

**PROPOSAL NOTICE**

For Locally Procured Federal-aid Contracts



**By signing this bid or quote, the Contractor agrees to the following certifications and provisions:**

Note: Sections I through X below shall apply to all contracts.

- I. Nondiscrimination** Construction contracts and related subcontracts in excess of \$10,000 shall require compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" (EEO) as amended by Executive order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR 60, 29 CFR 1630 and 41 CFR 60). Each Contractor and subcontractor shall comply with the following provisions:
- (a) The Contractor will not maintain or provide for their employees facilities which are segregated on a basis of race, creed, color, sex, religion, age, or national origin whether such facilities are segregated by directive or on a de facto basis. The Contractor agrees to obtain the same certifications from proposed subcontractors or material suppliers with contracts or agreements of \$10,000 or more and retain in files.
  - (b) The Contractor accepts as his/her operating policy the following statement:
 

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."
  - (c) EEO Officer: The Contractor will designate and make known to the Contracting Authority an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active Contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
  - (d) Notices and posters setting forth the Contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - (e) Disadvantaged Business Enterprise Obligation. The Contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR 26 have the maximum opportunity to participate in the performance of this contract and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all contractors shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.
  - (f) Records and Reports: The Contractor shall keep the following records to document compliance with the EEO requirements: (1) the number of minority and non-minority group members and women employed in each work classification on the project; (2) the progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; (3) the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and (4) the progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees. Each year, to document (1) above, all contractors with open contracts during the last week in July shall complete and submit Form FHWA-1391 to the Iowa Department of Transportation (Iowa DOT). If the Contractor fails to submit this form, the Contracting Authority may withhold payment from the Contractor until compliance with this requirement is achieved.
- II. Safety: Accident Prevention** In the performance of this contract, the Contractor shall comply with all applicable Federal, State, and local laws/codes/ ordinances governing safety, health, and sanitation (23 CFR 635). In the performance of this contract and any related subcontracts, the Contractor or subcontractor shall not permit their employees to work in surroundings or conditions which are unsanitary, hazardous or dangerous to their health or safety, as determined by the standards set forth in 29 CFR 1926. Pursuant to 29 CFR 1926.3, the Secretary of Labor or authorized representative thereof, shall have right of entry to the site of contract performance to inspect or investigate the Contractor's compliance with these regulations.
- III. Buy America** Construction contracts shall assure compliance with Section 165 of the Surface Transportation Assistance Act of 1982, Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 23 CFR 635.410 regarding Buy America provisions on the procurement of foreign products and materials. On

all contracts involving Federal-aid, all products of iron, steel, or a coating of steel which are incorporated into the work must have been manufactured in the United States. The Contracting Authority may allow minimal amounts of these materials from foreign sources, provided the cost does not exceed 0.1 percent of the contract sum or \$2,500, whichever is greater. The Contractor certifies that these materials are of domestic origin.

- IV. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion** For contracts and related subcontracts that exceed \$100,000, the person(s) signing this bid document so hereby certify under penalty of perjury under the laws of the United States and the State of Iowa that they, their company, or any person employed by their company; (a) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency; (b) has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years; (c) does not have a proposed debarment pending, and has not been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years; and (d) has not within a 3 year period preceding this application / proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

**Exceptions:** Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. If unable to make the certification above, attach an explanation to this proposal. In this explanation, indicate to whom the exception applies, the initiating agency, and the dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

- V. Certification Regarding Use of Contract Funds for Lobbying** For contracts and related subcontracts that exceed \$100,000, the person(s) signing this bid document so hereby certify under penalty of perjury under the laws of the United States and the State of Iowa that: (a) no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal 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; and (b) if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the 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.

This certification is a material representation of fact upon which reliance was made when this transaction was made or entered into. The Contractor shall also require the language of this certification to be included in all lower tier subcontracts which exceed \$100,000, and that all such recipients shall certify and disclose accordingly.

