drainage lines, troughs, ditches, dams, or other methods approved by the Contracting Officer's Technical Representative (COTR).
- G. Throughout the entire construction period, effectively dust-palliate the work area, unpaved and paved roads used in the operations, and unused portions of the site. Such palliation shall include application of intermittent watering and sprinkling at such frequency as will satisfactorily lay the dust. The use of calcium chloride for dust palliation is not permitted.

14 USE AND POSSESSION PRIOR TO COMPLETION

- A. The Authority shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Authority intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Authority's possession or use shall not be deemed an acceptance of any work under the contract. Prior to final acceptance the Contractor shall protect and ensure all portions of the work in beneficial occupancy against damages resulting from either equipment or work not yet placed into beneficial occupancy except to the extent such damage is the direct result of negligence on the part of Authority personnel or their representatives, or normal wear and tear.
- B. While the Authority has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Authority's possession or use, notwithstanding the terms of the provision in this contract entitled "Permits and Responsibilities." If prior possession or use by the Authority delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

15 CLEANING UP

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Authority. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

16 AVAILABILITY AND USE OF UTILITY SERVICES

- A. The Authority shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. If the contract provides that the Contractor is to pay for utility services, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Authority or, where the utility is produced by the Authority, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.
- B. The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Authority, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.
- C. Electrical power is available through Authority load centers. Wiring for temporary power shall be so arranged as to cause no interference with normal airport operations. Electric temporary wiring shall be kept thoroughly insulated and special precautions shall be taken to avoid short circuits using type THW wire and waterproof sockets and fittings throughout.
- D. Water will be made available to the Contractor at the site for construction and personnel use with approval from the Contracting Officer's Technical Representative (COTR) for connections to the water supply. On all connections the Contractor will be required to install and use meters to be provided by the Metropolitan Washington Airports Authority Utilities Branch. Requests for meters will be coordinated through the Contracting Officer's Technical Representative (COTR). The Contractor shall pay all costs for bringing water from its source. The cost of the water will be paid by the Authority, unless a determination is made by the Contracting Officer that the Contractor is not taking reasonable measures to conserve its use, in which case the Contractor will be required to install a meter at its own expense and bear the cost of the water used.
- E. Sanitary conveniences are the responsibility of the Contractor.

17 LAYOUT OF WORK

The Contractor shall lay out its work from Authority established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or by someone else through the Contractor's negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

18 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

- A. The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of a difference between drawings and the specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall

promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

- B. Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by" or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.
- C. Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place", that is, "furnished and installed".
- D. Shop Drawings
1. "Shop drawings" means drawings, submitted to the Authority by the Contractor, subcontractor, or any lower tier subcontract or pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e. form, fit, and attachment details) of materials or equipment. It also includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The Authority may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
 2. If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Authority's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with 3. below.
 3. If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
 4. The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor. Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

5. The Contractor shall mark up one set of reproducibles (Sepia/Mylar) to show the as-built conditions. These record documents shall be kept current and available on the job site at all times. All changes from the contract plans which are made in the work or additional information which might be uncovered in the course of construction shall be accurately and neatly recorded as they occur by means of details and notes. The marked reproducibles will be jointly inspected for accuracy and completeness by the Contracting Officer's Technical Representative (COTR) and a responsible representative of the Construction Contractor prior to submission of each monthly pay estimate. A determination by the COTR that record documents are not current may result in withholding of progress payments by the Contracting Officer. The record documents shall be returned to the COTR upon completion of the work and are subject to the approval of the COTR.

19 INDEMNIFICATION

- A. To the fullest extent permitted by law, the Contractor shall hold harmless and indemnify the Authority, the Authority's employees, and the Authority's agents, Contractors, subcontractors, and consultants, and agents and employees of any of them, from and against all claims, suits, damages, losses, expenses, and attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, suit, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or damage to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused by negligent acts or omissions of the Contractor or any of its subcontractors, their agents, or anyone directly or indirectly employed by them, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
- B. In claims against any person or entity indemnified under this provision by an employee of the Contractor, a subcontractor, an employee of a subcontractor, or an agent of the Contractor or a subcontractor, the indemnification obligation under this provision shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

20 INSURANCE

A. Authority Provided Insurance

1. The Authority has implemented an Owner Controlled Wrap-Up Insurance Program (OCWIP) to furnish certain insurance coverage with respect to job site work. This contract is covered by the OCWIP; your participation and that of your subcontractors of any tier is mandatory, unless specifically excluded. It is important to note that the OCWIP is not intended to cover the Contractor's consultants, suppliers, vendors or materials dealers, nor any fabrication, manufacturing, or operations conducted away from the job site. OCWIP coverages do not apply to Contractors or subcontractors of any tier performing work under an excluded contract, or other Contractors or subcontractors deemed to be ineligible for coverage, as defined in Chapter 2, Subsection 2.3 entitled "Contractors Not Enrolled in the OCWIP," of the Owner Controlled Wrap-up Insurance Program Manual (the *OCWIP Manual*).
2. OCWIP Insurance Manual. The *OCWIP Manual* is incorporated herein and attached hereto at Section X, Attachment 04. (Note: This manual may be revised from time to time. The latest revision to the manual is available from the "Business Information" section of the Authority's website at <http://www.mwaa.com>.) The *OCWIP Manual* provisions, when read in conjunction with the actual insurance policies, shall control the insurance and claim responsibilities and

rights of the parties to this contract. If there is any disagreement or inconsistency between the *OCWIP Manual* and this contract provision, this contract provision shall prevail.

3. Coverage Provided Under the OCWIP. The Authority hereby agrees to maintain at its sole expense the following insurance coverage **for all enrolled** Contractors and subcontractors of any tier:
 - a. Workers' Compensation and Employer's Liability (On-site coverage, except for asbestos abatement Contractors)
 - b. Commercial General Liability (On-site coverage)
 - c. Automobile Liability (On-site coverage, not including travel to or from the Job Site)
 - d. Umbrella Excess Liability
 - e. Contractor's Pollution Legal Liability (including asbestos abatement)
 - f. Builder's Risk (On-site property coverage)

Please refer to the *OCWIP Manual* for coverage details and procedural requirements. Note that the Authority retains the right to modify and/or terminate the OCWIP policies upon forty-five (45) days written notice to the covered Contractors and subcontractors.

4. Contractor Responsibilities. The Contractor and all subcontractors of any tier are required to cooperate with the Authority and the Authority's insurance administrator with respect to the administration and operation of the OCWIP. The Contractor's responsibilities shall include, but not be limited to:
 - a. Provision of necessary contract, operations and insurance information;
 - b. Inclusion of the OCWIP provisions in all subcontracts;
 - c. Notification to the Insurance Administrator of all subcontracts awarded;
 - d. Maintenance and provision of monthly payroll records and other records as necessary for premium computation in accordance with OCWIP Manual Paragraph 6.2. The mandatory *Monthly Payroll Report* must be submitted by the 10th day of each month to Aon Risk Services, Inc.;
 - e. Compliance with applicable loss control (safety) and claims reporting procedures and provisions as outlined or subsequently modified in the **Construction Safety Manual**;
 - f. Maintenance of the OSHA No. 200 Form to be provided monthly to the Authority or the Authority's designated representative; and
 - g. Completion of all necessary insurance applications prior to start of work.
5. No Release. The carrying of the above described insurance shall in no way be interpreted as limiting the Contractor's liability or relieving the Contractor or subcontractor of any other responsibility under this agreement or any applicable law, statute or regulation.

B. Contractor Provided Insurance

1. Coverage Required. The Contractor and all subcontractors enrolled in the OCWIP shall maintain the following minimum insurance coverage throughout the contract period. These coverages shall be written by insurance companies possessing a current rating of B+6 or higher from the A.M. Best Company or an equivalent rating.
 - a. Architects & Engineers Liability (for design work)
 - b. Workers' Compensation (for asbestos Contractors only)

Contractors should refer to Chapter 4 of the *OCWIP Manual* for the details of this coverage, including additional insured requirements.

2. Premium Reimbursement. The Contractor and subcontractors of any tier shall be reimbursed their actual premium costs for the contract related to any coverage required by the preceding paragraph B.1. Refer to Contract Provision 04, entitled "Payments - Construction Contract," paragraph B.5. for specific information concerning reimbursement of premiums.

21 CHANGES

- A. The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
 1. In the specifications (including drawings and designs);
 2. In the method or manner of performance of the work;
 3. In the Authority-furnished facilities, equipment, materials, services, or site; or
 4. Directing acceleration in the performance of the work.
- B. Any other written or oral order (which, as used in this paragraph (B), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this provision, if the Contractor gives the Contracting Officer written notice within seven calendar days of the written or oral order stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.
- C. Except as provided in paragraphs (A) and (B) of this provision, no order, statement, or conduct of the Contracting Officer shall be treated as a change or entitle the Contractor to an equitable adjustment.
- D. If any change under this provision causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a "proposal for adjustment" (hereafter referred to as proposal) based on defective specifications, no proposal for any change under paragraph (B) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Authority is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications. If an equitable adjustment is made and the contract is modified in writing, the Contractor shall modify its insurance and bonding coverage accordingly.
- E. The Contractor must submit any proposal under this provision within 30 days after (1) receipt of a written change order under paragraph (A) above, (2) furnishing a written notice under paragraph (B) above, or (3) after completion of Time and Material work in accordance with Paragraph H, unless this period is extended by the Authority. Failure to document the basis for change within prescribed time shall constitute an abandonment of all entitlement. The proposal must include a written statement describing the Contractor's assessment of the scope of change and costs thereof as well as a definitive determination of the effect of the change on time. The proposal for equitable adjustment may be included in the notice under paragraph (B) above.

- F. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- G. The following mark-ups are allowable on Lump Sum proposals submitted by the Contractor:
1. When Contractor or Subcontractor perform the work, they will be allowed the following mark-ups on direct productive costs:
 - a. Ten percent overhead
 - b. Ten percent profit on proposals less than \$100,000 and five percent profit on proposals more than \$100,000
 2. The Contractor and each Subcontractor not performing the work will be allowed a five (5) percent (%) mark-up on a lower tier Subcontractor's total costs subject to the limitations stated in subparagraph 3 below. The Contractor shall certify all Subcontractors proposals. The certification shall indicate the following:
 - a. The claim is made in good faith
 - b. The supporting data is accurate and complete to the best of the Contractor's knowledge and belief.
 - c. The amount requested accurately reflects the contract adjustment for which the Contractor believes the Authority is liable.
 3. The maximum allowable mark-up totals per Change Proposal which the Authority will be subject are twenty-seven (27%) percent for cost over \$100,000 and thirty-three (33%) percent for cost under \$100,000.
- H. Should circumstances dictate that changed work be started immediately, the Contracting Officer may direct the Contractor, and the Contractor shall proceed with the work on a Time and Material basis pending a contract modification. The Contractor shall provide on a daily basis separate records of Time and Material work, which will be subject to Contracting Officer's approval and audit. Work done on the basis of time and material shall be subject to all requirements of the contract. The following shall apply for Time and Material records:
1. Labor: Labor costs shall be composed of direct labor cost plus labor burdens. The Contractor shall submit his breakdown for approval. Direct labor cost shall be no higher than those regularly paid the employee. Upon the request of the Contracting Officer, the Contractor shall provide certified payroll records for audit purposes.
 2. Materials: Vendor's invoices accompanied by evidence of payment shall be supplied to establish the Contractor's cost of material. Payment will only be made for the material consumed during the performance of the Time and Material Work or for approved material which is incorporated as part of the finished work.
 3. Equipment: The value of equipment shall be completed by utilizing current Blue Book Equipment Rental Rates as follows:
 - a. If the equipment is owned, hourly rates will be computed based on the latest version of the "Blue Book Rental Rate for Construction Equipment." Hourly rates will be computed

by dividing monthly Blue Book rates (excluding operating costs) by 176, and adjusting for region and depreciation. In the case of any machinery or equipment not referred to in the Blue Book Rental Rates, a monthly rental rate shall be computed on the basis of an amount that is the equivalent of 6 percent of the manufacturer's list price of the sale (new) of such equipment. The hourly rate in such cases will be determined by dividing the monthly rate by 176 when actually operating. Payment for equipment idled as a direct result of the change, if applicable, shall be based on 50 percent of the rate determined herein.

- b. If the equipment is rented, the compensation shall be based on the actual rental costs supported by invoices.
- c. No payment will be made for the small tools defined as individual pieces of equipment or tools having a new value of \$1,000.00 or less.

