

# **ATTACHEMENT A**

## **REQUIRED FEDERAL CLAUSES**

- 1.1. Access to Records and Reports (Reference: 2 CFR § 200.333, 2 CFR § 200.336, FAA Order 5100.38).** The CONSULTANT must maintain an acceptable cost accounting system. The CONSULTANT agrees to provide the OWNER, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcriptions. The CONSULTANT agrees to maintain all books, records, and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.
- 1.2. Breach of Contract Terms (Reference: 2 CFR § 200 Appendix II(A)).** Any violation or breach of terms of this contract on the part of the CONSULTANT or its subconsultants may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

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

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

- 1.3. Civil Rights - General (Reference: 49 USC § 47123)**

**1.3.1. Owner Contracts**

### **GENERAL CIVIL RIGHTS PROVISIONS**

The CONSULTANT agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the CONSULTANT and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

**1.3.2. Owner Lease Agreements and Transfer Agreements**

## GENERAL CIVIL RIGHTS PROVISIONS

The (tenant/concessionaire/lessee) agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the (tenant/concessionaire/lessee) transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the (tenant/concessionaire/lessee) for the period during which the property is owned, used or possessed by the (tenant/concessionaire/lessee) and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### 1.4. Civil Rights - Title VI Assurances (49 USC § 47123, FAA Order 1400.11)

**1.4.1. Title VI Solicitation Notice.** The **OWNER of Taos**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, [select disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

**1.4.2. Title VI Clauses for Compliance with Nondiscrimination Requirements.** During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:

- a. **Compliance with Regulations:** The CONSULTANT will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- b. **Non-discrimination:** The CONSULTANT, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by the CONSULTANT of the CONSULTANT'S obligations under this contract and

the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

- d. **Information and Reports:** The CONSULTANT will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the OWNER or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish the information, the CONSULTANT will so certify to the OWNER or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of a CONSULTANT'S noncompliance with the Non-discrimination provisions of this contract, the OWNER will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - 1. Withholding payments to the CONSULTANT under the contract until the CONSULTANT complies; and/or
  - 2. Cancelling, terminating, or suspending a contract, in whole or in part.
- f. **Incorporation of Provisions:** The CONSULTANT will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The CONSULTANT will take action with respect to any subcontract or procurement as the OWNER or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the CONSULTANT becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, the CONSULTANT may request the OWNER to enter into any litigation to protect the interests of the OWNER. In addition, the CONSULTANT may request the United States to enter into the litigation to protect the interests of the United States.

**1.4.3. Title VI List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin).
- b. 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964).

- c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27.
- e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- f. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and consultants, whether such programs or activities are Federally funded or not).
- h. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38.
- i. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).
- l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**1.5. Clean Air and Water Pollution Control (Reference: 49 CFR § 18.36(i) (12)).** CONSULTANT agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act

(42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The CONSULTANT agrees to report any violation to the OWNER immediately upon discovery. The OWNER assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

**1.6. Debarment and Suspension (Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5)**

**1.6.1. Bidder or Offeror Certification**

**CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT**

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

**1.6.2. Lower Tier Contract Certification**

**CERTIFICATION OF LOWER TIER CONSULTANTS REGARDING DEBARMENT**

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the PROJECT is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

- a. Checking the System for Award Management at website: <http://www.sam.gov>
- b. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
- c. Inserting a clause or condition in the covered transaction with the lower tier contract.

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

**1.7. Disadvantaged Business Enterprises (Reference: 49 CFR PART 26)**

**1.7.1. Solicitation Language (Solicitations that include a Project Goal)**

Information Submitted as a matter of bidder responsiveness:

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

As a condition of bid responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

- a. The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- b. A description of the work that each DBE firm will perform;
- c. The dollar amount of the participation of each DBE firm listed under (1)
- d. Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal; and
- e. If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

Information submitted as a matter of bidder responsibility:

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

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

- a. The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- b. A description of the work that each DBE firm will perform;
- c. The dollar amount of the participation of each DBE firm listed under (1)
- d. Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal; and
- e. If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

**1.7.2. Solicitation Language (Race/Gender Neutral Means).** The requirements of 49 CFR part 26 apply to this contract. It is the policy of the **Town of Taos** to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

**1.7.3. Prime Contracts (Projects covered by DBE Program)**

**DISADVANTAGED BUSINESS ENTERPRISES**

**Contract Assurance (§ 26.13)** – The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the Contractor from future bidding as non-responsible.

**Prompt Payment (§26.29)** – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number] days from the receipt of each payment the prime contractor receives from the TOWN OF TAOS, NEW MEXICO. The prime contractor agrees further to return retainage payments to each subcontractor within [specify the same number as above] days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the TOWN OF TAOS, NEW MEXICO. This clause applies to both DBE and non-DBE subcontractors.

**1.8. Distracted Driving (Reference: Executive Order 13513, DOT Order 3902.10)**

**TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

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

**1.9. Energy Conservation Requirements (2 CFR § 200, Appendix II(H)).** CONSULTANT and subconsultant agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201et seq).