- VI. Implementation of Clean Air Act and Federal Water Pollution Control Act** Contracts and related subcontracts that exceed \$100,000 shall comply with Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder. The Contractor stipulates that any facility used in the performance of this contract is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities. If the Contractor receives notification that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities, the Contractor shall promptly notify the Iowa DOT.

- VII. Audits and Record Retention** Provide access by the Iowa DOT, the Federal Highway Administration, the Comptroller General of the United States, or any of their duly authorized representatives to any of the books, documents, papers, and records which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor shall retain such records for three years after the date the contracting agency makes final payment and all other pending matters are closed.

- VIII. False Statements** Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. The penalties for making false statements in offers prescribed in 18 U.S.C. 1020 are a fine of not more than \$10,000 or imprisonment of not more than 5 years, or both. Pursuant to 23 CFR 635.119, the Contractor shall post Form FHWA-1022 on the project in one or more places where it is readily available to all persons concerned with the project.

## IX. Partial Payments

- (a) Progress Payments: The Contracting Authority shall, at a minimum, make monthly progress payments to the Contractor, based on the amount of work completed in an acceptable manner, as determined by the project Engineer or Architect. For late progress payments, the Contracting Authority will pay a penalty of 1.0% per month (or part of a month), or a minimum of \$250, whichever is the greater amount, on any work completed but not processed for payment within 14 calendar days after completion of the work. Completion of the work includes physical completion of the work and submittal of all paperwork required by the contract.

Should a reasonable doubt arise as to the integrity of any part of the completed work, the payment for that portion will not be allowed until the cause for such doubt has been removed. The Engineer or Architect's estimates of work completed will result in partial payments on the contract sum, and the allowance of a progress payment by the Contracting Authority does not constitute final acceptance of the work upon which the payments are based.

The Contractor shall sign the final voucher certifying the quantities are just and unpaid.

- (b) Prompt Payment to Subcontractors: The Contractor shall promptly pay each subcontractor. Any delay or postponement of payment to a subcontractor may take place only for good cause, with written notification to the subcontractor. A payment, excluding retainage, to a subcontractor for satisfactory performance of the subcontractor's work shall be made by the Contractor no later than: 7 calendar days after the Contractor receives payment for the subcontractor's work; or 7 calendar days after the Contractor could have received payment for the subcontractor's work, provided the reason for the nonpayment is not the subcontractor's fault.

The use of joint checks for payment to subcontractors for their materials is acceptable under the following conditions:

- (1) The request for a joint check from the prime contractor is made by the materials supplier.
- (2) The joint check issued by the prime contractor is for an amount no to exceed the cost of unpaid invoice(s) from the materials supplier to a subcontractor on that contract.
- (3) The joint check is given to the subcontractor and the subcontractor must release the joint check to the material supplier.
- (4) The use of a joint check by the prime contractor is applicable to all their subcontractors.

- (c) Retainage: The Contracting Authority may withhold up to 5% of each progress payment to the Contractor.

The Contractor may withhold up to 5% of each progress payment for work performed by subcontractors. All retained funds due a subcontractor shall be paid by the Contractor within 30 calendar days after completion of the subcontractor's work. Non-bonded subcontractors may be required to submit proof of payment for all material bills and wages to the Contractor before the Contractor is required to pay the retainage.

The retained funds held by the Contracting Authority for the contract will not be due and payable prior to 30 calendar days after the date of final acceptance of the entire contract, or following the release or adjudication of claims that may have been filed, or until the Contractor has filed the signed final voucher with the Contracting Authority.

- (d) Complaints: Compliance with prompt payment is the responsibility of both the Contracting Authority and Contractor.

If the Contractor feels the Contracting Authority has not complied with the prompt payment provisions, the initial attempt to resolve the issue shall be with the Engineer or Architect, stating the project number, items of work, quantities, unit prices, dates work was performed, total amount owed, and signature of a representative of the Contractor.

If a subcontractor feels the Contractor has not complied with the prompt payment provisions, the initial attempt to resolve the issue shall occur with the Contractor. The attempt to resolve the issue shall include at least one written request to the Contractor, stating the project number, items of work, quantities, unit prices, dates work was performed, total amount owed, and signature of a representative of the subcontractor.