4. Mark-ups:

- a. On work performed by the Prime Contractor or a Subcontractor:

- (1) Fifteen Percent combined overhead and profit on net increased labor.
- (2) Ten percent combined overhead and profit on net increased material.
- (3) No mark-ups will be allowed on increased equipment.

- b. On work not performed by the Prime Contractor or a Subcontractor:

The Contractor and each Subcontractor not performing the work will be allowed a five (5) percent (%) mark-up on a lower tier Subcontractor's costs excluding Subcontractor mark-ups, regardless of the tier of the Subcontractor.

- c. The maximum allowable mark-up totals per Change Proposal which the Authority will be subject are twenty-seven (27%) percent for cost over \$100,000 and thirty-three (33%) percent for cost under \$100,000.

- I. The allowable percentages of cost for overhead and profit are deemed to include such costs as the following: Field management personnel including project manager, superintendent, site engineer, CQC, Safety and utility coordination personnel. All field office expenses required by Contract, expenses for timekeepers, clerks and watchmen, cost of correspondence of any kind, and insurance not specifically mentioned herein and not included in the Owner Controlled Wrap-Up Insurance program, all expenses in connection with the maintenance and operation of the field office, schedule update, use of small tools, and cost of small vehicles generally used for transporting either workmen, materials, tools or equipment to job location, and incidental job burdens, and overhead of Contractor's established home office, branch office or similar facilities. Other costs not listed herein shall be subject to the approval of the Contracting Officer.

- J. Bonding costs associated with change order work will be reimbursed upon completion of the contract.

22 INSPECTION OF CONSTRUCTION AND FINAL INSPECTION AND ACCEPTANCE

- A. Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

- B. The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Authority. All work shall be conducted under the general direction of the Contracting Officer and is subject to Authority inspection and testing at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- C. Authority inspections and tests are for the sole benefit of the Authority and do not:
1. Relieve the Contractor of responsibility for providing adequate quality control measures;
 2. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 3. Constitute or imply acceptance; or
 4. Affect the continuing rights of the Authority after acceptance of the completed work under paragraph I. below.
- D. The presence or absence of an Authority inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
- E. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Authority may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Authority shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- F. The Contractor shall, without charge, replace or correct work found by the Authority not to conform to contract requirements, unless in the Authority's interest the Authority consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises. If the Authority chooses not to accept the work with a contract price adjustment and if the Contractor does not promptly replace or correct rejected work, the Authority may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.
- G. If, before acceptance of the entire work, the Authority decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material to perform removal. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet the contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- H. Upon completion of all work required by the plans and specifications, the Contractor shall request final inspection from the Contracting Officer's Technical Representative (COTR). If the work is not acceptable to the COTR, the Contractor will be furnished a list of items which must be made acceptable. The Contractor shall again request final inspection after the completion of the unacceptable

items. If the work inspected by the COTR is then found to comply fully with the requirements of the contract, it shall be accepted by the Contracting Officer. Acceptance will not occur unless all items are acceptable.

- I. Unless otherwise specified in the contract, the Authority shall accept, as promptly as practicable after completion and inspection, all work required by the contract, or that portion of the work that the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Authority's rights under any warranty or guarantee. Final payment shall be made after acceptance of all work and the receipt of a fully executed Contractor's Release, and will be made in accordance with the terms and conditions of the contract.

23 WARRANTY OF CONSTRUCTION

- A. In addition to any other warranties in this Contract, the Contractor warrants, except as provided in paragraph J. of this provision, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship furnished or performed by the Contractor or any subcontractor or supplier of any tier.
- B. This warranty shall continue for a period of 1 year from the date of substantial completion of the work. If the Authority takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Authority takes possession.
- C. The Contractor shall remedy at the Contractor's expense any defects and any failure to conform to contract requirements. In addition, the Contractor shall remedy at the Contractor's expense any damage to Authority-owned or controlled real or personal property, when that damage is the result of:
 1. The Contractor's failure to conform to contract requirements; or
 2. Any defect of equipment, material, workmanship, or design furnished.
- D. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this provision. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- E. The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- F. If the Contractor fails to remedy any failure, defect, or damage within 14 calendar days after receipt of notice, unless permitted otherwise by the Contracting Officer, the Authority shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- G. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
 1. Obtain all warranties that would be given in normal commercial practice;
 2. Require all warranties to be executed, in writing, for the benefit of the Authority, if directed by the Contracting Officer; and
 3. Enforce all warranties for the benefit of the Authority, if directed by the Contracting Officer.

- H. In the event the Contractor's warranty under paragraph B. of this provision has expired, the Authority may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- I. Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier of any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Authority nor for the repair of any damage that results from any defect in Authority-furnished material or design.
- J. This warranty shall not limit the Authority's rights under the Inspection and Acceptance provision of this contract with respect to latent defects, gross mistakes, or fraud.
- K. Defects in design or manufacture of equipment specified by the Authority on a "brand name and model" basis, without deviation shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Authority.

24 DISPUTES

A. General

This contract provision sets forth the Authority's disputes procedures for disputes under remedy-granting contract provisions and non-material breaches of contract. It applies to all disputes except disputes based upon a material breach of contract.

It is the Authority's policy to encourage resolution of disputes by mutual agreement between the Contracting Officer and the Contractor. Consistent with this intent, the Authority requires, as a condition precedent to the initiation of litigation, the exhaustion of the administrative disputes procedure described in this contract provision. If the dispute is not resolved by the administrative disputes procedure, the contractor may proceed to court litigation in accordance with the agreements contained in this contract.

B. Waiver of Jury Trial

To the fullest extent permitted by law, the Contractor and the Authority hereby waive their respective rights to a trial by jury on any dispute or claim or cause of action upon, arising under, arising out of or related to, the contract. In addition, the Contractor and the Authority hereby waive their respective rights to trial by jury in any other proceeding or litigation of any type brought by any of the contracting parties against the other party whether with respect to contract claims or actions, tort claims, or otherwise. Without limiting the foregoing, the Authority and the Contractor further agree that their respective rights to a trial by jury are waived as to any action, counterclaim, or other proceeding that seeks, in whole or in part, to challenge the validity or enforceability of the contract. This waiver of jury trial shall also apply to any subsequent amendments, modifications, renewals or supplements to the contract.

C. Performance Pending Dispute

The contractor shall proceed diligently with performance of the contract's requirements, including the disputed portions, pending resolution of any dispute.

D. Steps of Administrative Disputes Procedure

1. Claim Submission

The Contractor shall submit a written claim signed and certified as true and accurate and that it is made in good faith based upon supporting facts and cost and pricing data that are current, accurate and complete as of date of submission and date of any agreement; the claim and certifications shall be made by a duly authorized officer of the Contractor. The claim at a minimum shall include a) the basis of liability; b) basis of request for additional compensation, time extension request or other relief requested; c) a narrative that fully explains the basis for liability; d) the claim must state that it is made in good faith, that the supporting facts and cost and pricing data are current, accurate and complete as of the date of certification, and the amount of additional compensation, time of performance, or other relief requested reasonably and accurately reflect the added cost, added time of performance, and other damage the Contractor reasonably believes it has incurred; and e) the claim must include or specifically reference all actual cost accounting records, actual schedule data, as-built data, or other data or facts that relate to any aspect of the Contractor's claim.

2. Prohibited Claim Formats

Monetary claims based on anticipatory profits are prohibited. Monetary claims requests based on a total cost approach are prohibited. Time extension requests or claims on a total time approach are prohibited.

E. Claims Review and Disposition

1. Contracting Officer Discussions

Discussions between the Contracting Officer and the Contractor concerning the claim presented shall occur within a reasonable period of time after submission of the certified claim and receipt by the Contracting Officer of sufficient information, including, but not limited to, information resulting from an audit, if deemed necessary. Discussions shall be conducted in good faith for the resolution of the dispute, including the exchange of relevant information. If requested by the Contracting Officer, the COTR shall provide the Contracting Officer with a written response to the claim that references the applicable provisions of the statement of work, contract requirements, and applicable contract provisions and may include a specific request that the COTR obtain additional information or audit access, or both. The Contractor shall provide such additional information or audit access and failure to promptly provide such information or access shall be a bar to the claim.

2. Alternative Dispute Resolution (ADR)

Non-binding evaluative mediation is established as the ADR for this contract. The parties agree that the following procedures shall apply:

- a. Selection of the neutral mediator shall be as made by the parties; a neutral means an individual who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services related to significant construction contracts.
- b. All statements made as a part of the proceeding and all memoranda, work products or other materials made during the course of the mediation are deemed confidential and are to be treated in accordance with Virginia Code Section 8.01-576.10; in addition, the

statements and any written materials are considered privileged settlement discussions, are not party admissions, and are made without prejudice to any party's legal position, if mediation does not result in an agreement.

- c. Materials prepared for the mediation are not subject to disclosure in any other judicial or administrative proceeding.
- d. Informal discovery is permissible in the form of production or inspection of certain categories of documents.
- e. The parties agree to split evenly the costs of the mediator and any incidental costs associated with holding the mediation.

3. Impasse and Litigation

If the ADR procedure does not result in an agreement, an impasse can be declared.

4. Contracting Officer's Final Decision

Upon the declaration of an impasse, the Contractor shall request a written final decision by the Contracting Officer. The Contracting Officer shall issue a final decision within sixty (60) calendar days from receipt of the request and adequate documentation unless the dispute is determined to be complex in nature. The final decision of the Contracting Officer shall be final and conclusive unless within thirty (30) calendar days from receipt of the Contracting Officer's final decision, the Contractor mails or otherwise furnishes a written notice of appeal to the Manager, Procurement and Contracts Department.

5. Litigation

Following the completion of the administrative disputes resolution process without an agreement as indicated by the timely receipt of a notice of appeal, the dispute may be resolved by litigation without a jury before a court of competent jurisdiction within the Commonwealth of Virginia.

F. Remedies for inappropriate claims

The following remedies are provided for the Authority's use in the event the Contractor submits reckless or frivolous claims or false, misleading, or material misrepresentations relating to claims.

1. Remedies for Reckless or Frivolous Claims

In the event that the Contractor makes a claim against the Authority and the Contractor's claim, as certified by an officer of the contractor, is a) found by a court to be based on any reckless statement contained in the certification of the claim or b) is found by a court to be of frivolous nature or materially overstated in amount, then the Contractor shall be liable to the Authority and shall pay to it a percentage of costs incurred by the Authority in investigating, analyzing, negotiating, mediating and litigating (including attorneys' fees) the frivolous or overstated claim. The percentage of costs referenced shall be equal to the percentage of the contractor's total claim which is determined through litigation to be the result of a reckless statement or frivolous claim. "Frivolous" shall mean having no basis in law or in fact. This remedy is a contractual remedy and does not otherwise affect the other rights of the Authority in law or in equity.

2. Remedies for False or Misleading Statements or Material Misrepresentation

Any claim by the Contractor that is based on false or reckless statements that mislead the Authority or material misrepresentations shall entitle the Airports Authority to a full recovery of all costs incurred by the Authority in investigating, analyzing, negotiating, mediating and litigating (including attorneys' fees) the claim. This remedy is a contractual remedy and does not otherwise affect the other rights of the Authority in law or in equity.

