



EXHIBIT #2

**I-26-2051
Oases CM/GC Project
Draft Phase Two Amendment
July 6, 2026**

RETURN WITH BID

CM/GC CONTRACT I-26-2051

CONTRACT DESCRIPTION

CONTRACT LOCATION

PHASE TWO AMENDMENT NUMBER XX

VOLUME I

REQUIRED DOCUMENTS



Illinois Tollway
2700 Ogden Avenue Downers Grove, IL 60515

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PART I - INSTRUCTIONS

Bid Schedule and Information

A-1

Construction Bid Checklist

CL-1 – CL-3

Instruction and information to CM/GC Contractor

I-1 – I-11

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THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

ADVERTISEMENT FOR CM/GC BID

Bid Schedule and information for

CONTRACT NO: XX-XX-XXXX

Phase Two Amendment NO: XX

A CM/GC Contractor electronic submission for Phase Two Amendment No. XX for the above numbered contract as described below will be received by the Illinois Tollway via BidBuy, the State of Illinois eProcurement System, until **TIME, DATE**. The Illinois State Tollway Highway Authority (ISTHA) will no longer accept manual, hard copy bid submissions. The CM/GC Contractor is strongly encouraged to submit their bid timely as the system will not accept a late bid submittal.

For assistance with registration in BidBuy or submitting an electronic bid, please contact the BidBuy Vendor Help Desk at: il.bidbuy@illinois.gov and /or phone: 866-455-2897.

The work to be done under this Phase Two Amendment shall be started on or about **DATE WORK STARTS**. All work under this Phase Two Amendment shall be completed by **DATE WORK COMPLETED**. The location of services to be performed on the **INSERT LOCATION**. The scope of the work shall consist of **INSERT SCOPE OF WORK**.

The CM/GC Contractor may be required to be pre-qualified by the Illinois Department of Transportation (IDOT).

IDOT Prequalification required: YES NO

If 'NO', ignore any reference to IDOT Prequalification within the remainder of this document.

The CM/GC Contractor is also required to be registered, or submit evidence of application, with the Illinois Department of Human Rights (IDHR). **There are NO EXCEPTIONS.**

Please note that written or oral communications received by the Illinois Tollway in connection with this solicitation may be required to be reported to the Procurement Policy Board as required by law. This provision is not intended to prohibit communications with State employees regarding a procurement matter, but rather only requires reporting of those communications when they occur.

The CM/GC Contractor's bid must be on forms prescribed by the Illinois Tollway and must comply with the terms and conditions set forth in the Phase Two Amendment documents. Copies of the plan's special provisions bid forms and other Phase Two Amendment documents are available from BHF Digital Imaging and can be viewed and/or ordered for purchase by visiting the On-line Plan Room via www.illinoistollwaybidding.com. Copies of the current Illinois Tollway Supplemental Specifications to the Illinois Department of Transportation Standard Specifications for Road and Bridge Construction can be purchased directly from BHF Digital Imaging. The current Illinois Tollway Supplemental Specifications may also be viewed in the 'Doing Business' section on the Tollway website. Current Illinois Department of Transportation Standard Specifications for Road and Bridge Construction, Supplemental Specifications and Recurring Special Provisions can be viewed and purchased from the IDOT website. Electronic copies of the Phase Two Amendment documents are also available on compact disk (CD) from BHF Digital Imaging. Copies are in a portable document format (PDF). **If the CM/GC Contractor has questions or is in need of assistance in purchasing Phase Two Amendment documents they are to contact a BHF Digital Imaging, Customer Service Representative at 630-393-0777, ask for the Plan Room.**

Questions pertaining to the intent of the Phase Two Amendment documents may be sent to the Illinois Tollway, attention **e-mail address**, to be received no later than **TIME** on **DATE**.

The CM/GC Contractor's bid must be accompanied by a Bid Guaranty in the amount of five (5%) percent of the total amount shown in the bid for the Phase Two Amendment. The Bid Guaranty shall be in the form of an acceptable bid bond or a bank draft, certified check or cashier's check drawn on a solvent bank made payable to the Illinois State Toll Highway Authority..

Award of the above Phase Two Amendment, if any award be made, will be to the CM/GC Contractor. The Tollway reserves the right to reject the CM/GC Contractor's bid, to waive technicalities, or cancel the solicitation.

COPIES OF PLANS, SPECIAL PROVISIONS, ELECTRONIC DATA FILES, BID FORMS, PHASE TWO AMENDMENT DOCUMENTS, STANDARD SPECIFICATIONS AND SUPPLEMENTAL SPECIFICATIONS ARE NOT AVAILABLE AT THE TOLLWAY CENTRAL ADMINISTRATION BUILDING.

DATE: ADVERTISING DATE

Documents Required with the Bid

The CM/GC Contractor should use this checklist to ensure that all required documents are completed and included with its bid.

Required Documents	Reference Volume I	Comments and Important Information	Included with Bid ✓
Disadvantaged Business Enterprise <ul style="list-style-type: none"> • DBE 2026-Utilization Plan • DBE 2023 if needed 	Section I #27 DBE Special Provision	Required for all solicitations with DBE goals. See DBE Special Provision for additional information. If goal is 0% the forms are not required.	
Veteran Small Business Participation and Utilization <ul style="list-style-type: none"> • VOSB 2026-Utilization Plan • VOSB 2023 if needed 	Section I #28 VOSB Special Provision	Required for all solicitations with Veteran goals. See Veterans Special Provision for additional information. If goal is 0% the form is not required.	
Page P-1 with Addendum noted, Page P-2 with Bid Guaranty completed, Page P-3 completed with signatures, P-4	Section I-#4 P-Pages	Fill in all available pay item prices with values of \$0.01 or greater.	
Bid Bond, Signature and Corporate Seal	Page 2 and 3 of the "P" Pages	If a Joint Venture, Bid Bond must be in the name of the Joint Venture. Signature and Corporate Seal page (last) must be submitted for each Joint Venture Partner.	
Preferences, Contacts and Affidavit	Section R	If a Joint Venture, must be submitted for each Joint Venture Partner.	
IDOT Certificate of Eligibility (If required—See Page A-1)	A-1 & Section I #9	If a Joint Venture, required from each Joint Venture Partner (If required)	
Tollway Standard Terms & Conditions	Section TC	If a Joint Venture, must be submitted for each Joint Venture Partner	

The Following Will Be Verified by the Tollway for the CM/GC Contractor

Tollway to Transact Business in Illinois - Secretary of State Certificate of Good Standing	Section I #10	If a Joint Venture, will be verified for each Joint Venture Partner.
Illinois Dept. of Human Rights	Section I #9 & #26	If a Joint Venture, will be verified for each Joint Venture Partner
State Board of Elections	Section I #24	If a Joint Venture, will be verified for each Joint Venture Partner

Documents Required from the CM/GC Contractor Upon Request from the Tollway (Notice of Intent e-mail will be sent requesting these items)

Agreement	Section T	If a Joint Venture, must be signed by both Joint Venture Partners
Performance Bond	Section U	If a Joint Venture, must be executed by both Joint Venture Partners
Payment Bond	Section V	If a Joint Venture, must be executed by both Joint Venture Partners
Insurance	Section I #17	If a Joint Venture insurance must be in the name of both Joint Venture Partners
Disadvantaged Business Enterprise <ul style="list-style-type: none"> • DBE 2025 (s) 	Section I #27 DBE Special Provision	Required for all solicitations with DBE goals. The DBE Form 2025 is required from the CM/GC Contractor on the fifth (5 th) calendar day after their bid is due or the bid will be deemed non-responsive. See DBE Special Provision for additional information. If goal is 0% the forms are not required. Submit form to contractcompliance@getipass.com
Veteran Small Business Participation and Utilization <ul style="list-style-type: none"> • VOSB 2025 (s) 	Section I #28 VOSB Special Provision	Required for all solicitations with Veteran goals. The VOSB 2025 is required from the CM/GC Contractor on the fifth (5 th) calendar day after their bid is due or the bid will be deemed non-responsive. See Veterans Special Provision for additional information. If goal is 0% the form is not required. Submit form to contractcompliance@getipass.com
Equal Employment Opportunity EEO 1256	Section I #29 & EEO Special Provision	Required for all solicitations with Equal Employment Opportunity goals. The CM/GC Contractor must submit EEO 1256 on the fifth (5 th) calendar day after their bid is due or bid will be deemed non-responsive. Submit form to

		contractcompliance@getipass.com
Responsible Bidder Affidavit PA-1 signed and Notary Seal	Section I #37	If a Joint Venture, must be submitted for each Joint Venture Partner
Evidence of Tollway of company representatives to execute the Phase Two Amendment, such as Board of Directors' Minutes, or a resolution authorizing officers of the firm to execute the contract documents		
Certificates showing authorization to do business in Illinois if CM/GC Contractor is not an Illinois corporation.		
Any supplemental financial or experience information if requested by the Illinois Tollway.		
A completed Signature Tollway Form designating any and all individuals to execute on behalf of the company any and all Phase Two Amendment modifications or documentation		
If a Joint Venture, a copy of the executed Joint Venture Agreement between all partners that identifies the Managing Partner. Unless specifically directed otherwise in writing by the joint venture, the Managing Partner's FEIN will be used for payment and tax purposes		
A completed W-9 form if this is the first time the company is conducting business with the Tollway as a Prime Contractor. Please refer to the following link for the most current IRS W-9 form: http://www.irs.gov/pub/irs-pdf/fw9.pdf		
A copy of your IRS Assignment/Acceptance Letter if this is the first time the company is conducting business with the Tollway as a Prime Contractor, or if it has been a long time since you have done work with the Tollway and have never provided the document.		
As applicable to this Phase Two Amendment, Proof of Certification from each firm listed on DBE Form(s) 2025 and or VOSB Form(s) 2025. Please refer to the Special Provision for Disadvantaged Business Enterprise Participation and the Veteran Small Business Participation and Utilization Plan for a list of Certifying Agencies accepted by the Tollway. Proof of Certification includes Original letter of Certification, Certification Certificate, or the company listing in the Certifying Agency's database.		

INSTRUCTIONS AND INFORMATION TO CM/GC CONTRACTOR

1. ADVERTISEMENT FOR BIDS

A CM/GC Contractor bid will be received electronically by the Illinois State Toll Highway Authority for constructing a portion of the Illinois Toll Highway System, as described in the advertisement for CM/GC Contractor bid.

2. EXAMINATION OF PHASE TWO AMENDMENT DOCUMENTS AND WORK SITE

Before submitting a bid, the CM/GC Contractor shall carefully examine the provisions of the Phase Two Amendment bid documents. The CM/GC Contractor shall also inspect in detail the site of the proposed work, investigate and become familiar with all conditions affecting the Phase Two Amendment, and the detailed requirements of construction. The CM/GC Contractor will be held responsible for having done so.

3. PHASE TWO AMENDMENT DOCUMENTS (TO BE COMPLETED IN INK)

The Phase Two Amendment documents for this Phase Two Amendment shall be as defined in Section 101 of the Tollway CM/GC Supplemental Specifications.

4. SCHEDULE OF PRICES

All blank spaces for bid prices must be filled in, in ink, with the unit price, or lump sum price, and the total price for each and every item (which prices must be more than \$0.00). If the CM/GC Contractor's bid does not contain a price for every item listed in the Schedule of Prices for the Phase Two Amendment being bid it will not be considered unless alternate bids are requested.

5. INQUIRIES RELATIVE TO INTERPRETATION OF PLANS & SPECIFICATIONS

Any inquiries by the CM/GC Contractor relative to interpretation of any provisions of any of the Phase Two Amendment documents will not be answered verbally, and to be given consideration must be submitted in writing to the Illinois Tollway no later than the date shown in the "Advertisement for Bids" (Page A-1). Answers, if any are given to such inquiries, will be in the form of an addenda and will be furnished to the CM/GC Contractor in conformance with the Tollway Supplemental Specifications.

6. BID GUARANTY

The CM/GC Contractor is required to furnish a Bid Guaranty in accordance with the provisions of Article 102.09 of the Tollway Supplemental Specifications.

7. WAGE STIPULATIONS

This Phase Two Amendment calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/01 *et seq.* ("the Act") or is a service contract subject to the prevailing wage requirement of the Illinois Procurement Code, 30 ILCS 500/25-60 (the "Code"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus fringe benefits) in the locality (county) where the work is performed. The Code requires vendors awarded certain service contracts to pay service workers no less than the general prevailing wage rate of hourly wages (hourly cash wages plus amount for fringe benefits in the locality (county) where the work is performed. The Illinois Department of Labor publishes the prevailing wage rates on its website <https://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>. The Illinois Department of Labor

revises the prevailing wage rates and the contractor/subcontractor has an obligation to check the Illinois Department of Labor's website for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website. All contractors and subcontractors rendering services under this Phase Two Amendment must comply with all requirements of the Act and Code, including but not limited to all wage requirements, notice, and record keeping duties.

The CM/GC Contractor to whom the Phase Two Amendment is awarded shall insert into each subcontract and into the project specifications for each subcontract a written stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the Phase Two Amendment. Each subcontractor shall insert into each lower tiered subcontract and into the project specifications for each lower tiered subcontract a stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the Phase Two Amendment.

NOTE: The prevailing wages are revised by the Department of Labor and are available on the Department's official website, which shall be deemed proper notification of any rate changes under this subsection. Vendor is responsible for contacting the Illinois Department of Labor to ensure understanding of prevailing wage requirements at 217-782-6206 or (<http://www.state.il.us/agency/idol/index.htm>).

Prime contractors will be responsible for ensuring that EEO work hours including those of their subcontractors are reported in the Tollway's Capture system.

AMENDMENTS TO PREVAILING WAGE LAW

Effective July 16, 2014, the Prevailing Wage Act has been amended. Below is a summary of some of the important changes that may affect you:

- For each calendar month construction on a Tollway project occurs, a certified payroll must be filed no later than the 15th of the following month.
- Payroll records must be kept for five (5) years from the date of last payment on a contract or subcontract.
- Any person who willfully files a false payroll is guilty of a Class A misdemeanor.
- Any person who willfully fails to create, keep, maintain, or **produce records as or when** required by the Act is guilty of a Class A misdemeanor.
- Any contractor or subcontractor convicted or found guilty of the above is subject to **automatic and immediate debarment** and prohibited from participating in any public works project for four (4) years with no right to a hearing.

The full text of the Prevailing Wage Act can be found here:

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2405&ChapterID=68>

Effective immediately, per CPO Notice 2021.03.

EMPLOYMENT OF PUBLIC WORKERS ON PUBLIC WORKS: In a period of excessive unemployment rates, State contractors (1) constructing or building any public works or (2) cleaning-up and disposing on-site of hazardous waste, and that clean-up or on-site disposal is funded or financed in whole or in part with State funds or funds administered by the State, are required to employ at least 90% Illinois laborers on such project. For projects involving clean-up and on-site disposal of hazardous waste, emergency

response or immediate removal activities are excluded. This requirement applies to all labor whether skilled, semi-skilled or unskilled, whether manual or non-manual.

A period of excessive unemployment rates is defined as any month immediately following two consecutive calendar months during which the level of unemployment in the State of Illinois has exceeded 5% as measured by the United States Bureau of Labor Statistics in its monthly publication of employment and unemployment figures. Any public works project financed in whole or in part by federal funds administered by the State of Illinois is covered under the provisions of this requirement, to the extent permitted by any applicable federal law or regulation. 30 ILCS 570. Contractors may receive an exception from this requirement by submitting a request and supporting documents certifying that Illinois laborers are either not available or are incapable of performing the particular type of work involved. The certification must: (a) be submitted to the agency within the first quarter of the Contract Term; (b) provide sufficient support that demonstrates the exception is met; (c) be signed by an authorized signatory of the contractor; and (d) be approved by the agency.

The Act defines a period of excessive unemployment rates as any month immediately following two consecutive calendar months during which the State unemployment rate exceeds 5%. To understand the details of the Employment of Illinois Workers on Public Works Act, please read it in its entirety:

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=549&ChapterID=7>

8. **NON-COLLUSION AFFIDAVIT**

The CM/GC Contractor must complete and return the Non-Collusion Affidavit furnished with the solicitation with their bid. In the event said Affidavit is found to be false in any respect, the Illinois Tollway may, at its option, void this Phase Two Amendment without liability on the part of the Illinois Tollway and in addition, the CM/GC Contractor and its surety or sureties shall be liable to the Illinois Tollway for any and all damages of every nature and description sustained, directly or indirectly, by the Illinois Tollway as a result of entering into contracts based upon, among other things, the execution of such false affidavit.

9. **QUALIFICATIONS OF CM/GC CONTRACTOR**

The Tollway follows the procurement rules set by the IDOT for the procurement of construction and professional services. The CM/GC Contractor must be prequalified by the IDOT if required by the solicitation. See Page A-1 to determine if IDOT Prequalification is required.

Illinois Department of Human Rights Public Contracts Number: The CM/GC Contractor shall complete and return the IDHR Public Contract Number form in Vendor Disclosure (Formerly Forms A), Part 2, or in the Illinois Procurement Gateway.

The CM/GC Contractor authorizes the Tollway to obtain and examine any and all financial data and experience information heretofore submitted by the CM/GC Contractor to any Federal, State or local unit of government without further notice.

The Tollway will analyze the division of work to verify the weakest joint venture member is capable of performing, and analyze the others to be able to complete the project if the weakest firm defaults.

The individual partners of any joint venture must be jointly and severally liable for the obligations of the joint venture under the contracts.

Only one person will be designated managing partner for the joint venture and will speak for all joint venture partners and act as project manager.

The Illinois Procurement Code provides, in part, that no person or business shall bid, offer, make a submission to a vendor portal, or enter into a contract under the code if the person or business assisted an employee of the State of Illinois, who, by the nature of his or her duties, has the Tollway to participate personally and substantially in the decision to award a State contract, by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request for information or provided similar assistance except as part of a publicly issued opportunity to review drafts of all or part of these documents. See certifications section of the Phase Two Amendment for the required certifications prior to entering into a contract with the State of Illinois

10. **AUTHORITY TO TRANSACT BUSINESS UNDER AN ASSUMED NAME**

If the CM/GC Contractor is doing business under an assumed name, it shall be required to furnish a certificate of registration and authorization showing that such individual or partnership is registered and authorized to conduct business in Illinois under such assumed name in accordance with Assumed Business Name Act, 805 ILCS 405/1, as amended from time to time.

11. **SECRETARY OF STATE CERTIFICATE OF GOOD STANDING**

A person, other than an individual acting as a sole proprietor, must be a duly constituted legal entity and authorized to transact business or conduct affairs in Illinois prior to execution of the Phase Two Amendment. 30 ILCS 500/20-43. The Secretary of State Certification will be verified by the Tollway for the CM/GC Contractor.

12. **TAX EXEMPTIONS**

The Illinois Tollway is currently exempted from the payment of Illinois Retailer's Occupational Tax, Use Tax, Service Tax, Municipal Taxes and Federal Excise Tax.

The tax exempt number and form will become a part of the Phase Two Amendment with the CM/GC Contractor.

13. **HAUL ROADS**

Attention of the CM/GC Contractor is directed to the probable use of public roads and streets (State, County and Municipal) for hauling loads in excess of present permitted allowance. It is the responsibility of the CM/GC Contractor to make proper arrangements with officials having jurisdiction for any use of public roads and streets beyond that permitted by present regulations.