If the initial attempt to resolve the issue does not result in satisfactory payment for completed work, the Contractor or subcontractor shall submit a written complaint to the Iowa DOT, Office of Contracts. The written complaint shall include copies of the correspondence with the Engineer, Architect, or Contractor that provides

the details stated above. The Iowa DOT will investigate and provide written response to the complainant within 15 business days of receipt of the complaint.

- (e) **Required Records:** The Contractor shall retain records that document the date of completion of the field work of each subcontractor and the date of final payment (including retained funds) to each subcontractor. Prior to receiving final payment, the Contractor shall provide to the Engineer or Architect the "Certification of Subcontractor Payments" (Form 518002). This form shall include the names of each approved subcontractor, the date of completion of the work, the date of final payment, the number of days between completion and final payment, and explanations for any final payments made after the 30 calendar day period following completion.
- (f) **Interest:** If the Contracting Authority fails to make final payment within 50 calendar days after final acceptance of the work, and if all requirements of the contract are complete, interest will accrue and additional payment will be made to the Contractor in accordance with Section 573.14 of the Code of Iowa.

If the Contractor is paid interest on any payments retained by the Contracting Authority, the Contractor shall pay the subcontractor a share of the interest payment proportional to the payment for that subcontractor's work.

**X. Payment of Retained Funds** Retained funds will be released by one of two methods:

- (a) **Retainage release:** When 95% of the original contract amount has been completed to the satisfaction of the Engineer or Architect, and it is apparent that conditions beyond the control of the Contractor will delay completion of the contract for more than 60 calendar days, the Contractor may request payment of retained funds. If the Contracting Authority agrees, payment of the retained funds will be made no sooner than 30 calendar days after approval.
- (b) **Supplemental Contract:** When 95% of the work has been performed to the satisfaction of the Engineer or Architect, including consideration of the contract period, and it is apparent that conditions beyond the control of the Contractor will delay the completion of the contract for more than 60 calendar days, the Contractor may request a supplemental contract for the uncompleted portion of work on the same terms as those of the original contract. If the Contracting Authority agrees, and the surety for the Contractor consents to the extension of the bond for the time required to complete the supplemental contract, the supplemental contract will be issued. After the contract has been entered into, full payment will be made for the work completed except under circumstances which would prejudice the rights of those who have filed claims pursuant to Chapter 573, Code of Iowa.

The unpaid moneys held by the Contracting Authority as a retainer of the original contract price will be due and payable to the Contractor 30 calendar days after the date of the Contracting Authority's approval of the supplemental contract, except as provided for the release and adjudication of claims in Section IX (c).

**Note:** Sections XI through XIX below shall apply if any part of the contract work is located inside the highway or street right-of-way, or if any part of the contract work will be reimbursed with Safe Routes to School (SRTS) program funds.

**XI. Payment of Predetermined Minimum Wage** Contracts that meet either of the following criteria shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7), as supplemented by the Department of Labor regulations (29 CFR 5): contracts in excess of \$2,000 where more than 50% of the work is within the right-of-way of a Federal-aid highway; or contracts that will be reimbursed in whole or in part with SRTS program funds. All mechanics and laborers employed or working upon the site of work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate, except as permitted by 29 CFR 3, the full amounts of wages and bona fide fringe benefits due at the time of payment. The payment shall be computed at wage rates not less than those contained in the wage rate determination issued by the Secretary of Labor. This wage determination shall be posted at all times by the Contractor and its subcontractors at the site of work in a prominent and accessible place.