25 TERMINATION FOR CONVENIENCE OF THE AUTHORITY

- A. The Authority may terminate performance of work under this contract in whole or in part if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this provision:
1. Stop work as specified in the notice.
 2. Place no further subcontracts or orders (referred to as subcontracts in this provision) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 3. Terminate all subcontractors to the extent they relate to the work terminated.
 4. Assign to the Authority, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Authority shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 5. With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this provision.
 6. As directed by the Contracting Officer, transfer title and deliver to the Authority (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Authority.
 7. Complete performance of the work not terminated.
 8. Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Authority has or may acquire an interest.
 9. As directed or authorized by the Contracting Officer, use its best efforts to sell and/or return at the Authority's expense to manufacturers, suppliers, or distributors for full credit less any applicable restocking charges, any property of the types referred to in subparagraph 6. above; provided, however, that the Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, the

Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Authority under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

- C. After expiration of the plant clearance period, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Authority to remove those items or enter into an agreement for their storage. Within 15 days, the Authority will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- D. After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- E. Subject to paragraph D. above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E. or paragraph F. below, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph F. below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- F. If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph E. above:
1. For contract work performed before the effective date of termination, the total (without duplication of any items) of--
 - a. The cost of this work;
 - b. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph a. above; and
 - c. A sum, as profit on a. above, determined by the Contracting Officer, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph c. and shall reduce the settlement to reflect the indicated rate of loss.
 2. The reasonable costs of settlement of the work terminated, including--

- a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - b. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- G. Except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph F. above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Authority or to a buyer.
- H. The Contractor shall have the right of appeal, under the Disputes provision, from any determination made by the Contracting Officer under paragraph D. F. or J. except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph D. or J. and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph D. F. or J. the Authority shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- I. In arriving at the amount due the Contractor under this provision, there shall be deducted--
1. All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
 2. Any claim which the Authority has against the Contractor under this contract; and
 3. The agreed price for, or the proceeds of, sale of materials, supplies or other things acquired by the Contractor or sold under the provisions of Paragraph B.9. of this provision and not recovered by or credited to the Authority.
 4. The amount credited to the Contractor for materials, supplies or other things that are returned to the manufacturers, suppliers or distributors in accordance with Paragraph B.9. of this provision and not recovered by or credited to the Authority.
- J. If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this provision shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.
- K. Payments Under Termination
1. The Authority may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
 2. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Authority upon demand, together with interest computed at the rate

established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

- L. Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Authority, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

26 DEFAULT

- A. If the Contractor: 1. fails to comply with the terms of this contract; 2. refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension; or 3. fails to complete the work within this time, the Authority may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Authority may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plants on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Authority resulting from the Contractor's refusal or failure to comply with the contract or to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Authority in completing the work.
- B. The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this provision, if:
1. The delay in completing the work or failure to comply with contract terms arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (a) acts of God or of the public enemy, (b) acts of the Authority in either its sovereign or contractual capacity, (c) acts of another Contractor in the performance of a contract with the Authority, (d) fires, (e) floods, (f) epidemics, (g) quarantine restrictions, (h) strikes, (i) freight embargoes, (j) unusually severe weather, or (k) delays of subcontractors or suppliers of any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers, and
 2. The Contractor, within ten (10) days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay or failure to comply with contract terms. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended.
- C. If, after termination of the Contractor's right to proceed, it is determined 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 termination had been issued for the convenience of the Authority.

- D. The rights and remedies of the Authority in this provision are in addition to any other rights and remedies provided by law or under this contract.

27 CORRESPONDENCE PROCEDURES

Correspondence of any nature shall be directed as required by the Contracting Officer. Specific requirements will be provided at the Pre-construction conference.

28 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) AUTHORITY

The Contracting Officer may designate personnel to act as his authorized representatives for one or more contract administration functions not involving a change in the scope, price, terms, or conditions of the contract. Such designation will be in writing, set forth by a separate letter signed by the Contracting Officer, and will contain specific instructions as to the extent to which the representative may take action for the Contracting Officer. Such designation will not contain authority to sign contractual documents, nor will it authorize the designee to order contract changes, modify contract terms, or create any liability on the part of the Authority.

29 HOLIDAYS

Except as noted, work will not be allowed on the following holidays or on holidays observed in lieu thereof:

New Year's Day	Labor Day
Martin Luther King Jr.'s Birthday	Columbus Day
President's Day	Veteran's Day
Memorial Day	Thanksgiving
Independence Day	Christmas

30 SAFETY REQUIREMENTS

In performing this contract the Contractor shall protect the health and safety of employees and other persons; prevent damage to property, materials, supplies, and equipment; and avoid interrupting the normal operation of the airport. The Contractor shall also comply with the provisions of the Authority's *Construction Safety Manual*, incorporated herein and attached hereto at Section X, Attachment 03. (Note: This manual may be revised from time to time. The latest revision to the manual is available from the "Business Information" section of the Authority's website at <http://www.mwaa.com>.)

31 INTERPRETATION OR MODIFICATION

Except as otherwise provided in this contract, no oral statement of any person and no written statement of anyone other than the Contracting Officer, shall modify or otherwise affect the terms or meaning of the contract or specifications. All requests for interpretation or modifications shall be made in writing to the Contracting Officer.

32 SECURITY

All Employees who will be working unescorted in a restricted area of the airport must have an Airport Identification badge. There must be one person with a valid identification badge with the work crew at all times. When contract work requires the group to separate, additional badged escorts must be provided.

The Contractor's company vehicles and equipment must be registered with the Airport Operations Division. Vehicles utilized in restricted areas must meet requirements set forth in the applicable Orders and Instructions

for the airport. Personnel shall be licensed by the Airport Pass and ID Section of Airport Operations prior to vehicle operation on the Airport Operations Area (AOA).

Security Training: All individuals who apply for a restricted area access must attend an FAA required training session prior to receipt of the Airport Identification badge and vehicle operator's permit. NOTE: Submission of fraudulent or intentional false statements may lead to legal enforcement action by the FAA.

The Contractor, subcontractors and their respective employees must enforce the Airport Security Program, failure to do so will result in removal of restricted area access. Vehicle registration, vehicle operator's permits, security requirements, procedures, associated costs and necessary forms are as specified in Section X, Attachment 05.

33 PROPOSALS FOR CONTRACT MODIFICATION

- A. The Contractor, in connection with any proposal for a Contract modification, shall furnish to the Contracting Officer a fully itemized proposal of the Contractor's cost for performing the work, within the time prescribed in Provision 21, Changes, Paragraph E, detailed as follows:
1. Labor description, daily hours, total hours and wage rate per hour. Wages paid shall be no higher than those regularly paid the employee.
 2. Material description, quantities, unit cost, and total cost. Payment will be made only for material consumed during the performance of the change or for approved material incorporated as an integral part of the finished work. The Contractor shall submit vendor quotations in support of material cost estimates.
 3. Equipment classification, model number and year, daily hours, total hours, and rate per hour. If the equipment is rented, payment shall be made on the basis of rental cost supported by paid rental invoices. If the equipment is owned, hourly rates will be computed based on the latest version of the "Blue Book Rental Rate for Construction Equipment." Hourly rates will be computed by dividing monthly Blue Book rates (excluding operating costs) by 176, and adjusting for region and depreciation. Hourly rates shall be charged only for those hours the equipment is actually in operation. Payment for equipment idled as a direct result of the change, if applicable, shall be based on 50 percent of the rate determined herein.
- B. For all Proposals that include a request for an extension in Contract time, the Contractor shall submit to the Contracting Officer, as part of the Contractor's proposal, a fully detailed analysis, based on the approved construction schedule, that establishes the relationship between the change in work and the requested time extension. The only basis for any extension of Contract time will be the demonstrated impact of an excusable delay on the critical path of the Project Schedule. For proposals that do not include a request for an extension of Contract time it will be deemed that the changed work has no impact on the scheduled milestones or Contract Completion Date.
- C. For all changes in the work to be performed by a subcontractor, the Contractor shall furnish the subcontractor's fully itemized breakdown of quantities and prices which shall bear the original signature of an authorized representative of the subcontractor.
- D. The Contractor shall certify all proposals, indicating the following:
1. The proposal is made in good faith, and

2. The supporting data is current, accurate and complete to the best of the Contractor's knowledge and belief, and
3. The amount requested accurately reflects a reasonable Contract adjustment to which the Contractor believes it is entitled.

On proposals for equitable adjustment or claims in excess of \$50,000 the certification shall be by a duly authorized officer of the Contractor.

E. The following mark-ups are allowable on Lump Sum proposals submitted by the Contractor:

1. When Contractor or Subcontractor perform the work, they will be allowed the following mark-ups on direct productive costs:
 - a. Ten percent overhead
 - b. Ten percent profit on proposals less than \$100,000 and five percent profit on proposals more than \$100,000
2. The Contractor and each Subcontractor not performing the work will be allowed a five (5) percent (%) mark-up on a lower tier Subcontractor's total costs subject to the limitations stated in subparagraph 3 below. The Contractor shall certify all Subcontractor's proposals. The certification shall indicate the following:
 - a. The proposal is made in good faith
 - b. The supporting data is accurate and complete to the best of the Contractor's knowledge and belief.
 - c. The amount requested accurately reflects the contract adjustment for which the Contractor believes the Authority is liable.
3. The maximum allowable mark-up totals per Change Proposal to which the Authority will be subject are twenty-seven (27%) percent for cost over \$100,000 and thirty-three (33%) percent for cost under \$100,000.

F. The allowable percentages of cost for overhead and profit are deemed to include such costs as the following: Field management personnel including project manager, superintendent, site engineer, CQC, Safety and utility coordination personnel, all field office expenses required by Contract, expenses for timekeepers, clerks and watchmen, cost of correspondence of any kind, and insurance not specifically mentioned herein and not included in the Owner Controlled Wrap-Up Insurance program, all expenses in connection with the maintenance and operation of the field office, schedule update, use of small tools, and cost of small vehicles generally used for transporting either workmen, materials, tools or equipment to job location, and incidental job burdens, and overhead of Contractor's established home office, branch office or similar facilities. Other costs not listed herein shall be subject to the approval of the Contracting Officer.

G. If the change involves only a credit, the Contract Price will be reduced by the amount it would have cost the Contractor if the work omitted had not been eliminated; including a negotiated allowance for overhead and profit, however, the Contractor and the affected subcontractors will be allowed to retain a sum, not in excess of three percent (3%) of the change value, for the administrative cost of the deductive change.

If the change involves both a credit and debit, the Contractor shall include a separate accounting of each, with a summarization of the net adjustment to price and/or time. No allowance to the Contractor shall be paid for loss of anticipated profit due to any changes in the Work.

- H. Where a change makes work necessary on an overtime basis, the Contracting Officer's approval for overtime work shall be obtained before the work is commenced.
- I. On changes in the work that may involve a compensable extension of Contract time, the Contractor's cost for extended overhead shall be based upon actual and verifiable home office costs that are directly related to the change involved. Use of formulas (such as Eichleay) to estimate extended or under absorbed home office overhead shall not be allowed. Upon the request of the Contracting Officer, home office overhead records shall be made available for audit and verification purposes.
- J. The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

34 DISPOSAL

The Contractor shall at all times keep the work areas clean as work progresses. All contract-generated trash, debris, and empty containers shall be removed from the work site daily and disposed of off airport property. There shall be no dumping or disposal on the airport.

35 CONTRACTOR'S FIELD OFFICE

Any field office established by the Contractor shall be subject to the approval of the COTR and will be established in accordance with his direction.

36 OPERATION OF MOTOR VEHICLES

- A. The Contractor shall have identification decals or other approved identification on all vehicles entering the Airport. Each employee of the Contractor (and of his subcontractors) driving motor vehicles on the Airport shall have a valid driver's license and each such motor vehicle shall have a current inspection sticker if required by the state of registration. Only properly identified vehicles of the Contractor shall be allowed in the work area.
- B. After award of contract, and before commencing use of vehicles, the Contractor shall furnish to the Contracting Officer a list showing the following:
 - 1. Name and address of each of his employees and those of his subcontractors that will be involved with the movement of motor vehicles.
 - 2. Operator's permit number for each employee in (A) above.
 - 3. Registration number of each vehicle that will be used at the Airport.

- C. All of the Contractor's personnel driving motor vehicles on the AOA must obtain an aerodrome operator's permit through the Airport Operations Division.

37 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Authority and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Authority.

38 ORDER OF PRECEDENCE

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Price Schedule (excluding the specifications); (b) Representations and Certifications; (c) Special Provisions; (d) Contract Provisions; (e) other documents, exhibits, and attachments; (f) the specifications; and (g) the drawings.

39 CLAIMS FOR ADDITIONAL COSTS

If the Contractor wishes to make a claim for an increase in the contract sum, he shall give the Authority written notice of his intent to do so within twenty (20) calendar days following the occurrence of the event giving rise to the claim, but prior to proceeding to execute the work, except in an emergency endangering life or property. No such claim shall be valid unless so made. Any change in the contract sum resulting from such claim shall be authorized by change order.

40 ENGLISH SPEAKING REPRESENTATIVE

At all times when any performance of the work at any site is being conducted by any employee of the Contractor or his subcontractors, the Contractor shall have a representative present who has the capability of receiving instructions in the English language, fluently speaking the English language and explaining the work operations to persons performing the work in the language that those performing the work are capable of understanding. The Contracting Officer shall have the right to determine whether the proposed representative has sufficient technical and lingual capabilities, and the Contractor shall immediately replace any individual not acceptable to the Contracting Officer.

41 TAXES

The Contractor is responsible for all applicable Federal, state, and local taxes of all kinds on materials, labor, or services furnished by it or arising out of its operations under the contract. Such taxes shall include, without limitation, sales, use, excise, employee benefit and unemployment taxes, customs duties, and income taxes.

