



# **FORT SMITH REGIONAL AIRPORT**

REQUEST FOR PROPOSALS FOR  
PARKING FACILITIES OPERATOR

April 15, 2025

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**SECTION 1:  
NOTICE OF OPPORTUNITY AND GENERAL PROJECT INFORMATION**

**A. NOTICE AND DESCRIPTION.**

The Fort Smith Airport Commission (the “Commission”) gives notice of this request for proposals (together with any addenda and answers to questions, the “RFP”) from experienced and qualified operators of parking facilities to operate the parking facilities (the “Facilities”) at Fort Smith Regional Airport (the “Airport” or “FSM”). It is the Commission’s intent to select a proposal that meets or exceeds the criteria set forth in this RFP, and thereafter to negotiate a concession and operations agreement (the “Agreement”) with the successful proposer.

**B. TIMELINE AND SCHEDULE OF EVENTS.**

The anticipated timeline and schedule of events for the proposal process is as follows:

<b>EVENT</b>	<b>DATE/TIME</b>
Issue RFP	April 15, 2025
Submittal of Written Questions	April 25, 2025
FSM Issues Answers to Written Questions	April 29, 2025
<b>SUBMISSION DEADLINE</b>	<b>MAY 13, 2025 BY 4:00 P.M. CST</b>
Finalist Interviews ( <i>if necessary</i> )( <i>virtual</i> )	May 20, 2025
Staff Recommendation to Commission	May 27, 2025
Negotiate and Execute the Agreement	No later than June 6, 2025

**\*\*\*NOTE\*\*\*** The above timeline and schedule of events is subject to modification without notice at the Commission's sole discretion.

**C. LOCATION OF PROCUREMENT DOCUMENTS.**

This RFP and all other documents related to this procurement are only available online at [www.flyfsm.com/opportunities](http://www.flyfsm.com/opportunities). This RFP will be available beginning April 15, 2025. Any amendments, addenda, questions/answers, and other documents pertaining this procurement will be posted at this site as they are released. It is the responsibility of each proposer to view this site on a regular basis to ensure the receipt of up-to-date information and documentation regarding this procurement.

**D. MINIMUM QUALIFICATIONS.**

The selected Proposer (sometimes referred to herein as the “Operator”) must have a minimum of ten years of continuous experience in the management and operation of public parking facilities and at least one parking facility that has or had an aggregate total of 100,000 transactions annually and \$3,000,000 in annual revenue. Each proposer should provide its DUNS number and financial statements for 2022, 2023, and 2024. A potential proposer that does not meet these minimum qualifications is encouraged to explore cooperative ventures with more established operators, to the extent permitted by the terms of this RFP.

Proposers must be incorporated or organized under the laws of one state in the United States and must be authorized to do business in the State of Arkansas at the time of agreement execution.

**E. SITE VISIT.**

There will be no site visit for this procurement. A submitted proposal constitutes a proposer’s certification that it has familiarized itself with the Airport and the Facilities.

**F. EVALUATION.**

The Commission will evaluate proposals based on the criteria set forth herein. In general, the Commission will only evaluate proposals submitted by proposers who meet the minimum requirements and qualifications set forth in this RFP. Further, the Commission reserves the right to reject any or all proposals, to waive irregularities and technicalities of any kind, to re-advertise, or to otherwise proceed in the best interests of the Airport.

**G. PROHIBITION AGAINST LOBBYING.**

A proposer shall not lobby, either on an individual or collective basis, the Commission (including its directors, officers, employees, or agents) or any federal, state, or local elected or public official or staff regarding this RFP or its written proposal. No proposer, and no acquaintances, friends, family members, outside advisors, agents, or other

representatives of a proposer, shall contact the Commission (including its commissioners, officers, employees, or agents), or any federal, state, or local elected or public officials or Airport staff to arrange meetings, visits, or presentations to influence the outcome of the selection process. Violation of this provision, by or on behalf of a proposer, intentionally or unintentionally, may result in disqualification of the proposer and/or rejection of a written proposal.

