

## **NOTICE OF PROPOSED GUIDANCE DOCUMENT**

DTIMBOA25

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIMBOA25, a proposed guidance document.

### **PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION**

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website: <https://appengine.egov.com/apps/wi/dot/guidance-docs?guidDocId=DTIMBOA25>

2. Mailing written comments to:

Division of Transportation Investment Management  
Wisconsin Department of Transportation  
4822 Madison Yards Way  
PO Box 7913  
Madison, WI 53707-7913

### **WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT**

The final version of this guidance document will be posted at [wisconsin.dot.gov](http://wisconsin.dot.gov) to allow for ongoing comment.

### **AGENCY CONTACT**

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# SPECIAL PROVISIONS

## THIS PARAGRAPH IF **FEDERALLY FUNDED (NON PRIMAY GA Airports)**

1. **General.** The work under this contract for the construction of Project (AIP 3-55-XXXX-XX if federally funded), (airport name) Airport, (city), Wisconsin, in (county) County, Wisconsin, shall be in accordance with the plans therefore and shall be executed under the attached General Provisions, requirements of the **Standard Specifications for Airport Construction, 1998 Edition**, the attached Supplemental Specifications and these Special Provisions.
  - A. Pay Items having numbers beginning with "P", "F", "D", "T", "L", and "X" (specials) shall be executed under the requirements of the **Standard Specifications for Airport Construction, 1998 Edition**, Supplemental Specifications, and these Special Provisions.
  - B. Pay Items having numbers without a letter prefix shall be executed under the requirements of the **Standard Specifications for Highway and Structure Construction, Current Year Edition**; and these Special Provisions.

## THIS PARAGRAPH IF **FEDERALLY FUNDED (PRIMAY CS Airports)**

1. **General.** The work under this contract for the construction of Project (AIP 3-55-XXXX-XX if federally funded), (airport name) Airport, (city), Wisconsin, in (county) County, Wisconsin, shall be in accordance with the plans therefore and shall be executed under the attached General Provisions, requirements of the technical specifications of FAA Advisory Circular AC 150/5370-10G as included within, and these Special Provisions.

## THIS PARAGRAPH IF **STATE FUNDED**

1. **General.** The Work under this Contract for the construction of State Aid Project (SAP XXXX-XX-XX if state funded), if state funded (airport name) Airport, (city), Wisconsin, in (county) County, Wisconsin shall be in accordance with the Plans therefor and shall be executed under the requirements of the **Standard Specifications for Airport Construction, 1998 Edition**, Supplemental Specifications, and these Special Provisions, subject to the following requirements.
  - C. Pay Items having numbers beginning with "P", "F", "D", "T", "L", and "X" (specials) shall be executed under the requirements of the **Standard Specifications for Airport Construction, 1998 Edition**, Supplemental Specifications, and these Special Provisions.
  - D. Pay Items having numbers without a letter prefix shall be executed under the requirements of the **Standard Specifications for Highway and Structure Construction, Current Year Edition**; and these Special Provisions.

2. **Scope of Work.** The Work under this contract consists of the construction of (work items such as grading, base, pcc pavement, bit pavement, arpt lighting, building const. etc.), and all incidental items necessary to complete the Work as shown on the plans and included in the Proposal and Contract.
3. **Prosecution and Progress.** The Work shall begin within 10 calendar days after a written notice to do so has been issued by the Engineer.
4. **Notice of Other Contracts.** Project No. (project #) for the construction of (description) will be in effect during the life of this contract.
5. **Schedule of Operations.** The Contractor shall submit a tentative schedule of operations in writing to the Department one week in advance of the pre-construction conference.
6. **Pre-construction Conference.** A pre-construction conference will be held prior to the start of any work, for the purpose of coordinating the Contractor's operations on the airport. The Contractor and subcontractors shall attend or send an authorized representative. Other parties, as necessary will be invited by the Department. Typically the following are represented:

Bureau of Aeronautics	Resident and Project Engineer
Federal Aviation Administration	Airline Representatives
Airport Manager	Department of Natural Resources.

7. **Payment to all Subcontractors.** Within 10 calendar days of receipt by a contractor of a progress payment for work performed, materials furnished, or materials stockpiled by a subcontractor, the contractor shall pay that subcontractor for all work satisfactorily performed and for all materials furnished or stockpiled.

The contractor agrees further to release retainage amounts to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed. In addition, whenever the Department reduces the contract retainage amount, within 10 calendar days of receipt by a contractor of a retainage payment, the contractor must reduce the total amount retained from subcontractors to no more than remains retained by the Department.