42 BRAND NAME OR APPROVED EQUAL

Unless otherwise provided in the solicitation, or unless the name is followed by words indicating that no substitution is permitted, the reference to a certain brand name, make, model number, or manufacturer does not restrict the offer to the specific brand, make, model number or manufacturer identified. The specific references to a brand is not intended to exclude other products but to convey the salient characteristics of function, performance, design requirements and quality of the item described. Comparable products of other manufacturers will be considered if proof of comparability is contained in or accompanies the offer. Any item

which the Authority at its sole discretion determines to be the equal to that which is specified, considering quality, workmanship, economy of operation, and suitability for the process intended, will be accepted.

43 RESERVED

44 PERFORMANCE OF WORK BY THE CONTRACTOR

The Contractor shall perform on the site, and with its own organization, at least twenty-five percent (25%) of the total direct labor and at least twenty-five percent (25%) of the total work-in-place to be performed under the contract. Prior to award, the Contractor must demonstrate to the Contracting Officer's satisfaction that both of these standards will be met during contract performance. Labor and work to be counted when determining whether the Contractor has met the self-performance requirement shall not include any work that the Contractor performs under the supervision of a subcontractor.

This self-performance percentage may be reduced by a supplemental agreement to this contract if, during performance of the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Authority.

45 PUBLICITY RELEASES

Publicity releases in connection with this contract will not be made by the Contractor unless prior written approval is obtained from the Manager, Procurement and Contracts Department.

46 AUDIT AND INSPECTION OF RECORDS

The Contractor shall maintain records and the Contracting Officer shall, until the expiration of five years after final payment under this Contract have access to and the right to examine any pertinent books, documents, papers and records of the Contractor involving the formation of the contract, transactions related to the Contract, for the purpose of inspection, making audit, examination, excerpts and transcriptions. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Contracting Officer shall until the expiration of five years after final payment under the Contract have similar access to and the right to examine any pertinent books, documents, papers and records of the subcontractor(s) involving all aspects of the subcontract including formation.

The Contracting Officer shall have all of the aforementioned rights for all types of contracts including fixed price contracts. The rights include without limitation the right to examine costs. The Authority's rights hereunder are in addition to any other audit and inspection rights under the Contract. The Authority reserves these rights because cost information is frequently needed to investigate performance issues and whether it is in the Authority's interest to exercise other reserved rights under the contract. The Contracting Officer shall have the broad rights of audit and inspection including but not limited to, the right to examine books, records, documents and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature that have been incurred for the performance of this Contract. Such right of examination shall include inspection at all reasonable times of the Contractor's labor, materials, plant or such parts thereof, or other costs or revenues as may be expended or received as a part of the performance of the Contract.

When costs are a factor in any request for an equitable price adjustment pursuant to a remedy granting provision of the Contract, the Contractor shall maintain separate accounts by specific designation or other suitable accounting procedure of all incurred segregable, direct costs, less allocable credits. Failure to maintain such cost records is a bar to any claim, legal or equitable, for such costs.

47 CONSENT TO ASSIGNMENT

The Contractor shall obtain the written consent of the Contracting Officer prior to any assignment of all or any part of this contract.

48 NOTIFICATION OF OWNERSHIP CHANGES

The Contractor shall notify the Contracting Officer in writing when the Contractor becomes aware that a change in its ownership is certain to occur. The Contractor shall also include this provision in all subcontracts under this contract, requiring each subcontractor to notify the Contracting Officer in writing when the subcontractor becomes aware that a change in its ownership is certain to occur.

49 COMPLIANCE WITH EMPLOYMENT ELIGIBILITY VERIFICATION, FORM I-9

The Contractor shall ensure that it is in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under, and that it will maintain compliance as long as any work is being performed under this contract with the Authority. The Contractor shall also ensure that its subcontractors are in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under, and that its subcontractors will maintain compliance as long as they are performing any work under this contract with the Authority.

50 RESERVED**51 AUTHORITY PROPERTY**

The Contractor shall have custodial management responsibility for all Authority-owned personal and real property assets (hereafter referred to as "property") that are provided during the contract term. This applies to all Authority property that is approved and provided by the Authority's Contracting Officer's Technical Representative (COTR), regardless of cost or whether the Contractor is authorized to directly purchase it or it is purchased by the Authority. Title to all Authority property provided to the Contractor shall remain with the Authority unless otherwise specified in the contract. Custodial management responsibility includes tracking assets, maintaining property records, preparing and submitting property documents, safeguarding assigned property, assisting with inventories, ensuring that assigned property is used only for official Authority purposes, and identifying property that is no longer needed and reporting it to the COTR.

Property assets provided to the Contractor shall be managed by the Contractor using the following identification methods approved by the COTR and their respective Authority Property Control Office:

1. An Authority issued bar code number for assets which are formally recorded by the respective Property Control Office
2. The manufacturer's assigned serial number
3. A unique recording number issued by the Contractor for tracking purposes and approved by the respective Authority Property Control Office when the manufacturer's assigned serial number is unavailable

Contractors shall ensure that they do not use any Authority property that has not been specifically authorized for their use by the COTR. If Contractors require additional Authority property, that requirement shall be submitted to the COTR in writing, including full justification prior to any use of such property.

An inventory of all property provided to the Contractor shall be conducted on the first and last day of the contract term by the Contractor's representative, COTR, and a representative from the respective Authority Property Control Office. An Authority property transfer form with a detailed property inventory listing will be used to transfer property at the beginning of the contract term. The inventory lists shall include the description of the property, bar code number (if assigned), serial number, acquisition cost, acquisition date, manufacturer, year manufactured, location, and user. If the acquisition cost and date for an item are unknown, the respective Authority Property Control Office will determine an estimated cost and date. If the COTR assigns additional property to the Contractor during the contract term or if property is returned to the Authority through the COTR by the Contractor, the respective Authority Property Control Office will be responsible for recording and maintaining an updated property inventory listing for Authority property that is bar coded. The Contractor will be responsible for recording and maintaining an updated property inventory listing for all non-bar coded Authority property. The COTR will be responsible for informing their respective Authority Property Control Office whenever property is issued or returned by the Contractor, including any changes that affect the property inventory records.

The Contractor accepts the provided property in "as is" condition. The COTR and/or the respective Authority Property Control Office may conduct scheduled or unscheduled property inventories during the contract term. The Contractor will perform at least annually a physical inventory of all Authority provided property. A corporate officer of the Contractor shall certify to the COTR and respective Authority Property Control Office that the property on the listings is still in the possession of the Contractor and has been used only in connection with this contract. The inventory listings should indicate a description of each asset, acquisition cost, acquisition date, manufacturer, year manufactured, its condition and location, the serial number, and the Authority asset bar code, if applicable. The existing Contractor's representative, new Contractor's representative, COTR, and a representative from the respective Property Control Office will conduct an inventory at the end of the contract period.

The COTR and the Property Control Office shall ensure that all property provided to the Contractor is returned to the Authority in the same condition as originally provided, with the exception of reasonable wear and tear, when it is no longer needed or at the end of the contract term. If the assigned property is not returned by the Contractor in the same condition as it was issued (with the exception of reasonable wear and tear) or has been lost, the Contractor will be liable for the loss or damage and will be required to reimburse the Authority for the cost to replace the property or to restore the property to its original condition, as determined by the Property Control Office and COTR.

You will be advised by separate communications from the Contracting Officer's Technical Representative (COTR) of the necessary property asset management procedures and specific recording levels established for all property under your control during the remainder of your contract term.

52 CONFLICT OF INTEREST

Firms participating in the planning and design of the work involved in this contract are excluded from participating in any part of the construction process, either as a prime or subcontractor.

**SECTION VIII - POLICIES ON EQUAL OPPORTUNITY, MINORITY AND WOMEN BUSINESS
ENTERPRISE (MBE/WBE) PARTICIPATION, AND EMPLOYMENT OF VETERANS**

01 EQUAL OPPORTUNITY

No person or firm shall be discriminated against because of race, color, national origin, or sex in the award of Authority contracts. Further, the Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

02 MBE/WBE PARTICIPATION

The Authority is committed to achieving significant participation in its contracting programs by business enterprises that are owned and operated by minorities and women (MBEs and WBEs) regardless of the size of the enterprise. All offerors are strongly encouraged to take active steps to maximize the participation of MBEs and WBEs in this contract. To communicate the Authority's strong desire for significant MBE/WBE participation in this contract, the Authority has set a voluntary MBE/WBE participation percentage of 25%. This percentage is derived from the types of contract opportunities arising from the work to be performed, and the availability of appropriate firms that have been certified by the Authority or by other agencies as firms that are at least 51% owned and controlled by minorities or women.

03 TECHNICAL ASSISTANCE

The Authority will provide assistance to promote the participation of MBEs and WBEs in this contract, including the identification of MBEs and WBEs. To obtain assistance, interested parties are encouraged to contact the Authority's Office of Equal Opportunity Programs at (703) 417-8625, or at the following address: Metropolitan Washington Airports Authority, Equal Opportunity Programs, 1 Aviation Circle, Washington, DC 20001-6000.

04 MONITORING OF MBE/WBE PARTICIPATION

To monitor and evaluate MBE/WBE participation in its contracting programs, the Authority is collecting information on the voluntary efforts made by offerors in securing MBE/WBE participation for this contract. All offerors are encouraged to provide information relating to these efforts (Exhibit A) and return it with their offer.

When MBE/WBE participation has been obtained, all offerors are required to include this information on the Contract Participation Form (Exhibit D) referenced in Section IX(03)(D), and to attach to the Contract Participation Form the MBE's or WBE's letter of DBE certification from the Authority, or MBE/WBE/DBE certification from another agency. This letter verifies the firm's MBE/WBE status, and is used in this case for the Authority's monitoring of its programs for the purposes of monitoring expenditures to MBE/WBEs, all contractors are required to identify on the Invoice Attachment Form (Exhibit J) expenditures to first tier subcontractors who are MBEs or WBEs. (Note: Exhibits D and J are available from the Business Information section of the Authority's website at <http://www.mwaa.com>)

The information requested above will be used to assist the Authority in monitoring and evaluating MBE/WBE participation and will not be used to determine to whom this contract will be awarded.

05 EMPLOYMENT OF VETERANS

The Authority has adopted a policy to encourage reasonable efforts whenever possible to offer employment to qualified veterans, including the disabled, by the Authority, its contractors and subcontractors.

Voluntary Efforts to Obtain MBE/WBE Participation

Please answer the following questions and return this questionnaire with attachments (i.e., ads, meeting attendance list, etc) to the Contracting Officer with your offer.

Project Name: _____
 Solicitation Number: _____
 Contractor: _____

Did your company:

YES NO

- | | | | |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-------|
| 1. | Attend any pre-proposal meetings that were scheduled by the Authority? If YES, please attach list of meetings attended. | _____ | _____ |
| 2. | Advertise subcontracting opportunities in major circulation newspapers such as: a) the <u>Washington Post</u> , b) trade association press, c) minority and women oriented media? If YES, please attach copies of ads for a, b, c. | a) _____
b) _____
c) _____ | _____ |
| 3. | Provide timely written notice to specific MBEs/WBEs that their interest in the contract is being solicited? If YES, please attach a sample of such notification and list MBEs/WBEs contacted on page 2. | _____ | _____ |
| 4. | Follow-up initial solicitations of interest by personally contacting MBEs/WBEs? If YES, please list those MBEs/WBEs contacted on page 2. | _____ | _____ |
| 5. | Select the portions of the contract to be performed by MBEs/WBEs in a manner that will increase the likelihood of MBE/WBE participation? If YES, please attach a list of those portions of the contract selected for MBE/WBE participation. | _____ | _____ |
| 6. | Provide interested MBEs/WBEs with timely and thorough information about the plans, specifications and technical requirements of the contract? If YES, please list the MBEs/WBEs provided with such information on page 2. | _____ | _____ |
| 7. | Negotiate in good faith with interested MBEs/WBEs, and not reject MBEs/WBEs as unqualified without sound reasons based on a thorough investigation of their capabilities? If YES, list MBEs/WBEs with whom good faith negotiations were conducted on page 2. | _____ | _____ |
| 8. | Assist interested MBEs/WBEs in obtaining bonding and/or insurance? If YES, list MBEs/WBEs assisted on page 2. | _____ | _____ |

SECTION IX - LOCAL DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION REQUIREMENTS

01 LDBE PARTICIPATION

As stated in Section IX(03), below, participation by Authority-certified LDBEs is a requirement of this contract. Participating LDBE firms must be LDBE certified by the Authority not later than the date established by the Authority for the award of this contract. If they are not LDBE certified by that date and the apparent successful offeror is relying upon these firms to achieve the required LDBE participation, the Authority is under no obligation to delay the award until certification is obtained and the Authority may select another offeror for contract award. The Authority requires sufficient time to process LDBE certification applications. Consequently, the Authority strongly encourages firms to apply for and obtain their LDBE certifications as early as possible. Prospective LDBEs are encouraged to apply for certification prior to the deadline for submission of proposals.