#### **H. QUESTIONS, INQUIRIES AND AIRPORT CONTACT.**

The Commission is committed to providing all interested parties with accurate and consistent information. To this end, from the date of this RFP through the execution of a written agreement, the Commission's contact is Lindsay Conley (email: [lindsay@flyfsm.com](mailto:lindsay@flyfsm.com) telephone: (479) 452-7000 ext. 50. All submissions required by this RFP shall adhere to the Timeline and Schedule of Events set out in Section 1 of this RFP.

Oral communications and emails from the Commission, its staff, agents, employees or outside advisor, or any other person associated with this RFP shall not be binding on the Commission and shall in no way modify any provision of this RFP. Only formally issued addenda and the Commission's published responses to proposers' questions shall modify the terms of this RFP. Any addenda issued for this RFP will be published at the following website address: [www.flyfsm.com/opportunities](http://www.flyfsm.com/opportunities). Proposers are responsible for checking the website prior to submission of proposals for any addenda and responses to questions. If you are unable to download the addenda, you may contact the Commission's contact noted in this Section.

**SECTION 2:  
AIRPORT AND REGIONAL INFORMATION**

**A. AIRPORT OVERVIEW.**

FSM currently is the third largest commercial service airport by enplanements in the State of Arkansas. The Airport opened for commercial service in July 1941. It has since grown to serve the transportation needs of residents and businesses in western Arkansas and eastern Oklahoma. In 2024, FSM had a total of over 61,000 enplanements. Since 1953, FSM has also been the home to Fort Smith Air National Guard Station and the Arkansas Air National Guard's 188th Wing. Approximately 80 people work on the FSM campus, with approximately 16 people being employed directly by the Commission. Currently, FSM has one airline, American, with service to Dallas/Ft. Worth (DFW).

**B. REGIONAL INFORMATION.**

The Arkansas River Valley, home to over 298,000 residents, boasts the University of Arkansas Fort Smith and serves as the corporate headquarters for major companies like ArcBest, ABB Motors and Drives, and OK Foods. These businesses, along with others, depend on Fort Smith Regional Airport to facilitate their global operations.

Leisure travelers also benefit from FSM's convenient location, allowing them to reach destinations worldwide without the hassle of traffic and long lines.

**C. PARKING FACILITIES.**

1. Public Parking Description. The current Facilities include a surface parking lot containing 431 parking spaces, 8 handicap spaces and 2 van accessible hc spaces. A map depicting the lot is attached hereto as Exhibit A.

The parking lot is controlled by two entrance gates that each include automatic ticket dispensers and barrier gate arms. The booth exit consists of one manned booth and one unmanned Ticket In Credit Card Out (TICO) lane.

2. Airport Parking Rates. The current rates charged to users of the Facilities are set forth below. The Commission will retain the discretion to adjust parking rates based on upon its business and operational needs.

Duration	Rate
0-30 minutes	No Charge
31-60 minutes	\$2.00
Each additional hour	\$2.00
Maximum daily fee	\$11.00

3. Parking Equipment. The Facilities also include certain equipment items. A list of parking equipment by location is attached hereto as Exhibit B. The equipment items may be expanded, reduced, or updated from time to time during the term of the Agreement.
4. Office Facilities and Storage. The existing operator uses the parking booth as office space. A restroom space is available for use by the Operator's personnel in the booth. The Operator will have use of these facilities as needed for operations.
5. Additional Facilities/Services. The Commission reserves the right to establish, at any time, additional parking lots, parking services/options, valet parking services, shuttle bus services, new revenue and access control solutions, or any other services that may benefit the Airport. To the extent that these additional services and solutions are outside the scope of the Agreement, the cost of managing these additional services and solutions will be negotiated.
6. Gross Receipts. The gross receipts reported by the current operator and manager of the Facilities are as follows:

<b>Contract Year</b>	<b>Gross Receipts</b>
2022	\$ 405,690.10
2023	\$ 585,624.58
2024	\$ 657,888.77

7. Historical Enplanements and Deplanements. A detailed description of enplanements and deplanements since 2018 is set out in Exhibit C.

**SECTION 3:**  
**PROJECT INFORMATION**

**A. SCOPE OF WORK.**

The Operator will operate and manage the Facilities and related equipment on behalf of the Commission. The Operator shall be required to operate and manage the Facilities seven days per week (including weekends and holidays), with sufficient personnel on duty one hour prior to the first daily commercial flight departure and one hour after the last daily commercial flight arrival, to ensure an effective, efficient, courteous, and convenient parking operation for visitors to and users of the Airport.