The contractor shall pay the subcontractor within the time frames described above unless the contractor complies with both of the following within 10 calendar days of receiving the Department's progress payment:

- 1) The contractor notifies the subcontractor in writing that the work is not satisfactorily completed.
- 2) The contractor requests approval from the Department to delay payment because the subcontractor has not satisfactorily completed the work.

The contractor's request for approval should include the written notification to the subcontractor and shall provide sufficient documentation of good cause to assist the engineer in making a timely decision. If the engineer does not grant approval, the contractor shall pay the subcontractor within 10 calendar days of the Department's decision.

All subcontracting agreements made by a contractor shall include the above provisions and shall be binding on all contractors and subcontractors.

The contractor certifies compliance with the requirements of this Additional Special Provision by signing the contract. This clause applies to both DBE and non-DBE subcontractors.

8. **Electronic Certified Payrolls Submittal (Remove this section for State Aid ONLY funded projects as DBE does Not Apply. Insert Electronic Labor Data Submittal Requirement below in its place.)**

NOTE: CRCS should be used on all projects. BOA approval is required to use paper payrolls.

- a. Use the department's Civil Rights Compliance System (CRCS) to submit certified payrolls electronically. Details are available online through the department's highway construction contractor information (HCCI) site on the Labor, Wages, and EEO Information page at:  
<http://roadwaystandards.dot.wi.gov/hcci/labor-wages-eeo/index.shtm>
- b. Ensure that all tiers of subcontractors, as well as all trucking firms, submit their weekly certified payrolls electronically through CRCS. These payrolls are due within seven days following the close of the payroll period. Every firm providing on-site physical labor towards completing the project is a subcontractor under this special provision.
- c. Upon receipt of contract execution, promptly make all affected firms aware of the requirements under this special provision and arrange for them to receive CRCS training as they are about to begin payrolls. The department will provide training either in a classroom setting at one of our regional offices or by telephone. Contact Paul Ndon at 414-438-4584 or via email at: paul.ndon@dot.wi.gov to schedule the training.
- d. Written permission from the engineer must be obtained in order for the department to accept paper submittals of certified payrolls using forms DT-1816 and DT-1929 for information required under this special provision. Use of paper submittals will be reserved for individual special cases and acceptance will be the exception, not the rule.
- e. Only firms who have been previously approved for exporting payroll data from their computer into the CRCS can initially submit their payroll data this way. Firms not previously approved that desire to export payroll data will have to

obtain permission from the Department. Approval will require the contractors' payroll coordinator to send several sample electronic files to Paul Ndon for evaluation and approval (Paul Ndon at 414-438-4584 or via email at: paul.ndon@dot.wi.gov) Not every contractor's payroll system is capable of producing acceptable export files for CRCS use.

- f. All costs for conforming to this special provision are incidental to the contract.

## 8. (Alternate in place of DBE for State Aid Funded **ONLY** projects) **Electronic Labor Data Submittal Requirement**

(1) Use the Workforce Utilization Report Microsoft Excel spread sheet, or other compatible spread sheet (i.e., Google Spread Sheet), to report required labor data. Details and the Excel spreadsheet are available online through the department's highway construction contract information (HCCI) site on the Labor, Wages, and EEO Information page at:

<http://wisconsindot.gov/Pages/doing-bus/civil-rights/labornwage/default.aspx>

(2) Ensure that all tiers of subcontractors, including all trucking firms, submit their labor data electronically via the Excel spread sheet to the prime contractor within 14 calendar days of the end of each quarter (quarters are defined as January-March, April-June, July-September, and October-December). The prime contractor shall coordinate collection of their subcontractors' spread sheets and forward them to the Regional Labor Compliance Specialist within 21 calendar days of the end of each quarter. Every company or contractor providing physical labor towards completing the project is a subcontractor under this special provision.

(3) Upon receipt of contract execution, promptly make all affected companies or contractors aware of the requirements under this provision and arrange for them to receive an Excel spreadsheet as part of their subcontract documents.

(4) The department will reject all paper submittals of information required under this special provision. All costs for conforming to this special provision are incidental to the contract.

## 9. **Disadvantaged Business Enterprise Development.** (Include **ONLY** if Federally Funded)

This item shall consist of concerted efforts by the contractor as part of its affirmative action responsibilities to train and develop minority business enterprises to become fully qualified contractors in the transportation construction field. Hereafter, minority business enterprise refers to businesses owned or controlled by socially and economically disadvantaged person(s) as certified by the Wisconsin Department of Transportation. It is the intention of this provision that firms owned and controlled by women be included **as a presumptive** group within the definition of Disadvantaged Business Enterprise (DBE).