By signing the offer, offeror commits itself to achievement of the LDBE participation requirement listed in Section IX(03) below, unless a waiver request meeting the requirements of Section IX(04) is submitted with the offer. Failure to sign the offer (or otherwise meet the foregoing requirement to commit to the LDBE participation requirement) or submit a waiver request with the offer may result in the offer being found to be in nonconformance with the RFP and rejected. The Authority will treat all other matters of LDBE participation (for example, whether the offeror has made a good faith effort to meet the LDBE requirement, the sufficiency of the submitted Contract Participation Form (Exhibit D), or whether an LDBE for whom preaward substitution is sought was proposed in good faith) as matters relating to the offeror's responsibility that the Authority may determine prior to award through communications with the offeror(s) in question. Unless the Authority declares otherwise, such communications with the offeror(s) in question do not constitute "negotiations" or "discussions" as these terms are used in the Authority's Contracting Manual and do not require communication with other offerors.

02 LDBE CERTIFICATION REQUIREMENTS

To be certified by the Authority as an LDBE, a firm must be a small business concern which is organized for profit and which is located within a 100-mile radius of Washington, DC's zero mile marker. Those business entities located within counties that fall partially within the aforementioned boundary, are also eligible to participate in the Authority's program. A table of a representative list of zip codes that fall within this 100-mile radius is attached as Exhibit B. A "small business" is defined, for LDBE purposes, as a firm that is not dominant in its field, and that meets the Authority's small business size standards for the goods it will be supplying or services it will be performing in this contract. Receipts of all affiliates of the LDBE applicant shall be counted in determining the size of the business. The applicable small business size standard(s) for this solicitation are listed in Exhibit C. The apparent successful offeror who claims LDBE status, and all subcontractors claiming LDBE status, must be certified as such by the Authority prior to award of this contract and are subject to an investigation to establish status as a local disadvantaged business enterprise, in accordance with the criteria specified in Section IX(07)(A). The Contractor shall prompt, using reasonable measures, all LDBE firms participating in this contract, including itself, if it is an LDBE, to renew their LDBE certifications and notify the Authority immediately of any change in status that would affect their eligibility for LDBE certification. If an LDBE certified firm participating in this contract outgrows the small business size standard (for example, the firm's annual gross receipts increase sufficiently during the term of this contract to cause the three year average of the LDBE's annual gross receipts to exceed the size standard) during the term of this contract, the firm will continue to be considered an LDBE for purposes of calculating LDBE participation for this contract until this contract, including any option years, expires. If an LDBE certified firm participating in this contract becomes ineligible for LDBE certification for any reason other than growth during the term of this contract (e.g., the LDBE moves outside the local area or the LDBE is purchased by a large or non-local firm), the Authority reserves the right to require the Contractor to substitute a certified LDBE firm to perform the ineligible LDBE's work under this contract.

03 LDBE PARTICIPATION REQUIREMENTS

A. The LDBE participation requirements which apply to this solicitation are as follows:

1. The LDBE requirement for this solicitation is sixty percent (60%) of the total offer amount of the contract. The sixty percent (60%) LDBE participation shall be computed as outlined in Section IX(03)(C). The Authority may consider the Contractor to be in breach of this contract if the contract work to be performed by LDBEs is performed by firms that are not LDBEs, unless expressly permitted by this contract or waived in writing by the Authority.
2. If the offeror is not an LDBE, then it agrees that the LDBE participation requirement will be met by first tier subcontracts, or by joint venturing with an Authority certified LDBE.
3. No offeror that seeks to meet the LDBE requirement through subcontracting or through a joint venture shall be considered to have met this requirement unless the LDBE subcontractor and/or the LDBE joint venture partner is certified by the Authority and performs a commercially useful function as defined in Section IX(07)(F).
4. When modifications to the contract increase or decrease the total dollar value of the contract, the Contractor shall make best efforts under the circumstances to maintain the LDBE participation of sixty percent (60%), so that by completion of the contract, sixty percent (60%) of the total contract dollars will have been awarded to LDBEs. The Contractor must submit a revised Contract Participation Form (Exhibit D) and Revised Letter(s) of Intent (Exhibit E1), or other documentation acceptable to the Authority, which reflects changes in the LDBE participation associated with the modifications to the contract, within three (3) business days of the Contracting Officer's request.
5. The Authority discourages offerors and Contractors from the practice known as "shopping the contract" when such practice results in a disparate impact on LDBE subcontractors at any tier. Although offerors and Contractors are expected to provide the Authority with the best value possible for the work performed, this expectation should not be construed to mean that the Authority expects or condones any subcontractor, especially LDBEs, to perform work at an unreasonably low price.
6. The Authority is committed to significant participation of minority and woman-owned business enterprises (MBEs and WBEs) in this contract, and encourages offerors to meet the LDBE participation requirement with significant participation by MBEs and WBEs who qualify as LDBEs.

B. Where subcontracting is proposed, the Authority may evaluate the amount of work subcontracted, the industry practices involved, and any other relevant factors in determining whether the LDBE is performing a commercially useful function.

C. Computing LDBE participation:

Offerors shall apply the following rules to determine whether their proposed LDBE participation will meet the contract's LDBE requirement (see Section IX(03)(A)(1)):

1. A prime offeror who is an eligible LDBE certified by the Authority can count the amount of its own participation in the contract towards the LDBE requirement, provided that it is performing a commercially useful function as defined in Section IX(07)(F).

2. A non-LDBE prime offeror, in a joint venture with an LDBE, can count towards its LDBE requirement only that portion of the total dollar value of the contract work to be performed by the LDBE joint venture partner, provided that the LDBE joint venture partner is performing a commercially useful function as defined in Section IX(07)(F). The joint venture must be an eligible joint venture as defined in Section IX(07)(D).

Note: The following subsections discuss the Authority approved methods of calculating LDBE participation for a variety of likely subcontracts.

3. Subject to the conditions in Section IX(03)(C)(4-8) below, a non-LDBE prime offeror who plans to subcontract work to LDBEs can count towards its LDBE requirement the total dollar value of first tier subcontracts to be awarded to LDBEs, provided that:
 - a. Each first tier LDBE subcontractor performs a commercially useful function in the work of the contract as defined in Section IX(07)(F). In considering normal industry practices, the Authority recognizes that LDBE subcontractors, due to various specialties, may be required to enter into subcontract agreements. The value of the subcontract shall not exceed 20% of the original subcontract value unless the Authority gives written approval of a higher percentage. It is the responsibility of the prime offeror to disclose subcontracting information to the Authority and seek Authority written approval of its LDBE's subcontracting agreements. The Authority reserves the right to determine if an LDBE that subcontracts work is performing a commercially useful function as defined in Section IX(07)(F); and, that
 - b. Each first tier subcontractor is an eligible LDBE certified by the Authority.
4. A non-LDBE prime offeror who plans to obtain supplies or materials from an LDBE manufacturer (i.e., a producer of goods from raw materials or one which substantially alters them before resale), may count towards its LDBE requirement the total dollar value of first tier LDBE manufacturer subcontracts provided that:
 - a. The LDBE assumes the actual responsibility for directly manufacturing the materials or supplies; and,
 - b. Is certified as an LDBE by the Authority.
5. A non-LDBE prime offeror who plans to obtain supplies or materials from an LDBE stocking distributor or stocking supplier may count towards its LDBE requirement sixty percent (60%) of the value of the first tier LDBE distributor and stocking supplier contracts provided that:
 - a. The LDBE assumes the actual responsibility for directly providing the materials or supplies; and,
 - b. Is certified as an LDBE by the Authority.
6. A non-LDBE prime offeror who plans to obtain materials or supplies from an LDBE non-stocking supplier, i.e., broker, agent, or packager, may count only the broker, agent or packager fee plus transportation cost (usually not more than five percent (5%) of the total value of the subcontract) toward its LDBE requirement provided that the LDBE broker, agent or packager is certified as an LDBE by the Authority.

7. An LDBE prime offeror who plans to obtain the services of an LDBE hauling/trucking firm may count towards its LDBE requirement:
 - a. The full value of the transportation services provided by the LDBE, provided that the LDBE hauling/trucking subcontractor is using trucks it owns, insures, and operates using drivers it employs, is performing a commercially useful function as defined in Section IX(07)(F) and is certified as a LDBE by the Authority under an appropriate SIC code. The LDBE may also receive credit for the full value of the transportation services it provides using trucks leased from another LDBE firm, including an owner operator who is certified as a LDBE. The LDBE who leases trucks from a non-LDBE firm is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The LDBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by an LDBE.
 - b. The cost of materials/supplies may not be counted toward the total value of the hauling firm's subcontract unless the LDBE hauling firm is also certified as a LDBE stocking supplier or non-stocking supplier, and requirements in Sections IX (03)(C)(5) or (6) are met. The total subcontract value, the hauling/trucking fee, and the materials price shall be listed on Exhibits D and E as separate line items.
8. A non-LDBE prime offeror who plans to lease or rent equipment from an LDBE equipment rental firm may count the total value of the rental/lease contract provided that:
 - a. the equipment is used for the performance of a distinct element of the contract work; and, that
 - b. the rental/lease cost(s) are not in excess of industry standard rates for leased or rented equipment; and, that
 - c. the LDBE equipment rental firm must actually own or control the equipment and maintain a yard or other facility where such equipment is stored; and, that
 - d. the LDBE equipment rental firm is certified as an LDBE by the Authority.

D. Offeror Conformance with LDBE Requirements

1. Documents to be Submitted With Offer.

By signing the offer, offeror commits itself to achievement of the LDBE participation requirement listed in Section IX(03).

- a. To be in conformance with this solicitation, the offeror is required to commit to meeting the LDBE participation requirement in Section IX (03) above. The offeror's signature on the offer signifies the offeror's commitment. If the offeror is unable to commit to the LDBE requirement, it must submit a Request for Waiver (Exhibit H) in accordance with the requirements of Section IX(04) with the offer below to be in conformance with this solicitation.
- b. All offerors (including those who are Authority certified LDBEs or eligible joint ventures who plan to count themselves to fulfill the LDBE requirement), shall submit a Contract Participation Form (Exhibit D) with their offers. Exhibit D is to list all firms that are participating in the contract and to provide all information required by the Exhibit. This

form must be signed and dated by the Prime Contractor's representative. (Note: Requirements for submission of certification documents set forth in Section IX(03)(D)(3) must also be met.) Offerors are also asked to identify whether or not the LDBE firms listed on the Exhibit D are also MBEs and WBEs.

2. Documentation to be Submitted After Offer Submission

a. Letters of Intent

The apparent successful offeror shall submit original signed Letters of Intent (Exhibit E) from each of the LDBEs identified on the Contract Participation Form (Exhibit D). These Letters of Intent must be submitted within three (3) business days after the Contracting Officer's request. Each Exhibit E shall be completely filled out and signed by the LDBE and co-signed by the offeror. A detailed description of the LDBE's scope of work must be provided on Exhibit E.

In an RFP process, the signed Letter of Intent (Exhibit E) represents an intent by the LDBE to perform the subcontract at the price stated on the Contract Participation Form (Exhibit D), if the offer is accepted by the Authority without negotiation. However, if price negotiation occurs, e.g., the Authority requests a best and final offer, the offeror shall submit a revised Exhibit D with its revised offer, and within three (3) business days after the Contracting Officer's request, Exhibit E. The offeror is not required to renegotiate prices with any LDBEs identified on the initial Exhibit D; consequently, the revised Exhibit D submitted after negotiations between the Authority and the offeror is not required to show any change to the original price agreed to by the LDBE.

b. LDBE Certification

1. All LDBEs must be certified by the Authority as LDBEs prior to award of this contract. All joint ventures between a non-LDBE and an LDBE must be formally certified by the Authority as an eligible joint venture under this section prior to award of this contract. The definitions and qualifications for LDBEs and eligible joint ventures are outlined in Section IX(07). Each LDBE that the offeror intends to use or joint venture with that is not currently LDBE certified by the Authority, must submit a completed Application for LDBE Certification (Exhibit F) to the Authority. This Application should be submitted prior to proposal submission, if possible, or promptly thereafter.
2. The apparent successful offeror shall submit the following no later than three (3) business days after notification by the Contracting Officer unless otherwise determined by the Contracting Officer:

For each LDBE named by the offeror, that is not currently LDBE certified by the Authority and that has not previously submitted a completed Application for LDBE Certification, the offeror shall submit a completed Application for LDBE Certification (Exhibit F). The completed Exhibit F shall be submitted by the LDBE applicant firm in a sealed envelope identified as "Proprietary Data for Use by the Authority only". The application must be fully completed and must include all documents required by the application. If the Authority determines, after receiving the application, that any information or document is missing from the application, the apparent successful offeror must submit such missing information or document to the Authority within two (2) business days of being notified (unless

another time period is established by the Authority). If an LDBE is already certified by the Authority as an LDBE, the apparent successful offeror may submit a copy of the LDBE certification letter (certification must be current), or submit the firm's LDBE certification number and expiration date. A joint venture must also submit the Application for Joint Venture Eligibility (Exhibit G). LDBE joint venture partners must also complete the Authority application for LDBE certification unless currently certified by the Authority.