The Operator shall operate each Facility and provide all services that are required under this RFP, its Proposal, and the completed Agreement with Commission, including, without limitation, the following:

- Collecting parking fees and charges established by the Commission;
- Providing a monthly accounting of all expenses to Commission and providing copies of all deposits made to Commission's designated bank account(s);
- The Operator shall be responsible for and shall abide by all ordinances and laws pertaining to the operation of the Facilities and shall obtain all required licenses and permits and satisfy any other technical requirements at its own expense.
- Commission may make periodic and routine inspection of the Facilities and the equipment therein to determine whether the Operator is in compliance with the Operator's obligations regarding the Facilities;
- Keeping all areas of the Facilities safe, clean and orderly at all times and in strict accordance with applicable laws, including, without limitation, the rules and regulations of the Commission;
- Removing improperly parked or abandoned vehicles from all Facilities;
- Completing a nightly license plate inventory of all vehicles parking on the Facilities;
- Providing free emergency public services, including, without limitation, a portable charging unit for jump-starting of vehicles, distribution of ice scrapers, and car-search assistance in parking areas designated by the Commission;
- Maintaining equipment and facilities as prescribed in the Agreement;
- The operation and maintenance of the revenue control system;
- Receiving, reporting, tracking and responding to all complaints and all claims made for losses, damage or injuries on the Facilities in a manner satisfactory to the Commission;



- Performing mandatory criminal background checks on all potential employees prior to employment; and
- Performing snow and ice removal including application of de-icing materials acceptable to the Commission.

The Operator shall accept the Facilities in their present condition, as-is, where-is, and with all faults, and shall be responsible for any interior modifications as it deems necessary; provided, however, that the Operator must first obtain the Commission's written approval of any alteration of any physical facility or the installation of replacement or additional equipment. The Commission shall have the right to require that any practices inconsistent with this RFP, the Operator's Proposal, or the Agreement be discontinued or remedied immediately. Failure of the Operator to take appropriate action after notification from Commission may result in termination of the Agreement.

## **B. GENERAL OPERATOR REQUIREMENTS.**

1. Knowledge of the Airport. Employees of the Operator are expected to be able to assist Airport patrons with way-finding in the vicinity of the Airport.
2. Cleaning and Snow Removal. In order to maintain the Facilities in a neat, orderly, and safe condition, the Operator shall be solely responsible for the pick up and removal of trash from the Facilities, and shall additionally be responsible for the prompt removal of snow and ice from the Facilities. The Operator may self-perform or contract for the removal of snow, ice, or other frozen precipitation from the Facilities. Daily custodial services inside the toll plaza facilities shall be the Operator's sole responsibility.
3. Inspection. The Operator shall make the Facilities available to the Commission for inspection by the Commission's authorized personnel at all times.
4. Subcontracts. The Commission must approve all subcontracts prior to the execution thereof by the Operator. In addition, the Operator may not assign, delegate, transfer or convey to any person or entity the right to operate the Facilities without the Commission's prior written approval.
5. Airport Modifications. The Commission shall have the right, at any time and from time to time prior to and during the term of the Agreement, in the interest of the safe and efficient operation of the Airport, to close, move or alter any roadway, Facility, vehicular entrance or exit or common corridor, passageway, walkway or other common areas in the terminal, including, without limitation, entrances, exits, passages, halls, corridors, aisles, stairways, or elevators, or to restrict or change the traffic on or through any portion thereof. The Operator shall not have any claim against the Commission for such action, nor shall such action by the Commission release the Operator from any of its obligations under the Agreement.
6. Operator's Property. The Operator shall be solely responsible for security measures required to protect its area, equipment, materials and receipts.