The contractor will aggressively solicit DBE subcontractor and/or supplier quotes and incorporate them in its bid for work on this project by making systematic written and verbal contact with DBEs likely to have an interest in transportation construction work. Access to

the DBE unified Certification Program (UCP) list of certified DBE's can be found at the following website:

<http://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>

In this contract, the contractor shall procure services, materials, or subcontract the minimum percentage as shown on the cover of the **Proposal for Airport Work** of the total amount bid to one or more certified DBEs. The Department maintains and furnishes the list of DBEs considered certified. If the proposed DBE is uncertified, the contractor must appeal to the Department to establish the eligibility of the DBE to become certified. This goal may be accomplished through the use of any combination of ethnic or women owned businesses certified as DBEs by the Department.

It is the intent of this specification that the percentage goal specified be fulfilled as indicated. However, if the contractor considers such fulfillment to be impossible of attainment, and if the contractor can demonstrate to the satisfaction of the Department that such utilization is not feasible (via the Good Faith Effort process explained below), the Department may accept a varying percentage in lieu of the designated percentage for the DBE classification.

Credit toward the required DBE goal is allowed for supplies and materials furnished by DBEs. However, the DBEs must assume the actual contractual responsibilities for furnishing the supplies and materials and also manufacture them. For these purposes, a manufacturer is a supplier that either produces goods from raw materials or substantially alters them before resale. When the supplier is not the manufacturer, only 60 percent of the expenditure to the supplier may be credited toward the DBE goal, provided the supplier performs a commercially useful function in the transaction.

The contractor is encouraged to develop DBEs in areas of construction where these firms have traditionally been non-competitive. Therefore, **DBE credit applied to** this contract may be **increased** by the Department up to **“double”** for DBE work in the non-traditional construction categories of: concrete paving, asphalt paving, excavating and heavy grading, aggregate production, structures and major culvert installation. Any **credit increase** is discretionary by the Department and will only be granted where it is clear the intended work will benefit the development and experience of the DBE.

Nevertheless, in order for the Department to execute a contract with a bidder that has failed to meet the specified DBE contract goal, the Department must determine that the bidder's good faith efforts were those that, given all relevant circumstances, a bidder actively and aggressively seeking to meet the goal would make.

**Good Faith Effort forms (550c), are required to be submitted no later than two (2) business days after the DBE commitment forms have been submitted to the department.**

The Good Faith Efforts are to include contacts with the Department's **Business Opportunity and Equity Compliance (OBOEC) which may be reached at (608) 266-0503**. In determining whether a contractor has made good faith efforts, the Department

will usually look not only at the different kinds of efforts that the bidder has made, but also the quantity and intensity of those efforts. Efforts that are merely pro forma are not good faith efforts to meet the goal. Even if the efforts are sincerely motivated, they are not considered to be good faith efforts if, given all relevant circumstances, they could not reasonably be expected to produce a level of DBE participation sufficient to meet the goal.

**The apparent low bidder is required to submit, within five (5) business days after the BID OPENING, the DBE commitment forms (550b) are included in the bid proposal.** The apparent low Bidder is the bidder, as announced at the bid opening, and indicated the WisDOT-Aeronautics website:

<http://wisconsindot.gov/Pages/doing-bus/aeronautics/airports/arpt-applow.aspx>

If the Department determines that it is not clear which bidder is the apparent low bidder based upon alternate bids provided in the proposal, the department may ask additional bidders to submit DBE commitment forms (550b). These forms are required to be submitted, within five (5) days of being notified by the department, and if necessary, good faith effort forms no later than two (2) business days after as outlined above.

The commitment form will identify, by name, the DBE firms whose utilization is intended to satisfy this provision, the items of work of the subcontract or supply agreement and the dollar amount of such items of work. **Failure by the Bidder to furnish the necessary information within the specified time frame does not negate the Department's right to award and execute the contract;** however, good faith efforts after the submittal requirement will be discounted. Delay in fulfilling this requirement shall not constitute a cause for extension of the contract time. All other aspects of this minority business enterprise requirement shall be in accordance with appropriate provisions of Part 26 of Volume 49 of the Code of Federal Regulations entitled "Participation by Minority Business Enterprises in Department of Transportation Programs."

