

USDA RURAL DEVELOPMENT ATTACHMENT TO THE INSTRUCTIONS TO BIDDERS

For projects with **USDA RD MFH Direct Funding**

For use with AIA or other USDA approved contract documents

The provisions contained herein will supersede any conflicting provisions of the Bid Documents dated _____

for _____ (Project Name).

The term "Agency," as used in this document, shall mean the United States of America, acting through the United States Department of Agriculture.

BIDDER'S REPRESENTATIONS

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.

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

BIDDING PROCEDURES

Only one copy of the Bid is to be submitted.

Each Bid must be accompanied by a Bid Bond payable to the Owner for five percent of the total amount of the Bid.

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.

The Bidder agrees to abide by the requirements of section 319 of Public Law 101-121 (31 USC 1352), as supplemented by the Department of Agriculture regulations (2 CFR part 418), 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.

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.

No Bidder may withdraw, modify or cancel a Bid within 60 calendar days after the actual date of the opening thereof, 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.

In the event the lowest responsive bidder requests to withdraw its bid after a bid opening due to an unintentional error in its contents, the Owner may waive informalities, accept the request, and keep the bid security provided by the Bidder.

CONSIDERATION OF BIDS

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

PERFORMANCE BOND AND PAYMENT BOND

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.

Surety companies executing Bonds must hold a certificate of authority as an 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.

The Bidder to whom the Contract is awarded will be required to execute the Agreement and obtain Performance and Payment Bonds, if required, at or prior to closing.

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

BUILD AMERICA, BUY AMERICA ACT (BABAA)

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

Definitions:

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.

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.

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.

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

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.

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, 2 CFR 184) on the application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

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.**