14. **ACKNOWLEDGMENT OF RECEIPT OF ADDENDA**

The CM/GC Contractor is required to acknowledge receipt of any addenda issued to the CM/GC Contractor by inserting the addendum number and the issuing date in the space provided in the solicitation.

15. **TOLLWAY POWER AND FUNDS**

The Illinois Tollway has been created and derives its power and Tollway under and pursuant to "An Act in relation to the construction, operation, regulation and maintenance of a system of toll highways, and to create the Illinois State Toll Highway Authority, and to define its powers and duties, approved August 7, 1967," (Illinois Compiled Statutes, 605 ILCS 10/1 to 605 ILCS 10/35, as amended from time to time, hereinafter called the "Act").

No payment or other obligations under this contract are or shall ever be construed to be obligations of the State of Illinois.

16. **PAYMENT OF TOLLS**

The CM/GC Contractor shall be required to pay the full amount of tolls, if any, incurred by it during the duration of the Phase Two Amendment. Said tolls will not be refunded by the Illinois Tollway. Furthermore, in the event that a final determination is made by the Tollway that the CM/GC Contractor has failed to pay any required tolls and associated fines, the Tollway is authorized to take steps necessary to withhold the amounts of unpaid tolls and fines from any payment due the CM/GC Contractor by the Tollway and/or other State of Illinois office, department, commission, board or agency.

17. **INSURANCE**

The CM/GC Contractor shall not commence any work under the Phase Two Amendment until all the insurance as specified in Article 107.27 of the Tollway Supplemental Specifications or any special provisions has been provided and approved, and Notice to Proceed is issued to the CM/GC Contractor.

18. **ILLINOIS HUMAN RIGHTS ACT**

The CM/GC Contractor is advised that the Illinois State Toll Highway Authority has heretofore by resolution adopted all of the applicable requirements and provisions of the Illinois Fair Employment Practices Act, now the Illinois Human Rights Act (Illinois Compiled Statutes, 775 ILCS 5/1 -101, *et sequitur*, as amended from time to time) and all of the applicable rules and regulations promulgated thereunder, and that all such applicable requirements, provisions and rules and regulations are deemed to be a part of the Phase Two Amendment and to apply to the CM/GC Contractor as if fully set out herein.

19. **MULTI-PROJECT LABOR AGREEMENT**

The Multi-Project Labor Agreement is not in effect for this Phase Two Amendment.

20. **RESERVED**

21. **COMPUTER GENERATED PAY ITEM PRICE PAGES FOR BIDS SUBMITTED ELECTRONICALLY**

The schedule of prices for this Phase Two Amendment is available for download in spreadsheet format on the Tollway's Online Plan Room hosted by BHFx Digital Imaging at: www.illinoistollwaybidding.com.

The schedule of prices is published in spreadsheet format only once when the Phase Two Amendment is advertised and is published as a tool to assist the CM/GC Contractor with preparation of their bid. Any revisions to the schedule of prices, including addenda, are the responsibility of the CM/GC Contractor and must be included in the bid. It is the CM/GC Contractor's responsibility to provide an accurate bid, which includes verification that the spreadsheet version of the schedule of prices matches the final Phase Two Amendment book P-Pages. When submitting the bid, in the event of a discrepancy between the spreadsheet schedule of prices from the online plan room, and the Phase Two Amendment book P-Pages, the contract book P-Pages and addenda control and take precedence over the spreadsheet schedule of prices.

If the CM/GC Contractor intends to submit a computer-generated bid, it must be in a form similar to the Phase Two Amendment book P-Pages and must be legible. See Page I-1, Item 4 for additional pay item pricing requirements.

P-Pages submittal responses should be submitted in an Excel and PDF format.

22. **PUBLISHED PROCUREMENT INFORMATION:**

The State publishes procurement information, including updates on the General Services eProcurement System BidBuy (<https://bidbuy.illinois.gov>), referred to as “BidBuy”. Procurement information may not be available in any other form or location. The CM/GC Contractor is responsible for monitoring BidBuy. The State will not be held responsible if the CM/GC Contractor fails to monitor BidBuy, or to fully complete their vendor registration in BidBuy.

23. **PROTEST REVIEW OFFICE**

Vendors may submit a written protest to the Protest Review Office following the requirements of the IDOT Standard Procurement Rules 44 ILL ADM 6.390 through 6.440. All protests shall be in writing and filed with the CPO within seven (7) calendar days after the protester knows or should have known of the facts giving rise to the protest. Protests filed after the seven (7) calendar day period will not be considered. In addition, protests that raise issues of fraud, corruption or illegal acts affecting specifications, special provisions, supplemental specifications, plans and electronic data files must be received by the CPO no later than fourteen (14) calendar days before the date set for opening of bids. The Protest Review Office information is as follows:

Chief Procurement Office for General Services
Attn: Protest Review Office

Email: cpogs.pro@illinois.gov

24. **SUBSTANCE ABUSE PREVENTION PROGRAM (SAPP) PUBLIC ACT 95-0635**

This Public Act requires that all contractors/subcontractors have a SAPP in place, with certain requirements, **before** starting work. The requirements of this Public Act are material to the Phase Two Amendment, and the CM/GC Contractor shall require the same of all approved subcontractors.

25. **STATE BOARD OF ELECTIONS REGISTRATION PUBLIC ACT 95-0971**

State Board of Elections Registration: Vendor or CM/GC Contractor may be prohibited from making political contributions and be required to register with the State Board of Elections. For more information, see State Board of Elections in Vendor Disclosure (Formerly Forms A), Part 5.

26. **DEPARTMENT OF HUMAN RIGHTS (DHR) PUBLIC CONTRACT NUMBER**

The CM/GC Contractor bidding on public contracts must register with the IDHR to be eligible to be awarded public contracts. If the CM/GC Contractor registered previously but has a DHR number of 89999-00-0 or lower they must re-register to maintain eligibility. Any IDHR number of 90000-00-0 or higher is valid for five (5) years from the date of issue. The IDHR website link is below.

http://www2.illinois.gov/dhr/PublicContracts/Pages/IDHR_Number.aspx

27. **DISADVANTAGED BUSINESS PARTICIPATION**

See Special Provision for Disadvantaged Business Participation

28. **VOSB/SDVOSB PARTICIPATION**

See Special Provision for VOSB/SDVOSB Participation

29. **EQUAL EMPLOYMENT OPPORTUNITY**

See Special Provision for Equal Employment Opportunity.

30. **BID CREDIT INCENTIVE PROGRAMS**

Tollway Bid Credit Incentive Programs allow contractors or subcontractors/fabricators to earn bid credits to be used toward future Tollway construction bids. A CM/GC Contractor can then apply its bid credits to a maximum Bid Credit Cap assigned to each construction contract to lower their bid amount and increase the chances of winning the contract as the low bidder. Use of bid credits from the Bid Credit Incentive Programs is applicable only to construction projects advertised by the Tollway for public bidding.

See Special Provision for Bid Credit Incentive Programs included in Volume 1.

Current Tollway Bid Credit Programs:

- **CONSTRUCTIONWORKS PROGRAM**

The ConstructionWorks (CW) Program offers contractors and subcontractors/fabricators a chance to earn bid credits toward future Tollway construction bids when they hire workers from a pool of qualified and eligible CW individuals including minorities, women, ex-offenders and exonerated individuals, veterans and other traditionally underserved populations.

See the Operational Guide for CW Program at <https://www.illinoistollway.com/doing-business/diversity-development/programs/constructionworks>

- **EARNED CREDIT PROGRAM**

The Earned Credit Program (ECP) offers contractors and subcontractors/fabricators a chance to earn bid credits toward future Tollway construction bids when they hire workers from a pool of qualified and eligible Workforce Innovation and Opportunity Act (WIOA) individuals including minorities, women, ex-offenders and exonerated individuals, veterans and other traditionally underserved populations.

See the Operational Guide for Earned Credit Program at <https://www.illinoistollway.com/doing-business/diversity-development/programs/ecp>

- **PARTNERING FOR GROWTH - CONSTRUCTION for DISADVANTAGED BUSINESS ENTERPRISE OR VETERAN-OWNED SMALL BUSINESS BID CREDIT INCENTIVE PROGRAM**

A firm performing as a mentor in an approved Partnering for Growth (P4G) – Construction relationship, providing assistance to and training of a DBE or Veteran firm can earn Bid Credits that may be used toward future Tollway construction bids.

See the Operational Guide for Partnering For Growth - Construction For Disadvantaged Business Enterprise Bid Credit Incentive Program and the Operational Guide For Partnering For Growth – Construction For Veteran-owned Small Business Bid Credit Incentive Program at <https://www.illinoistollway.com/doing-business/diversity-development/programs/partnering-for-growth>

31. **REPORTING OF COMMUNICATIONS WITH VENDORS**

Please note that written or oral communications received by the Tollway that imparts or requests material information or makes a material argument regarding potential action concerning this procurement may require reporting to the Procurement Policy Board as required by the Procurement Code. When an oral communication is made by a person required to register under the Lobbyist Registration Act (25 ILCS 170) and received by a State employee, all individuals who initiate or participate in the communication shall submit a written report to that State employee memorializing the communication and for reporting to the Procurement Policy Board. This provision is not intended to prohibit communications with State employees regarding procurement matter, but rather only requires reporting of those communications when they occur.

32. **INITIAL CONTACT INFORMATION**

The Initial Contact Person named on Page A-1 shall be familiar with assembling or obtaining the duly executed documents constituting the Phase Two Amendment between the Illinois Tollway and the CM/GC Contractor.

33. **WEB-BASED PROJECT MANAGEMENT**

The Illinois Tollway will manage this project using the Tollway's web-based project management system. The primary goal of using the web-based project management system is to create a complete project record and serve as a project archive.

All project correspondence occurring with the CM/GC Contractor will be addressed to the initial contact person via e-mail from Contract Services and via the web-based project management system. Initial correspondence is expected to consist of requests for information and responses related to DBE and subcontractor related items.

34. **SUBCONTRACTOR DISCLOSURE**

The CM/GC Contractor must identify, to the extent the information is known, the names, addresses and type of work for all sub-contractors that will be utilized in the performance of this Phase Two Amendment together with the anticipated contract value each sub-contractor is expected to receive pursuant to this Phase Two Amendment. The State may request updated information at any time. For purposes of this section, sub-contractor means a person or entity that enters into a contractual agreement with a person or entity who has a contract with the Illinois Tollway pursuant to which the person or entity provides some or all of the goods, services, real property, remuneration, or other monetary forms of consideration that are the subject of the primary Illinois Tollway contract. A person or entity is not a sub-contractor if that person only provides goods or supplies that are incidental to the performance of a Phase Two Amendment by a person who holds the Phase Two Amendment with the Illinois Tollway. In no event shall a sub-contractor be allowed to start work prior to approval by the Tollway.

35. **PROCUREMENT COMPLIANCE MONITORS**

Pursuant to Public Acts 96-0795, 96-0920 and 97-0895, Agency Procurement Compliance Monitors may review Phase Two Amendment documents and any files or records related to procurements and will report to the Chief Procurement Officer on procurement issues that may require action, and to further

report on corrective action not taken by state personnel. Additionally, the Procurement Compliance Monitors may monitor the procurement process for appropriate actions and transparency.

36. **PUBLICITY**

CM/GC Contractor shall not, in any advertisement, including but not limited to CM/GC Contractor's website or any other type of solicitation for business, state, indicate or otherwise imply that it has been endorsed by or is currently or has previously been under contract with the Illinois Tollway nor shall the Illinois Tollway's name be used in any such advertisement or solicitation without the prior written approval of the Illinois Tollway.

37. **RESPONSIBLE BIDDER AFFIDAVIT**

Public Act 97-0369 amended the Illinois Procurement Code to require a "responsible bidder" to submit a signed affidavit stating that the bidder shall maintain an Illinois office as the primary place of business for persons employed in the construction authorized by the Phase Two Amendment. Therefore, in accordance with the Act the Illinois Tollway will request the "Responsible Bidder Affidavit" from the CM/GC Contractor.

38. **REPORT OF A CHANGE IN CIRCUMSTANCES**

The CM/GC Contractor agrees to report to the Tollway as soon as practically possible, but no later than twenty-one (21) days following any change in facts or circumstances that might impact the CM/GC Contractor's ability to satisfy its legal or contractual responsibilities and obligations under this Phase Two Amendment. Required reports include but are not limited to changes in the CM/GC Contractor's Certification/Disclosure Forms, the CM/GC Contractor's IDOT pre-qualification status, or certification or licensing required for this project. Additionally, the CM/GC Contractor agrees to report to the Tollway within the above timeframe any arrests, indictments, convictions or other matters involving the CM/GC Contractor, or any of its principals, that might occur while this Phase Two Amendment is in effect. The reporting requirement does not apply to common offenses, including but not limited to minor/traffic offenses.

Further, the CM/GC Contractor agrees to incorporate substantially similar reporting requirements into the terms of any and all subcontractors relating to work performed under this Phase Two Amendment. The CM/GC Contractor agrees to forward or relay to the Tollway any reports received from subcontractors pursuant to this paragraph within twenty-one (21) days.

Finally, the CM/GC Contractor acknowledges and agrees that the failure of the CM/GC Contractor to comply with this reporting requirement shall constitute a material breach of this Phase Two Amendment which may result in this Phase Two Amendment being declared void.

39. **RECORD RETENTION AND AUDIT**

The CM/GC Contractor shall maintain in the State of Illinois, for a minimum of five (5) years from the latter of the date of completion of the Phase Two Amendment or the date of final payment under the Phase Two Amendment, adequate books, records, and supporting documents from an accounting system maintained in accordance with generally accepted accounting principles to verify the amounts, recipients, uses and methods of all disbursements of funds passing in conjunction with the Phase Two Amendment. The five (5) year record maintenance period shall be extended for the duration of any audit

in progress at the time of that period's expiration. The CM/GC Contractor shall at its own expense make such records available in a timely manner for inspection and audit (including copies and extracts of records) as required by the Auditor General and other State Auditors, Chief Procurement Officer, the Illinois Department of Transportation, and the Tollway's Inspector General, Internal Audit or other Tollway agents at all reasonable times and without prior notice.

The obligations of this section shall be explicitly included in any subcontracts or agreements formed between the CM/GC Contractor and any subcontractors or suppliers of goods and services to the extent that those subcontracts or agreements relate to fulfillment of the CM/GC Contractor's obligations to the Tollway. Such subcontractor shall be required to comply with the terms and conditions of this Section and the Tollway shall be entitled to enforce a breach of this Phase Two Amendment.

Any audit adjustment will be submitted on a final invoice for any underpayment or overpayment to the CM/GC Contractor or its subcontractors. The CM/GC Contractor shall promptly reimburse the Tollway for any overpayment, or the Tollway at its option may deduct any overpayment from any funds due the CM/GC Contractor, whether those funds are due under this Phase Two Amendment or other Phase Two Amendments to which the CM/GC Contractor is a party either directly with the Tollway or as a subcontractor. In the event the CM/GC Contractor fails or refuses to reimburse the Tollway for an overpayment, the CM/GC Contractor shall be responsible for all costs, including attorney fees, incurred by the Tollway to collect such overpayment.

Failure to maintain or make available the books, records, and supporting documents required by this Section shall establish a presumption in favor of the Tollway for recovery of any funds paid by the Tollway under the contract for which adequate books, records and supporting documentation are not available to support their purported disbursement.

The CM/GC Contractor shall reimburse the Tollway for the total costs of an audit that identifies significant findings that would benefit the Tollway, including but not limited to reasonable attorney's fees and other expenses. Significant findings for the purposes of this provision shall be identified as an amount in excess of \$50,000 in aggregate of the audit report or findings of material performance or compliance deficiencies.

If the CM/GC Contractor fails to comply with these requirements, the CM/GC Contractor may be disqualified or suspended from bidding on or working on future Phase Two Amendments or contracts.

40. **INSPECTOR GENERAL**

The vendor/CM/GC Contractor hereby acknowledges that pursuant to Section 8.5 of the Toll Highway Act (605 ILCS 10/8.5) the Inspector General of the Illinois State Toll Highway Authority has the Tollway to conduct investigations into certain matters including but not limited to allegations of fraud, waste and abuse, and to conduct reviews. The vendor/CM/GC Contractor shall fully cooperate in any OIG investigation or review. Cooperation includes providing access to all information and documentation related to the goods/services described in this Phase Two Amendment, and disclosing and making available all personnel involved or connected with these goods/services or having knowledge of these goods/services. All subcontracts must inform Subcontractors of this provision and their duty to comply.

41. **ACCEPTANCE OF SCANNED SIGNATURES**

Unless otherwise specified, the parties agree that bids, contracts, certifications and disclosures, and other Phase Two Amendment related documents to be entered into in connection with the resulting Phase Two Amendment will be considered signed when the signature of a party is delivered by scanned image (e.g. .pdf or .tiff file extension name) as an attachment to electronic mail (email). Such scanned signature will be treated in all respects as having the same effect as an original wet ink signature.

42. **EXPATRIATED ENTITIES**

Except in limited circumstances, no business or member of a unitary business group, as defined in the Illinois Income Tax Act, shall submit a bid for or enter into a contract with a State agency if that business or any member of the unitary business group is an expatriated entity.

PART II: Bid Requirements

Bid	Submit with bid
Bid Listing All Addenda	Submit with bid
Bid Bond	Submit with bid
Disadvantaged Business Enterprise DBE 2026 and DBE 2023 (if required)	Submit with bid
Veteran Small Business Participation VOSB 2026 and VOSB 2023 (if required)	Submit with bid
Bid Credit Program, if applicable	Submit with bid
I.D.O.T. Certificate of Eligibility (if required)	Submit with bid
Affidavit	Submit with bid
Responsible Bidder Affidavit	Submit with bid
CM/GC Contractor List of Individual Contacts	Submit with bid
Illinois Tollway Standard Terms and Conditions	Submit with bid
Secretary of State Certificate of Good Standing	Will be verified by the Tollway
State Board of Elections	Will be verified by the Tollway
Illinois Department of Human Rights	Will be verified by the Tollway

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

BID

CONTRACT NO. XX-XX-XXXX

The CM/GC Contractor bid will be received electronically via BidBuy, the State of Illinois eProcurement system. The bid must be received by **TIME, DATE**. The system will not accept a bid after the deadline.

TO THE CHAIR OF THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY:

The undersigned hereby proposes to perform: **INSERT SCOPE OF WORK**

The services will be performed within the: **INSERT LOCATION**

The undersigned declares that the Advertisement for CM/GC Contractor bid, Instructions to CM/GC Contractor, this Bid Form, IDOT Standard Specifications, Tollway CM/GC Supplemental Specifications, Tollway Supplemental Specifications, Special Provisions, Plans, Electronic Data Files and Addenda to the foregoing (if any), form of Phase Two Amendment, forms of Contract Bonds, and other exhibits (if any), on file at the office of The Illinois State Toll Highway Authority have been carefully examined, and that the undersigned has inspected in detail the site of the proposed Work, and familiarized itself with all of the conditions affecting the Phase Two Amendment, and that has satisfied itself as to The Work to be done and the conditions under which it must be carried out, and understands that in submitting this bid waives all rights to plead any misunderstanding regarding the same.