The contractor shall also provide or arrange for direct assistance to the DBEs in such areas as providing information to prepare intelligent quotations, insuring that the DBE can read and understand airport plans, assisting in reaching a full understanding of the Standard Specifications and contract requirements applicable to the DBE portion of the work, appropriate cost accounting and other business practices, and other actions aimed at continued development of the DBE into a viable airport contracting business.

The contractor shall maintain records and may be required to furnish periodic reports documenting its performance under this item.

The work herein prescribed will not be paid for separately, but will be considered incidental to other items of work included in the contract.

Failure on the part of the bidder to meet the DBE goal and to meet an adequate level of good faith efforts will, at the discretion of the Department, **be cause for rejection of bid, or if awarded,** be deemed failure to execute the contract and be just cause of the cancellation of the award, and such other actions as deemed appropriate.

The entire provisions of this item do not apply if the bidder, excluding joint ventures, is a certified DBE.

10. Modify Section 70-02 of the General Provisions to add the following: Delete this note- Also delete the following paragraph below for projects funded with 100% state aid, or projects at privately owned airports Racine-Batten International and Brookfield-Capitol airports.

Municipalities are exempt from paying sales tax for purchase of materials and goods on their projects that remain as real property of the municipality. As a result, materials purchased strictly on and for the project are exempt from sales tax. The successful bidder (contractor) will be provided the municipality's tax-exempt information after contract execution. The Contractor (or subcontractor) is responsible for completing all necessary documentation and filings with the Department of Revenue as required if the contractor or subcontractor utilizes the exemption. It is important to note that only materials that are incorporated into the project or are required to be delivered per the contract are eligible for the sales tax exemption. Investigations that determine that purchases were made in excess of those materials incorporated into the project, the municipality, contractor or subcontractor may be subject to appropriate penalties afforded by applicable laws.

11. **(Federal Aid Only)** Section 90-06 of the federal General Provisions shall be supplemented with the additional section 90-06(a) as follows:

#### **90-06(a) Payment Withholdings**

##### **Liquidated Damages and Claims (State Aid Only projects delete the following and include SS#8)**

- (1) The department will withhold a portion of the payment from progress payment estimates for liquidated damages and claims including the following:
  1. To provide for recovery of liquidated damages assessable against the contract as specified in Section 80-08
  2. To cover claims against the contract filed with the department under chapter 779 of the Wisconsin statutes.  
<http://docs.legis.wi.gov/statutes/statutes/779>
  3. To provide for recovery of damage and tort claims assessable against the contract as specified in the project special provisions.
- (2) Liquidated Damages as assessed and finally determined will be permanently withheld.
- (3) The amount withheld for claims or recovery of damage for tort claims will be released in accordance with the resolution of the claim.

##### **Retainage (State Aid Only projects delete following and include SS#7)**

- (1) In addition to liquidated damage withholding, the Department will withhold retainage in accordance with State Statute 66.0901 as follows:



1. An amount equal to 5 percent of each estimate until 50% of the work has been completed. Thereafter the total amount of retainage will remain equal to 5 percent of the estimated completed cost shall continue to be retained while the project is progressing satisfactorily.
2. At 50% completion or any time thereafter when the work is not satisfactory, additional amounts may be retained, but the total retainage may not exceed 10% of the estimated completed contract value.

(2) Retainage may be released upon substantial completion as specified in 50-15, except an amount equal to the estimated value of remaining work to be completed which shall be retained until final acceptance. After final acceptance has been granted as specified in 50-15, any remaining retainage shall be released.

12. **(Federal Aid Only – For State Aid projects include SS#9)** Section 70-11 Responsibility for Damage and Tort Claims shall be supplemented with the following section 70-11(a) as follows:

### 70-11(a) Insurance Requirements

#### A. Standard Commercial Insurance

Maintain not less than, the following standard insurance types and limits of commercial insurance in force until completing and obtaining the department’s acceptance of all work as specified in 50-15 “Final Acceptance”.

TYPE OF INSURANCE	MINIMUM LIMITS REQUIRED[Note 1]
1. Commercial general liability insurance; shall be endorsed to include blanket contractual liability coverage.	\$2 million combined single limits per occurrence with an annual aggregate limit of not less than \$4 million.
2. Workers' compensation and employers' liability Insurance.	Workers' compensation limits: statutory limits  Employers' liability limits: Bodily injury by accident: \$100,000 each accident  Bodily injury by disease: \$500,000 each accident \$100,000 each employee
3. Commercial automobile liability insurance; shall cover all contractor-owned, non-owned, and hired vehicles used in carrying out the contract.	\$1 million-combined single limits per occurrence.