3. If the apparent successful offeror is a joint venture between a non-LDBE and an LDBE partner, the joint venture should also submit the Application for Joint Venture Eligibility (Exhibit G) as early as possible, either prior to the proposal submission deadline or promptly thereafter. The LDBE joint venture partner must also complete the Authority Application for LDBE Certification (Exhibit F) unless currently certified by the Authority.
4. All LDBEs shall keep their LDBE certifications current, and shall immediately notify the Authority if they become ineligible for LDBE certification.

3. Failure to Submit Documents and Information

Failure to submit Contract Participation Form (Exhibit D), Letters of Intent (Exhibit E), LDBE Certification Application (Exhibit F)(if needed), or LDBE Waiver Request Procedure (Exhibit H) (if applicable) by the deadline specified by the Contracting Officer, may result in rejection of the offer.

04 REQUEST FOR WAIVER

- A. If an offeror is unable to meet all or any part of the LDBE participation requirements specified in this solicitation, the offeror must submit a Request for Waiver (Exhibit H) of this requirement with the offer. Exhibit H must demonstrate that the offeror has made a good faith effort to meet this LDBE participation requirement. The Request for Waiver must include a detailed report of the efforts employed by the offeror to meet the LDBE requirement, and such reporting must sufficiently satisfy the Authority that the requested waiver is justified. If the Authority is not satisfied that the requested waiver is justified, the Authority may find that the offeror is not in conformance with the RFP and reject the offer. A waiver of any portion of the LDBE requirements does not relieve the offeror of its responsibilities and requirements under Section IX(03)(D) concerning submission of the Contract Participation Form (Exhibit D), Letters of Intent (Exhibit E) and certification documents for the LDBE participation that the offeror has proposed.
- B. The offeror's report supporting the waiver request shall include documentation to substantiate that good faith efforts were made. The following is a sample listing of the efforts that an offeror may make. This list is not intended to be exclusive or exhaustive.
 1. Attend any preproposal meetings that are scheduled by the Authority;
 2. Advertise in major circulation newspapers such as the Washington Post, trade association publications, and disadvantaged and minority and women oriented media concerning the subcontracting opportunities;
 3. Provide written notice to a reasonable number of specific LDBEs that their interest in the contract is being solicited, in sufficient time to allow the LDBEs to participate effectively;

4. Follow up initial solicitations of interest by contacting LDBEs to determine with certainty whether the LDBEs were interested;
5. Select portions of the work to be performed by LDBEs in a manner that will increase the likelihood of meeting the LDBE requirement;
6. Select available LDBEs whose work/business history demonstrates capability to perform the work of the subcontract;
7. Provide interested LDBEs with adequate information about the plans, specifications and requirements of the contract;
8. Negotiate in good faith with interested LDBEs, and not reject LDBEs as unqualified without sound reasons based on a thorough investigation of their capabilities; and,
9. Make efforts to assist interested LDBEs in obtaining bonding and/or insurance.

The good faith effort of an offeror (if it is unable to meet the LDBE requirements) shall be evaluated by the Authority to determine whether the efforts to obtain LDBE participation were those that a firm aggressively seeking subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable probability of success; and whether based upon the size, scope and complexity of the subcontract, there were qualified LDBE firms available and willing to accept the contract at a competitive price.

Efforts that are merely pro forma are not good faith efforts to meet the requirement. Efforts to obtain LDBE participation are considered pro forma, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of LDBE participation to meet the LDBE requirement. For example, advertising or bulk mailings, alone or together, are considered pro forma and not good faith efforts unless followed up with telephone calls and/or correspondence consistent with normal business practice. If the LDBE provides a quote or offer, reasonable efforts to negotiate must be demonstrated.

C. Documents Required for Request for Waiver

1. The Request for Waiver (Exhibit H) of any portion of the LDBE requirement, the report of Good Faith Efforts, and all documentation of good faith efforts shall be submitted by an offeror with its offer by the offer deadline. Failure to submit the Request for Waiver with the offer will cause the offer to be rejected as nonconforming to the solicitation.
2. LDBE Unavailability Certification Form (Exhibit I) is to be used if the LDBE contacted responded to the prime offeror and stated that it was unavailable for a specific reason. These forms, if applicable, shall be submitted with the Request for Waiver (Exhibit H) of the requirement.

D. The Authority's Equal Opportunity Programs Department will assist offerors by identifying Authority certified LDBE firms and minority-owned and woman-owned firms. Upon request, a directory of certified LDBEs and certified Disadvantaged Business Enterprises (DBEs) who may be eligible LDBEs will be provided for information only. The Authority does not warrant or guarantee the performance capability of any firms listed therein. The Authority's Equal Opportunity Programs Department may be contacted at 703-417-8625, or at the following address: Metropolitan Washington Airports Authority, Equal Opportunity Programs, 1 Aviation Circle, Washington, DC 20001-6000.

05 PRE-AWARD SUBSTITUTIONS

The Authority expects contractors to achieve LDBE participation using the firm(s) specified on the Contract Participation Form (Exhibit D). On occasion it may be necessary to substitute other firms to achieve the LDBE participation. No substitution may occur without the Authority's prior written approval. The Authority will approve a proposed substitution if it determines that the offeror has acted in good faith in attempting to meet the LDBE participation achievement and if the Authority concurs that the substitution is necessary. The following are some examples of when substitution may be necessary:

- A. Failure to qualify as an LDBE, if the firm was proposed in good faith by the offeror.
- B. Death or physical disability, if the named LDBE subcontractor, or LDBE partner of the joint venture is an individual.
- C. Dissolution, if a corporation or partnership.
- D. Bankruptcy.
- E. Inability to furnish the required performance and payment bond.
- F. Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- G. Failure or refusal to execute the subcontract in accordance with the terms of an offer negotiated with the Contractor, but only where the Contracting Officer can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the successful offeror obtained an enforceable commitment from the subcontractor involved.
- H. Failure to comply with the terms and conditions of the contract or those of its subcontract or joint venture agreement.
- I. Voluntary decision by the LDBE to not participate on the project prior to signing the Letter of Intent (Exhibit E).
- J. The Authority determines that a named LDBE is not likely to be performing a commercially useful function or is unable to perform work of the nature and scope claimed for it and the Authority finds that the offeror acted in good faith with respect to its decision to propose that LDBE.

06 POST-AWARD COMPLIANCE

- A. Compliance Reviews
 - 1. The Authority may conduct post-award compliance reviews to ensure that the named LDBEs on the original or, as a result of contract modification, amended Contract Participation Form (Exhibit D), submitted to and accepted by the Authority, perform the work as assigned, and at least at the agreed price that was identified on Exhibit D. Specifically, compliance reviews verify: (1) the participation of those LDBE subcontractors identified on Exhibit D; (2) the scope of work for each LDBE listed on Exhibit D; and, (3) at least at the agreed price identified for each LDBE listed on Exhibit D. The Authority may use the Invoice Attachment Form (Exhibit J), and any other appropriate information, to verify the participation of each LDBE subcontractor identified on Exhibit D, as submitted by the Contractor. Delineated on these forms will be the activities of all first tier subcontractors (and second or third tier subcontractors, if required),

including contract amount and reported payment, for the purpose of monitoring the progress of all phases of the contract. Voluntary MBE/WBE participation will also be reported on Exhibit J.

2. The Authority is committed to equitable treatment, and meaningful utilization of, and timely payment and return of retainage to, LDBE subcontractors. All offerors are advised that the contract resulting from this solicitation will include the subcontractor payments provision referenced in Section VII(04)(C). This provision must be incorporated into all subcontracts exceeding \$5,000.

B. By accepting the contract, the Contractor agrees to the following requirements:

1. The Contractor shall prompt, with reasonable measures, all LDBE firms participating in this contract to renew their LDBE certifications and notify the Authority immediately of any change in status that would affect their eligibility for LDBE certification.
2. The Contractor shall submit a revised Contract Participation Form (Exhibit D) and Revised Letter(s) of Intent (Exhibit E1), or other documentation acceptable to the Authority, which reflects changes in the LDBE participation associated with the modifications to the contract. **A revised Exhibit D, if required, shall be provided to the Contracting Officer concurrent with submission of the proposal for the changed work. Revised Exhibit(s) E1, if required, shall be provided to the Contracting Officer concurrent with submission of the signed modification.**
3. The Contractor shall submit a completed Invoice Attachment Form (Exhibit J) with each invoice. The Contractor is responsible for the accuracy of all information reported.
4. The Contractor shall allow the Authority access to records relating to the contract, including but not limited to, subcontracts, payroll records, tax information and accounting records, for the purpose of ascertaining whether the LDBEs are performing the scheduled subcontract work and the Contractor is otherwise in compliance with the contract's LDBE participation requirements.
5. The Contractor shall maintain LDBE subcontractor records of all LDBE subcontracting activities. These records shall include current LDBE subcontractor logs, the Authority's Invoice Attachment Form (Exhibit J) and evidence of payments to LDBE subcontractors, including but not limited to, copies of canceled checks and paid invoices. These records must evidence compliance with the terms of the contract. Copies of these records will be available to the Contracting Officer or the Equal Opportunity Specialist to review. The Contractor shall document any changes in LDBE subcontractor(s) resulting from new LDBE subcontracts, completion of existing LDBE contracts or approved substitution of an LDBE subcontractor.
6. The Contractor shall maintain a detailed record of every non-compliance issue and corrective action taken. Examples of non-compliance issues are found in Section IX(06)(C).

C. The Contractor shall be found to be in non-compliance if the Contractor fails to fulfill the LDBE participation commitment contained in the Contract Participation Form (Exhibit D) and Letter(s) of Intent (Exhibit E), or in revisions to these documents. The following are examples of non-compliance:

1. The terms of a subcontract with an LDBE do not agree with the Contract Participation Form (Exhibit D) and/or Letter of Intent (Exhibit E).
2. A firm other than the LDBE listed on the Contract Participation Form (Exhibit D) is performing the subcontract work listed on Exhibit D, unless the substitution was authorized by the Authority.

The Invoice Attachment Form (Exhibit J) may be used by the Authority to monitor the activities of LDBEs and to identify incidents of non-compliance.

3. The Contractor is purchasing the supplies or materials when the Contractor has represented to the Authority that the LDBE will supply both the labor and supplies or materials for the subcontract.
 4. The Contractor requires the LDBE to perform additional work that was not agreed to in the Letter of Intent (Exhibit E) and the formal contract between the Contractor and the LDBE, without additional compensation, and without filing a Revised Letter of Intent (Exhibit E1) with the Authority.
 5. The Contractor is paying the LDBE subcontractor less than the agreed price of the subcontract as defined in the Letter of Intent (Exhibit E), or in the Revised Letter of Intent (Exhibit E1) without cause.
 6. The Contractor is not paying the LDBE subcontractor in accordance with the payment provisions of their subcontract.
 7. The Contractor fails to submit Invoice Attachment Form (Exhibit J) with his/her invoice submittal, and other documents requested for the purpose of conducting a post-award compliance review.
 8. The Contractor's expenditures to an LDBE subcontractor do not meet the LDBE dollar commitment made in the Contract Participation Form (Exhibit D).
 9. The Contractor fails to accurately report payments to the LDBE subcontractor on the Invoice Attachment Form (Exhibit J).
 10. The LDBE subcontractor is not performing a commercially useful function as defined in Section IX(07)(F).
- D. If the Contractor is found to be in non-compliance, the Authority may impose appropriate sanctions, (including, but not limited to, withholding of payments or termination of the contract in accordance with the DEFAULT provision) if corrective action acceptable to the Authority is not taken within forty-eight (48) hours (or such other time period deemed appropriate by the Contracting Officer) after notification by the Contracting Officer.
- E. If an LDBE listed on the Contract Participation Form (Exhibit D) is determined not to be performing a commercially useful function and it is determined by the Authority that a misrepresentation was made by the LDBE, the firm's LDBE certification with the Authority may be revoked. In such cases, the Contractor will be required to replace the LDBE found to be ineligible with another eligible, certifiable LDBE approved by the Authority, that will perform a commercially useful function.
- F. POST-AWARD SUBSTITUTION: The Authority may permit the Contractor to make post-award LDBE substitutions consistent with the principles established in Section IX(05).