The undersigned hereby tenders this bid to construct and complete said Work in accordance with the Plans, Electronic Data Files, IDOT Standard Specifications, Tollway CM/GC Supplemental Specifications, Tollway Supplemental Specifications and the accompanying Special Provisions now on file in the office of The Illinois State Toll Highway Authority, and the following addenda issued thereto:

Addendum No. _____ Date _____

The undersigned further agrees to furnish all necessary transportation, machinery, equipment, tools, labor and other means of construction; and to do all the work and to furnish all of the materials specified in the contract in the manner and at the times prescribed under the supervision and direction of the Tollway or its authorized representatives, for the **GMP or lump sum amount** quoted in the Schedule of Prices.

Accompanying this bid is a Bid Guaranty:

- (a) Evidence by a bank draft, cashier's check or certified check on _____, Bank, for \$_____, payable to The Illinois State Toll Highway Authority, or
- (b) A Bid Bond in favor of the Tollway for \$_____, with a corporate surety authorized to do business in the State of Illinois.

In the event that this bid shall be accepted by The Illinois State Toll Highway Authority, and the undersigned should fail to execute a Phase Two Amendment with and furnish the security required by the Tollway, as set forth in the Standard Specifications, within ten (10) days after receipt of notice of the acceptance of the bid, such draft or check shall become the property of the Tollway, or if a bid bond has been submitted, the principal amount of said bid bond shall become immediately due and payable to the Tollway; otherwise the Bid Guarantee will be returned to the CM/GC Contractor upon written request, as soon as the Phase Two Amendment and Phase Two Amendment bonds have been executed. If a bid guaranty is secured by a check, the check will be returned to the CM/GC Contractor.

Pursuant to the provisions of the Prevailing Wage Act, [820 ILCS 130](#), the undersigned, as part of its bid for the construction of The Illinois State Toll Highway Authority **Contract XX-XX-XXXX**, Phase Two Amendment **XX**, hereby stipulates that, if awarded a Phase Two Amendment on said bid, it will pay the laborers, mechanics and other workers who are employed in the performance of such Work hourly wages not less than the minimum hourly wages stated in the instructions to CM/GC Contractor; and that its computations in arriving at said bid are based on hourly wages not less than those stated in the instructions to CM/GC Contractor; and that if a Phase Two Amendment be entered into under said bid, the minimum hourly wage rates stated in the Instructions to CM/GC Contractor shall become and be a part of said Phase Two Amendment as provided by law.

It is understood that the quantities of work and material shown herein in the Schedule of Prices of the bid are approximate only and are subject to increase or decrease. Such increase or decrease shall in no manner affect the validity of the Phase Two Amendment. Payment to the CM/GC Contractor will be based on the **GMP or lump sum** bid and work will only be paid on an unit price basis if specifically noted in the Phase Two Amendment documents.

On the acceptance of this bid for said Work, the undersigned will furnish and deliver the Performance and Payment Bonds, in the forms required and furnished by the Tollway and included in the Phase Two Amendment documents, with a corporate surety acceptable to the Tollway and authorized to do business in the State of Illinois, conditioned as stated in said bonds.

The undersigned has also properly executed or caused to be executed by an officer thereof, if a corporation, the non-collusion affidavit filed with this bid.

Unless otherwise specified, a current IDOT "Certificate of Eligibility" shall be included with this bid, or shall be submitted within twenty-four (24) hours of the Tollway's request. **Failure to meet this requirement shall be grounds for rejection of the bid, per Article 102.13 of the Tollway CM/GC Supplemental Specifications.**

It is agreed that time is of the essence of this Phase Two Amendment and that I (we) will, in the event of my (our) failure to complete the Phase Two Amendment within the time limit named above, pay to The Illinois State Toll Highway Authority liquidated damages in the amount stated in the Special Provision, based on the price(s) shown in the Schedule of Prices of the bid.

The undersigned is (check one)

an individual

a Partnership

a Corporation under the laws of the State of _____

having principal office at _____ and has furnished to the Tollway the necessary evidence of Tollway to transact business in the State of Illinois, in accordance with Paragraph 10 of the Instructions to CM/GC Contractor.

Signed and sealed this ____ day of _____, by its _____, thereunto duly authorized.

_____ (SEAL)

_____ (SEAL)

Affix Corporate Seal

BY:

or Power of Attorney Where Applicable

Information below to be typed or printed where applicable.

INDIVIDUAL:

_____	_____
Name	Address

PARTNERSHIP - NAME AND ADDRESS OF GENERAL PARTNERS:

_____	_____
Name	Address

_____	_____
Name	Address

_____	_____
Name	Address

INCORPORATED:

_____	_____
President	Address

_____	_____
Vice-President	Address

_____	_____
Secretary	Address

_____	_____
Treasurer	Address

Bid Notes

No Bid Credits can be applied to this particular solicitation.

All blank spaces for bid prices must be filled in with the unit price, or lump sum price, and the total price for each and every item (which prices must be more than \$0.00). Bids which do not contain a price for every item listed in the Schedule of Prices for the Phase Two Amendment being bid, will not be considered, unless alternate bids are requested.

FINANCIAL DISCLOSURES AND CERTIFICATIONS

All vendors responding to an Illinois Tollway solicitation must comply with Illinois Procurement Code 30 ILCS 500 -- specifically section 50-35 Financial Disclosures and Potential Conflicts of Interest. The Illinois Procurement Gateway (IPG) is a web-based system that serves as the primary location for entering, organizing, and reviewing vendor information. The IPG allows prospective vendors to provide disclosures, registrations, and other documentation needed to do business with a State agency or university in advance of any particular procurement. Vendors can register on the Illinois Procurement Gateway at: <https://ipg.illinois.gov/>

The CM/GC Contractor submitted Form N IPG Active Registered Vendor Disclosure or financial statements with their Statement of Qualifications (SOQ) and is not required to submit anything additional with their bid.

The Illinois Procurement Code requires the Tollway to collect financial disclosures from any known subcontractor with anticipated participation in excess of \$100,000.00 at the time of the bid. Subcontractor disclosures will be requested from the CM/GC Contractor for any such subcontractor identified in their bid.

The subcontractor disclosure submittals shall contain either Vendor Disclosure (Formerly Forms A) or IPG Active Registered Vendor Disclosure (Formerly Forms B).

Vendor Disclosure (Formerly Forms A) section contains eight forms and shall be returned by the CM/GC Contractor subcontractors are not registered in the Illinois Procurement Gateway (IPG).

IPG Active Registered Vendor Disclosure (Formerly Forms B) contains three forms and shall be returned by the CM/GC Contractor if subcontractors have a current, approved IPG registration.

Subcontractor Disclosure (Formerly Forms A) Section

*Complete this section if you **are not using** an Illinois Procurement Gateway (IPG) Registration.*

<https://www.illinoistollway.com/doing-business/construction-engineering/forms>

1. Business and Directory Information
2. Illinois Department of Human Rights Public Contracts Number
3. Authorized to Do Business in Illinois
4. Standard Certifications
5. State Board of Elections
6. Disclosure of Business Operations in Iran
7. Financial Disclosures and Conflicts of Interest
8. Taxpayer Identification Number
9. Signature

IPG Active Registered Vendor Disclosure (Formerly Forms B) Section

*Complete this section only if you **are using** a current, approved IPG Registration.*

<https://www.illinoistollway.com/doing-business/construction-engineering/forms>

1. Certification of Illinois Procurement Gateway Registration #
2. Certification Timely to this Solicitation
3. Disclosures of Lobbyist or Agent
4. Disclosure of Current and Pending Contracts

5. Signature

REMINDER TO SUBCONTRACTORS SUBMITTING IPG ACTIVE REGISTERED VENDOR DISCLOSURE

Subcontractors intending to fulfill certification and disclosure requirements by supplying the State with their Illinois Procurement Gateway registration number, expiration date, and “IPG Active Registered Vendor Disclosure” documents must read this clarification document in its entirety.

Subcontractors UTILIZING “IPG ACTIVE REGISTERED VENDOR DISCLOSURE” MUST BE REGISTERED SPECIFICALLY WITH THE ILLINOIS PROCUREMENT GATEWAY.

In order to verify that you are registered with the Illinois Procurement Gateway (IPG), please click on “Registered Vendor Directory” on the IPG homepage (<https://ipg.illinois.gov/>). Search for your Business Name. If your company does not appear in the search results, then you are not registered in the IPG.

To use IPG Active Registered Vendor Disclosure, subcontractors must be listed in the “Registered Vendor Directory” as described above, and provide a valid registration number with expiration date from the Illinois Procurement Gateway. Please note that it is possible for vendors who have registered with another government entity (such as the City of Chicago’s Compliance and Certification portal) using the same portal software, to have a registration number and expiration date for a different (non-State of Illinois) application process. *Registration information from other government entities will not be accepted.*

If the “Registered Vendor Directory” does not list your company, then you must utilize the “Vendor Disclosure (Formerly Forms A)” option to meet the certification and disclosure requirements of this solicitation.

Every bid submitted to and Phase Two Amendment executed by the State, and every subcontract subject to Section 20-120 of the Procurement Code shall contain a certification by the bidder, contractor, or sub-contractor under the Section, and acknowledge that the Chief Procurement Officer may declare the related Phase Two Amendment void if any of the certifications are false.

RESPONSIBLE BIDDER AFFIDAVIT
in accordance with
PUBLIC ACT 97-0369

CONTRACT NO:

(Enter Tollway Contract Number)

SUBMITTING BIDDER:

(Enter Name of Firm)

ADDRESS:

STATE OF ILLINOIS

)

)

SS

COUNTY OF _____

)

The Affiant, _____, being first duly sworn, upon oath
deposes and says:

1. That the Affiant is _____ of _____ who is the
CM/GC Contractor and bidder on the above referenced contract by the Illinois State Toll Highway
Authority, hereinafter "Owner" for the contract known as _____ (*enter Tollway contract
number*), between the bidder and the Owner;
2. The Affiant hereby states that the CM/GC Contractor will maintain an Illinois office as the primary place
of employment for persons employed in the construction authorized by said contract if contract is so
awarded.

**I am duly authorized to make this Affidavit. I know and understand the contents of this
Affidavit, and all statements herein are true and correct.**

SIGNATURE OF AFFIANT

SUBSCRIBED AND SWORN BEFORE ME THIS ____ DAY OF _____, 20__.

NOTARY PUBLIC

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

CONTRACT NO. XX-XX-XXXX
PHASE TWO AMENDMENT NO. XX

LIST OF INDIVIDUAL CONTACTS

The CM/GC Contractor is hereby requested to list those individuals to be contacted for information regarding the analysis of the various portions of the bid.

<u>ITEM</u>	<u>INDIVIDUAL</u>	<u>TELEPHONE NO.</u>	<u>E-MAIL</u>
Schedule of Prices			
Bid Guaranty			
DBE 2026			
EEO Program			
VOSB 2026			
Financial Disclosures Vendor Disclosure or IPG Active Registered Vendor Disclosure			
IDOT Certificate of Eligibility			
Non-Collusion Affidavit – Page R-4			

Illinois State Toll Highway Authority
SPECIAL PROVISION
FOR
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

1. POLICY STATEMENT

It is the policy of the Illinois State Toll Highway Authority (“ISTHA” or “Tollway”) that qualified and *bona fide* Disadvantaged Business Enterprises (DBEs), as that term is defined herein, have maximum feasible opportunities to participate fully in the performance of all contracts funded and administered by the Tollway. The Tollway seeks to ensure non-discrimination in the award and administration of its contracts and associated subcontracts and that it is not a passive participant in a discriminatory marketplace; to create a level playing field on which DBEs can compete fairly for its contracts; to ensure that its Special Provision is narrowly tailored in accordance with applicable law; to ensure that only firms that meet the eligibility standards are permitted to participate as DBEs; and to help to remove barriers to participation of DBEs in Tollway contracts and associated subcontracts.

Consistent with this policy, it is the responsibility of all contractors for general contracting work and a specific condition of all Tollway contracts to which they are parties to ensure full and fair opportunities for DBEs to compete in contracts funded and administered by the Tollway and to fully comply with this Special Provision.

2. DEFINITIONS

For the purposes of this Special Provision, the following terms shall have the following meanings:

Affiliate of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining Affiliation, the Tollway shall consider all appropriate factors, including common ownership, common management, and contractual relationships.

Broker means a person or entity that fills orders by purchasing or receiving supplies from a third-party supplier rather than out of its own existing inventory and provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.

Commercially Useful Function means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a Joint Venture partner.

Contingency Work is the anticipated work within the scope of the project which is included in the project to cover the work of such an uncertain nature that the location or quantity could not be identified prior to awarding the contract.

Core Work is the anticipated work within the scope of the project which is included in the project to cover the work of such a nature that the location and estimated quantity could be identified prior to awarding the contract.

Disadvantaged Business Enterprise (“DBE”) means a business currently certified by the Illinois Unified Certification Program (“ILUCP”) pursuant to 49 C.F.R. Part 26, or a business currently certified by the City of Chicago, Illinois or the County of Cook, Illinois, as a Minority or Women-Owned Business (“M/WBE”) pursuant to its M/WBE program for construction contracts, Art. IV, § 2-92-650, *et seq.*, as amended, or a business currently certified by the U.S. Small Business Administration (SBA) pursuant to the Small Business Act as an SBA 8(a) business, owned and operated by a socially and economically disadvantaged person. A DBE is considered to have current certification if the firm is listed in the directory database of the pertinent certifying agency.

DBE Joint Venture means an association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform as a single for profit business enterprise, in which each Joint Venture partner contributes property, capital, efforts, skill and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the project and whose share in the capital contribution, control, management, risks, and profits of the Joint Venture are equal to its ownership interest. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship, risks and responsibility under the contract.

DBE Utilization Plan means the list of currently certified DBEs that the Bidder commits will be utilized, including its own participation as a DBE, if applicable, in the scopes of the work and the dollar values or the percentages of the work to be performed pursuant to this solicitation and in conformance with this Special Provision.

Good Faith Efforts means actions undertaken by a contractor to achieve a DBE contract goal, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the contract goal.

Mobilization means preparatory work and operations necessary for the movement of personnel, equipment and incidentals to the project site for the establishment of offices, buildings and other facilities necessary for work on the project and for all other work operations which must be performed, or costs incurred when beginning work on the project.

Regular Dealer means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis. Packagers, manufacturer representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

3. CONTRACTOR ASSURANCE

The contractor will assure that each of its employees and its subcontractors' employees associated with the contract shall not discriminate on the basis of any protected category identified by law in the performance of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Tollway deems appropriate.

4. DBE CONTRACT GOAL TO BE ACHIEVED BY THE CONTRACTOR

This contract includes a specific DBE utilization goal of % of the Core Work of the contract. The goal reflects the estimated availability of DBEs to perform the scopes of work of this contract, including as a prime contractor. Consequently, in addition to the other award criteria established for this contract, ISTHA will award this contract to a Bidder who either meets this goal or who demonstrates its good faith efforts to do so. The participation of DBEs will be calculated on the amount of the Core Work, not Contingency Work identified in the bid documents. **The Contractor's DBE commitment will be assessed for any and all Extra Work Orders (EWO) and Change Orders (CO) at the time such orders are issued.**

5. DBE, M/WBE and SBA 8(a) LOCATOR REFERENCES

Bidders should consult the Illinois Unified Certification Program ("ILUCP") DBE Directory as a reference source for DBEs and the City of Chicago, the County of Cook M/WBE directories as reference sources for M/WBEs in construction certified by the City of Chicago or the County of Cook, or the Small Business Administration SBA 8(a) directory for SBA 8(a)s certified

by the Small Business Administration. Only firms certified by the IL-UCP, the City of Chicago, the County of Cook, or the Small Business Administration **at the time of bid opening** are eligible to be considered for contract award to either meet the contract goal or establish the Bidder's good faith efforts to do so.

These directories are to be used as an informational source only. Certification does not mean that a firm is in any way prequalified to provide the products and/or services in its certification specialty. "Certification" means that the ILUCP, the City of Chicago, the County of Cook, or the Small Business Administration has determined, on the basis of information provided and the representations therein, that a business is a *bona fide* DBE. The ILUCP, the City of Chicago, the County of Cook or the Small Business Administration does not, as a result of listing, make any representation concerning the ability of any listed firm to perform work in the specialty listed. The Tollway does not, through its use of and referral to ILUCP DBE, the City of Chicago, the County of Cook MBE/WBE, and the Small Business Administration SBA 8(a) lists, make any representation concerning the ability of any listed firm to perform work in its certification specialty. The Bidder must conduct its own due diligence regarding the capabilities of certified firms to perform the work of the contract.

6. BIDDING PROCEDURES

Compliance with the bidding procedures of this Special Provision is required as provided in this Special Provision prior to the award of the contract. The failure of the as-read low Bidder to comply will render the bid non-responsive.

6.1 Submission of the Disadvantaged Business DBE Utilization Plan, DBE Form 2026

A Bidder must submit a Disadvantaged Business DBE Utilization Plan on ISTHA DBE Form 2026 **with the bid submission**.

This is also a requirement in the case where a prime Bidder is also a DBE, is certified to perform a portion of the contract work as indicated on the DBE's Certification submitted at time of bid, and will meet the DBE goal via a self-performance requirement on the contract greater than or equal to the DBE goal for the contract. If the Bidder is a DBE Joint Venture, each Joint Venture partner must provide the attestation to the DBE Utilization Plan, Form 2026.

Otherwise, if the DBE Utilization Plan is not submitted at time of bid, then the bid will be deemed non-responsive. If the bid is deemed non-responsive due to a failure to submit a DBE Utilization Plan or failure to comply with the bidding procedures set forth herein, ISTHA may elect to cause the forfeiture of the penal sum of the Bidder's bid guaranty, and may deny authorization to bid the project if re-advertised for bids.

The DBE Utilization Plan shall indicate that the Bidder either has obtained sufficient DBE participation commitments to meet the contract goal or demonstrate and document its good faith efforts to meet the goal. The DBE Utilization Plan will also require the name of each DBE firm proposed for use on the contract along with a brief scope of work and dollar amount to be assigned to the DBE. The DBE Utilization Plan shall further provide the name, telephone number, and email address of a responsible official of the Bidder designated for purposes of notification of DBE Utilization Plan approval or disapproval under the procedures of this Special Provision.

Any agreement between a contractor and a DBE or other subcontractor in which the contractor requires that the DBE not provide subcontracting quotations to other contractors is prohibited.

6.2 Submission of the DBE Participation Commitment Statement, DBE Form 2025

The Utilization Plan must be supported by the submission of a detailed DBE Participation Commitment Statement, Form 2025, for each DBE proposed for the performance of work to achieve the contract goal. DBE Form 2025 is required from the lowest apparent bidder on the fifth (5th) calendar day after bids are due or the bid will be deemed non-responsive.

The submission of DBE Form 2025 should be via email to contractcompliance@getipass.com.

In no case should a contractor remove, replace, or reduce the commitment to a DBE listed in the initial Utilization Plan Form 2026 without prior written consent of ISTHA. Under no circumstances is the Bidder allowed to change the amount of the core bid submitted or any other documentation unrelated to this special provision.