7. Uniforms and Identification. The Operator's employees shall always wear neat and clean attire. All such attire as outlined in the Agreement shall be subject to the Commission's approval. The Operator's employees shall always wear identification badges provided by the Operator.
8. Repairs and Maintenance. The Operator shall be responsible for the loading of tickets, the clearing of ticket jams and adjustments to ticket dispensers and gate arms to ensure the continuous and efficient operation of the computerized revenue control systems of the Facilities. The Operator shall be responsible for preventive maintenance and repair of all equipment within the Facilities. No alterations or additions shall be made to the Facilities or the equipment located thereon without the Commission's prior written approval. The Operator shall be responsible for purchasing tickets, access cards, and other supplies as needed and coordinated with the Operator.
9. Compliance with Law. The Operator shall be required to comply with all federal, state, and local laws, rules, and regulations, as well as all ordinances and resolutions enacted or passed by the Commission.

**C. TERM AND FINANCIAL CONSIDERATIONS.**

1. Term. The initial term of the Agreement shall be for five years. The Commission anticipates that the Agreement will have two one-year renewal options.
2. Compensation Structure. Proposals should include compensation to be based on a proposed Minimum Annual Guarantee and percentage of receipts to be paid to the Commission by the Operator each month for the gross receipts earned through the management, operation, and administration of the Facilities. It is anticipated that this fee will be paid monthly to the Commission. If a proposer anticipates incurring any expenses in the operation of the Facilities that it believes should be reimbursed by the Commission, these should be clearly defined.

**D. AIRPORT SECURITY REQUIREMENTS.**

The Operator must agree to observe all security requirements of the Transportation Security Administration (TSA), 49 C.F.R. Parts 1540 and 1542, and the Airport Security Plan, and to take such steps as may be necessary or directed by Commission to ensure that its operations and that of its subcontractors, material suppliers, employees, invitees and guests observe these requirements. If the Commission incurs any fines and/or penalties imposed by the TSA or any expense in enforcing the regulations of the TSA and/or the Airport Security Plan as a result of the acts or omissions of the Operator or any of its subcontractors, material suppliers, employees, invitees or guests, the Operator shall agree to pay and/or reimburse the Commission for such fines and/or penalties.

**E. MISCELLANEOUS REQUIREMENTS.**

In addition to other requirements and terms described elsewhere in this RFP, and in addition to other negotiated terms in the Agreement, the following will apply:

1. ACBDE Requirements.

- a. In accordance with regulations of the U.S. Department of Transportation, 49 CFR Part 23, Subpart C, the Commission has implemented an Airport Concessions Disadvantaged Business Enterprise (ACDBE) concession plan under which qualified firms may have the opportunity to operate or participate in the operation of an airport business. An ACDBE goal of 0.64%, as measured by total estimated annual gross revenues, has been established. The successful proposer shall be required to take all necessary and reasonable steps to achieve this goal.
- b. Upon the Commission's written approval, which may be withheld in the Commission's sole discretion, ACDBE participation may be in the form of one or more subleases, joint ventures, partnerships, or other legal arrangement meeting the eligibility standards in 49 CFR Part 23, Subpart C. If the successful proposer qualifies as an ACDBE, the goal shall be deemed to have been met.
- c. If the successful proposer will be unable to achieve the ACDBE goal stated herein, it will be required to provide documentation demonstrating that it took all necessary and reasonable steps in attempting to do so, or that it is not economically feasible at this time to enter either a joint venture, sublease, partnership, or other eligible arrangement with a ACDBE firm.

2. Insurance and Indemnification. The successful proposer will be required to meet the insurance requirements established by the Commission during the negotiation of the Agreement with the successful proposer. For reference, the Commission's minimum insurance requirements are:

- a. Comprehensive commercial general liability with a limit of not less than \$1,000,000.00 per occurrence and no less than \$2,000,000.00 aggregate for bodily injury, including death resulting therefrom, personal injury, property damage and advertising injury;
- b. Business automobile liability with a limit of not less than \$1,000,000.00 per occurrence and no less than \$2,000,000.00 aggregate;
- c. Statutory workers compensation and employer's liability insurance with limits not less than \$1,000,000.00 for each sub-category of coverage; and
- d. Umbrella or excess liability coverage with a minimum limit of \$1,000,000.00 each occurrence and \$2,000,000.00 in the annual aggregate with coverage extending over primary commercial general liability, business automobile liability, and employer's liability.

It is anticipated that the coverage requirements for general liability insurance and umbrella/excess liability will be greater than the Commission's above-stated minimum coverage amounts.

