



CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into on _____ by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "CITY," and **MEAD & HUNT, INC.**, a Wisconsin Corporation, 476 Salty Way, Eugene, Oregon 97404, hereinafter referred to as "**CONSULTANT**."

WITNESSETH:

WHEREAS, the CITY desires to hire CONSULTANT as an independent contractor to perform the services as described in the Scope of Services attached hereto as Exhibit A and by this reference made a part hereof.

WHEREAS, the CITY has authority to contract for such services; and

WHEREAS, the CONSULTANT represents that he/she/it is fully qualified to perform such services personally and is in compliance with the Montana Statutes relating to the provisions of such services.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **PURPOSE:** CITY agrees to hire CONSULTANT as an independent contractor to perform the services as described in the Scope of Services (Attachment A). In performing these services, the CONSULTANT shall at all times comply with all Federal, State, and Local statutes, rules and ordinances applicable, and the attached Standard Terms and Conditions set forth in Attachment B and by this reference made a part hereof. These services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

2. **TERM:** This AGREEMENT shall be for a period of five (5) years from the execution of this AGREEMENT.

3. **PAYMENT:** In consideration of the services provided by the CONSULTANT under this AGREEMENT, the CITY agrees to pay CONSULTANT on the basis of the actual time expended and an agreed to hourly rate (see Exhibit A – Consultant Fee Schedule).

Except as otherwise specified herein, the CONSULTANT shall invoice the CITY monthly (or on such other basis as the parties may mutually determine) for all services rendered pursuant to this AGREEMENT. Such invoices shall specify the services provided to the CITY during the preceding month and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

Except as otherwise specified herein, the CITY shall pay, net of applicable withholding tax, if any, the CONSULTANT for said invoice within thirty (30) days after receipt.



In the event Scope of Service issues arise, the CONSULTANT shall immediately discuss them with the Project Manager for the CITY. It is understood that the CONSULTANT will not perform any work that the CITY deems outside the scope prior to receiving written approval from the CITY, and at a rate agreed upon by both parties. Any payment for work not agreed upon by the CITY shall be denied.

The prices established in this AGREEMENT may be extended to other political subdivisions within the State of Montana solely at the CONSULTANT'S discretion.

4. INDEPENDENT CONTRACTOR STATUS: The parties agree that CONSULTANT is an independent contractor for purposes of this AGREEMENT and is not to be considered an employee of the CITY for any purpose. CONSULTANT is not subject to the terms and provisions of the CITY'S personnel policies handbook and may not be considered a CITY employee for workers' compensation or any other purpose. CONSULTANT is not authorized to represent the CITY or otherwise bind the CITY in any dealings between CONSULTANT and any third parties.

5. INDEMNITY: The CONSULTANT shall indemnify and hold harmless CITY as set forth in the Standard Terms and Conditions (Attachment B).

6. INSURANCE: The CONSULTANT shall maintain in good standing the insurance described in the Standard Terms and Conditions (Attachment B).

7. AGREEMENTS OF CONSULTANT: As an inducement to the execution of this AGREEMENT by the CITY and in consideration of the agreements to be performed by the CITY, the CONSULTANT agrees that:

A. **Qualifications:** The CONSULTANT is qualified to perform the services to be furnished under this AGREEMENT and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.

B. **Solicitation of Agreement:** The CONSULTANT has not employed any person to solicit this AGREEMENT and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this AGREEMENT.

C. **Facilities and Personnel:** The CONSULTANT has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

D. **Subcontracting:** None of the work or services covered by this AGREEMENT shall be subcontracted without the prior approval of the CITY.

E. **Affidavits of Compliance:** The CONSULTANT will, if requested by the CITY, furnish the CITY affidavits certifying compliance with the provisions of this Section.

8. AGREEMENTS OF CITY:

A. **To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the CITY'S portion of the project as designated in the Scope of Services (Attachment A).**

B. Name a Project Manager who shall be the liaison between the CONSULTANT and the CITY. For this project, the Project Manager for CONSULTANT designated is Trina Froehlich, Managing Director, Air Service Consulting, and the Project Manager for the CITY designated is Jeff Roach, Director of Aviation and Transit, and/or Shane Ketterling, Assistant Director of Aviation and Transit.

9. NONDISCRIMINATION:

A. CONSULTANT shall, in performance of work under this AGREEMENT, fully comply with all applicable Federal, State, or Local laws, rules, regulations, and executive orders including, but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. CONSULTANT is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by CONSULTANT subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, CONSULTANT agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this AGREEMENT.