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

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

**1.11. Foreign Trade Restriction Certification (Reference: 49 USC § 50104, 49 CFR Part 30).** The by submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror -

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

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

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

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

- a. who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- b. whose subconsultants are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or



- c. who incorporates in the public works PROJECT any product of a foreign country on such U.S.T.R. list;

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

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

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

**1.12. Lobbying and Influencing Federal Employees (Reference: 31 U.S.C. § 1352 – Byrd Anti-Lobbying Amendment, 2 CFR part 200, Appendix II(J) 49 CFR part 20, Appendix A)**

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

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or

entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**1.13. Occupational Safety and Health Act of 1970 (Reference: 20 CFR part 1910).** All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. CONSULTANT must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The CONSULTANT retains full responsibility to monitor its compliance and their subconsultant's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). CONSULTANT must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**1.14. Certification of Offeror/Bidder regarding Tax Delinquency and Felony Convictions (Reference: Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76) & DOT Order 4200.6 - Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions)**

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

#### **Certifications**

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

#### **Note**

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

#### **Term Definitions**

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

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

**1.15. Termination of Contract (Reference: 2 CFR § 200 Appendix II(B), FAA Advisory Circular 150/5370-10, Section 80-09)**

**1.15.1. Termination for Convenience (Professional Services)**

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

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

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

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

**1.15.2. Termination for Default (Professional Services)**

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

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

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

Upon receipt of the notice of termination, the CONSULTANT must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the CONSULTANT must deliver to the OWNER all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the CONSULTANT under this contract, whether complete or partially complete.

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

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

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

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

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

In the event of termination is due to the OWNER's breach, the CONSULTANT is entitled to invoice the OWNER and to receive full payment for all services performed or furnished in accordance with

this Agreement and all justified reimbursable expenses incurred by the CONSULTANT through the effective date of termination action. OWNER agrees to hold CONSULTANT harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause

**1.16. Veteran's Preference (Reference: 49 USC § 47112(c)).** In the employment of labor (excluding executive, administrative, and supervisory positions), the CONSULTANT and all sub-tier CONSULTANTS must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

## **SECTION 2 - SPECIAL PROVISIONS, TASK ORDERS & SCHEDULES**

**2.1.** This Agreement is subject to the following special provisions.

**2.1.1.** This Agreement is supported by a OWNER's contract stipulating that XXXXXXXXXXXXXXXXXXXX is authorized to perform the services as outlined in Task Orders to the contract.

**2.1.2.** The OWNER's obligation to make payment under this Agreement is wholly conditional on the funding of the PROJECT, including all engineering services, by the U.S. Department of Transportation. This Agreement shall, upon such funding, be supported by the OWNER's Budget Resolution appropriating the funds to pay for the services to be rendered by the CONSULTANT.

**2.1.3.** Reimbursement for CONSULTANT'S travel costs will be in accordance with the limits and rates of the State of New Mexico.

## Federal Clause Check List

### Meaning of cell values

- Info – Sponsor has discretion on whether to include clause in its contracts.
- Limited – Provision with limited applicability depending on circumstances of the procurement.
- n/a – Provision that is not applicable for that procurement type.
- NIS – Provision that does not need to be included or referenced in the solicitation document
- REF – Provision to be incorporated into the solicitation by reference.
- REQD - Provision the sponsor must incorporate into procurement documents.

**Table 1 – Applicability of Provisions**

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
<a href="#">Access to Records and Reports</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Affirmative Action Requirement</a>	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
<a href="#">Breach of Contract</a>	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Buy American Preferences</a>	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) <a href="#">Buy American Statement</a>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) <a href="#">BA – Total Facility</a>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) <a href="#">B.A. – Manufactured Product</a>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
<a href="#">Civil Rights – General</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
<a href="#">Civil Rights - Title VI Assurances</a>	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) <a href="#">Notice - Solicitation</a>	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) <a href="#">Clause - Contracts</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) <a href="#">Clause – Transfer of U.S. Property</a>	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) <a href="#">Clause – Transfer of Real Property</a>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) <a href="#">Clause - Construct/Use/Access to Real Property</a>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) <a href="#">List – Pertinent Authorities</a>	\$0	NIS	REQD	REQD	REQD	REQD	REQD
<a href="#">Clean Air/Water Pollution Control</a>	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Contract Work Hours and Safety Standards</a>	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Copeland Anti-Kickback</a>	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Davis Bacon Requirements</a>	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a
<a href="#">Debarment and Suspension</a>	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
<a href="#">Disadvantaged Business Enterprise</a>	\$ 0	REF	REQD	REQD	REQD	REQD	n/a

<b>Provisions/Clauses</b>	<b>Dollar Threshold</b>	<b>Solicitation</b>	<b>Professional Services</b>	<b>Construction</b>	<b>Equipment</b>	<b>Property (Land)</b>	<b>Non-AIP Contracts</b>
<a href="#">Distracted Driving</a>	\$3,500	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Energy Conservation Requirements</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Equal Employment Opportunity</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(1) <a href="#">EEO Contract Clause</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(2) <a href="#">EEO Specification</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Federal Fair Labor Standards Act</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Foreign Trade Restriction</a>	\$ 0	REF	REQD	REQD	REQD	REQD	n/a
<a href="#">Lobbying Federal Employees</a>	\$ 100,000	REF	REQD	REQD	REQD	REQD	n/a
<a href="#">Occupational Safety and Health Act</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Prohibition of Segregated Facilities</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Recovered Materials</a>	\$10,000	REF	Limited	REQD	REQD	Limited	n/a
<a href="#">Rights to Inventions</a>	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
<a href="#">Seismic Safety</a>	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
<a href="#">Tax Delinquency and Felony Conviction</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Termination of Contract</a>	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Veteran's Preference</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a

**Airport Concessions Disadvantage Business Enterprise (ACDBE) Notes:**

1. Language relative to solicitation for ACDBEs does not need to be included in AIP funded solicitations, since in no case are concessions activities funded with federal funds.
2. Airport sponsors must include the appropriate Title VI language in their solicitation notices when they seek proposals for concessions.