The signatures on these forms must be original signatures. All elements of information indicated on Form 2025 must be provided, including but not limited to:

- 6.2.1 The name and address of each DBE to be used;
- 6.2.2 A full description, including pay item numbers for DBEs or associated pay items for trucking services, of the commercially useful function to be performed by each DBE. Descriptions such as “miscellaneous” and prices such as “lump sum” are not acceptable. Contingency Work must not be included under Pay Items and will not be approved toward DBE goal participation until such time that those pay items have been confirmed as required work of the contract.
- 6.2.3 Direct Allowance items will not be approved toward DBE participation in the DBE Utilization Plan.
- 6.2.4 Mobilization costs should be included in the cost of the pay item for which it is associated rather than as a separate pay item on the DBE Utilization Plan, DBE Form 2025 for DBE subcontractors.
- 6.2.5 If the DBE is the Prime Contractor, the Mobilization pay item may be approved toward DBE participation in the DBE Utilization Plan.
- 6.2.6 The price to be paid to each DBE for the identified work, specifically stating the quantity, unit price and total subcontract price for the work to be completed by the DBE. If partial pay items are to be performed by the DBE, the Form must indicate the portion of each item, a unit price where appropriate and the subcontract price amount;
- 6.2.7 A commitment statement signed by the Bidder and each DBE evidencing availability and intent to perform a commercially useful function on the project; and
- 6.2.8 If the Bidder is a joint venture comprised of DBEs and non-DBEs, the Plan must also include a clear identification of the portion of the work to be performed by the DBE joint venture partner(s).
- 6.2.9 If the Bidder is unable to meet the goal, it must demonstrate it made good faith efforts to do so, as described in this Special Provision and detailed in section 6.6 below.
- 6.2.10 The contract will not be awarded until the DBE Utilization Plan, including if applicable, the bidder’s good faith efforts to meet the goal, is approved by ISTHA. The DBE Utilization Plan will be approved if it demonstrates that DBEs will be used to perform a commercially useful function sufficient to meet the contract goal, or that the Bidder made sufficient good faith efforts, as defined in this Special Provision, to meet the goal.

6.3 Counting DBE Participation

The DBE Utilization Plan’s DBE commitments represent work expected to be performed and paid for upon satisfactory completion. ISTHA is only able to count toward the achievement of the contract goal the value of payments made for the work actually performed by DBEs. The Tollway will count DBE participation, and the contractor will receive credit towards meeting the DBE contract goal, as follows:

- 6.3.1 The entire amount of that portion of work that the DBE is certified to perform, as indicated on the DBEs Letter of Certification, and that is performed by the DBE’s own forces either as the contractor or a subcontractor shall be counted, including the cost of supplies and materials obtained by the DBE for the work of the contract, and supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE purchases or leases from the prime contractor or the prime contractor’s affiliate). **Work that the DBE subcontracts to a non-DBE does not count toward the DBE goal.**

- 6.3.2 The entire amount of fees or commissions charged by a DBE for providing a *bona fide* service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.
- 6.3.3 One hundred percent of the cost of trucking services utilized on the contract shall be counted, provided the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed and insured by the DBE must be used on the contract. Credit will only be applied for trucking activity to and from the ISTHA job site. Credit will be given for the following: (1) the DBE may lease trucks from another DBE, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. (2) The DBE may also lease trucks from a non-DBE, including from an owner-operator. Goal credit will be limited to the value of the reasonable fee or commission received by the DBE for trucks that are leased from a non-DBE.
- 6.3.4 When a DBE performs as a participant in a Joint Venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the Joint Venture's contract that is performed by the DBE with its own forces and for which it is separately at risk, shall be counted. A Joint Venture may also count the dollar value of work subcontracted to DBEs other than the DBE Joint Venture partner(s). Work performed by the forces of the non-DBE joint venture partner shall not be counted toward the DBE goal. The Tollway will evaluate the Joint Venture agreement, which must be submitted with the DBE Utilization Plan, for conformance with this Special Provision and eligibility for credit towards meeting the goal. The agreement must describe in detail the financial contribution of each partner; the list of personnel and equipment contributed and used by each partner; the responsibilities of each partner for each aspect of the joint venture; if applicable, the bonding capacity of each partner; if applicable, the prequalification status of each partner; the basis and distribution of all profits and losses; and any other elements deemed relevant by the Tollway.
- 6.3.5 One hundred percent of the cost of the materials obtained from a DBE Manufacturer, as that term is defined in 49 C.F.R. § 26.55(e) shall be counted towards the DBE contract goal. Sixty-percent of the cost of the materials or supplies obtained from a DBE Regular Dealer or Supplier, as those terms are defined in 49 C.F.R. § 26.55(e), shall be counted towards the DBE contract goal. One hundred percent of the fees or transportation charges for the delivery of materials or supplies required on a job site shall be counted towards the DBE contract goal only if the payment of such fees is a customary industry practice and are commensurate with fees customarily charged for similar services.
- 6.3.6 One hundred percent credit will be counted towards the DBE contract goal for the value of fees and commissions for the procurement of materials and supplies if the DBE is not a regular dealer or manufacturer, provided such fees or commissions are determined by the Tollway in its sole discretion to be reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials or supplies themselves shall be counted towards the contract goals.
- 6.3.7 If a firm's certification is revoked by its certifying agency during its performance on a contract, the dollar value of work performed under this contract with that firm after it has ceased to be certified shall not be counted.

If a DBE graduates from its respective certification program, based upon exceeding the firm size or personal net worth limitations after this contract is awarded, the firm's participation will be counted towards meeting the goal on this contract.

In determining achievement of the contract goal, the participation of a DBE shall not be counted until that amount has been paid to the DBE.

6.4 Demonstrating Commercially Useful Function

Only expenditures to a DBE that is performing a Commercially Useful Function shall be counted. To determine whether a DBE is performing a Commercially Useful Function, the Tollway will evaluate the amount of work subcontracted, industry practices, whether the amount the DBE is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors. A DBE performs a commercially useful function when it is responsible for the execution of the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

6.4.1 To perform a commercially useful function, the DBE must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

6.4.2 A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, ISTHA will examine similar transactions, particularly those in which DBEs do not participate.

6.4.3 If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, ISTHA will presume that the DBE is not performing a commercially useful function. When a DBE is presumed not to be performing a commercially useful function as provided in this section, the DBE and the contractor may present evidence to rebut this presumption.

6.5 Extended Documentation Period for Low Apparent Bidders with a DBE Commitment Below the Advertised DBE Goal

Each contractor identified as the low Bidder who has a DBE commitment less than the advertised DBE goal shall be allowed, upon email notification from the Tollway, an extended documentation period which will extend until 5:00 pm CT on the second business day after the day the notification is sent (e.g. if a Bidder is notified on Monday, extended documentation period concludes on Wednesday at 5pm). The extended documentation period allows contractors solely to supplement their initial Utilization Plan to add DBE participation to meet the stated DBE participation goal or to demonstrate additional good faith efforts in obtaining DBE participation. The contractor may take other action beyond any stated additional efforts in order to obtain additional DBE commitments. The contractor shall submit an amended DBE Utilization Plan if additional DBE commitments to meet the contract goal are secured by the end of the extended documentation period. If additional DBE commitments sufficient to meet the advertised contract goal are not secured, the contractor shall report the final good faith efforts made during the extended documentation period along with a request for a waiver pursuant to section 6.6 of this section. All additional efforts taken by the Bidder before and during the extended documentation period will be considered as part of the Contractor's good faith efforts.

The extended documentation period is intended to allow contractors that have made a good faith effort to secure DBE participation an opportunity to meet the stated contract goal. Contractors are expected to have utilized good faith efforts in compiling their initial DBE Utilization Plan, and the DBE participation indicated in the initial DBE Utilization Plan should reflect the participation the contractor could achieve through good faith efforts. In no case should a contractor remove, replace or reduce the commitment to a DBE listed in the initial Utilization Plan without prior written consent of ISTHA. Under no circumstances is the Bidder allowed to change the amount of the core bid submitted or any other documentation unrelated to this special provision. When ISTHA determines that a contractor, either through a pattern of conduct or with respect to a single bid, has failed to discharge its good faith efforts obligations in this intended fashion, ISTHA, in its discretion, may reject the bid outright without allowing the Bidder to take advantage of the extended documentation period.

6.6 Good Faith Efforts Procedures

If the bidder cannot obtain sufficient DBE commitments to meet the contract goal, the Bidder must document in the DBE Utilization Plan its good faith efforts to meet the goal, including any DBE participation secured as detailed in Form(s) 2025, using the Good Faith Efforts Contact Log and Checklist, DBE Form 2023. If the DBE contract goal was not achieved by a Bidder, the Bidder must submit its good faith efforts documentation, including the DBE Form 2023. Documentation submitted after bid opening, except as provided for in Section 6.5 above, will not be accepted or reviewed.

Demonstrating good faith efforts means that the Bidder must show that all necessary and reasonable steps were taken to achieve the contract goal. Necessary and reasonable steps are those that could reasonably be expected to obtain sufficient DBE participation. ISTHA will consider the quality, quantity and intensity of the kinds of efforts that the Bidder has made. Mere *pro forma* efforts are not good faith efforts; rather, the Bidder is expected to have taken those efforts that would be reasonably expected of a Bidder actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.

If ISTHA determines that the contractor has made a good faith effort to secure the work commitment of DBEs to meet the contract goal, ISTHA will award the contract provided that the Bidder is otherwise eligible for award and award is in the Tollway's best interest.

The following is a list of types of action that ISTHA will consider as part of the evaluation of the Bidder's good faith efforts to obtain DBE participation. These listed factors are not intended to be a mandatory checklist and are not intended to be exhaustive. Other factors or efforts brought to the attention of ISTHA may be relevant in appropriate cases, and will be considered by ISTHA.

- 6.6.1 Soliciting through all reasonable and available means (*e.g.*, attendance at DBE Networking Sessions sponsored by ISTHA, pre-bid meetings, advertising and/or written notices) the interest of all DBEs that have the capability to perform the work of the contract. A list of certified DBEs in the trades considered to determine the contract goal may be provided by the Tollway, but should not be considered exhaustive, and other firms may be available for solicitation by the Bidder. The Bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation, but in any event, no later than five (5) calendar days prior to the bid submission date. At least two methods of solicitation of DBEs must be used (*e.g.*, email and fax). The Bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow-up initial solicitations.
- 6.6.2 Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- 6.6.3 Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- 6.6.4 Negotiating in good faith with interested DBEs.
 - 6.6.4.1 Making a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, e mail address and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - 6.6.4.2 A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as

contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- 6.6.5 DBEs may not be rejected as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the contract goal.
- 6.6.6 Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the Tollway or the contractor.
- 6.6.7 Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- 6.6.8 Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

In determining whether a Bidder made good faith efforts, ISTHA may take into account the performance of other Bidders in meeting the contract goal or of Bidders in meeting the goal on contracts of a similar nature. For example, when the apparent successful Bidder fails to meet the contract goal, but others meet it, ISTHA will review whether, with additional reasonable efforts, the apparent successful Bidder could have met the goal. If the apparent successful Bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, ISTHA may view this, in conjunction with other factors, as evidence of the apparent successful Bidder having made good faith efforts.

- 6.6.9 A Bidder that rejected a DBE based on price must provide to ISTHA all quotes received for the scope of work proposed by the DBE from all firms, including non-DBEs.
- 6.6.10 The Bidder may request administrative reconsideration of a pre-final determination on its DBE Utilization Plan adverse to the Bidder by filing a request, within five working days after the Bidder receives written notice of the determination, which five-day period shall begin immediately after ISTHA provides the Bidder written notice of its pre-final determination, by delivering the request to the Illinois State Toll Highway Authority, Procurement Department, Chief of Contract Compliance, 2700 Ogden Avenue, Downers Grove, Illinois 60515-1703, contractcompliance@getipass.com, (630) 241-6800 ext. 4615. Submission via e-mail is acceptable. Deposit of the request in the United States mail on or before the fifth business day shall not be deemed delivery. The pre-final determination shall become final if a request is not received within the five-day period.
- 6.6.11 A request may provide additional written documentation and/or argument concerning the issue of whether an adequate good faith effort was made to meet the contract goal. In addition, the request shall be considered consent by the Bidder to extend the time for award. The request will be forwarded to the Illinois State Toll Highway Authority, Procurement Department, Chief of Contract Compliance. The Chief of Contract Compliance may extend an opportunity to the Bidder to meet in person in order to consider all issues of whether the Bidder made a good faith effort to meet the goal. Such meeting shall extend the time for a decision. After the review by the Chief of Contract Compliance, the Bidder will be sent a written decision within ten (10) working days after receipt of the request for reconsideration or the date of the meeting, explaining the basis for finding that the Bidder did or did not meet the goal or make adequate good faith efforts to do so. A final decision by the Chief of Contract Compliance that a good faith effort was made shall

approve the DBE Utilization Plan submitted by the Bidder and shall clear the contract for award. A final decision that a good faith effort was not made shall render the bid non-responsive. The administrative reconsideration procedures described in this section are not intended to allow a Bidder to have an additional opportunity to submit a new DBE Utilization Plan or evidence of additional good faith efforts performed after bid submission.

7. CONTRACT COMPLIANCE

7.1 Forms to be Submitted

All work indicated for performance by an approved DBE shall be performed, managed and supervised by the DBE executing the DBE Form 2025 - Participation Statement.

To receive a notice to proceed, the contractor must submit for the Tollway's review signed subcontracts with all DBEs proposed to meet the goal within twenty (20) calendar days of award.

7.2 Changes to the DBE Utilization Plan

The contractor may not make changes to its contractual DBE commitments, substitute a DBE subcontractor or make any other changes to the DBE Utilization Plan without the prior written approval of the Tollway's Contract Compliance Team. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of this Special Provision and a breach of the contract.

If a Change Order or Extra Work order is issued by the Tollway or Contingency Work is authorized, the contractor, in ISTHA's discretion, will be required to amend its DBE Utilization Plan to reflect the recalculated DBE dollars and any percentage change in the goal. The DBE contract goal may change in the Tollway's discretion to reflect a Change Order or Extra Work Order or the authorization of Contingency Work.

The facts supporting the request for changes to the DBE Utilization Plan must not have been known or reasonably could not have been known by the parties prior to entering into the subcontract. The contractor must negotiate in good faith with the subcontractor to resolve the problem. If requested by either party, the Tollway shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the DBE can be substituted only where agreement cannot be reached for a reasonable price or reasonable schedule for the correct scope of work. Requests should be sent to contractcompliance@getipass.com.

Substitutions of a DBE subcontractor shall be permitted only under the following circumstances:

- 7.2.1 Unavailability after receipt of reasonable notice to proceed;
- 7.2.2 Failure of performance;
- 7.2.3 Financial incapacity;
- 7.2.4 Refusal by the subcontractor to honor the bid or bid price or scope or schedule;
- 7.2.5 Material mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
- 7.2.6 Failure of the subcontractor to meet insurance, licensing or bonding requirements;
- 7.2.7 The subcontractor's withdrawal of its bid or bid; or
- 7.2.8 Decertification of the subcontractor as a DBE, other than on the basis of its exceeding firm size or personal net worth limits.

If it becomes necessary to substitute a DBE or otherwise change the DBE Utilization Plan, the contractor must notify the Illinois State Toll Highway Authority, Contract Compliance Team in writing of the request to substitute a DBE or otherwise change the DBE Utilization Plan to contractcompliance@getipass.com. The request must state specific reasons for the substitution or change. A letter from the DBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request. Any refusal by the DBE to provide such a letter must be documented by the contractor. The Illinois State Toll Highway Authority, Contract Compliance Team will approve or deny a request for substitution or other change in the DBE Utilization Plan in writing within five (5) working days of receipt of the request.

Where the contractor has established the basis for the substitution to the Tollway's satisfaction, it must make good faith efforts to meet the contract goal by substituting a DBE subcontractor. Documentation of a replacement DBE, or of good faith efforts, must meet the requirements in Section 6.6. If the contract goal cannot be reached and good faith efforts have been made, the contractor may substitute with a non-DBE.

If the contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the DBE Utilization Plan, the contractor must obtain the approval of the Illinois State Toll Highway Authority, Contract Compliance Team to modify the DBE Utilization Plan and must make good faith efforts to ensure that DBEs have a fair opportunity to bid on the new scope of work.

A new subcontract, a new Form 2025 for the substituted DBE (if applicable) and an amended DBE Utilization Plan must be executed and submitted to the Illinois State Toll Highway Authority, Contract Compliance Team at contractcompliance@getipass.com within five (5) working days of the contractor's receipt of the Tollway's approval for the substitution or other change.

7.3 The submission of the DBE Payment Report

DBE Payment reporting, in such form or format as specified by the Tollway, must be submitted as specified in the Contract Compliance Payment Reporting Instructions posted on the Tollway's website.

The contractor shall maintain a record of payments to DBEs and all other subcontractors and suppliers for work performed. The records shall be made available to ISTHA for inspection and copying upon request. After the performance of the final item of work or delivery of material by a DBE and final payment to the DBE by the contractor, but not later than thirty (30) calendar days after payment has been made by ISTHA to the Contractor for such work or material, the contractor shall submit partial and final waivers of lien via B2GNow. Not complying with this requirement may delay processing of pay estimates and/or retainage.

All active Tollway vendors/contractors/consultants will be required to use B2GNow. Both diverse and non-diverse subcontractor payments must be reported and confirmed monthly in the system at <https://iltollway.diversitysoftware.com/>.

8. SANCTIONS

The Tollway will periodically review the contractor's compliance with this Special Provision and the terms of its contract with the contractor, including the DBE Utilization Plan. Without limitation, the contractor's failure to comply with this Special Provision or its DBE Utilization Plan, failure to cooperate in providing information regarding its compliance with this Special Provision or its DBE Utilization Plan, or provision of false or misleading information or statements concerning compliance, certification status of DBEs, good faith efforts or any other material fact or representation shall constitute a material breach of this contract and may result in damages to the Tollway. Such breach or damages entitle the Tollway to declare a default, terminate the contract, impose liquidated damages or exercise those remedies provided for in the contract or at law or in equity.

Sanctions may include, but are not limited to, monetary sanctions, including non-release of retainage; the monetary cost of audits resulting in findings of noncompliance; damages based on the damage to the Tollway from the contractor's lack of good faith efforts and failure to meet the other requirements of this Special Provision in an amount up to the monetary

difference between the amount committed to by the contractor in its DBE Utilization Plan and the amount actually paid to DBEs; deeming the contractor non-responsible with respect to future business with the Tollway; and any other sanctions as are permitted by law.

In imposing sanctions, the Tollway will consider the *bona fide* efforts of the contractor to meet the DBE goal, its history of good faith efforts on other Tollway contracts, the size of the contract, the degree to which the contractor fell below the DBE goal, and other factors deemed relevant by the Tollway.