**F. EVALUATION AND CRITERIA.**

Proposals received in response to this RFP will be evaluated by Commission and airport staff members. Staff will use the evaluation criteria summarized below, and may utilize any information or other criteria they deem necessary as submitted by proposers.

1. Experience and Financial Responsibility (25%). The proposer's number of years and relevancy of experience in the industry; financial performance with regard to existing facilities; industry achievements (national recognition from industry organizations and local and regional recognition); and references on past and existing performance at airports.
2. Compensation Structure (30%). The Compensation Structure proposed, together with the potential amount associated with reimbursable expenses.
3. Quality of Proposal and Customer Service (15%). The overall quality and innovativeness of the proposal (and potential presentation) and its responsiveness to the Commission's needs, including operational, management techniques, the proposer's practices and procedures relating to safety and customer queries, complaints and services.
4. Management and Operating Plans (25%). The demonstrated ability of the proposer to manage the Facilities; the terms of the proposer's management plan relating to the experience and qualifications of staff, including on-site staff; hourly rates paid to employees and benefits provided; staffing practices; methods to monitor customer service; and inventory and cash control, sales reporting and revenue procedures. The soundness of proposed operating budget for the first year of operation and acceptability of the submitted transition plan. This also includes the operating plans for other enhancements suggested by proposer.
5. ACDBE Participation (5%). The proposed ACDBE participation rate.

**SECTION 4:**  
**PROPOSAL CONTENT AND INSTRUCTIONS**

Proposals shall be divided into the following four sections:

1. Cover Letter;
2. Executive Summary;
3. Operation and Management Plan;
4. Experience and Qualifications.

Each proposer shall submit one hard-copy original proposal, bound in a three-ring binder or comparable presentation. Additionally, each proposer shall submit a digital copy of the proposal by email to [lindsay@flyfsm.com](mailto:lindsay@flyfsm.com). Page sizes must be 8½" by 11"; provided, however, that drawings, renderings, or other similar material that would benefit from a larger page size may be on a page size of 11" by 17", folded to 8½" by 11".

**A. COVER LETTER.**

Each proposer must submit a cover letter generally introducing the proposal, and identifying (a) the proposer's name, legal form, date of formation, information relating to the proposer's size and history, along with biographical information of the proposer's principal officers; and (b) complete contact information for the proposer's authorized representative. The cover letter must be signed by an authorized representative of the proposer.

**B. EXECUTIVE SUMMARY.**

No longer than one single-spaced page in length, the Executive Summary should succinctly describe the proposer's management and operations plan, summarize any proposed technological innovations and/or upgrades for the Facilities, and such other information which the proposer deems significant to the reader's general understanding of the proposal.

**C. OPERATION AND MANAGEMENT PLAN.**

This section should contain all pertinent information regarding the proposal, and must be sufficient to enable the Commission to evaluate how the plan will achieve the goal of providing

high-quality, customer-focused parking operations at the Airport's Facilities. At a minimum, this section must contain the following:

1. Operational Plans, Policies and Procedures. Describe in detail how a proposer plans to operate and manage the facilities on a day-to-day basis. This section should describe a proposer's general management policies, operating procedures, and any plans or proposals to improve and modernize the operation and management of the Facilities with the goal of maximizing operational efficiency and financial gain. Preferential consideration will be given to proposals that seek to modernize the Facilities and their operation.
2. Staffing and Scheduling Plan. Present a staffing plan that shows by the shifts of proposed personnel to be scheduled in the daily management and operation of the Facilities. Staffing plans should describe hiring practices, qualifications, and compensation. The successful proposer will require sufficient experience and temperament of its management staff.
3. Custodial and Facilities Maintenance. Describe the procedures and schedules for all custodial services, facilities maintenance and repair, and snow/ice removal.
4. Transition. Describe how the proposer will transition from the current operator.

#### **D. FINANCIAL OPERATIONS.**

Each proposal shall describe internal financial activities related to the proposed operation and management of the Facilities, to specifically include the following:

1. A detailed description of the proposer's internal financial controls and auditing procedures.
2. The amount of the proposed Compensation Structure and the basis on which it was determined.
3. A description of items and associated costs that the proposer would consider an item to be reimbursed by the Commission.
4. A detailed proposed annual budget for the first 12 months of operation.