B. The CONSULTANT shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.

The CONSULTANT and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

The CONSULTANT and any subconsultant shall abide by the requirements of 41 CFR 60-1.4, which states employees or applicants may not be discharged or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the CONSULTANT'S legal duty to furnish information.

C. The CONSULTANT shall comply with any and all reporting requirements that may apply to it that the CITY may establish by regulation.

D. The CONSULTANT shall comply with all applicable Federal, State, and Local laws concerning the prohibition of discrimination.

E. The CONSULTANT shall include the provisions of Subsections A through D of this Section in every subcontract or purchase order under this AGREEMENT, so as to be binding upon every such subcontractor or vendor of the CONSULTANT under this AGREEMENT.

F. The CONSULTANT agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

10. PERMITS, LAWS, AND TAXES: The CONSULTANT shall acquire and maintain in good standing all permits, licenses, and other entitlements necessary to its performance under this AGREEMENT. All actions taken by the CONSULTANT under this AGREEMENT shall comply with all applicable statutes, ordinances, rules, and regulations, including the Federal Provisions as set forth in Attachment C and by this reference made a part hereof. The CONSULTANT shall pay all taxes pertaining to its performance under this AGREEMENT.

11. NONWAIVER: The failure of either party at any time to enforce a provision of this AGREEMENT shall in no way constitute a waiver of the provision, nor in any way affect the validity of this AGREEMENT or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

12. CONFLICT OF INTEREST: CONSULTANT shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with CITY'S interest. During the term of this AGREEMENT, CONSULTANT shall not accept any employment or engage in any consulting work which creates a conflict of interest with CITY or in any way compromises the services to be performed under this AGREEMENT. CONSULTANT shall immediately notify CITY of any and all violations of this Section upon becoming aware of such violation.

13. SUCCESSORS AND ASSIGNS: This AGREEMENT and all of the covenants hereof shall inure to the benefit of and be binding upon the CITY and the CONSULTANT respectively and their partners, successors, assigns, and legal representatives. Neither the CITY nor the CONSULTANT shall have the right to assign, transfer, or sublet their interest or obligations hereunder without written consent of the other party.

14. CHANGES IN WORK: Any change in the scope of CONSULTANT'S services as stated in this AGREEMENT for whatever reason, will be negotiated between the CITY and the CONSULTANT and an amendment to this AGREEMENT will be issued with the appropriate change of services and AGREEMENT fee noted.

15. LEGAL RELATIONS: The CONSULTANT shall comply with all Federal, State, and Local laws and ordinances applicable to the work to be done.

16. TERMINATION OF AGREEMENT: The right is reserved by the CITY to terminate this AGREEMENT at any time upon not less than thirty (30) days written notice to the CONSULTANT.

In the event the CITY terminates this AGREEMENT, the CONSULTANT shall be paid for the amount of work performed or services rendered to date of termination per the AGREEMENT fee.

17. **ENDORSEMENTS:** The CONSULTANT shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by CONSULTANT.

18. **SYSTEM SECURITY:** The CONSULTANT shall ensure systems delivered under this AGREEMENT are adequately secure. For purposes of this AGREEMENT, adequate security is defined to require compliance with Federal and State of Montana security requirements and to ensure freedom from those conditions that may impair the CITY or State's use of its data and information technology or permit unauthorized access to the CITY or State's data or information technology.

The CITY and State have established control standards and policies that align with the NIST Cybersecurity Framework. The latest revision of NIST SP 800-53 is used for control adherence evaluation established after developing a security categorization utilizing FIPS PUB 199. Thus, CONSULTANT shall provide reasonable proof, through independent audit reports, security scans of operating systems, code or the technology environment provided; that the system specified under this AGREEMENT meets or exceeds Federal and State of Montana security requirements to ensure adequate security and privacy, confidentiality, integrity, and availability of the CITY or State's data and information technology. Annual assurance statements shall be delivered to the Contract Liaison. Annual assurance statements must contain a detailed accounting of the security controls provided and must be in the form of a NIST Security Assessment Report or FedRAMP Security Assessment Report.