The contractor may appeal the decision to impose sanctions within five (5) working days of its receipt of the written decision by filing an appeal in hard copy or electronic format with the Illinois State Toll Highway Authority's Sanctions Committee. Actual delivery of the hard copy and electronic formats within the five (5) business days is required and mere posting by mail within that period is not sufficient. An appeal may provide additional documentation and/or arguments and request an oral presentation to the Tollway's Sanctions Committee. The Tollway's Sanctions Committee shall notify the contractor in writing of the final determination and the basis for the determination within ten (10) working days after receipt of the appeal or after the date of the oral presentation by the contractor, whichever is later. The contractor may appeal an adverse decision within five (5) working days of receipt of the final determination to the Executive Director by filing an appeal in hard copy and electronic format to the Illinois State Toll Highway Authority, Executive Director, 2700 Ogden Avenue, Downers Grove, Illinois 60515-1703, contractcompliance@getipass.com. The Executive Director or his/her designee, which designee shall not be employed within the Tollway's Contract Compliance Team, may solicit information from the contractor, the Diversity and Strategic Development Department, the Chief of Contract Compliance, the Law Department, Internal Audit, the Procurement Department, and anyone else in his/her discretion, and shall render a final decision on the contractor's appeal within thirty (30) calendar days.

9. INACCURATE OR FRAUDULENT REPORTING

The contractor has a duty to accurately report information pursuant to this Special Provision. A contractor who fails to supply accurate information is subject to sanctions imposed by the Tollway. A contractor who intentionally supplies inaccurate information may be subject to civil and/or criminal sanctions.

10. OTHER REGULATIONS

The adherence to the DBE goal does not abrogate other responsibilities of the contractor to comply with affirmative action requirements under federal or state law, municipal ordinance, prevailing government regulations or terms contained elsewhere in the contract.



ILLINOIS STATE TOLL HIGHWAY AUTHORITY
DBE FORM 2026 - UTILIZATION PLAN

CONTRACT NUMBER _____
CORE VALUE AMOUNT _____

PRIME CONTRACTOR: _____
CONTACT NAME: _____
CONTACT PHONE NUMBER: _____
CONTACT E-MAIL: _____

Check one:

- Contractor will meet or exceed the DBE Contract Goal and will provide Disadvantaged Business Participation as presented below.
PERCENTAGE OF ADVERTISED DBE GOAL : _____
PERCENTAGE OF DBE COMMITMENT: _____
- Contractor requests a waiver of the DBE Contract Goal.
The Bidder is requesting the contract Goal be accordingly modified or waived. Attached is all information required by the Special Provision in support of this request, including Good Faith Efforts - Form 2023.
DOLLAR AMOUNT OF WAIVER REQUEST: _____
PERCENTAGE OF WAIVER REQUEST: _____
PERCENTAGE OF DBE COMMITMENT: _____

Instructions to Bidders:

1. Bidders are required to fully read and comply with the Special Provision.
2. Submit only one DBE Utilization Plan for each Project at time of Bid.
3. This Utilization Plan, Form 2026 must:
--be submitted with the bid or the bid will be deemed non-responsive
--be an accurate representation of work and pricing agreed upon between the prime and the DBE firm prior to bid submission
4. The Participation Statement(s) (DBE Form 2025), with original signatures, pay item description and pricing are to be submitted to Tollway Contract Compliance at contractcompliance@getipass.com from the lowest apparent bidder on the fifth (5th) calendar day after bids are due or the bid will be deemed non-responsive.
5. Each company listed on the Utilization Plan and subsequent Participation Statement must be listed in a certifying agency's database as stipulated in the Special Provision at the time of bid submission to be considered acceptable for DBE credit.
6. In no case should a Contractor remove, replace or reduce the commitment to a DBE listed in the initial Utilization Plan on the Participation Statement without prior written consent of ISTHA. Under no circumstances is the Bidder allowed to change the amount of the core bid submitted or any other documentation unrelated to this special provision.
7. If trucker, please describe if company will transport materials/equipment to or from a Public Works job site or if company will transport materials/equipment by the sellers or suppliers.

DBE UTILIZATION PLAN		
DBE Firm Name	Scope of Work Specific description of overall work to be performed.	DBE - Amount (\$) If supplier, enter 60% credit amount.
TOTAL		

For ebid: the submission of Form 2026 constitutes signature of this form.
For hardcopy: signature required.
Form 2026 - 02/2022

Signature Title Date



CONTRACT #		DBE FIRM NAME:		CIRCLE ALL THAT APPLY	<input type="checkbox"/> DBE	<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/> SBA 8(A)
CHECK ALL THAT APPLY:	<input type="checkbox"/> PRIME	<input type="checkbox"/> JV PARTNER	<input type="checkbox"/> SUBCONTRACTOR	<input type="checkbox"/> TRUCKER	<input type="checkbox"/> SUPPLIER	<input type="checkbox"/> MANUFACTURER		
IF TRUCKER, CHECK ALL THAT APPLY:	<input type="checkbox"/> Transportation of materials or equipment to or from a Public Works job site			<input type="checkbox"/> Transportation of materials or equipment by the sellers or suppliers				
SUBCONTRACTOR:	TIER 1 (SUB TO PRIME):	<input type="checkbox"/> Y <input type="checkbox"/> N	TIER 2 OR BELOW:	<input type="checkbox"/> Y <input type="checkbox"/> N	UNDER CONTRACT TO:			
Will the DBE subcontract a portion of its contract to one or more subcontractors?	<input type="checkbox"/> Y <input type="checkbox"/> N				Total amount of the DBE subcontract that will be subcontracted to non DBE companies			
					Total amount of the DBE subcontract that will be subcontracted to DBE companies			

This form must be completed for EACH disadvantaged business participating in the DBE Utilization Plan. This form is due to the Tollway from the lowest apparent bidder on the fifth (5th) calendar day after bids are due or the bid will be deemed non-responsive to contractcompliance@getipass.com. If additional space is needed, complete an additional form(s) for the firm or attach a detailed information on the DBE firm company letterhead.

PAY ITEM NO. *	DESCRIPTION: Specific description of overall work to be performed. Indicate whether furnish only, or both furnish and install	QUANTITY	UNIT PRICE	TOTAL CONTRACT AMOUNT (\$)	CHECK IF SUPPLIER	TOTAL DBE CREDIT AMOUNT (\$) (reduce to 60% of contract amount if firm is a SUPPLIER)
TOTALS FOR THIS DBE FIRM:						

*Contingency Work must not be included under Pay Items and will not be approved toward DBE goal participation until such time as those Pay Items have been confirmed as required work of the contract. Direct Allowance items, including but not limited to Mobilization Item #JS671010, will not be approved within the DBE Utilization Plan. NOTE that these items are not included in the determination of the DBE Goal percentage.

<p>1. PARTIAL PAY ITEMS: For any of the above ITEMS that are partial pay items, specifically describe the work and subcontract dollar amount.</p>
<p>2. SUBCONTRACTING: If any of the DBE scope of work will be subcontracted, provide the name of the contractor and attach a brief explanation, description and pay item number of the work that will be subcontracted. DBE credit will not be given for work subcontracted to Non-DBE contractors, except for as allowed in the Special Provision for Disadvantaged Business Enterprise Participation.</p>
<p>3. COMMITMENT: The undersigned certify that the information herein is true and correct, and that the DBE listed below has agreed to perform a commercially-useful function in the work of the contract item(s) listed above and to execute a contract to that effect with the Prime Contractor. The undersigned further understand that NO CHANGES to the type or scope of work performed by the DBE may be made without PRIOR WRITTEN APPROVAL and that complete and accurate information regarding actual work performed by the DBE on this contract and the payment thereto must be provided to ISTHA's Contract Compliance. The Prime Contractor will not assign any of the contract items listed above to a firm other than the DBE identified below without ISTHA's prior written approval. The Prime Contractor must request, in writing, approval by ISTHA's Contract Compliance of any proposed amendment to the type or scope of work to be performed by the DBE no later than three business days from the date the Prime Contractor becomes aware of the circumstances supporting the request. Failure to receive written approval prior to a change in type or scope is a violation of the Special Provision for DBE Participation and can subject the contractor to contract sanctions.</p>

<u>Signature for Prime Contractor</u>	<u>Title</u>	<u>Date</u>
<u>Contact:</u>		
<u>Firm Name:</u>		
<u>E-mail:</u>		
<u>Phone:</u>		
<u>Address:</u>		

<u>Signature for DBE Contractor</u>	<u>Title</u>	<u>Date</u>
<u>Contact:</u>		
<u>Firm Name:</u>		
<u>E-mail:</u>		
<u>Phone:</u>		
<u>Address:</u>		



DBE FORM 2023

Demonstration of Good Faith Efforts to Achieve DBE Subcontracting Goal

If the DBE contract goal was not achieved, the Good Faith Efforts checklist and contacts log must be submitted with the bid. Failure to do so may render the Bidder's solicitation response non-responsive and cause it to be rejected, or render the Bidder ineligible for contract award, at ISTHA's sole discretion. **The Bidder must provide all evidence relied upon in support of its Good Faith Efforts with its bid.**

Good Faith Efforts Checklist

Insert on each line below the initials of the authorized Bidder representative who is certifying the Bidder has completed the activities described below and attach proof of such efforts for review. If any of the items were not completed, attach a detailed written explanation. If any other efforts were made to obtain DBE participation in addition to the items listed below, attach a detailed written explanation.

_____ Identified portions of the contract work capable of performance by available DBEs, including, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation even when the Bidder could perform those scopes with its own forces.

_____ Solicited through reasonable and available means (e.g., pre-bid meetings, networking session, written notices, advertisements) DBEs to perform the types of work that could be subcontracted on this project, within sufficient time to allow them to respond.

- ILUCP DBE Directory:
<http://www.idot.illinois.gov/doing-business/certifications/disadvantaged-business-enterprise-certification/il-ucp-directory/index>
- City of Chicago's M/WBE Directory:
<https://chicago.mwdbe.com/FrontEnd/VendorSearchPublic.asp?TN=Chicago>
- County of Cook, IL's M/WBE Directory:
<http://www.cookcountyil.gov/mbewbevbe-directory/>
- Small Business Administration's SBA 8(a) Directory:
http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm

_____ Provided timely and adequate information about the plans, specifications and requirements of the contract. Followed up initial solicitations to answer questions and encourage DBEs to submit bids.

_____ Negotiated in good faith with interested DBEs that submitted bids and thoroughly investigated their capabilities.

_____ Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as may be required for performance of the contract (if applicable).

_____ Utilized resources available to identify available DBEs, including but not limited to DBE assistance groups; local, state and federal minority or women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

Affidavit of Truthfulness: Signature below affirms accuracy of Good Faith Efforts and Tollway to provide above information

Print Name: _____ Phone contact: _____

Position: _____ E-mail address: _____

Signature: _____ Date: _____

-



DBE FORM 2023

Good Faith Efforts Contacts Log for Soliciting - DBE Participation: Form 2023 continued

Project name: _____

Project number: _____

Bidder name: _____

Contact person: _____

Use this form to document all contacts and responses (telephone, e-mail, fax, etc.) regarding the solicitation of DBEs. Duplicate as needed. **The Bidder must provide all evidence relied upon in support of its Good Faith Efforts with its bid.**

Name of DBE	Date and method of contact	Scope of work solicited	Reason agreement was not reached

Affidavit of Truthfulness: Signature below affirms accuracy of Good Faith Efforts and Tollway to provide above information

Print Name: _____

Phone contact: _____

Position: _____

E-mail address: _____

Signature: _____

Date: _____

Illinois State Toll Highway Authority
SPECIAL PROVISIONS FOR
EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

1. OBJECTIVE OF THE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM (EEO):

To promote equality of employment opportunity for all individuals including veteran, minority, and female tradespersons on Illinois State Toll Highway Authority (ISTHA or “Tollway”) capital construction projects. In its efforts to achieve this equality, it is the desire of ISTHA to follow the guidelines as instituted by the United States Department of Labor, Office of Federal Contract Compliance Programs (“OFCCP”) as established through Executive Order 11246 and by Title VII of the Civil Rights Act of 1964, the Illinois Department of Human Rights (IDHR) as established through the Illinois Human Rights Act (Illinois Compiled Statutes, 775 ILCS 5/1 -101, *et sequitur*), and State of Illinois Executive Order 15-2, Executive Order To Ensure Equal Opportunity Is Provided To All Illinois Persons And Businesses.

2. CONTRACTOR ASSURANCE:

The contractor will assure that each of its employees and its subcontractors’ employees associated with the contract shall not discriminate on the basis of any protected category identified by law in the performance of this contract in compliance with Title VII of the Civil Rights Act of 1964 found in 42 U.S.C § 2000e, *et seq* and Illinois state laws. Discrimination is the unfair treatment or denial of normal privileges to persons because of any characteristic protected by law. The Tollway encourages the prompt reporting of incidents of suspected discrimination, harassment or retaliation, regardless of the offender’s identity or position. In the event of the contractor’s non-compliance with this Equal Employment Opportunity Special Provision, the contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or voided in whole or in part, and other remedies invoked as provided by statute or regulation.

3. EEO GOAL TO BE ACHIEVED BY THE CONTRACTOR:

The EEO goals set by the U.S. Dept. of Labor - Office of Federal Contract Compliance Programs (“OFCCP”) for construction trade workers in the Chicago area, which is provided through Executive Order 11246, apply to this contract. The EEO goals are measured through the following percentages of construction aggregated work hours in each of the categories;

- Women: at least 6.9 percent for all contracts.
- Minorities: set on a contract basis, dependent upon the county where the work will be performed. The Minority Goal for this contract is %.

ILLINOIS COUNTY	CURRENT FEDERAL GOAL % FOR MINORITIES	ILLINOIS COUNTY	CURRENT FEDERAL GOAL % FOR MINORITIES
BOONE	6.3	LAKE	19.6
BUREAU	18.4	LASALLE	18.4
COOK	19.6	LEE	4.6
DEKALB	18.4	MCHENRY	19.6
DUPAGE	19.6	OGLE	4.6
GRUNDY	18.4	ROCK ISLAND	4.6
HENRY	4.6	STEPHENSON	4.6
IROQUOIS	18.4	WHITESIDE	3.4
KANE	19.6	WILL	19.6
KENDALL	18.4	WINNEBAGO	6.3

4. DEFINITIONS OF ETHNIC CLASSIFICATIONS:

AMERICAN INDIAN OR ALASKA NATIVE:

Persons having origins in any of the original peoples of North and South American (including Central America), and who maintain tribal affiliation or community attachment.

ASIAN:

Persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including for example Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

BLACK OR AFRICAN AMERICAN:

Persons having origins in any of the Black racial groups of Africa.

HISPANIC:

Persons of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race.

5. CONTRACT PERFORMANCE

During the performance of this contract, the contractor agrees as follows, as required by the Illinois Department of Human Rights (IDHR) at 44 Ill. Admin. Code 750 (Appendix A):

That, EEO Form 1256, Workforce Projection is required from the lowest apparent bidder on the fifth(5th) calendar day after bids are due or the bid will be deemed non-responsive. The submission of EEO Form 1256 should be sent via email to contractcompliance@getipass.com.

- 5.1 That it will not discriminate against any protected category identified by law; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- 5.2 That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with IDHR's rules) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- 5.3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination of any protected category identified by law.
- 5.4 That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the contractor's obligations under the Illinois Human Rights Act and the IDHR's Rules. If any such labor organization or representative fails or refuses to cooperate with the contractor in its efforts to comply with such Act and Rules, the contractor will promptly so notify the IDHR and the contracting agency and will recruit employees from other sources such as the construction works program when necessary to fulfill its obligations thereunder.
- 5.5 That it will submit reports as required by the IDHR's Rules, furnish all relevant information as may from time to time be requested by the IDHR or the Tollway, and in all respects comply with the Illinois Human Rights Act and the IDHR's Rules.
- 5.6 That it will abide by the audit clause of the contract.
- 5.7 That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the contractor will be liable for

compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the IDHR in the event any subcontractor fails or refuses to comply therewith. In addition, the contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

5.8 That it will designate and make known to the Tollway an EEO Officer.

6. CALCULATING EEO PERFORMANCE, CREDIT TOWARDS THE USDOL OFCCP GOALS AND VETERAN PARTICIPATION FOR ILLINOIS EXECUTIVE ORDER 15-12:

Actual amounts of minority, female, and veteran work will be measured for the total hours of construction workers employed on the contract within each of the categories of journeyworker, apprentice and laborer by the contractor and all of the worksite subcontractors. Minority female trade worker hours are counted in applicable ethnic category, in the veteran category if applicable and also in the female category.

In the certified payroll reports, the following ethnic categories should be used to indicate minority personnel for purposes of reporting compliance with the weekly certified payroll report: American Indian/Alaska Native, Asian, Black/African American, Hispanic and Native Hawaiian/Other Pacific Islander.

Included in the certified payrolls, as "Apprentices" are only bona fide apprentices currently in a training program certified by the U.S. Department of Labor - Bureau of Apprenticeship and Training, and hours credited towards the EEO Program are only those hours the apprentice was employed at the construction site. "Journeyworkers" are the construction site journeyworkers from the major trades. Other "Helpers", watchmen, custodial workers, clerical workers, and salaried superintendents are not creditable in the formula. Hourly wage "Forepersons" and "Forepersons" otherwise known as working forepersons, will be counted as journeyworkers for purposes of the EEO Program reporting.

In addition to the timely submission of certified payroll required by the Prevailing Wage Act (820 ILCS 130) as required by the contract specifications, the contractor must have submitted all certified payrolls for the contractor and all subcontractors before the contractor submits its request for the final release of retention and the final waiver of lien. No adjustments to certified payrolls will be accepted after the transmission of the final waiver of lien.

The contractor and each subcontractor shall permit its employees to be interviewed on the job, during working hours, by compliance personnel of the Tollway, IDHR or the Department of Labor regarding compliance with the terms of this Special Provision.

7. REQUIRED EEO REPORTING INTO CAPTURE SYSTEM

The contractor is responsible for submitting certified payrolls to the Illinois Department of labor (IDOL) and reporting EEO hours worked in the Tollway's Capture System. Prime contractors are responsible for ensuring that certified payrolls including those of their subcontractors are submitted to IDOL and EEO hours are reported in Capture, including all properly executed certifications, organized by contract for every construction worksite. EEO information must be submitted in Capture no later than the 25th of the month for the prior months payroll data (i.e. Payroll provided to IDOL for the month of December is due in Capture by the 25th of January). Note: Questions concerning the certified payroll submission should be directed to IDOL. Failure to report fully all required workforce information will cause a delay in processing the contractor's pay estimates. Disclosure of this information is required. Patterns of delinquent reporting may be cause to terminate this contract or such other remedy as the Tollway deems appropriate.

8. SUBCONTRACTOR OBLIGATIONS:

The contractor is required to clearly identify in their subcontract agreements the specific performance obligations that each subcontractor has toward assisting the contractor in meeting the EEO goals.

In the same manner as with other provisions of this contract, the contractor will be responsible for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the Tollway and the IDHR

in the event any subcontractor fails or refuses to comply therewith. In addition, the contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

9. GOOD FAITH EFFORT PROCEDURES:

If the Tollway determines that the contractor and/or its subcontractors are not in compliance with the EEO goals, the Tollway will notify the contractor of said non-compliance. The contractor must submit a Corrective Action Plan within fifteen (15) business days of the date of its receipt of the notice of non-compliance. The Corrective Action Plan must contain evidence of good faith efforts the contractor has made in an effort to meet the EEO goals and outline the additional good faith efforts the contractor will be making, including but not limited to timelines, through the remaining life of the contract.