Proposers are free to include other financial metrics that would be relevant to an understanding of the financial viability of the proposal. However, the foregoing factors are required.

**E. EXPERIENCE AND QUALIFICATIONS.**

Each proposal shall contain a section that fully and fairly describes a proposer's experience and qualifications to manage and operate the Facilities, along with information demonstrating the proposer's financial viability, to specifically include the following:

1. The number of years in business.
2. Full audited financial statements for 2022 and 2023, which must be prepared in accordance with generally accepted accounting principles. Proposals must be supplemented to provide financial statements for 2024 when available. The Commission may request additional financial information in order to evaluate a proposer's financial qualifications.
3. A detailed description of any experience in operating and/or managing public paid parking facilities within the last 10 years, to include the names and locations of such facilities, the inclusive dates of operation at such facilities, and the annual gross revenue of parking operations managed at each facility.
4. A contact name and contact information for each place identified in the previous paragraph 3.
5. The experience of the management team members that will be responsible for the proposer's operations at the Airport;
6. A description of any litigation pertaining to the proposer's performance of any obligations identical or similar in nature to those sought to be obtained by this proposal in which the proposer was a named party.

**SECTION 5:  
MISCELLANEOUS NOTICES AND INFORMATION**

**A. TITLE VI SOLICITATION NOTICE.**

The Commission, 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 for any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

**B. OPEN RECORDS AND CONFIDENTIALITY.**

The Commission is a public corporation and is subject to the Arkansas Freedom of Information Act ("FOIA"), and upon receipt of a valid request made under FOIA, the Commission may be required to disclose copies of proposals submitted in response to this RFP. The Commission shall promptly notify a proposer if it receives a request under FOIA that would require it to produce financial information relating to a proposer or its proposal, and shall timely assert, for itself or on behalf of a proposer, any exemption to FOIA the Commission believes may apply to prevent or limit disclosure of such financial information. However, in the event the Commission believes no exemption applies, or if a requesting party pursues or threatens to pursue a lawsuit to enforce its request over any exemption asserted on a proposer's behalf, proposers are hereby notified that the Commission will comply with FOIA and a proposer may, at its expense, assert or defend on its own behalf any FOIA exemption it believes applies to the requested documents.