**[Note 1]** The contractor may satisfy these requirements through primary insurance coverage or through excess/umbrella policies.

## **B. Builders Risk Insurance**

It is the responsibility of the Contractor to provide Builder's Risk Insurance according to the stated specifications when the building is new construction of a freestanding structure or if the Contractor has complete control of the building or during these type of operations including but not limited to: new terminal buildings, renovating, expanding existing terminal buildings, hangars, equipment storage buildings etc.

The Contractor will provide and maintain "All Risks" Builders Risk insurance insuring 100% of full replacement value of the work including change orders for incorporation into work. The insurance shall be purchased by the Contractor, and name all Sub-Contractors of all tiers, Wisconsin Department of Transportation and the airport owner or owners as insured's, and all others having an insurable interest in the Work (if any).

Insurance provided is to insure against "All Risks" of physical loss or Damage and be issued on an "All Risks" builders risk policy to apply to:

- a) The "All risk" Builders Risk policy shall include coverage for all fixtures, materials, machinery, and equipment that constitute a permanent part of the structure. This coverage shall also include coverage for damage to foundations, including pilings, equipment, machinery and materials that have not been installed but which are destined to become a permanent part of the structure including property in transit.

Each bidder shall provide the department with certificates of insurance as evidence that required coverage's for insurance types 1, 2, and 3 are in force. The bidder shall provide certificates of insurance with their prequalification or accompanied with the contract prior to the department fully executing the contract.

Notify the department at least 60 calendar days before a cancellation or material change in coverage. Only obtain coverage from insurance companies licensed to do business in the state that have an A.M. Best rating of A- or better. The cost of providing the required insurance coverage and limits is incidental to the contract. The department will make no additional or special payment for providing insurance.

The above insurance requirements shall apply with equal force whether the contractor or a subcontractor, or anyone directly or indirectly employed by either, performs the work under the project

### 13. Construction Layout and Staking (Federal Aid projects only)

#### **General**

- (1)The department is responsible for errors or discrepancies found in previous Department surveys, plans, specifications, special provisions, or work constructed

under other department contracts. The department will pay for further studies and redesign required due to these errors or discrepancies.

- (2) The department will furnish and set original horizontal and vertical control points. Prosecute the work using these points for field control. The department is responsible for the accuracy of lines, slopes, and grades it provides. The engineer and contractor shall agree on the meaning of all stakes, measurements, and marks before the contractor begins work.

### **Engineer Responsibilities**

(1) The Engineer will:

1. The Project Engineer shall furnish all personnel, instruments, and equipment required for their survey party.
2. Furnish and set construction survey stakes for reference points, slope intercepts, subgrade shoulder points, and reference lines to establish the alignment, slopes, and continuous profile-grade for the work.
3. Establish bench marks and set the stakes or reference points deemed necessary to establish the location, alignment, and elevation for structures.
4. These stakes and marks will constitute the field control by and in accordance with which the Contractor shall govern and execute the work.
5. The Engineer will cooperate with the contractor to minimize disruption of the Contractor's work caused by required staking. In addition, the Engineer will cooperate with any potential errors discovered and promptly make necessary corrections whether those errors or adjustments are found by the Engineer or notified by the Contractor.

### **Contractor Responsibilities**

(1) The Contractor will:

1. Govern and execute the work.
2. Furnish, at Contractor's expense, such other facilities and labor required by the Engineer in establishing the points and lines necessary to the prosecution of the work after the work is started.
3. Furnish free of charge all additional stakes and other material necessary for marking and maintaining the points and lines given.
4. Set and be responsible for all additional stakes or markings needed to facilitate layout or construction of the Work.
5. Be responsible for the preservation of all stakes and marks. If any of the surface stakes or marks have been carelessly or willfully destroyed or disturbed

by the Contractor, the cost to the Department of replacing them may be charged against the Contractor and will be deducted from the payment of the Work at the discretion of the Engineer.

6. Confirm the accuracy and measurement of the staking prior to constructing permeate structures or facilities.

7. Notify the Project Engineer immediately if the Contractor believes an error in staking or adjustments to stakes are believed to be required. The Contractor shall not take advantage of any error which may have been made.

8. During construction, the contractor may submit requests for staking to the Engineer. The Department is responsible for staking delays only if the Engineer receives that request at least 72 hours before related work begins.