10. CORRECTIVE ACTION PLAN:

The Corrective Action Plan must show that the contractor made good faith efforts, taking all necessary and reasonable steps to achieve the stated EEO goals. Necessary and reasonable steps are those that could reasonably be expected to employ and retain a sufficient number of minority and female trade workers to meet or exceed the federally set EEO goals for the Illinois county in which work is performed.

Examples of Good Faith Efforts include, but are not limited to, the following:

- Establish and maintain a current list of minority, veteran and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its labor organizations have employment opportunities available, and maintain a record of the organizations' responses.
- Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a labor organization, a recruitment source or community organization.
- Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor.
- Disseminate the contractor's EEO policy by providing notice of the policy to labor organizations and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and Subcontractors with whom the contractor does or anticipates doing business.

- Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs.
- Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

The Tollway will consider the quality, quantity and intensity of the kinds of efforts that the contractor and its subcontractors have made throughout the life of the contract. Mere pro forma efforts are not good faith efforts; rather, the contractor and its subcontractors are expected to have taken those efforts that would be reasonably expected of a contractor and its subcontractors who are actively trying to employ and retain minority and female trade workers sufficient to meet the contract EEO goals.

11. AMENDED CORRECTIVE ACTION PLAN:

If the Tollway determines that the contractor has not made a good faith effort to meet the EEO goals, the Tollway will notify the contractor of that preliminary determination by contacting the responsible company official designated in the Corrective Action Plan. The preliminary determination will include a statement of reasons why a finding of insufficient good faith efforts has been made and may include additional good faith efforts that the contractor could take to remedy the deficiency. The notification will designate a fifteen (15) business day period during which the contractor may make additional efforts to demonstrate a good faith effort to meet the EEO goals. The contractor is not limited by the Tollway's suggestions per Sections 9 and 10 of additional good faith efforts, but may take other actions in order to demonstrate good faith efforts to employ and retain additional minority and female trade workers on the project. The contractor shall submit an amended Corrective Action Plan if additional employment commitments to meet the EEO contract goal are secured and/or to document its additional good faith efforts. If additional hiring commitments sufficient to meet the EEO contract goal are not secured, the contractor shall report the final good faith efforts made in the time allotted. All additional efforts taken by the contractor will be considered as part of the contractor's good faith efforts. If the contractor is not able to meet the EEO goal after making additional efforts, the Tollway will make a pre-final determination as to the good faith efforts of the contractor and will notify the designated responsible contractor official of the reasons for an adverse determination, if applicable.

12. DETERMINATION OF NON-COMPLIANCE:

If the Tollway determines that the contractor has failed to make a good faith effort to meet the EEO goals on the contract, the Tollway will document its findings in a "Letter of Non-Compliance" that will become part of the procurement file maintained on the contractor by the Tollway. The Letter may include a proposed sanction under Section 14 if the contractor fails to take corrective action in a timely fashion. Upon a finding that a contractor has failed to make good faith efforts to achieve the applicable EEO goals, the Tollway may exercise any appropriate sanction available to it under Section 14, including the revocation of the contract award to the contractor and any other remedy available to the Tollway under its contract with the contractor or by law.

13. ADMINISTRATIVE RECONSIDERATION:

The contractor may request administrative reconsideration of a Letter of Non-Compliance within the fifteen (15) business days after its receipt of the Letter by actual delivery of a reconsideration request to the Illinois State Toll Highway Authority, Contract Compliance Team, 2700 Ogden Avenue, Downers Grove, Illinois 60515-1703 or via email to E-mail address: contractcompliance@getipass.com. Deposit of the request in the United States mail on or before the fifth business day shall not be deemed delivery. The Letter of Non-Compliance shall become final if the contractor fails to submit a timely request for administrative reconsideration. A request may provide additional written documentation and/or argument concerning the issue of whether an adequate good faith effort was made to meet the contract goal.

The Tollway Chief of Contract Compliance or his/her designee will send the Contractor a written decision within fifteen (15) business days after receipt of the request for reconsideration, unless extended by the Tollway if a hearing is

requested, explaining the basis for finding that the contractor did or did not meet the EEO goals or demonstrate good faith efforts towards meeting those goals. A decision by the Chief of Contract Compliance that a good faith effort was made shall be deemed approval of the Corrective Action Plan submitted by the contractor. A final decision that a good faith effort was not made shall render the contractor in breach as non-compliant with its contract with the Tollway and may subject the contractor to sanctions under Section 14.

14. SANCTIONS:

The Contractor's failure to achieve the EEO goals or to demonstrate good faith efforts towards meeting those goals may subject the Contractor to administrative sanctions. These sanctions include, but are not limited to, monetary sanctions, including non-release of retainage, liquidated damages, deeming the contractor as non-responsible with respect to future business with the Tollway, and other reasonable sanctions as are permitted by law or equity. A contractor's repeated failure to meet its EEO obligations on Tollway contracts can be grounds for the Tollway to not award future contracts to the contractor.

In imposing sanctions, the Tollway will consider the bona fide efforts of the contractor to meet the EEO goals, its history of good faith efforts on other Tollway contracts, the size of the contract, the degree to which the contractor fell below the EEO goals, and other factors deemed relevant by the Tollway.

15. RECORDS RETENTION AND AUDIT

Refer to the audit clause of the contract.

16. INACCURATE OR FRAUDULENT REPORTING:

contractors and subcontractors have a duty to accurately report information pursuant to this Special Provision. A contractor or subcontractor who fails to supply accurate information may be subject to sanctions imposed by the Tollway under Section 14. A contractor or subcontractor who intentionally supplies inaccurate information may be subject to civil and/or criminal sanctions.

17. OTHER REGULATIONS:

The achievement of the EEO goals does not abrogate other responsibilities of the contractor to comply with equal employment opportunity requirements under federal or state law, municipal ordinance, prevailing government regulations or terms contained elsewhere in the contract.

EEO 1256 FORM INSTRUCTION

The 1256 Form must be submitted by the lowest apparent bidder on the 5th calendar day after bids are due or the bid will be deemed non-responsive.

#	Item	Instructions
1	Job titles	List the job classifications/titles that are needed to complete the scope of work- including the entire workforce for the prime and all subcontractors. This includes all diverse and non-diverse employee job classifications/titles.
2	Number of Hours required to complete job for each title?	List how many labor hours are needed to complete the scope of work for each classification/title.
3	Number of positions in the job title to complete the job?	List how many employees are needed to complete the scope of work for each job title.
4	Number currently employed in the job title?	List how many employees are currently employed at each job title/position.
5	Number from column 4, that are minorities?	List the number of minority hires from #4 your firm currently has for each position/job title.
6	Number from column 4, that are Female?	List the number of female hires from #4 your firm currently has for each position/job title
7	Number of positions needed to be hired? (column 3-4) Automatic Calculation?	Calculation of the difference between #3 and #4 above; or how many of the positions specified in #3 are currently open/vacant that the contractor will commit to.
8	How many apprentices will be hired for each job title?	List the number of apprentice hires your firm will commit to for each position. Note - apprentices are only bona fide apprentices currently in a training program certified by the U.S. Department of Labor, and hours credited towards the EEO Program are only those hours the apprentice was employed at the construction site.
9	How many Journeymen will be hired?	List the number of journeymen hires your firm will commit to for each position. Note - certified by the U.S. Department of Labor, and hours credited towards the EEO Program are only those hours the journeymen spends employed at the construction site.
10	How many trainees will be hired?	List the number of trainee hires your firm will commit to for each position. Hours credited towards the EEO Program are only those hours the journeymen spends employed at the construction site.
11	How many minority hires and hours for each position/hire?	Number of minority workers that will be hired for each position, and the number of minority hours that your firm will commit to, to meet the minority goal. The number of hires should not be more than column #7 for each position/title.
12	How many female hires and hours for each position/hire?	Number of female workers that will be hired for each position, and the number of female hours that will be committed to meet the female goal. The number of hires should not be more than column #7 for each position/title.
13	Anticipated hire dates for each position/titles?	List the anticipated hiring date for the minorities, women, apprentices and journeymen hires for each position/title committed to.

STATE OF ILLINOIS

**SPECIAL PROVISION - VETERAN SMALL BUSINESS
PARTICIPATION AND UTILIZATION PLAN - CONSTRUCTION
For State Agency/State University Use Only**

It is the goal of the State to promote and encourage the continued economic development of small businesses owned and controlled by qualified veterans and that qualified service-disabled veteran-owned small businesses (SDVOSB) and veteran-owned small businesses (VOSB) participate in the State's procurement process as both prime contractors and subcontractors. 30 ILCS 500/45-57.

Contract Goal to be Achieved by Vendor: This solicitation includes a specific **Veteran Small Business** participation goal of **%** based on the availability of CMS certified veteran-owned and service-disabled veteran-owned small business (VOSB/SDVOSB) vendors to perform or provide the anticipated services and/or supplies required by this solicitation.

The Veteran Small Business participation goal is applicable to all bids or offers. In addition to the other award criteria established for this solicitation, the Agency will award this contract to a Vendor that meets the goal or makes good faith efforts to meet the goal. This goal is also applicable to change orders and allowances within the scope of work provided by the certified VOSB/SDVOSB vendor. If Vendor is a CMS certified VOSB/SDVOSB vendor, the entire goal is met and no subcontracting with a CMS certified VOSB/SDVOSB vendor is required; however, **Vendor must submit a Utilization Plan indicating that the goal will be met by self-performance.**

The VOSB goal is separate and distinct from the DBE goal. A single firm may not be utilized to achieve credit toward both DBE and VOSB goals on a single project except when the firm is bidding the contract as the Prime Vendor, is certified as both a DBE and VOSB and will commit to meeting the two goals by self-performing the same or greater percentage of work under the contract as the DBE and VOSB goals added together.

Following are guidelines for Vendor's completion of the Utilization Plan. **Please read the guidelines carefully.**

- Utilization Plan (Form 2026) is due with bid
- Good Faith Efforts (Form 2023) is due with bid, if applicable
- Participation Statement (Form 2025) for each Veteran firm listed on the Form 2026 should be submitted from the lowest apparent bidder on the fifth (5th) calendar day after bids are due or the bid will be deemed non-responsive. In no case should a contractor remove, replace, or reduce the commitment to a Veteran firm listed in the initial Utilization Plan Form 2026 without prior written consent of ISTHA. Under no circumstances is the Bidder allowed to change the amount of the core bid submitted or any other documentation unrelated to this special provision.

Vendor should include any additional information that will add clarity to Vendor's proposed utilization of certified Veteran Small Business vendors to meet the targeted goal. The Utilization Plan must demonstrate that Vendor has either: (1) met the entire contract goal; (2) made good faith efforts towards meeting the entire goal; or (3) made good faith efforts towards meeting a portion of the goal. Any submission of good faith efforts by Vendor shall be considered as a request for a full or partial waiver.

At the time of bid or offer, Vendor, or Vendor's proposed Subcontractor, must be certified with CMS as a VOSB or SDVOSB. Failure to complete a Utilization Plan or provide Good Faith Effort documentation shall render the bid or offer non-responsive or not responsible.

1. If applicable where there is more than one prime vendor, the Utilization Plan should include an executed Joint Venture Agreement specifying the terms and conditions of the relationship between the parties and their relationship and responsibilities to the contract. The Joint Venture Agreement must clearly evidence that the certified VOSB/SDVOSB vendor will be responsible for a clearly defined portion of the work and that its responsibilities, risks, profits and contributions of capital, and personnel are proportionate to its ownership

percentage. It must include specific details related to the parties' contributions of capital, personnel, and equipment and share of the costs of insurance and other items; the scopes to be performed by the certified VOSB/SDVOSB vendor under its supervision; and the commitment of management, supervisory personnel, and operative personnel employed by the certified VOSB/SDVOSB vendor to be dedicated to the performance of the contract. Established Joint Venture Agreements will only be credited toward Veteran Small Business goal achievements for specific work performed by the certified VOSB/SDVOSB vendor. **Each party to the Joint Venture Agreement must execute the bid or offer prior to submission of the bid or offer to the Agency.**

2. An agreement between a vendor and a certified VOSB/SDVOSB vendor in which a certified VOSB/SDVOSB vendor promises not to provide subcontracting or pricing quotations to other vendors is prohibited. The Agency may request additional information to demonstrate compliance. Vendor agrees to cooperate promptly with the Agency in submitting to interviews, allowing entry to places of business, providing further documentation, and to soliciting the cooperation of a proposed certified VOSB/SDVOSB vendor. Failure to cooperate by Vendor and certified VOSB/SDVOSB vendor may render the Bidder or offeror non-responsive or not responsible. **The contract will not be finally awarded to Vendor unless Vendor's Utilization Plan is approved.**
3. **Veteran Small Business Certified Vendor Locator References:** Vendors may consult CMS' Veteran Small Business Vendor Directory at www.sell2.illinois.gov/cms/business, as well as the directories of other certifying agencies, but firms **must be certified with CMS as VOSB/SDVOSB vendors at the time of bid/offer.**
4. **Vendor Assurance:** Vendor shall not discriminate on the basis of race, color, national origin, sexual orientation or sex in the performance of this contract. Failure by Vendor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Agency deems appropriate. This assurance must be included in each subcontract that Vendor signs with a subcontractor or supplier.
5. **Calculating Certified VOSB/SDVOSB Vendor Participation:** The Utilization Plan documents work anticipated to be performed, or goods/equipment provided by all certified VOSB/SDVOSB vendors and paid for upon satisfactory completion/delivery. Only the value of payments made for the work actually performed by certified VOSB/SDVOSB vendors is counted toward the contract goal. Applicable guidelines for counting payments attributable to contract goals are summarized below:
 - 5.1 The participation of VOSBs will be calculated on the amount of the Core Work, not Contingency Work identified in the bid documents. The contractor's VOSB commitment will be assessed for any and all Extra Work Orders (EWO) and Change Orders (CO) at the time such orders are issued.
 - 5.1.1 *Contingency Work* is the anticipated work within the scope of the project which is included in the project to cover the work of such an uncertain nature that the location or quantity could not be identified prior to awarding the contract.
 - 5.1.2 *Core Work* is the anticipated work within the scope of the project which is included in the project to cover the work of such a nature that the location and estimated quantity could be identified prior to awarding the contract.
 - 5.2. The value of the work actually performed or goods/equipment provided by the certified VOSB/SDVOSB vendor shall be counted towards the goal. The entire amount of that portion of the contract that is performed by the certified VOSB/SDVOSB vendor, including supplies purchased or equipment leased by the certified VOSB/SDVOSB vendor shall be counted, except supplies purchased and equipment rented from the Prime Vendor submitting this bid or offer.
 - 5.3. A vendor shall count the portion of the total dollar value of the Veteran Small Business contract equal to the distinct, clearly defined portion of the work of the contract that the certified VOSB/SDVOSB vendor performs toward the goal. A vendor shall also count the dollar value of work subcontracted to other certified VOSB/SDVOSB vendor. Work performed by the non-certified VOSB/SDVOSB party shall not be counted toward the goal. **Work that a certified VOSB/SDVOSB vendor subcontracts to a non-certified**

VOSB/SDVOSB vendor will not count towards the goal.

- 5.4.** A Vendor shall count toward the goal 100% of its expenditures for materials and supplies required under the contract and obtained from a certified VOSB/SDVOSB manufacturer; 60% of the cost of the materials or supplies required under the contract and obtained from a certified VOSB/SDVOSB regular dealer or supplier shall count toward the VOSB/SDVOSB goal. A Vendor shall count toward the goal the following expenditures to certified VOSB/SDVOSB vendors that are not manufacturers, regular dealers, or suppliers:
- 5.4.1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - 5.4.2. The fees charged for delivery of materials and supplies required by the contract (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer or a supplier of the materials and supplies being procured, provided that the fee is determined by the Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services. The certified VOSB/SDVOSB vendor's trucking firm must be responsible for the management and supervision of the entire trucking operation for which it is responsible on the contract, and must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
 - 5.4.3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 5.5.** Certified VOSB/SDVOSB vendors who are performing on contract as second tier subcontractors may be counted in meeting the established Veteran Small Business goal for this contract as long as the Prime Vendor can provide documentation indicating the utilization of these vendors.
- 5.6.** A Vendor shall count towards the goal only expenditures to firms that perform a commercially useful function in the work of the contract.
- 5.6.1. A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The certified VOSB/SDVOSB vendor must also be responsible, with respect to materials or supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials or supplies, and installing the materials (where applicable) and paying for the material or supplies. To determine whether a firm is performing a commercially useful function, the Agency shall evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the credit claimed for its performance of the work, industry practices, and other relevant factors.
 - 5.6.2. A certified VOSB/SDVOSB vendor does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed through in order to obtain certified VOSB/SDVOSB vendor participation. In determining whether a certified VOSB/SDVOSB vendor is such an extra participant, the Agency shall examine similar transactions, particularly those in which certified VOSB/SDVOSB vendors do not participate, and industry practices.
- 5.7.** A Vendor shall not count towards the goal expenditures that are not direct, necessary and related to the work of the contract. Only the amount of services or goods that are directly attributable to the performance

of the contract shall be counted. Ineligible expenditures include general office overhead or other Vendor support activities.

6. Good Faith Effort Procedures: Vendor must submit a Utilization Plan (VOSB Form 2026) and Participation Statement(s)(VOSB Form 2025) that meet or exceed the published goal. If Vendor cannot meet the stated goal,

Vendor must document and explain via VOSB Form 2023 the good faith efforts it undertook to meet the goal. Utilization Plan, Participation Statement(s) and Good Faith Effort are due at the time of bid or offer submission. **Vendors will not be permitted to correct goal deficiencies after bid or offer due dates.** CMS or the State Agency, as its delegate, will consider the quality, quantity, and intensity of Vendor's efforts.

The Utilization Plan contains a checklist of actions that CMS or the State Agency, as its delegate, will consider as evidence of Vendor's good faith efforts to meet the goal. Other factors or efforts brought to the attention of CMS or the State Agency, as its delegate, may be relevant in appropriate cases.

6.1. In evaluating Vendor's good faith efforts, CMS or the State Agency, as its delegate, may consider whether the ability of other Bidders or offerors to meet the contract goal suggests that good faith efforts could have resulted in Vendor meeting the goal.

6.2 If CMS or the State Agency, as its delegate, determines that Vendor has made good faith efforts to meet the goal, the Agency may award the contract provided that Vendor is otherwise eligible for award.

6.3. If CMS or the State Agency, as its delegate, determines that good faith efforts have not been met, the bid or offer may be determined to be non-responsible by the Chief Procurement Office.

7. Contract Compliance: Compliance with this section is an essential part of the contract. The following administrative procedures and remedies govern Vendor's compliance with the contractual obligations established by the Utilization Plan. After approval of the Plan and award of the contract, the Utilization Plan becomes part of the contract. If Vendor did not succeed in obtaining certified VOSB/SDVOSB vendor participation to achieve the goal and the Utilization Plan was approved and contract awarded based upon a determination of good faith, the total dollar value of certified VOSB/SDVOSB vendor work calculated in the approved Utilization Plan as a percentage of the awarded contract value shall become the contract goal.