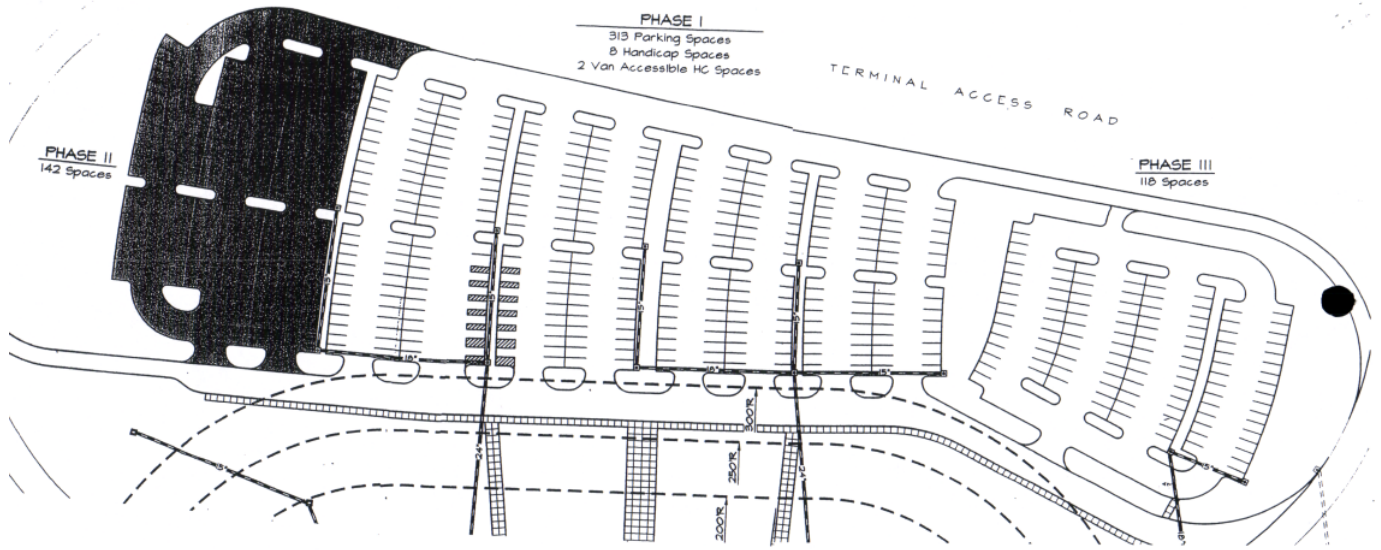
**C. MANDATORY FEDERAL PROVISIONS.**

Certain provisions mandated by federal law apply to this procurement and are attached hereto as Exhibit D and are incorporated herein by reference.



# EXHIBIT A

## Map of Facilities



# EXHIBIT B

## Parking Equipment

Quantity	Device	Year Installed
2	MicroDrive Gates	2015
1	Exit Station	2015
2	Non-Resettable Counters	2015

# EXHIBIT C

## Detailed Enplanement and Deplanement Data 2018-Current

Passengers			
Year	Enplane	Deplane	Total Passengers
2024	61,409	59,861	121,270
2023	60,669	58,659	119,328
2022	61,719	61,342	123,061
2021	47,287	46,888	94,175
2020	38,660	37,851	76,511
2019	95,670	93,797	189,467
2018	90,501	88,880	179,381

# **EXHIBIT D**

## Mandatory Federal Provisions

## **MANDATORY FEDERAL REQUIREMENTS**

The following provisions, if applicable, shall be part of this procurement and will be included to the extent required in any contract with a submitting party.

All references made herein to “Contractor”, “Prime Contractor”, “Bidder”, and “Offeror” shall pertain to the submitting party.

All references made herein to “Subcontractor”, “Sub-Tier Contractor” or “Lower Tier Contractor” shall pertain to any subconsultant under contract with the submitting party.

All references made herein to “Sponsor” and “Owner” shall mean the Fort Smith Airport Commission.

All references made herein to “this contract” shall include this RFP and any contract that results from it between the Commission and the successful submitting party.

### **1. Disadvantaged Business Enterprises (Reference: 49 CFR Part 26)**

- a. Solicitation Language (Race/Gender Neutral Means). The requirements of 49 CFR part 26 apply to this contract. It is the policy of the Commission to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Commission encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.
- b. Contractor Assurance. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of any contract with the Commission. 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 will be considered a material breach of any contract with the Commission, which may result in the termination or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
  - i. Withholding monthly progress payments;
  - ii. Assessing sanctions;
  - iii. Liquidated damages; and/or
  - iv. Disqualifying the Contractor from future bidding as non-responsible.

2. **Fair Labor Standards Act**. All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, et seq, 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.

### 3. Foreign Trade Restriction.

- a. By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror:
  - i. 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);
  - ii. 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
  - iii. 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 § 1001.

- b. 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.
- c. 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:
  - i. 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
  - ii. whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
  - iii. who incorporates in the public works project any product of a foreign country on such USTR list.

- d. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by 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.
  - e. 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.
  - f. 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.
4. **Incorporated by Reference.** The following five Federal provisions are incorporated in this RFP by reference:
- a. Buy American Preference (49 USC § 50101, Executive Order 14005, and Bipartisan Infrastructure Law (Pub. L. No. 117-58, Build America, Buy America (BABA)));
  - b. Davis-Bacon Requirements (2 CFR § 200, Appx. II(D), 29 CFR Part 5, 49 USC § 47112(b), and 40 USC §§ 3141-3144, 3146 and 3147);
  - c. Debarment and Suspension (2 CFR Part 180 (Subpart B), 2 CFR Part 200, Appx. II(H), 2 CFR Part 1200, DOT Order 4200.5, and Executive Orders 12549 and 12689);
  - d. Lobbying and Influencing Federal Employees (31 USC § 1352—Byrd Anti-Lobbying Amendment; 2 CFR Part 200, Appx. II(I), and 49 CFR Part 20, Appx. A); and
  - e. Procurement of Recovered Materials (2 CFR § 200.322, 2 CFR Par 200, Appx. II(J), 40 CFR Part 247, and 42 USC § 6901 *et seq.* (Resource Conservation and Recovery Act)).