

REQUEST FOR QUALIFICATIONS

**Design, Bid, Construction Administration/Construction Observation
Consulting Services for Fueling Operations
for the
XWA Williston Basin International Airport**



**Submissions Due: October 18, 2017
3:00PM Central Daylight Time**

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ANTICIPATED SOLICITATION TIMELINE

<u>Target Date</u>	<u>Event</u>
September 27, 2017	Solicitation posted on xwaproject.com .
October 4, 2017	Questions Due by 5:00PM CDT
October 11, 2017	City of Williston Response to Questions
October 18, 2017	Submission Deadline at 3:00PM CDT
October 18-20, 2017	Evaluation Period
October 23, 2017	Notice of Award
October 23 – October 31, 2017	Fee Negotiation and Contract Execution

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1.0 INVITATION TO SUBMIT QUALIFICATIONS

The City of Williston is soliciting qualifications for qualified Respondents to enter into an agreement to provide Design, Bid, and Construction Administration/Construction Observation (CA/CO) Consulting Services at XWA Williston Basin International Airport.

Sealed submissions are to be delivered to:

David Tuan
City Administrator
PO Box 1306
Williston ND 58802
701-713-3800
davidt@ci.williston.nd.us

1.1 - Qualifications Submission Deadline

Qualifications will be accepted until **3:00PM CDT October 18, 2017**.

1.2 - Questions Regarding Request for Qualifications

Questions and requests for additional information may be directed to:

Rick Skumavc
701-500-6873
rick@cardonglobal.com

Questions must be received by **5:00PM CDT on Wednesday, October 4, 2017**. Responses to submitted questions shall be posted on xwaproject.com by 5:00PM on Wednesday, October 11 as an addendum to this Request for Proposal.

1.3 - Certification of Regarding Debarment

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

1.4 - Time Is of the Essence

The City wishes to secure the services described herein as quickly as reasonably possible in order to maintain project momentum and avoid unnecessary delays. The timeline for submission and evaluation of proposals is reflective of this consideration, and as such, potential respondents should infer neither bias nor lack of rigor in this procurement process.

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2.0 MANDATORY RESPONDENT CRITERIA

Respondents must meet the following mandatory requirements to be considered for an award of contract. Respondents will address each mandatory requirement specifically in their qualifications submission by submitting written evidence to support and affirm Mandatory Respondent Criteria.

1. Respondent shall have provided Design, Bid, and CA/CO or related services for fuel storage and dispensing locations within the past ten (10) years.
2. Respondent shall accept all contract provisions as described within Section 6.0, Required Contract Provisions.

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3.0 SCOPE OF SERVICES

3.1 – Overview of Requested Services

The City of Williston is constructing a new airport in a rural area that is northwest of Williston. The Program will consist of approximately 40 construction projects. Some of those projects are currently underway and others will start over the next couple of years. It is anticipated that most construction activity will be complete by October 2019. The City of Williston is seeking consultant services related to environmental, health, safety, and site security.

The City of Williston is seeking qualified consultants to provide design, bidding, and Construction Administration/Construction Observation (CA/CO) services for fueling operations for the XWA Williston Basin International Airport.

The selected Consultant shall perform the work under this Agreement, applicable FAA Advisory Circulars, locally adopted International Building Codes (IBC), and regulations that are current as of the effective date of the Agreement.

Respondents may obtain detailed information regarding the Williston Basin International Airport program at www.xwaproject.com.

3.2 – Detailed Scope of Services

The desired scope of services includes, but is not limited to, providing design, bid, and CA/CO services for the following:

- City-owned system which will include diesel and gasoline tanks, pumping, and metering equipment which will be used for fueling ground equipment.
- Provisions for tanks and FBO equipment that will be used to transfer jet fuel and aviation gas from storage tanks to fuel trucks.
- Concrete containment for tanks.
- Concrete pad for fuel truck on loading and offloading.
- Power and communications services.

This scope also includes, at a minimum, the following supporting activities:

- Meet with City staff and selected Fixed Base Operators (FBO) to determine needs.
- Make recommendations on fuel management system (hardware and software).
- Assist with permitting process.