7.1. The Utilization Plan may not be amended after contract execution without the Agency's prior written approval.

7.2. Vendor may not make changes to its contractual certified VOSB/SDVOSB vendor commitments or substitute certified VOSB/SDVOSB vendors without the prior written approval of the Agency. Unauthorized changes or substitutions, including performing the work designated for a certified VOSB/SDVOSB vendor with Vendor's own forces, shall be a violation of the utilization plan and a breach of the contract, and shall be cause to terminate the contract, and/or seek other contract remedies or sanctions. The facts supporting the request for changes must not have been known nor reasonably should have been known by the parties prior to entering into the subcontract. Vendor must negotiate with the certified VOSB/SDVOSB vendor to resolve the problem. Where there has been a mistake or disagreement about the scope of work or goods/equipment, provided the certified VOSB/SDVOSB vendor can be substituted only where agreement cannot be reached for a reasonable price or schedule for the correct scope of work, goods or equipment.

7.3. Substitutions of a certified VOSB/SDVOSB vendor may be permitted under the following circumstances:

7.3.1. Unavailability after receipt of reasonable notice to proceed;

7.3.2. Failure of performance;

7.3.3. Financial incapacity;

7.3.4. Refusal by the certified VOSB/SDVOSB vendor to honor the bid or bid price or scope;

7.3.5. Material mistake of fact or law about the elements of the scope of work of a solicitation where a

- reasonable price cannot be agreed;
- 7.3.6. Failure of the certified VOSB/SDVOSB vendor to meet insurance, licensing or bonding requirements;
- 7.3.7. The certified VOSB/SDVOSB vendor's withdrawal of its bid or offer; or
- 7.3.8. Decertification of the certified VOSB/SDVOSB vendor.
- 7.4.** If it becomes necessary to substitute a certified VOSB/SDVOSB vendor or otherwise change the Utilization Plan, Vendor must notify the Agency in writing of the request to substitute a certified VOSB/SDVOSB vendor or otherwise change the Utilization Plan to contractcompliance@getipass.com to request for approval. The request must state specific reasons for the substitution or change. The Agency will approve or deny a request for substitution or other change in the Utilization Plan within five (5) business days of receipt of the request.
- 7.5.** Where Vendor has established the basis for the substitution to the Agency's satisfaction, it must make good faith efforts to meet the contract goal by substituting a certified VOSB/SDVOSB vendor. Documentation of a replacement certified VOSB/SDVOSB vendor, or of good faith efforts to replace the certified VOSB/SDVOSB vendor, must meet the requirements of the initial Utilization Plan. If the goal cannot be reached and good faith efforts have been made, Vendor may substitute with a non-certified VOSB/SDVOSB vendor or Vendor may perform the work.
- 7.6.** If a Vendor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Utilization Plan, Vendor must obtain the approval of the Agency to modify the Utilization Plan and must make good faith efforts to ensure that certified VOSB/SDVOSB vendors have a fair opportunity to submit a bid or offer on the new scope of work.
- 7.7.** A new certified VOSB/SDVOSB vendor agreement must be executed and submitted to the Agency within five (5) business days of Vendor's receipt of the Agency's approval for the substitution or other change.
- 7.8.** Veteran payment reporting, in such form or format as specified by the Tollway, must be submitted as specified in the Contract Compliance Payment Reporting Instructions posted on the Tollway's website.

After the performance of the final item of work or delivery of material by a VOSB/SDVOSB and final payment to the VOSB/SDVOSB by the contractor, but not later than thirty (30) calendar days after payment has been made by ISTHA to the contractor for such work or material, the contractor shall submit a VOSB/SDVOSB partial and final waivers of lien via B2GNow, or such other form or format as specified by the Tollway, to the Construction Manager. If full and final payment has not been made to the VOSB/SDVOSB, the Report shall indicate whether a disagreement concerning the final payment exists between the contractor and the VOSB/SDVOSB or if the contractor believes that the VOSB/SDVOSB's work has not been satisfactorily completed.

All active Tollway vendors/contractors/consultants will be required to use B2GNow. Both diverse and non-diverse subcontractor payments must be reported and confirmed monthly in the system at <https://iltollway.diversitysoftware.com/>.

Vendor shall maintain a record of all relevant data with respect to the utilization of certified VOSB/SDVOSB vendors, including but without limitation, payroll records, invoices, canceled checks and books of account for a period of at least five years after the completion of the contract. Full access to these records shall be granted by Vendor in a timely fashion upon written demand by the Agency to any duly authorized representative thereof, or to any municipal, state or federal authorities. The Agency shall have the right to obtain from Vendor any additional data reasonably related or necessary to verify any representations by Vendor. After the performance of the final item of work or delivery of material by the certified VOSB/SDVOSB vendor and final payment to the certified VOSB/SDVOSB vendor by Vendor, but not later than thirty (30) calendar days after such payment, Vendor shall submit a statement confirming the final payment and the total payments made to the certified VOSB/SDVOSB vendor under the contract.

- 7.9.** The Agency will periodically review Vendor's compliance with these provisions and the terms of its contract. Without limitation, Vendor's failure to comply with these provisions or its contractual commitments as contained in the Utilization Plan, failure to cooperate in providing information regarding its compliance with these provisions or its Utilization Plan, or provision of false or misleading information or statements concerning compliance, certification status or eligibility of the certified VOSB/SDVOSB vendor, good faith efforts or any other material fact or representation shall constitute a material breach of this contract and entitle the Agency to declare a default, terminate the contract, or exercise those remedies provided for in the contract or at law or in equity.
- 7.10.** The Agency reserves the right to withhold payment to Vendor to enforce these provisions and Vendor's contractual commitments. Final payment shall not be made pursuant to the contract until Vendor submits sufficient documentation demonstrating compliance with its Utilization Plan.



Illinois State Toll Highway Authority "ISTHA"

VOSB FORM 2025 - VOSB PARTICIPATION STATEMENT FORM, PART 2

CONTRACT #		VOSB FIRM NAME:		CIRCLE ALL THAT APPLY	VOSB	SDVOSB
CHECK ALL THAT APPLY:	PRIME _____	JV PARTNER _____	SUBCONTRACTOR _____	TRUCKER _____	SUPPLIER _____	MANUFACTURER _____
IF TRUCKER, CHECK ALL THAT APPLY:	_____ Transportation of materials or equipment to or from a Public Works job site		_____ Transportation of materials or equipment by the sellers or suppliers			
SUBCONTRACTOR:	TIER 1 (SUB TO PRIME):	Y N	TIER 2 OR BELOW:	Y N	UNDER CONTRACT TO:	
Will the VOSB subcontract a portion of its contract to one or more subcontractors?	Y	N	_____ Total amount of the VOSB subcontract that will be subcontracted to non VOSB companies		_____ Total amount of the VOSB subcontract that will be subcontracted to VOSB companies	

This form must be completed for EACH veteran-owned business participating in the VOSB Utilization Plan. This form is due to the Tollway from the lowest apparent bidder on the fifth (5th) calendar day after bids are due or the bid will be deemed non-responsive to contractcompliance@getipass.com. If additional space is needed, complete an additional form(s) for the firm or attach a detailed information on the VOSB firm company letterhead.

PAY ITEM NO. *	DESCRIPTION: Specific description of overall work to be performed. Indicate whether furnish only, or both furnish and install	QUANTITY	UNIT PRICE	TOTAL CONTRACT AMOUNT (\$)	CHECK IF SUPPLIER	TOTAL VOSB CREDIT AMOUNT (\$) (reduce to 60% of contract amount if firm is a SUPPLIER)
TOTALS FOR THIS VOSB FIRM:						

*Contingency Work must not be included under Pay Items and will not be approved toward VOSB goal participation until such time as those Pay Items have been confirmed as required work of the contract. Direct Allowance items, including but not limited to Mobilization Item #JS671010, will not be approved within the VOSB Utilization Plan. NOTE that these items are not included in the determination of the VOSB Goal percentage.

1. PARTIAL PAY ITEMS: For any of the above ITEMS that are partial pay items, specifically describe the work and subcontract dollar amount.

2. SUBCONTRACTING: If any of the VOSB scope of work will be subcontracted, provide the name of the contractor and attach a brief explanation, description and pay item number of the work that will be subcontracted. VOSB credit will not be given for work subcontracted to Non-VOSB contractors, except for as allowed in the Special Provision for Veteran Small Business.

3. COMMITMENT: The undersigned certify that the information herein is true and correct, and that the VOSB listed below has agreed to perform a commercially-useful function in the work of the contract item(s) listed above and to execute a contract to that effect with the Prime Contractor. The undersigned further understand that NO CHANGES to the type or scope of work performed by the VOSB may be made without PRIOR WRITTEN APPROVAL and that complete and accurate information regarding actual work performed by the VOSB on this contract and the payment thereto must be provided to ISTHA's Contract Compliance. **The Prime Contractor will not assign any of the contract items listed above to a firm other than the VOSB identified below without ISTHA's prior written approval. The Prime Contractor must request, in writing, approval by ISTHA's Contract Compliance of any proposed amendment to the type or scope of work to be performed by the VOSB no later than three business days from the date the Prime Contractor becomes aware of the circumstances supporting the request. Failure to receive written approval prior to a change in type or scope is a violation of the STATE OF ILLINOIS VETERAN SMALL BUSINESS PARTICIPATION AND UTILIZATION PLAN and can subject the contractor to contract sanctions.**

Signature for Prime Contractor _____ Title _____ Date _____

Contact: _____

Firm Name: _____

E-mail: _____

Phone: _____

Address: _____

Signature for VOSB Contractor _____ Title _____ Date _____

Contact: _____

Firm Name: _____

E-mail: _____

Phone: _____

Address: _____



VOSB FORM 2023

Demonstration of Good Faith Efforts to Achieve VOSB Construction Subcontracting Goal

If the VOSB contract goal was not achieved, the Good Faith Efforts checklist and contacts log must be submitted with the bid. Failure to do so may render the Bidder's solicitation response non-responsive and cause it to be rejected, or render the Bidder ineligible for contract award, at ISTHA's sole discretion. **The Bidder must provide all evidence relied upon in support of its Good Faith Efforts with its bid.**

Good Faith Efforts Checklist

Insert on each line below the initials of the authorized Bidder representative who is certifying the Bidder has completed the activities described below. If any of the items were not completed, attach a detailed written explanation. If any other efforts were made to obtain VOSB/SDVOSB participation in addition to the items listed below, attach a detailed written explanation.

_____ Utilize the Sell2Illinois website to identify certified VOSB/SDVOSB vendors within the respective commodity/service codes and at a minimum email all listed vendors and solicit quotes from all vendors who express an interest via follow-up emails or telephone calls.

- <https://www2.illinois.gov/cms/business/sell2/Pages/VendorSearch.aspx>

_____ Identified portions of the contract work capable of performance by available VOSBs/SDVOSBs, including, where appropriate, breaking out contract work items into economically feasible units to facilitate VOSB/SDVOSB participation even when the Bidder could perform those scopes with its own forces.

_____ Make a portion of the work available to certified VOSB/SDVOSB vendors and selecting those portions of the work or material needs consistent with their availability, so as to facilitate certified VOSB/SDVOSB vendor participation.

_____ Solicited through reasonable and available means (e.g., pre-bid meetings, networking session, written notices, advertisements) VOSBs/SDVOSBs to perform the types of work that could be subcontracted on this project, within sufficient time to allow them to respond. Vendor must determine with certainty if the certified VOSB/SDVOSB vendors are interested by taking appropriate steps to follow up initial solicitations and encourage them to submit a bid.

_____ Provided timely and adequate information about the plans, specifications and requirements of the contract. Followed up initial solicitations to answer questions and encourage VOSBs/SDVOSBs to submit bids.

_____ Negotiated in good faith with interested VOSBs/SDVOSBs that submitted bids and thoroughly investigated their capabilities. Evidence of such negotiation must include the names, addresses, email addresses, and telephone numbers of certified VOSB/SDVOSB vendors that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting and evidence as to why additional agreements could not be reached for certified VOSB/SDVOSB vendors to perform the work. A Vendor using good business judgment may consider a number of factors in negotiating with certified VOSB/SDVOSB vendors and may take a firm's price and capabilities into consideration. The fact that there may be some additional costs involved in finding and using certified VOSB/SDVOSB vendors may not be in itself sufficient reason for a Vendor's failure to meet the goal, as long as such costs are reasonable. Vendors are not required to accept higher quotes from certified VOSB/SDVOSB vendors if the price difference is excessive or unreasonable. The certified VOSB/SDVOSB vendor's memberships in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids in Vendor's efforts to meet the goal.



VOSB FORM 2023 page 2

_____ Made efforts to assist interested VOSBs/SDVOSBs in obtaining bonding, lines of credit, or insurance as may be required for performance of the contract (if applicable).

_____ Made efforts to assist interested certified VOSB/SDVOSB vendors in obtaining necessary equipment, supplies, materials, or related assistance or services.

_____ Utilized resources available to identify available VOSBs/SDVOSBs, including but not limited to VOSB/SDVOSB assistance groups; local, state and federal business assistance offices; and other organizations that provide assistance in the recruitment and placement of VOSBs/SDVOSBs.

Affidavit of Truthfulness: Signature below affirms accuracy of Good Faith Efforts and Tollway to provide above information

Print Name: _____ Phone contact: _____

Position: _____ E-mail address: _____

Signature: _____ Date: _____



VOSB FORM 2023

Good Faith Efforts Contacts Log for Soliciting - VOSB Participation: Form 2023 continued

Project name: _____ Project number: _____

Bidder name: _____ Contact person: _____

Use this form to document all contacts and responses (telephone, e-mail, fax, etc.) regarding the solicitation of VOSBs/SDVOSBs. Duplicate as needed. **The Bidder must provide all evidence relied upon in support of its Good Faith Efforts with its bid.**

Name of VOSB/SDVOSB	Date and method of contact	Scope of work solicited	Reason agreement was not reached

Affidavit of Truthfulness: Signature below affirms accuracy of Good Faith Efforts and Tollway to provide above information

Print Name: _____

Phone contact: _____

Position: _____

E-mail address: _____

Signature: _____

Date: _____

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

SPECIAL PROVISION

FOR

BID CREDIT INCENTIVE PROGRAMS

1. OBJECTIVE OF THE BID CREDIT INCENTIVE PROGRAM

The Tollway offers programs allowing a contractor or subcontractor/fabricator to earn Bid Credits to be used toward future Tollway construction bids. A Bidder can then apply its Bid Credits to a maximum Bid Credit CAP assigned by the Tollway to each contract in order to lower their bid amount and increase the chances of winning the contract as the low bidder.

Use of Bid Credits from the Bid Credit Incentive Programs is applicable only to construction projects advertised by the Tollway for public bidding.

Current Tollway Bid Credit Programs are:

- ConstructionWorks (CW) Program: encouraging contractors to employ and retain qualified and eligible CW individuals enrolled in the CW Program, including African Americans, Asians, Hispanic, Ex-offenders, exonerated individuals, Females, Veterans and other traditionally underserved populations.
- Earned Credit Program (ECP): encouraging contractors to employ and retain qualified and eligible Workforce Innovation and Opportunity Act eligible individuals, including African Americans, Asians, Hispanic, Ex-offenders, exonerated individuals, Females, Veterans and other traditionally underserved populations.
- Partnering for Growth – Construction (P4G-Con): encouraging contractors to mentor a Disadvantaged Business Enterprise or Veteran-owned Small Business protégé firm.

For more information, reference the Operational Guide for each program on the Tollway's website, <https://www.illinoistollway.com/doing-business/diversity-overview>

2. DEFINITIONS

Active Bid Credit Certificate Register: Listing of all active Bid Credit Certificates for all Bid Credit programs indicating certificate number, value, owner and issue date.

Active Bid Credits: Bid Credits available for submission and utilization on a construction bid.

Award Criteria: Contractor's Base Bid minus Bid Credit submitted subject to the Bid Credit Cap identified for each solicitation.

Base Bid: The bid amount prior to applying Bid Credits Submitted.

Bid Credit: Virtual dollar credits earned through a Tollway BID CREDIT Program.

Bid Credit Allocation: When Bid Credits Submitted by a prime contractor and subcontractor/fabricator are applied proportionally to the total of all the Bid Credits originally submitted with the bid.

Bid Credit Cap: A contract-specific limit as determined by an approved Tollway formula on the amount of Active Bid Credits that can be applied as Bid Credits. Any Bid Credits Submitted above and beyond the Bid Credit Cap will not be considered.

BID CREDIT CERTIFICATE: A numbered document that identifies certificate number, value, owner and issue date.

BID CREDITS SUBMITTED: BID CREDITS included in a construction bid as evidenced by a Bid Credit Certificate. The total amount of the certificate(s) will be considered as tendered unless otherwise indicated on the physical certificate.

BID CREDITS UTILIZED: The amount of BID CREDITS required to establish the apparent low Bidder based on the difference between the award criteria of the lowest Bidder and the next apparent low Bidder plus \$1.00 of BID CREDIT.

INACTIVE BID CREDITS: Bid Credit not available for submission due to utilization on a construction bid or superseded by current ACTIVE BID CREDITS.

TOLLWAY: The Illinois State Toll Highway Authority.

3. EARNING BID CREDITS

Refer to the Operational Guides for active TOLLWAY Bid Credit Programs as posted on the TOLLWAY's website,

<https://www.illinoistollway.com/doing-business/diversity-development/programs/ecp>

4. BIDDING PROCEDURES

All bids must comply with the applicable procurement statutes, rules and regulations and the specific requirements of each solicitation to be considered responsive. Bids that fail to meet these minimum requirements may be considered non-responsive.

4.1 Each bid solicitation will have a contract-specific total Bid Credit Cap as determined by the approved Tollway formula on the amount of Bid Credit that can be applied.

4.2 Any credits applied above and beyond the Bid Credit Cap will not be considered.

4.3 If needed, contractors can check the appropriate ACTIVE Bid Credit Certificate REGISTER on the TOLLWAY's website to ensure Bid Credit Certificate SUBMITTED are active.

4.4 The Bid Credit Cap may be met by Bid Credits:

4.4.1 Earned from one Bid Credit program or from a combination of Bid Credit programs, as Bid Credit Certificates are now issued as one certificate covering all Bid Credit programs

4.4.2 Offered for submission by joint venture partners independently, and/or by subcontractors/fabricators independently, as per Section 5 below. If Bid Credits from different firms are submitted on the same bid, the Bid Credits are applied via Bid Credit Allocation as defined above proportionally to the amounts originally submitted on the bid.

4.5 Entering Bid Credits on the bid forms:

- The BASE BID is to be clearly identified on line #1 of the P page;
- Line #2 is to include the total amount of Bid Credit applied to the bid;
- Line #3 is to include the AWARD CRITERIA (Line #1 minus Line #2 equals Line #3).

- 4.6 All Bid Credit Certificates submitted to calculate the Bid Credit included on Line #2 must be included in the original bid package.
- 4.7 All Bid Credit UTILIZED to become or remain the successful Bidder will become unavailable for inclusion in any other bid at the time the Bidder's AWARD CRITERIA is deemed the lowest responsive and responsible bid.
- 4.8 The Bid Credit Certificate (s) will be redeemed up to the amount needed plus \$1 to allow the contractor's bid to be the lowest apparent bid for award of the contract and any unused remaining balance will be returned in the form of a Bid Credit Certificate (s) to the contractor, or subcontractor/fabricator if applicable.