07 DEFINITIONS

- A. An LDBE is defined as a small business concern that is organized for profit and that is located within a 100-mile radius of the District of Columbia's zero mile marker. Those business entities located within counties that fall partially within the aforementioned boundary are also eligible to participate in the Authority's LDBE program. "Located" means that as of the date of its LDBE application, a business

entity has an established office or place of business within a city, county, or town within the 100-mile radius referenced above. Evidence of whether a business is "located" within the region include: an office address within the 100-mile radius that is not a post office box and that is not an office principally devoted to the performance of work on a single project, and; the firm's owner, management, or the firm's employees are present and conduct the firm's business on a regular and frequent basis at that address. In addition, the firm must have one or more of the following: a business license or registration to do business locally, if applicable to the business; receipts showing payment of local taxes by the business; current performance of work in the local area; or other evidence that demonstrates that the business entity has an established local presence, and that its local presence is not just in connection with performance of a contract or project that it has received, or that it anticipates receiving, from the Authority or any other entity. A residential address will not be considered an office address unless the firm demonstrates to the Authority that the residence is used on a full-time basis during business hours for conducting the firm's business.

Further, a local office that principally serves to market the firm locally is not considered to have an established local presence, unless the office is used full-time by principals and employees of the firm, the firm pays local taxes and the office is used for the current performance of work in the local area. A firm that is doing business from a local telework center, or similar facility in which businesses share facilities, such as receptionists or copiers, on a short or long term basis, will not be considered to have a sufficient local presence unless the firm's principals and employees use it on a full-time basis.

A "small business" is defined, for LDBE purposes, as a firm that is not dominant in its field, and that meets the Authority's small business size standards for the goods it will be supplying or services it will be performing in a specific solicitation. The receipts of the business or the number of employees, whichever is applicable to the size standard in question, including all affiliates, will be counted in determining size of the firm. The Authority uses the Small Business Administration regulations, 13 CFR Part 121, as guidance in determining whether firms are affiliates of each other. A firm is not considered dominant in its field of operation when it does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration will be given to all appropriate factors including volume of business, number of employees, financial resources, and competitive status or position.

- B. "Affiliates". Business concerns are affiliates of each other when either directly or indirectly, (1) one business concern controls or has the power to control the other, or (2) a third party or parties controls or has the power to control both. In determining whether business concerns are affiliated, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships. The provisions of 13 CFR Part 121 will be used to guide the Authority in determining whether firms are affiliated.
- C. For purposes of Section IX of this solicitation, the term "subcontractor" shall mean an individual or firm with which the offeror proposes to enter into a contract for the supply of goods and/or performance of services for the offeror. The term "subcontractor" shall refer only to first tier subcontractors unless the contract also permits second tier subcontracting.
- D. The term "joint venture" shall mean an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and/or knowledge.

A joint venture competing as a prime offeror under a full and open competitive opportunity is eligible to be considered an LDBE joint venture if it meets the following requirements: the LDBE member of the joint venture meets the definition of an eligible LDBE; the LDBE member will perform a commercially

useful function and will share in the ownership, control, management, responsibility, risks, and profits of the joint venture.

E. "Minority Business Enterprises and Women Business Enterprises" (MBE/WBE). The Authority is committed to achieving significant participation of minority and woman-owned businesses in its contracting opportunities. To be considered a minority or woman-owned business enterprise, the business concern must be at least 51 percent owned and controlled by one or more minority (African American, Hispanic American, Native American, Asian-Indian American, Asian Pacific American) or female individuals. The firm's management and daily business operations must be controlled by one or more of the qualifying individuals who own it.

F. "Commercially Useful Function:"

An LDBE is considered to perform a commercially useful function when it:

1. Engages in meaningful work that provides for a performance of a distinct element of the contract where that distinct element of work is worthy of the dollar amount to be awarded to the LDBE; and,
2. Carries out its responsibilities by actually performing, managing, and supervising the work involved.

Exhibit C

Local Disadvantaged Business Enterprise (LDBE)
Size Standards for Solicitation 1-12-C205

<u>NAICS Code</u>	<u>Type Of Work / Service</u>	<u>LDBE Size Standard</u>
238910	Site Preparation Contractors	\$14.0 Million
238390	Other Building Finishing Contractors	\$14.0 Million
238340	Tile and Terrazzo Contractors	\$14.0 Million
236220	Commercial & Institutional Building Contractors	\$33.5 Million

To be considered an LDBE small business, a business firm's average annual gross receipts or average number of employees for the last three (3) years cannot exceed the applicable Small Business Administration (SBA) size standard. Gross receipts or numbers of employees of all affiliates of the firm are included when determining the firm's average annual gross receipts or average number of employees.

Firms will only be certified as an LDBE for services or goods that they are able to provide at the time of LDBE certification and for which they do not exceed the applicable SBA size standard, as noted above. An LDBE firm adding services or goods during the term of its certification may request the Authority's Equal Opportunity Programs Department to amend the LDBE certification to include these new services or goods, provided the firm also meets the applicable SBA size standards for these new services or goods, as noted above.

Your firm must be certified for the work you plan to perform or for the goods you plan to manufacture or supply on this contract.

There may be other NAICS codes approved for this project. If this list does not include an LDBE NAICS code and size standard for work that you anticipate may be needed for this project, you must request it through the Contracting Officer.

The Authority will review your request. If the NAICS code is accepted for this solicitation, the change will be formally communicated in an amendment to the solicitation.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY CONTRACT PARTICIPATION FORM

Check One: Original Revised Date: _____ Contract No.: _____

Name of Offeror: _____ Project Name: _____

Original Contracted LDBE Participation: \$ _____ Original Percent Contracted LDBE Participation: _____ %

The Offeror shall submit the Contract Participation Form to the Contracting Officer with the offer. Please attach additional sheets if needed.

EX	LIST THE PRIME AND <u>ALL</u> FIRST TIER FIRMS PARTICIPATING IN THIS CONTRACT <small>Identify whether firms are *P, S, JV, SP, B, H, MFG, in next column.</small>	TYPE OF FIRM <small>(see below)</small>	FEDERAL TAX ID <small>(also known as Employer Identification Number) nine digit number.</small>	Enter "X" for all that apply				ADDRESS <small>(Number, Street, City, State, ZIP)</small>	DESCRIBE TYPE OF WORK <small>(Electrical, Paving, etc. with notation e.g. "Labor Only", "Material Only", "Complete") Item Number if Applicable, Quantity, Unit Price</small>	AGREED PRICE
				LDBE	MBE **	WBE ***	OTHER			
1	SAMPLE	S	55-5555555	X	X			12345 Main Street, Washington, DC 20001	Furnish and install Structural Steel	\$986,000.00
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
TOTAL AGREED PRICE MUST EQUAL TOTAL OFFERED PRICE:										

I, _____, a duly authorized representative of _____, certify that the above information is true and correct.
(type or print name) (name of firm)

Signature: _____ Date: _____

TYPE OF FIRM

*P = Prime Contractor
S = Subcontractor
JV = Joint Venture

SP = Stocking Supplier/Distributor
B = Broker, Agent, Packager
H = Hauler
MFG = Manufacturer

** MBE = A certified Minority Business Enterprise (Attach current certification letter)
*** WBE = A certified Women Business Enterprise (Attach current certification letter)
(Information regarding MBE/WBE participation will be used for generalized statistical purposes and program analysis.)

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
LETTER OF INTENT**

_____	Contract Number _____	_____
(Name of Prime Contractor)	Location _____	_____
_____	Contract Name _____	_____
(Name of 1 st Tier Subcontractor (If Applicable))		

- A. The undersigned LDBE intends to perform the work associated with this contract as (Check one):
 Individual Partnership Corporation Joint Venture
- B. The undersigned LDBE will perform the work associated with this contract as a (Check all that apply):
 Construction Contractor Stocking Supplier Manufacturer Stocking Distributor
 Broker, Agent, Packager Hauler Service Provider (for non-construction contracts)
- C. The undersigned LDBE will: Perform the following services Supply the following materials, equipment, supplies:

IF AVAILABLE, PLEASE ATTACH A COPY OF THE PROPOSED SCOPE OF WORK FOR THIS SUBCONTRACTOR.

Item Number	Detailed Description Of Scope of Work	Scope of Services (Check One)	Quantity	Unit Price
01	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____
02	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____
03	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____
04	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____

Please Attach Additional Sheets if Necessary

- D. Work described above will be performed at the following total price: \$ _____.
- E. Total Contract Amount: \$ _____
- F. Term of Contract Commencement Date: _____ Completion Date: _____
- G. _____% of the dollar value of the subcontract will be performed by (check if applicable):
 Non-LDBE contractors Non-LDBE suppliers.

The undersigned will enter into a subcontract consistent with the above upon execution of a contract between the Prime Contractor and the Authority: **(NOTE: SIGNATURES MUST BE DATED)**

_____	Agreed To	_____
(Print or Type Name of LDBE Firm)		(Print or Type Name of Prime Contractor)
By _____		_____
(Print or Type Name and Title)		(Print or Type Name and Title)
_____	_____	_____
(Signature)	(Date)	(Signature) (Date)

(Print or Type LDBE's Certification Number and Expiration Date)		

FOR MWAA USE ONLY

MWAA EOP Specialist's Approval \$ _____	_____	_____
(Enter The Amount of Contract Approved for LDBE Participation)	(Signature)	(Date)

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
REVISION TO ORIGINAL LETTER OF INTENT**

_____ Contract Number _____
 (Name of Prime Contractor) Location _____
 _____ Contract Name _____
 (Name of 1st Tier Subcontractor (If Applicable))

Revision # _____ MWA Change Notice # _____ MWA Contract Modification # _____
 Describe Change or Modification _____
 This revision represents: Increase in Contract Amount Decrease in Contract Amount
 If Decrease, state reason _____

- A. The undersigned LDBE intends to perform the work associated with this contract as (Check one):
 Individual Partnership Corporation Joint Venture
- B. The undersigned LDBE will perform the work associated with this contract as a (Check all that apply):
 Construction Contractor Stocking Supplier Manufacturer Stocking Distributor
 Broker, Agent, Packager Hauler Service Provider (for non-construction contracts)
- C. The undersigned LDBE will: Perform the following services Supply the following materials, equipment, supplies:

IF AVAILABLE, PLEASE ATTACH A COPY OF THE PROPOSED SCOPE OF WORK FOR THIS SUBCONTRACTOR.

Item Number	Detailed Description Of Scope of Work	Scope of Services (Check One)	Quantity	Unit Price
01	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____
02	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____
03	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____
04	_____	<input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete	_____	_____

Please Attach Additional Sheets if Necessary

- D. Work described above will be performed at the following total price: \$_____.
- E. Original Total Contract Amount: \$_____ Current Total Contract Amount: \$_____
 Total Amount of This Revision: \$_____ New Total Contract Amount: \$_____
- F. Term of Contract Original Commencement Date: _____ Original Completion Date: _____
 Revised Commencement Date: _____ Revised Completion Date: _____
- G. _____ % of the dollar value of the subcontract will be performed by (check if applicable):
 Non-LDBE contractors Non-LDBE suppliers.