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4.0 QUALIFICATIONS SUBMISSION PREPARATION

4.1 – Detailed Submittal Requirements

In order to facilitate the analysis of responses to this RFQ, Respondents are required to prepare their proposals in accordance with the instructions outlined below. Qualifications should be prepared as simply as possible and provide a straightforward, concise description of the Respondent’s capabilities to satisfy the requirements of the RFQ. Emphasis should be placed upon accuracy, completeness, and clarity of content. All parts, pages, figures, and tables should be numbered and clearly labeled. Responses shall not exceed 50 pages in length, or 25 double-sided pages.

Respondents shall submit qualifications in the following format and with tabs numbered as shown below:

TAB	ITEM	INSTRUCTIONS
1	Mandatory Respondent Criteria	<p>Respondent shall provide written evidence that it meets the following mandatory criteria:</p> <ol style="list-style-type: none"> 1. Respondent shall have provided Design, Bid, and CA/CO or related services for fuel storage and dispensing locations within the past ten (10) years. 2. Respondent shall accept all contract provisions as described within Section 6.0, Required Contract Provisions.
2	Company Profile	Respondent should provide a general overview of the company, including brief company history, amount of time in business, company size and organizational structure, service lines and locations.
3	Experience with Similar Efforts	Respondent should address experience of Respondent with clients of similar size and complexity to the City of Williston.
4	References	<p>Respondent shall provide three (3) references of current or previous clients. Each reference must contain:</p> <ol style="list-style-type: none"> a) Reference contact information, including name, title, organization, phone number, and email address; and b) A brief description of the services provided to the reference organization by Respondent. <p>Respondent is encouraged to notify selected references that the City may be contacting them. The City reserves the right to disqualify references that are unresponsive or unreachable.</p>
5	Project Approach	Respondent shall demonstrate understanding of the scope and complexity of this effort for the City, and shall provide a narrative of Respondent’s proposed approach to accomplishing the Scope of Services.

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TAB	ITEM	INSTRUCTIONS
6	Project Team Composition and Résumés	Respondent should provide résumés of proposed project team to support the services outlined in this RFQ.

4.2 - Delivery of Qualifications Submissions

One (1) hard copy and one (1) USB containing a copy of the complete original response in Adobe PDF format must be submitted in a sealed package and delivered to:

David Tuan
City Administrator
PO Box 1306
Williston ND 58802
701-713-3800
davidt@ci.williston.nd.us

The City's office hours are Monday through Friday, 8:00AM to 5:00PM CDT, excluding major holidays.

Facsimile or e-mail Proposals will not be accepted. Subject to the City's discretion to waive minor irregularities that will not result in an unfair economic or competitive advantage or disadvantage to any Respondent, a late submission, as determined by the City's official bid clock, will not be considered and may be returned to the Respondent as non-responsive. Each Respondent is fully responsible for ensuring submission is timely received, and shall assume the risk of non-delivery or untimely delivery caused by its chosen delivery method, whether by US mail, public carrier or otherwise. This RFQ does not commit the City to paying costs or expenses of any kind incurred by the various Respondents during proposal preparation, submittal or presentation, if any.

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5.0 QUALIFICATIONS EVALUATION

5.1 - Qualifications Evaluation Criteria

The City will examine the factors listed below and will assign the defined point value on a scaled basis. The City reserves the right to reject any and all submissions, in whole or in part, and to waive any minor irregularities that will not result in an unfair economic or competitive advantage or disadvantage to any Respondent.

This solicitation will be evaluated using the following factors and corresponding maximum available points:

- 1) Mandatory Respondent Criteria (Pass/Fail)** – See Section 2.0, Mandatory Respondent Criteria.
- 2) Approach to Project (Maximum 25 Points)** – Respondents shall be evaluated on the basis of their demonstrated understanding of, and approach to, this effort for the City.
- 3) Past Performance (Maximum 25 Points)** – Respondents shall be evaluated on the basis of stated outcomes and references for past efforts.
- 4) Experience with Similar Efforts (Maximum 25 Points)** – Respondents shall be evaluated on the basis of the degree to which proposed firms and/or team members have successfully completed efforts of similar scope and complexity to this one for the City.
- 5) Project Team Composition and Experience (Maximum 25 Points)** – Proposed project team members shall be evaluated on their technical expertise as demonstrated by submitted résumés. Demonstrated knowledge of FAA safety program requirements is preferred.

