

ATTACHMENT TO AIA DOCUMENT A701-2018, *Instructions to Bidders*

The provisions of this Attachment shall delete, modify and supplement the provisions contained in the "*Instructions to Bidders*", AIA Document A701-2018 Edition. The provisions contained in this Attachment will supersede any conflicting provisions of the AIA Document. The term "Agency", as used in this Attachment, shall mean the United States of America, acting through the United States Department of Agriculture.

**When the project is not subject to the Build America, Buy America Act the provisions in bold do not apply.**

**ARTICLE 1, DEFINITIONS**

**Add the following paragraphs and subparagraphs:**

**1.10 Build America, Buy America Act (BABAA) - Requirements instituted by the Bipartisan Infrastructure Law of 2021 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States.**

**1.10.1 Construction Materials - Those articles, materials, or supply - other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives - that are or consist primarily of: non-ferrous metals, plastic and polymer-based products, glass, lumber or drywall.**

**1.10.2 Manufactured Product - Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the project.**

**1.10.3 Manufacturer's Certification - Documentation provided by a Manufacturer, certifying that the items provided by Manufacturer meet the domestic preference requirements of BABAA.**

**ARTICLE 2, BIDDER'S REPRESENTATIONS**

**Add the following clauses to paragraph 2.1:**

- .7 This Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid, with any other Bidder or with any competitor.**

- .8 Bidder is familiar with all laws and regulations that may affect cost, progress, and performance of the work; **including BABAA requirements.**

**ARTICLE 3, BIDDING DOCUMENTS**

**Add the following sentence to the end of subparagraph 3.3.1: "Any request for substitute or "or equal" shall include the Manufacturer's Certification of compliance with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L.177-58".**

**ARTICLE 4, BIDDING PROCEDURES**

Add the following sentence to the end of subparagraph 4.1.1:

"Only one copy of the Bid is to be submitted".

Delete subparagraph 4.2.1 in its entirety and substitute the following:

4.2.1 Each Bid must be accompanied by a Bid Bond payable to the Owner for 5% of the total amount of the Bid.

Delete the last sentence of subparagraph 4.2.4 and substitute the following:

"However, if no Contract has been awarded or a Bidder has not been notified of the acceptance of its Bid, a Bidder may withdraw its Bid and request the return of its bid security beginning 60 days after the opening of Bids, unless a different period of time is mandated by State Law." Should there be reasons why the Contract cannot be awarded within the specified period, the time may be extended, by mutual agreement between the Owner and the Bidder, and the concurrence of the Agency.

Add the following subparagraphs and clauses to paragraph 4.3:

4.3.6 All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project, shall apply to the Contract throughout.

4.3.7 The Bidder agrees to abide by the requirements of Executive Order 11246, specifically including the provisions of the Equal Opportunity Clause and the Standard Federal Equal Employment Construction Contract Specifications set forth in the Supplementary Conditions.

4.3.8 The Bidder agrees to abide by the requirements of section 319 of Public Law 101-121, which pertains to lobbying activities and applies to recipients of contracts or subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. Each Bid

shall be accompanied by a completed lobbying certification form identical to that included in the Bidding Documents.

4.3.9 The Bidder agrees to abide by the requirements under 2 CFR Part 417, which pertains to the debarment or suspension of a person from participating in a Federal program or activity.

4.3.10 This Bid is for services related to a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget's regulation (reference 2 CFR 200) on the application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

4.3.11 Under these Bidding Instructions, all Bidders (Contractors / Subcontractors) shall be responsible for:

- .1 Providing bids that reflect compliance with BABAA requirements.
- .2 Providing only iron, steel, construction materials and manufactured products that meet BABAA requirements. Installation of materials or products that are not compliant with BABAA requirements shall be considered defective work.
- .3 Including manufacturer's certification for BABAA requirements with all applicable submittals. If a specific manufacturer is used in the bidding, a statement that the manufacturer will comply with BABAA requirements must be included with the bid submission. Contractor shall comply with BABAA requirements, including coordination with manufacturers, distributors, and suppliers to correct deficiencies in any BABAA documentation.
- .4 Providing manufacturer's certification for BABAA requirements with any change order for any new construction materials or manufactured products required by the change.
- .5 Certifying by submitting an application for payment, based in whole or in part on furnishing construction materials or manufactured products; that such materials and products, to the Contractor's knowledge, are compliant with BABAA requirements.
- .6 Ensuring that the Architect / Engineer has been provided an approved manufacturer's certification or

**waiver prior to items being delivered to the project site.**

**.7 Certifying upon completion that all work and materials are in compliance with BABAA requirements.**

Add the following terms and conditions to subparagraph 4.4.3:

The Owner keep the bid security provided by the Bidder.

ARTICLE 5, CONSIDERATION OF BIDS

Delete subparagraph 5.3.2 in its entirety and substitute the following:

5.3.2 The Owner shall have the right to accept Alternates in the sequence or combinations listed and to determine the low Bidder on the basis of the sum of the Base Bid and the Alternates accepted.

ARTICLE 7, PERFORMANCE BOND AND PAYMENT BOND

Delete subparagraph 7.1.1 in its entirety and substitute the following:

7.1.1 Prior to execution of the Contract, the Bidder shall furnish Bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder. Both Bonds shall be separately written, each in the amount of the Contract Sum with Power of Attorney attached naming "The United States of America, acting through the United States Department of Agriculture, Rural Development" as co-obligee. The cost shall be included in the Bid.

Delete subparagraph 7.1.3 in its entirety and substitute the following:

7.1.3 Surety companies executing Bonds must hold a certificate of authority as a acceptable surety on Federal Bonds as listed in Treasury Circular 570, as amended, and be authorized to transact business in the State where the Project is located.

Delete subparagraph 7.2.1 in its entirety and substitute the following:

7.2.1 The Bidder to whom the Contract is awarded will be required to execute the Agreement and obtain Performance and Payment Bonds, if required, within ten (10) calendar days from the date when the Notice of Award is delivered to the Bidder. The Notice shall be accompanied by the necessary Agreement.

Delete subparagraph 7.2.2 in its entirety and substitute the following:

7.2.2 The Bonds shall be written on forms identical to those included in the Bidding Documents.

ARTICLE 8, ENUMERATION OF CONTRACT DOCUMENTS

The following documents should be referenced, if applicable; in paragraph 8.1, clause .9:

Attachment to the *Standard Form of Agreement Between Owner and Contractor* (RD Instruction 1942-A, Guide 27, Attachment 3)  
Attachment to the General Conditions of the Contract for Construction (RD Instruction 1942-A, Guide 27, Attachment 4)  
Special Conditions  
Invitation for Bids (Form RD 1924-5)  
Instructions to Bidders, AIA A701-2018  
Attachment to the Instructions to Bidders (this attachment)  
Bid Form  
Bid Bond  
EEO Compliance Statement (Form RD 400-6)  
Payment Bond  
Performance Bond  
Certification for Contracts, Grants and Loans (RD Instruction 1940-Q, Exhibit A-1)

(Note: Any additional provisions that are necessary to remain effective after execution of the Contract for Construction will be inserted here and continue in the same format.)

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