The undersigned will enter into a subcontract consistent with the above upon execution of a contract between the Prime Contractor and the Authority: **(NOTE: SIGNATURES MUST BE DATED)**

_____ Agreed To _____
 (Print or Type Name of LDBE Firm) (Print or Type Name of Prime Contractor)

By _____
 (Print or Type Name and Title) (Print or Type Name and Title)

_____ (Signature) _____ (Date) _____ (Signature) _____ (Date)

_____ (Print or Type LDBE's Certification Number and Expiration Date)

FOR MWA USE ONLY

MWA EOP Specialist's Approval \$ _____
 (Enter The Amount of Contract Approved for LDBE Participation) (Signature) (Date)

EXHIBIT F

LDBE CERTIFICATION APPLICATION

The Local Disadvantaged Business Enterprise (LDBE) Program application form is available for download from the Metropolitan Washington Airports Authority's website at:

<http://www.mwaa.com/362.htm>

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

APPLICATION FOR JOINT VENTURE ELIGIBILITY

Note: This form need not be filled in if all joint venture firms are LDBEs

<p>1. JOINT VENTURE NAME AND ADDRESS (Company Name, Address, City State Zip)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>2. CONTACT PERSON AND TITLE</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>3. TELEPHONE</p> <p>_____</p>
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4. IDENTIFY THE COMPANIES WHICH COMPRISE THE JOINT VENTURE (LDBE PARTNER(S) MUST COMPLETE LDBE APPLICATION):

5a. DESCRIBE ROLE OF LDBE FIRM IN THE JOINT VENTURE:

b. NATURE OF JOINT VENTURE'S BUSINESS: _____

c. DESCRIBE VERY BRIEFLY THE EXPERIENCE AND BUSINESS QUALIFICATIONS OF EACH NON-LDBE JOINT VENTURER: _____

6. IS THE JOINT VENTURE RESPONDING TO A SPECIFIC AUTHORITY SOLICITATION?

YES NO IF YES, WHICH ONE? _____

7. WHAT IS THE PERCENTAGE OF LDBE OWNERSHIP IN THE JOINT VENTURE?

AFFIDAVIT

“The undersigned swear that the foregoing statements are true and correct and include all material information necessary to identify and explain the terms and operation of the joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide the Metropolitan Washington Airports Authority (the Authority) current, complete, and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records, and files of the joint venture, by authorized representatives of the Authority or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.”

Name of Joint Venture (if any) _____

Names of companies forming Joint Venture _____

Signature(s) _____

Name(s) _____

Title(s) _____

Date _____

State of _____

County of _____

On this _____ day of _____, 20____, before me appeared (name) _____, to me personally known, who being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____

Commission Expires _____

[Seal]

On this _____ day of _____, 20____, before me appeared (name) _____, to me personally known, who being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____

Commission Expires _____

[Seal]

LDBE WAIVER REQUEST PROCEDURE

This procedure must be followed if an offeror cannot meet the LDBE subcontracting requirements in whole or in part. The Request for Waiver must be submitted in writing with the proposal. The Request for Waiver must report and document the efforts made by the offeror to solicit LDBEs for participation and clearly outline the offeror's reasons why no subcontracting opportunities exist. A waiver request must also demonstrate that there are an insufficient number of LDBEs to provide adequate competition and reasonable prices. The provisions of Section IX (04) must be reviewed by the offeror before submitting a request for a waiver.

A blanket statement that there are no LDBE businesses to provide services or materials related to the bid/offer is INADEQUATE. An explanation of how that conclusion was reached must be provided or the request will be determined to be pro forma and not in good faith.

Actions which may demonstrate a good faith effort on the part of the bidder include, but are not limited to, the following:

1. Attend any pre-proposal meetings that are scheduled by the Authority;
2. Advertise in major circulation newspapers such as The Washington Post, trade associations, small business, and minority and women oriented media concerning the subcontracting opportunities;
3. Provide written notice to a reasonable number of specific LDBEs that their interest in the contract is being solicited, in sufficient time to allow the LDBEs to participate effectively;
4. Follow up initial solicitations of interest by contacting LDBEs to determine with certainty whether the LDBEs were interested.
5. Select portions of the work to be performed by LDBEs in a manner that will increase the likelihood of meeting the LDBE requirement;
6. Provide interested LDBEs with adequate information about the plans, specifications, and requirements of the contract;
7. Negotiate in good faith with interested LDBEs, and not reject LDBEs as unqualified without sound reasons based on a thorough investigation of their capabilities; and,
8. Make efforts to assist interested LDBEs in obtaining bonding or insurance, if needed.

WAIVER REQUEST (Continued)

REQUEST FOR WAIVER

_____ hereby requests a waiver of the required contract requirement for the participation of LDBEs as specified in solicitation number _____.

All good faith efforts to identify potential LDBEs as subcontractors have been made, but we have been unable to meet the LDBE requirement for the following reason(s):

(Authorized Representative)

(Date)

NOTE: All advertisements, telephone conversations, and other documentation to support this statement should be attached.

Exhibit I

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
LDBE UNAVAILABILITY CERTIFICATION**

I, _____, _____ of
(Name) (Title)
_____, certify that on _____
(Offeror) (Date)

I contacted the following LDBEs to obtain a quote for work items to be performed on Contract
Number _____.

<u>LDBE (Name of Firm)</u>	<u>Work Items Sought</u>
_____	_____
_____	_____
_____	_____

To the best of my knowledge and belief, said LDBEs were unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare an offer or bid, for the following reason(s):

Signature _____

Date _____

_____ was offered an opportunity to bid or make an offer on
(Name of LDBE)
the above identified work on _____ by _____.
(Date) (Source)

The above statement is a true and accurate account of why I did not submit an offer/bid on this project.

(Signature of LDBE)

(Title)

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY INVOICE ATTACHMENT FORM

Name Of Prime Contractor _____
 Contract Name & Number _____
 Original Contract Amount \$ _____ Payments Received \$ _____
 Current Contract Amount \$ _____ Retainage Withheld \$ _____
 Invoice Period From _____ Through _____ Date Submitted _____
 Actual LDBE Participation To Date \$ _____
 Current Scheduled LDBE Participation \$ _____
 Total Original Contracted LDBE Participation \$ _____ Percent Original Contracted Participation _____ %

#	NAME OF SUBCONTRACTOR	BUSINESS ADDRESS (CITY, STATE, ZIP)	DESCRIPTION OF WORK	* L D B E	M B E	W B E	O T H E R	MONTHLY CONTRACT INFORMATION				% C O M P L E T E	% L D B E
								ORIGINAL SUBCONTRACT AMOUNT	CURRENT SUBCONTRACT AMOUNT	TOTAL PAYMENTS TO DATE	AMOUNT THIS INVOICE		
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
11													
12													
13													
14													
15													
16													
17													
18													
SUBCONTRACTOR TOTALS													
PRIME CONTRACTOR TOTAL													
TOTAL THIS INVOICE													

* PUT AN "X" IN THIS COLUMN ONLY IF SUBCONTRACTOR IS AN AUTHORITY CERTIFIED LDBE.

I certify that the information furnished above is correct to the best of my knowledge and represents the current status of the firm's (Prime Contractor) subcontract(s) with the listed firms (Subcontractors) for the designated period covered by this report.

Signed: _____ Title _____ Date _____

This form must be attached to all Invoices submitted by the Prime Contractor.

Metropolitan Washington Airports Authority
INSTRUCTIONS FOR COMPLETING
THE INVOICE ATTACHMENT FORM (EXHIBIT J)

I. USE AUTHORIZED FORMS

Use only **Authority approved forms** to file monthly Invoice Attachment Form. Do not change or amend the Authority approved form in any manner. Authority approved forms are available on hard copy or diskette from the EOP Specialist assigned to the contract. Note that all subcontractors are to be listed on the Invoice Attachment Form. Also, note that some entries are required that apply only to the sum of LDBE contracts. To facilitate accuracy in reporting, it is recommended that LDBE subcontractors be listed first and a subtotal appear in each of the four sub-columns that comprise the "Monthly Contract Information" section of the report.

II. REPORT ALL LDBEs EVERY MONTH

Every LDBE firm whose contract is counted toward achievement of the participation requirement must appear on the Invoice Attachment Form every month. If there is no invoice activity for an LDBE in any given month, enter "0" in the column, "Amount this Invoice". Note that all other information must be entered, must be current and correct.

III. LEDGER PORTION

A. Name, Location & Description of Work – For all subcontractors, enter the subcontractor's name, location (city, state and zip code) and description of work. For LDBEs, these entries must be the same as comparable information appearing on the Letter of Intent and the Contract Participation Form.

B. Classification of Subcontractor(s)

Only those subcontractors who meet the LDBE eligibility requirements may be classified as LDBEs on the Invoice Attachment Form.

Assign classifications as follows:

1. **LDBE**-Place an "X" in this column only if the subcontractor is an Authority certified LDBE.
2. **MBE**-Place an "X" in this column if the subcontractor is also a minority-owned company, regardless of their size. This classification should also be used for subcontractors who have submitted a certification application but have not yet been certified. Once certification has been achieved, such firms should be classified as both MBE and LDBE. This column is also used to calculate Voluntary Participation of Minority-owned firms. Thus, a subcontractor can be classified as both LDBE and MBE, or just MBE.
3. **WBE**-Place an "X" in this column if the subcontractor is a woman-owned company regardless of their size. This classification should also be used for subcontractors who have submitted a certification application but have not yet been certified. Once certification has been achieved, such firms should be classified as both LDBE and WBE. This column is also used to calculate Voluntary Participation of woman-owned firms. Thus, a subcontractor can be classified as both LDBE and WBE, or just WBE.

**Metropolitan Washington Airports Authority
Instructions for Completing the Invoice Attachment Form**

4. **Other**-Place an "X" in this column for all subcontractors who cannot be classified as either LDBE, MBE or WBE.

C. Original Subcontract Amount

Enter the original subcontract amount. For LDBEs, this must be the amount submitted on the LDBE's Letter of Intent and approved by the Authority.

D. Current Subcontract Amount

Enter the current subcontract amount. If this amount is the same as the entry in "Original Subcontract Amount", enter it. For LDBEs, if this amount is different that the amount entered in "Original Subcontract Amount", a **Revised Letter of Intent** must be on file with and approved by the EOP Specialist. It is recommended that **Revised Letters of Intent** be submitted with the Invoice Attachment Form that initially reports the New Contract amount.

E. Total Payments to Date

Enter the sum of payments that have been made to that subcontractor as of the date of the report. Note that this column should not contain diminishing amounts, i.e., a succeeding month's entry lower than the preceding month's entry. If this occurs, the Authority may request an examination of additional records to verify the correct amount.

F. Amount of This Invoice

Enter the amount of the subcontractor's invoice being submitted with this report.

G. Percentage Amount Complete

Enter the percentage that equals the progress of that subcontractor's work.

H. Percent LDBE

This entry depends upon the type of contract and terms stated in the solicitation. The **percentage for non-LDBEs is always "0"**. Thus, if the subcontractor does not meet the requirements stated above to be classified as a LDBE, the percentage entered in this column **must be "0"**.

I. Totals

Fill out totals as follows:

1. **SUBCONTRACTOR TOTALS** – Totals for all subcontractor data reported on the Exhibit J form.
2. **PRIME CONTRACTOR TOTAL** – Portion of invoice attributed to work performed by prime contractor. (May include payments to non-LDBE/MBE/WBE suppliers that are not listed in the subcontractor section of the Exhibit J from.)
3. **TOTAL THIS INVOICE** – Sum of the Subcontractor Total and Prime Contractor Total for the current invoice. Must match the amount of the invoice.

**Metropolitan Washington Airports Authority
Instructions for Completing the Invoice Attachment Form**

IV. TOP PORTION OF INVOICE ATTACHMENT FORM

A. Original Contract Amount

Enter the original amount of the Prime's Contract.

B. Payments Received

Enter the sum total of payments received as of the date of the report.

C. Current Contract Amount

Enter the current amount of the Prime's Contract.

D. Retainage Withheld

Enter the amount of retainage withheld. If none, enter 0.

E. Invoice Period

Enter the month being reported, i.e. January 1 to January 31, 2000.

F. Date Submitted

Enter the date the report is submitted to the Authority.

G. Actual LDBE Participation to Date \$

Enter the sum of Total Payments to LDBEs.

H. Current Scheduled LDBE Participation \$

Enter the sum of **Current Subcontract Amounts** reported for **LDBEs only**, i.e, do NOT include current subcontract amounts for non-LDBEs even though they appear in the ledger portion of the report.

I. Total Original Contracted LDBE Participation \$

Enter the dollar amount of the original LDBE participation requirement of this contract.

J. Percentage Original Contracted Participation

Enter the percentage of required LDBE participation for this contract.

SECTION X - ATTACHMENTS

**ATTACHMENT 01
SPECIFICATIONS
ENTITLED
MAIN TERMINAL EAST EXPANSION JOINT REPLACEMENT
DATED MAY 4, 2012
ONE BOUND BOOK**

ATTACHMENT 02

DRAWINGS

SHEET NUMBERS GN00.0001 THRU AR08.0001

ATTACHMENT 03

CONSTRUCTION SAFETY MANUAL
Revision 15, dated July 2002

ATTACHMENT 04

**OWNER CONTROLLED WRAP-UP INSURANCE PROGRAM MANUAL
November 2010 Edition**

ATTACHMENT 05

**AIRPORT BULLETINS
WASHINGTON DULLES INTERNATIONAL AIRPORT
February 2009 Edition**