5.2 – Selection Process

Consultant shall be selected on the basis of qualifications and experience, with fees determined through negotiations following selection. The City shall evaluate the qualifications of each respondent using the above weighted criteria, and the best qualified consultant shall be selected. Subject to a mutual understanding of the scope of services and negotiation of a fair and reasonable fee, a contract shall be awarded.

5.3 – Disadvantaged Business Enterprise

The requirements of 49 CFR part 26 apply to this contract. It is the policy of The City to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The City encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

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6.0 REQUIRED CONTRACT PROVISIONS

6.1 – Overview of Required Contract Provisions

The Williston Basin International Airport is enabled by Airport Improvement Program funding through the Federal Aviation Administration. As such, any contract resulting from this Request for Proposal will be subject to the contract provisions described herein. Respondent must state affirmatively its agreement with the below contract provisions.

6.2 – Access to Records and Reports

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

6.3 – General Civil Rights Provisions

The contractor 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 contractor and sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

6.3.1 Title VI Solicitation Notice

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, 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.

6.3.2 Compliance with Nondiscrimination Requirements

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

1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

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

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or

supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to: a. Withholding payments to the contractor under the contract until the contractor complies; and/or b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, Required Contract Provisions Issued on January 29, 2016 Page 19 AIP Grants and Obligated Sponsors Airports (ARP) unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

6.3.3 Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 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, subrecipients

and contractors, whether such programs or activities are Federally funded or not); • 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; • 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);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-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;
- 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);
- 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).

6.4 – Seismic Safety

The contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

6.5 – Copeland Anti-Kickback Act

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

6.6 – Disadvantaged Business Enterprise

The requirements of 49 CFR part 26 apply to this contract. It is the policy of The City to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The City encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

6.7 – Energy Conservation Requirements

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201et seq).

6.8 – Equal Opportunity

During the performance of this contract, the Contractor agrees as follows:

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(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

6.9 - Federal Fair Labor Standards Act

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in

full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

6.10 - Occupational Safety and Health Act

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. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor 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.

6.11 – Trade Restriction Certification

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

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

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- (3) 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 contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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

6.12 – Veteran’s Preference

In the employment of labor (excluding executive, administrative, and supervisory positions), the contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 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.

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

6.14 – Contract Termination

6.14.1 Termination for Convenience

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete. Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services. Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

6.14.2 Termination for Default

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party

initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

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

a) Termination by Owner: The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:

1. Perform the services within the time specified in this contract or by Owner approved extension;
2. Make adequate progress so as to endanger satisfactory performance of the Project;
3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

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

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

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

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

b) Termination by Consultant: The Consultant may terminate this Agreement in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

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

In the event of termination due to Owner breach, the Consultant is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all

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

6.15 – 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.

6.16 – Certification Regarding Lobbying

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, 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.

6.17 – Breach of Contract Terms

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide 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. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Consultant must correct the breach. 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.

6.18 – Clean Air and Water Pollution Control

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

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

6.19 – Affirmative Action Requirement

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade: 4.4%

Goals for female participation in each trade: 6.9%

These goals are applicable to all of the contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated

starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is Williams County, North Dakota.

6.20 - Prohibition of Segregated Facilities

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

6.21 - Procurement of Recovered Materials

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

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

The list of EPA-designated items is available at www.epa.gov/epawaste/conserves/tools/cpg/products/. Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

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

6.22 - Contract Work Hours and Safety Standards Act Requirements

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work

in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

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

3. Withholding for Unpaid Wages and Liquidated Damages.

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

4. Subcontractors.

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

6.23 – Contract Assurance

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 DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

6.24 – Prompt Payment

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from Owner. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced timeframe may occur only for good cause following written approval of the Owner. This clause applies to both DBE and non-DBE subcontractors.