Prohibited Activities and Spoofing. CONSULTANT, Licensor and its officers, employees, agents, subcontractors, and affiliated users, shall not violate or attempt to violate the security of the CITY or State's network or interfere or attempt to interfere with the CITY or State's systems, networks, authentication measures, servers or equipment, or with the use of or access to the CITY or State's network by any other user. Such prohibited activity includes (a) accessing or logging into a server where access is not authorized; (b) unauthorized probing, scanning, or testing the security or vulnerability of the CITY or State's network or other systems; and (c) attempting to portray itself as the CITY or State, or an affiliate of the CITY or State, or otherwise attempting to gain access, without authorization, via the CITY or State's network or systems to any account or information technology resource not belonging to CONSULTANT, Licensor or its officers, employees, agents, subcontractors, and affiliated users ("Spoofing"). CONSULTANT or Licensor shall not perform unauthorized Spoofing or scanning of any kind, including user account identity. Systems shall not Spoof the billings.mt.gov or mt.gov domains or engage in Email Spoofing. Email Spoofing is the creation of email messages with a forged sender address. For example, Email Spoofing includes creating or sending emails using the CITY or State's domain.

19. **OWNERSHIP OF DOCUMENTS:** All information relating to the project and prepared under the terms of this AGREEMENT, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the CITY. Reproducibles of all notes, reports, and plans shall be made available at the CITY'S request.

20. **PUBLIC INFORMATION:** The CONSULTANT shall not issue any statements, releases, or information for public dissemination without prior written approval of the CITY. All materials related to this AGREEMENT and services provided are considered public records under Article II, Section 9 of the Montana Constitution and §§ 2-6-102 and 7-1-4144, MCA and may be distributed by written request pursuant to Montana's Constitutional Right to Know or Public Records Acts.



21. **PROPRIETARY RIGHTS:** If patentable discoveries or inventions should result from work required herein, all rights accruing from such discoveries are set forth under the Standard Terms and Conditions, Intellectual Property, in Attachment B.

22. **RECORDS:** The CONSULTANT shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the AGREEMENT term and for three (3) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the CITY and copies thereof shall be furnished if requested.

23. **ATTORNEY'S FEES AND COSTS:** That in the event it becomes necessary for either party to this AGREEMENT to retain an attorney to enforce any of the terms or conditions of the AGREEMENT or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney's fees and costs.

24. **LITIGATION LOCATION:** The parties agree that this AGREEMENT shall be governed in all respects by the laws of the State of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the AGREEMENT or the performance of its terms.

25. **MODIFICATION AND AMENDMENTS:** That any amendment or modification of this AGREEMENT or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

CONSULTANT NAME

WILLIAM A. COLE
MAYOR

SIGNATURE

JOSEPH PICKERING
PRINT NAME

APPROVED AS TO FORM:

VICE PRESIDENT
PRINT TITLE

CITY ATTORNEY'S OFFICE

ATTEST:

CITY CLERK

ATTACHMENT A

SCOPE OF SERVICES

Air Service Consulting Services may include, but are not limited to, the following:

1. **Market Research:**

- a. Leakage studies: The Submitter shall be able to prepare a true market estimate (i.e., leakage study) utilizing U.S. Department of Transportation (DOT) and Airline Reporting Corporation (ARC) data to estimate passengers for the total market on a destination-by-destination basis, including those air travelers using airports other than Billings Logan International Airport (BIL).
- b. GPS analyses: The Submitter shall be able to utilize GPS data to determine, at a minimum, inbound visitation by Metropolitan Statistical Area (MSA), outbound visitation by MSA and inbound migration trends.
- c. Airfare comparisons: Submitter shall have access to a Computer Reservation System (CRS) in order to compare published airfares each quarter with those at Bozeman Yellowstone International Airport (BZN) for each airline serving Billings Logan International Airport (BIL).
- d. Route analyses: The Submitter shall be able to analyze route performance and recommend airlines and routes that would be financially viable. The analysis shall be based on, but not limited to, the following considerations:
 - 1) Historic and forecast traffic volumes, service patterns, and seasons.
 - 2) Historic and/or current commercial aviation services.
 - 3) Traffic and revenue forecasts including total passengers, projected load factors, passenger revenue potential, estimated operating costs, and potential route profitability.

2. **Messaging and Presentation Packages:** The Submitter shall demonstrate its ability to develop customizable presentations and messaging materials in various formats for a variety of audiences, including airline planners, airline leadership, community business groups, airport members, and others, and may be required to attend and participate in meetings.

3. **Airline Headquarters Meetings:** Submitter shall coordinate airline headquarters visits on at least an annual basis with each of the air carriers serving BIL. Submitter, along with other community representatives, shall schedule, organize, and jointly prepare materials for each of these meetings. Presentation media prepared by the Submitter shall include information on the Billings region, performance measurements of BIL's air service, airline opportunities, and local promotional programs.