**XII. Overtime Requirements** Construction contracts in excess of \$2,000 and other contracts in excess of \$2,500 which involve the employment of mechanics or laborers shall require compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR 5). No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchpersons, or guards (including apprentices, trainees, and helpers) shall require or permit any laborer, mechanic, watchperson, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchperson, or guard receives compensation at a rate not less than one-and-one half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

- XIII. Statements and Payrolls** Contracts and subcontracts that meet either of the following criteria shall comply with the Copeland "anti-Kickback" Act (18 U.S.C. 874), as supplemented in Department of Labor regulations (29 CFR 3): contracts and related subcontracts exceeding \$2,000 for construction on a Federal-aid highway; or contracts that will be reimbursed in whole or in part with SRTS program funds. Any person employed on any Federally financed project cannot be compelled by force or any other means (threat of dismissal, etc.) to give up any part of compensation (wages) received. The Contractor and subcontractor shall submit certified payrolls, accompanied by a "Statement of Compliance," to the Contracting Authority as prescribed by 29 CFR 3. The Statement of Compliance certifies that: (a) submitted payrolls are correct and contain the required information; (b) each employee has been paid the full weekly wages earned without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than provided for in 29 CFR 3; and (c) each employee has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- XIV. Selection of Labor** During the performance of this contract, the Contractor shall not discriminate against labor from any other State. In addition, if any part of the contract work is located within the right-of-way of a Federal-aid highway, or if any part of the contract work will be reimbursed with SRTS program funds, the Contractor shall not employ convict labor for any purpose within the limits of the project, unless it is labor performed by convicts who are on parole, supervised release, or probation.
- XV. Noncollusion Statement** As provided for in 28 U.S.C. 1746 and as required by 23 CFR 635.112(f), the person(s) signing this bid document so hereby certify under penalty of perjury under the laws of the United States and the State of Iowa that such person, firm, association, partnership, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract.
- XVI. Equipment Rental Rates** If force account work is ordered by the Contracting Authority, the equipment rental rates used in the force account work shall not exceed the average monthly rental rates published in the "Rental Rate Blue Book," published by Primedia Information, Inc. Hourly rates shall not exceed the monthly rental rates divided by 176. The Blue Book rates do not include ineligible costs such as contingencies, replacement cost escalation factors, or premium rental rates for rental periods less than one month.
- XVII. Foreign Contractors and Suppliers** As required by 49 CFR 30, the Contractor shall not use any subcontractor or material supplier of a foreign country which is listed by the United States Trade Representative (USTR) as discriminating against U.S. firms in its public works projects.
- XVIII. Convict Produced Materials** If any part of the contract work is located within the right-of-way of a Federal-aid highway, or if any part of the contract will be reimbursed with SRTS program funds, 23 CFR 635.417 requires that materials produced by convict labor after July 1, 1991 may only be incorporated in the project if such materials have been: (a) produced by convicts who are on parole, supervised release, or probation from a prison; or (b) produced in a qualified prison facility. A qualified prison facility is one in which the amount produced during any 12-month period, for use in Federal-aid projects, does not exceed the amount produced, for such use, during the 12-month period ending July 1, 1987.
- XIX. Changed Conditions**
- (a) Differing site conditions.
- (1) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, *the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.*
  - (2) Upon written notification, the Engineer or Architect will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The Engineer or Architect will notify the Contractor of the determination whether or not an adjustment of the contract is warranted.
  - (3) No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.
  - (4) No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

## (b) Suspensions of work ordered by the Engineer or Architect.

- (1) If the performance of all or any portion of the work is suspended or delayed by the Engineer or Architect in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer or Architect in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
- (2) Upon receipt, the Engineer or Architect will evaluate the Contractor's request. If the Engineer or Architect agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer or Architect will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contractor will be notified of the Engineer or Architect's determination whether or not an adjustment of the contract is warranted.
- (3) No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.
- (4) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

## (c) Significant changes in the character of work.

- (1) The Engineer or Architect reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.
- (2) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer or Architect may determine to be fair and equitable.
- (3) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
- (4) The term "significant change" shall be construed to apply only to the following circumstances:
  - (A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
  - (B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

**Notice to All Bidders:** To report bid rigging activities call: 1-800-424-9071. The U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. Eastern Standard Time. Anyone with knowledge of possible bid rigging, collusion, or other fraudulent activities should use the "hotline" to report such activities.