4. **Industry Conference Support:** The Submitter shall prepare presentations for meetings at conferences such as ACI-NA's JumpStart Air Service Development Program, Routes Americas, and TakeOff North America. Submitter shall attend these conferences with BIL representatives or in certain situations represent BIL solo.

5. **Airline Incentive Program:** The Submitter may be asked to provide guidance, analyses, and recommendations on appropriate forms of community support and air service

ATTACHMENT A

development incentives, which may be requested or needed in obtaining airline commitments to initiate new service. This may include preparing Small Community Air Service Development Program grant applications and/or updating the Airport's airline incentive program.

6. **Ongoing Data:** The Submitter shall provide ongoing data services on airline air service schedules, passenger related statistics, and related airline performance measures. Gathered data would include, but not be limited to:
 - a. Benchmarking BIL against other similarly sized airports and/or those within the same geographic region.
 - b. T100 Data on a monthly basis, which provides detailed information on a route-by-route basis.
 - c. Monthly commercial airline service flight schedule providing both seat and departure/arrival information.
 - d. Monitor any recent changes in BIL's commercial airline service and airfare on an ongoing basis.

7. **On-Call Research:** On occasion, questions/inquiries will arise regarding a start-up airline, new entrant airline, incumbent airline, international air service possibilities, air service marketing opportunities, research into air service decisions made by airlines to other communities/airports, etc. The Submitter shall be able to prepare an appropriate response to the inquiry or other assistance may be requested of the Submitter by the Airport.

ATTACHMENT A
CONSULTANT FEE SCHEDULE
EFFECTIVE JANUARY 2023

Standard Billing Rates

Clerical	\$80.00/hour
Accounting/Administrative Assistant	\$100.00/hour
Technical Editor	\$110.00/hour
Senior Editor	\$180.00/hour
Principal	\$205.00/hour
Project Manager	\$215.00/hour
Vice President	\$235.00/hour

Expenses

Company or Personal Car Mileage	IRS Rate
Air and Surface Transportation	Cost
Lodging and Subsistence	Cost
Out-of-Pocket Direct Job Expenses	Cost

ATTACHMENT B

STANDARD TERMS AND CONDITIONS

ACCESS AND RETENTION OF RECORDS: The Submitter agrees to provide the Aviation and Transit Department, Aviation and Transit Department Auditor(s), or their authorized agents, access to any records necessary to determine contract compliance (MCA 18-1-118). The Submitter agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract, or the conclusion of any claim, litigation, or exception relating to the contract taken by the Aviation and Transit Department or third party.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The Submitter shall not assign, transfer, or subcontract any portion of the contract without the express written consent of the Aviation and Transit Department.

AUTHORITY: The attached request for proposal, limited solicitation, or contract is issued under authority of Title 18, MCA, and the Administrative Rules of Montana, Title 2, Chapter 5.

COMPLIANCE WITH LAWS: The Submitter must, in performance of work under the contract, fully comply with all applicable Federal, State, or Local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Submitter subjects the subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the Submitter agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the Aviation and Transit Department. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the Submitter's expense.

DEBARMENT: The Submitter certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the Submitter cannot certify this statement, attach a written explanation for review by the Aviation and Transit Department.

DISABILITY ACCOMMODATIONS: The Aviation and Transit Department does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to the Aviation and Transit Department office. Interested parties should provide as much advance notice as possible.

FAILURE TO HONOR BID/PROPOSAL: If a Submitter to whom a contract is awarded refuses to accept the award (contract) or fails to deliver in accordance with the contract terms and conditions, the Aviation and Transit Department may, in its discretion, reject all future proposals and/or business agreements with the Submitter.

ATTACHMENT B

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party is using its best efforts to remedy such failure or delays.

HOLD HARMLESS/INDEMNIFICATION: The Submitter agrees to protect, defend, and save the Aviation and Transit Department, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Submitter's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omission of the Submitter and/or its agents employees, representatives, assigns, subcontractors, except the sole negligence of the Aviation and Transit Department, under this Agreement.

INSURANCE: The Submitter shall obtain and maintain insurance coverage, at its expense, for the following claims which may arise out of the performance of the contract award whether resulting from the Submitter's operations or from the operations of any subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable: The insurance shall cover such claims as may be caused by any negligent act or omission.

Workers' Compensation:

State	Statutory
Applicable Federal (e.g., Longshoremen's)	Statutory
Employer's Liability	\$1,500,000.00

Automobile Liability: N/A

Professional Liability:

In addition to the insurance required to be provided by Submitter herein, Submitter shall purchase and maintain a separate Professional Liability policy to provide coverage against claims for errors and omissions with limits of liability as specified below. The Owner shall be named as Primary Additional Insured.

General Aggregate	\$3,000,000.00
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Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies and an Excess or Umbrella Liability policy.

General Aggregate per Project	\$1,500,000.00
Personal and Advertising Injury (Each Occurrence)	\$1,500,000.00
Bodily Injury and Property Damage (Each Occurrence)	\$1,500,000.00

The policies shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days prior written notice has been given to the City of Billings Aviation and Transit Department. Certificates of insurance showing required coverage to be in force shall be filed with

ATTACHMENT B

the Aviation and Transit Department within five (5) days of execution of the contract and prior to commencement of work to be performed. The City of Billings Aviation and Transit Department shall be named as **primary additional insured** on the insurance certificate(s). The Submitter shall notify the Aviation and Transit Department a minimum of thirty (30) days prior to any cancellation or change to the insurance coverage provided. The Submitter shall bear the sole responsibility to provide continuing insurance coverage for the duration of this Agreement. The Aviation and Transit Department reserves the right to purchase insurance coverage in the limits specified should the policy provided by the Submitter be cancelled during the term of this Agreement and withhold payment for said coverage from compensation due the Submitter.

A certificate of insurance, indicating compliance with the required coverages, must be provided to the City of Billings Logan International Airport, 1901 Terminal Circle, Room 216, Billings, MT 59105, within five (5) days of execution of the contract. The Submitter must notify the Aviation and Transit Department immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc.

All insurance shall be written on an "occurrence" basis. "Claims Made" insurance coverage is not allowed.

INTELLECTUAL PROPERTY: All patents and other legal rights in or to inventions arising out of activities funded in whole or part by the contract must be available to the Aviation and Transit Department for royalty-free and non-exclusive licensing. The Submitter shall notify the Aviation and Transit Department in writing of any invention conceived or reduced to practice in the course of performance of the contract. The Aviation and Transit Department shall have a royalty-free, nonexclusive, and irrevocable right to reproduce publish or otherwise use and authorize others to use copyrightable property created under the contract.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted, and will automatically be disqualified from further consideration. It shall be solely the Submitter's risk to ensure delivery at the designated office by the designated time. Late proposals will not be opened and may be returned to the Submitter at the expense of the Submitter or destroyed if requested.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business. If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SOLICITATION DOCUMENT EXAMINATION: Submitter shall promptly notify the Aviation and Transit Department of any ambiguity, inconsistency, or error which they may discover upon examination of a solicitation document.

ATTACHMENT B

TAX EXEMPTION: The Aviation and Transit Department is exempt from Federal Excise Taxes (#81-6001237).

TERMINATION OF CONTRACT: Unless other stated, the Aviation and Transit Department may, by written notice to the Submitter, terminate the contract in whole or in part at any time the Submitter fails to perform the contract.

UNAVAILABILITY OF FUNDING: The Aviation and Transit Department, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason.

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: The laws of Montana govern this solicitation. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the Thirteenth Judicial Court in and for the County of Yellowstone, State of Montana. (MCA 18-1-401).

ATTACHMENT C

FEDERAL AVIATION ADMINISTRATION (FAA) PROVISIONS

ACCESS TO RECORDS AND REPORTS

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

BREACH OF CONTRACT TERMS

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

Owner will provide [Contractor | Consultant] written notice that describes the nature of the breach and corrective actions the [Contractor | 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 [Contractor | Consultant] must correct the breach. Owner may proceed with termination of the contract if the [Contractor | Consultant] fails to correct the breach by the deadline indicated in the Owner's notice.

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

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 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.

TITLE VI SOLICITATION NOTICE

The (Name of Sponsor), 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.

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.

ATTACHMENT C

2. Nondiscrimination: 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 non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 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 USC § 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 USC § 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 USC § 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

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504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, 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 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 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 nondiscrimination 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 USC 1681 et seq).

CLEAN AIR AND WATER POLLUTION CONTROL

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

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

DEBARMENT AND SUSPENSION

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

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

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

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offerer/Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

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

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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:

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

Prompt Payment (§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 [Name of recipient]. 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 [Name of Recipient]. This clause applies to both DBE and non-DBE subcontractors.

DISTRACTED DRIVING

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

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

ENERGY CONSERVATION REQUIREMENTS

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

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

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FOREIGN TRADE RESTRICTION

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

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

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

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

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

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

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

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

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

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:

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

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

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

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

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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.

TERMINATION OF CONTRACT

TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

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

Owner agrees to pay Contractor for:

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

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

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

TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)

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

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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.

VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.