5. JOINT VENTURE AND SUBCONTRACTOR/FABRICATOR PARTICIPATION

- 5.1 Joint Venture partners who own Bid Credits may independently submit Bid Credits toward the joint venture bid subject to the overall Bid Credit Cap.
- 5.2 Subcontractors/fabricators who own Bid Credits may provide those Bid Credits to prime contractors to be applied by prime contractors in a bid solicitation, provided the prime contractor has committed to utilizing the subcontractor/fabricator in the performance of the contract unless such use is prohibited for reasons beyond the prime contractor's control.
- 5.3 In the event that a subcontractor/fabricator becomes disqualified from contract participation by no fault of the prime, (i.e. delinquent debt, etc.) the actual Active Bid Credits Utilized by the disqualified subcontractor/fabricator that factored into the apparent winning bid will not be refunded to the subcontractor's Bid Credit Certificate balance.
- 5.4 For subcontractor/fabricator Bid Credit to be considered for utilization on a bid by a prime contractor:
 - 5.4.1 The prime contractor must include Bid Credit owned by the prime Bidder along with the BID CREDIT from the subcontractor/fabricator for application to the bid.
 - 5.4.2 The amount of Bid Credits Submitted by the prime contractor shall be no less than the lowest dollar amount submitted by any subcontractor/fabricator application to the bid.
 - 5.4.2.1 An allowance may be made in cases where the prime contractor's total Bid Credits owned are less than those of the subcontractor/fabricator.
 - In no case can the prime offer less than \$1,000 in Bid Credits.
 - In instances where the prime has Bid Credits, but the total amount of the prime's Bid Credits is less than any subcontractor's Bid Credits offered with a bid, the prime's Bid Credits will be utilized and exhausted before a subcontractor's Bid Credits will be applied to the bid.
 - 5.4.2.2 Failure to meet this standard will result in the Bid Credits Submitted not being considered.
 - 5.4.3 The prime contractor is required to perform the following:
 - Ensure that the subcontractor is aware of and has provided permission to the Bidder as indicated on the Bid Credit Certificate to use the Bid Credit Certificate in the bid solicitation;
 - Identify the scope of work and dollar amount committed to each subcontractor/fabricator where a Bid Credit Certificate is being calculated in the Bid Credit;

- Ensure that the Bid Credit Certificate is in active mode, which can be done through checking the Active Bid Credit Certificate Register on the Tollway's website (www.illinoistollway.com and click on "Doing Business") prior to submitting a Bid Credit Bid Credit Certificate in a Tollway bid solicitation;

5.4.4 Ensure that the total amount of Bid Credit Certificates does not exceed the contract-specific total Bid Credit Cap. In the event of a successful bid, excess credits shall be returned via Bid Credit Allocation in proportion to what was originally submitted by the prime(s) and subcontractor/fabricator(s).

5.4.5 Insert a copy of this Tollway Special Provision for Bid Credit incentive programs in each and every subcontract or joint venture agreement under this contract and it shall become a material term of the subcontracts.

5.5 Bid Credits Submitted by the prime contractor, joint venture partner(s) and/or subcontractor/fabricator(s) are applied via Bid Credit Allocation, proportionally to the amounts originally submitted on the bid.

6. LONGEVITY OF BID CREDIT CERTIFICATES

6.1 Unused Bid Credits do not expire.

6.2 Bid Credits will become Inactive Bid Credits once utilized in a successful bid.

6.3 Should the same Bid Credit Certificate be submitted in multiple bids on the same date:

- Where multiple solicitations have the same bid opening date, the Tollway will typically open bids in numerical order with the lowest project number per the last four digits of the contract being opened first.
- The first bid opened containing the Bid Credit Certificate will be considered for bid.
- All other bids containing a duplicate Bid Credit Certificate will be placed in a suspended mode until the award recommendation of the prior bid(s) has been issued.
- Until such time of award recommendation, all duplicate Bid Credit Certificates will be Inactivated as applicable and the remaining Bid Credit(s) and Award Criteria will be recalculated for subsequent bids.

As an example: Bid 01 (RR-XX-1234) included Bid Credit Certificate A for \$100, Bid 02 (RR-XX-5678) also included Bid Credit Certificate A for \$100. Bid 01 utilized \$50 of Bid Credit Certificate A. Upon award recommendation of Bid 01, Bid Credit Certificate A has \$50 remaining available for consideration in Bid 02.

6.4 As stated in Section 4.8 above, the Bid Credit Certificate (s) will be redeemed up to the amount needed plus \$1 to allow the contractor's bid to be the lowest apparent bid for award of the contract and any unused remaining balance will be returned in the form of a revised Bid Credit Certificate (s) to the contractor or subcontractor/fabricator if applicable.

7. FRAUDULENT USE OF BID CREDIT CERTIFICATES

Any contractor who knowingly submits an Inactive Bid Credits shall be permanently barred from participating in any Tollway Bid Credit program.

Any contractor who submits a subcontractor/fabricator's Bid Credit Certificate without the permission of the subcontractor/fabricator and/or without committing to utilizing the subcontractor/fabricator by scope of service and dollar value of commitment in the bid shall be permanently barred from participating in any Tollway Bid Credit program.

The Tollway may report such reporting abuses to the Office of the Inspector General and applicable law enforcement authorities.



Date: _____ **Project Number:** _____

Project Name: _____

**DELINQUENT DEBT REVIEW
CONTRACTOR/
CONSULTANT**

Sub-Contractor/Consultant Disclosure.

Will you be using any sub-consultants/contractors? Yes No

If yes, you must identify below, to the extent the information is known, regardless of the subcontract value, the names, addresses and type of work all sub-contractors/consultants that will be utilized in the performance of this contract, together with the anticipated dollar value (sub-contractors) or percentage (sub-consultants) each is expected to receive pursuant to this contract. The list of sub-contractors/consultants should include but not be limited to sub-contractors/consultants, suppliers and truckers proposed to achieve disadvantaged business enterprise and veteran owned business goals. The State may request updated information at any time. For purposes of this section sub-contractors/consultants are those specifically hired to perform part of the work of this contract. Non-DBE suppliers and truckers do not need to be included.

Upon request, our firm agrees to provide a copy of the subcontract, if required, within fifteen (15) days after execution of the contract if selected, or after execution of the subcontract, whichever is later, for those subcontracts with an annual value of more than \$50,000. All subcontracts over \$50,000 must include the same certifications that the Vendor must make as a condition of the contract. The vendor shall include in each subcontract the subcontractor certifications as shown on the Standard Subcontractor Certification form available from the State.

Delinquent Payment. The contractor/consultant certifies that it, or any affiliate, is not barred from being awarded a contract under 30 ILCS 500. Section 50-11 prohibits a person from entering into a contract with a State agency if it knows or should know that it, or any affiliate, is delinquent in the payment of any debt to the State as defined by the Debt Collection Board. Section 50-12 prohibits a person from entering into a contract with the State agency if it, or any affiliate, has failed to collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act. The contractor/consultant further acknowledges that the contracting State agency may declare the contract void if this certification is false or if the contractor/consultant or any affiliate is determined to be delinquent in the payment of any debt to the State during the term of the contract.

Contractor/Consultant: _____

Federal Employment Identification Number (FEIN): _____

E-Mail: _____

Include an attachment if more space is needed to provide the below information. The attachment must provide the requested information.

NOTE for Construction Contracts: List all known subcontractors including those identified in the Bid Package on DBE Form 2026 and VOSB Form 2026, and include any name listed in the "Under Contract To" section of these forms.

<u>Sub-Contractor(s)/Consultant(s)</u>	<u>Sub-Contractor/Consultant FEIN</u>	<u>Address</u>	<u>General Type of Work</u>	<u>Anticipated Amount of Contract to be Paid (to extent known) Sub-Contractor (dollar value) or Sub-Consultant (percentage)</u>

Signature: _____

Date: _____

Printed Name:



**Substance Abuse Prevention
Program Certification
Public Act 95-0635**

Contract # _____ Today's
Date _____

The undersigned contractor(s) and subcontractor(s) certify that they have read the provisions of the Substance Abuse Prevention on Public Works Act, Public Act 95-0635, and are in compliance with the terms of the Act.

____ The contractor/subcontractors hereby certify that they are exempt from the provisions of Public Act 95-0635 because it is a party to a collective bargaining agreement that deals with Substance Abuse and Prevention as provided for in the Act.

____ The contractor/subcontractors hereby certify they have a program in place to address Substance Abuse and Prevention as provided for in the Act and will submit the same to the Tollway prior to issuance of an Authorization to Proceed.

____ Contractor Name/Title of Authorized Representative
____ Signature of Authorized Representative

____ Subcontractor Name/Title of Authorized Representative
____ Signature of Authorized Representative

____ Subcontractor Name/Title of Authorized Representative
____ Signature of Authorized Representative

____ Subcontractor Name/Title of Authorized Representative
____ Signature of Authorized Representative

____ Subcontractor Name/Title of Authorized Representative
____ Signature of Authorized Representative

PART III: CONTRACT REQUIREMENTS

Contract Bond Agreement

Performance Bond

Payment Bond

Insurance

AGREEMENT

CONTRACT NO: **XX-XX-XXXX**

Phase Two Amendment NO. **XX**

(USE INK ONLY)

This agreement, authorized by the Board of Directors to be entered into in duplicate this _____ day of _____, 2024 by and between The Illinois State Toll Highway Authority (hereinafter referred to as the "Tollway"), and _____

- * a corporation organized and existing under the laws of the State of _____ and authorized to do business in Illinois. {Attach Secretary of State certification}
- * a partnership consisting of _____
- * an individual doing business as _____
- * a joint venture consisting of no more than three (3) members.

(* DELETE ALL LINES THAT DO NOT APPLY)

with principal office in the City of _____, in the State of _____ (hereinafter referred to as the "contractor").

WITNESSETH:

In consideration of the premises and of the mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

DESCRIPTION AND SCOPE OF WORK

The CM/GC Contractor shall perform all of the services and furnish all of the transportation, labor, materials, equipment and any other incidentals necessary or required to construct and complete the project described in this Phase Two Amendment, also called The Work.

CONTRACT

The following documents, taken as a whole, constitute the contract:

1. This executed Agreement and any supplement thereto.
2. The Contract Bonds.
3. The Addenda.
4. The Special Provisions.
5. The Plans.
6. The Electronic Data Files
7. The Tollway CM/GC Supplemental Specifications.
8. The Tollway Supplemental Specifications.
9. The IDOT Supplemental Specifications and Recurring Special Provisions
10. The IDOT Standard Specifications for Road and Bridge Construction.
11. The Bid.
12. The Instructions and Information to Bidders.
13. The Advertisement for Bids.

The terms and provisions of each and every one of the above documents are a part of this Phase Two Amendment. In the event that any provision in any of the foregoing documents conflicts with any provisions in any other of the Phase Two Amendment documents, the provisions in the Phase Two Amendment document first above enumerated shall govern over the provisions of any other Phase Two Amendment document which follows it.

CONTRACT NO: XX-XX-XXXX
PHASE TWO AMENDMENT NO. XX

PHASE TWO AMENDMENT BOND AGREEMENT

The CM/GC Contractor shall simultaneously herewith furnish and deliver to the Tollway a Performance Bond, agreeing to perform the Work in accordance with all of the provisions of the Phase Two Amendment, as in said Performance Bond provided, and a Payment Bond, agreeing to pay not less than prevailing wages for the Work to be performed in accordance with the Phase Two Amendment and the laws of the State of Illinois and agreeing to pay all sums of money due for any labor, materials, apparatus, fixtures or machinery and transportation with respect thereto, as in said Payment Bond provided, each dated the same date as this Agreement, in the forms prescribed by the Tollway, and each in an amount equal to the Phase Two Amendment price with a corporate surety or sureties acceptable to the Tollway authorized to do business in the State of Illinois.

The CM/GC Contractor agrees that said Bonds shall be maintained in full force and effect until final acceptance of the Work by the Tollway and thereafter, as provided in Article 103.05 of the Tollway Supplemental Specifications. The CM/GC Contractor agrees and will cause the surety to agree to be bound by each and every provision of all of the Phase Two Amendment documents.

If any surety upon any bond furnished in connection with this Phase Two Amendment becomes unacceptable to the Tollway, or if any such surety fails to furnish reports as to its financial condition from time to time as requested by the Tollway, the CM/GC Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Tollway and all persons supplying labor or materials in the prosecution of the Work contemplated by this Phase Two Amendment.

In the event the surety shall make any assignment for the benefit of creditors or commit any act of bankruptcy, or if it shall be declared bankrupt, or if it shall file a voluntary petition in bankruptcy, or shall in the opinion of the Tollway be insolvent, the CM/GC Contractor agrees forthwith upon request of the Tollway to furnish and maintain other corporate surety with respect to said Bonds satisfactory to the Tollway.

DEFINITIONS

As used in this Agreement, the terms set forth shall have the meanings attributed to them in the Tollway CM/GC Supplemental Specifications for The Illinois State Toll Highway Authority issued by the Tollway.

TIME OF PERFORMANCE

The duration of this Phase Two Amendment shall commence upon the work commencement date identified in the Notice to Proceed letter and shall continue until **THE PHASE TWO AMENDMENT COMPLETION DATE**, in accordance with the Phase Two Amendment book schedule.

PHASE TWO AMENDMENT EXPIRATION DATE

The Phase Two Amendment expiration date is two (2) years from the Phase Two Amendment completion date. Based on the completion date stated in the Phase Two Amendment at the time of award the Phase Two Amendment expiration date is **THE PHASE TWO AMENDMENT COMPLETION DATE PLUS TWO YEARS**.

This Phase Two Amendment maybe renewed for two (2) additional one (1) year terms or one (1) additional two (2) year term, the length of any renewal is to be determined and agreed upon by the Parties.

CONTRACT NO: XX-XX-XXXX
PHASE TWO AMENDMENT NO. XX

LIABILITY OF JOINT VENTURE

In the event the successful bidder (CM/GC Contractor) of this Phase Two Amendment is a joint venture, then each individual, partnership, or corporation comprising such joint venture, shall be individually, personally, severally and jointly liable and responsible, financially, legally, and in all other respects, for the full and proper performance of each and every provision and requirement of this Phase Two Amendment, notwithstanding any arrangement, understanding or agreement to the contrary, if any, whether disclosed to the Tollway or not, entered into by and between the individual, partnership, joint venture, or corporation comprising such joint venture.

PERFORMANCE OF THE WORK

The CM/GC Contractor shall perform all work under the direct supervision, and to the satisfaction of the Tollway Construction Manager. The Tollway Construction Manager shall decide all questions which arise as to the quality and acceptability of Work performed, manner of performance, rate of progress of the Work and interpretation of the specifications, and the Tollway's Construction Manager's decision shall be final.

Any dispute between the Tollway Construction Manager and the CM/GC Contractor with respect to any matter shall be decided by the Chief Engineering Officer of The Tollway and his/her decision shall be final.

Notwithstanding anything contained in this Phase Two Amendment, all payments to be made pursuant to this Phase Two Amendment shall be subject to approval by the Chief Engineering Officer.

CONSIDERATION

The Tollway shall pay the CM/GC Contractor for the performance of the Work, subject to any additions or deductions therein as provided for in the Specifications, in current funds. Payments are to be made to the CM/GC Contractor in accordance with and subject to the provisions of the contract documents.

ASSIGNMENT

This Phase Two Amendment may not be assigned, transferred in whole or in part by the Vendor without prior written consent of the Illinois Tollway.

CONTRACT NO: XX-XX-XXXX
PHASE TWO AMENDMENT NO. XX

COVENANT AGAINST CONTINGENT FEES

The CM/GC Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Phase Two Amendment upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CM/GC Contractor for the purpose of securing business. For breach or violation of this warranty, the Tollway shall have the right to annul this Phase Two Amendment without liability or in its discretion to deduct from the Phase Two Amendment price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

TERMINATION / CANCELLATION FOR NON-APPROPRIATION OF FUNDS

This Phase Two Amendment is subject to termination and cancellation in any year for which the General Assembly fails to make an appropriation (if such an appropriation is required) to make payments under the terms of the Phase Two Amendment. Currently, the Tollway is not required to obtain a yearly appropriation of its funds. However, the Tollway cannot and does not make any representations or warranties concerning future appropriation requirements.

COMPTROLLER REQUIREMENTS FOR PHASE TWO AMENDMENTS

CM/GC Contractor and any and all subcontractors under this Phase Two Amendment agrees to maintain books and records related to the performance of the contract and necessary to support amounts charged to the State under the Phase Two Amendment for a minimum of five (5) years from the last action on the Phase Two Amendment. CM/GC Contractor further agrees to cooperate fully with any audit and to make the books and records available to the Auditor General, Chief Procurement Officer, Internal Auditor, Inspector General, and the Purchasing Agency.

The State requires a fee of \$15 to cover expenses related to the administration of the Minority Contractor Opportunity Initiative. Any CM/GC Contractor awarded a Phase Two Amendment under Section 20-10, 20-15, 20-25 or 20-30 of the Illinois Procurement Code (30 ILCS 500) of \$1,000 or more is required to pay a fee of \$15. The Comptroller shall deduct the fee from the first check issued to the Vendor under the Phase Two Amendment and deposit the fee in the Comptroller's Administrative Fund.

FREEDOM OF INFORMATION ACT

This Phase Two Amendment and all related public records maintained by, provided to or required to be provided to the State are subject to the Illinois Freedom of Information Act (FOIA) (50 ILCS 140) notwithstanding any provision to the contrary that may be found in this Phase Two Amendment.

GOVERNING LAW; EXCLUSIVE JURISDICTION

This agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced only in accordance with the laws of the United States and the State of Illinois (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this agreement, including arbitration proceedings, shall be brought only in DuPage County, Illinois. **THE CM/GC CONTRACTOR CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS LOCATED IN DUPAGE COUNTY, STATE OF ILLINOIS.**

CONTRACT NO: XX-XX-XXXX
NOTICE

Notices or documents to be given or delivered shall be deemed given or delivered if delivered personally or by registered or certified mail to the CM/GC Contractor at:

or to the TOLLWAY at 2700 Ogden Avenue, Downers Grove, Illinois, 60515. Either party may change the place to which notices hereunder may be addressed, by written notice to the other party from time to time or at any time.

Addendum, if any, referred to on Page P-1 hereof, and attached hereto, is a part of this Agreement as if fully set forth hereon.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.*

Agreed By:

President Date

Printed Name as Signed Above

ATTEST:

Secretary (Seal)

Printed Name as Signed Above

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

APPROVED:

Arnaldo Rivera, Chairman/CEO Date

APPROVED:

Cathy R. Williams, Chief Financial Officer Date

APPROVED:

Kathleen Pasulka-Brown, General Counsel Date

Approved as to Form and Constitutionality

Assistant Attorney General, State of Illinois Date

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

CONTRACT NO. XX-XX-XXXX
PHASE TWO AMENDMENT NO. XX

PERFORMANCE BOND

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, That we, _____,
(Name of Principal)

- a corporation organized and existing under the laws of the State of _____ and authorized to do business in the State of Illinois,
- a limited liability company admitted to transact business in the State of Illinois and in good standing with the State of Illinois,
- a partnership consisting of _____,
- an individual doing business as _____,
- a joint venture consisting of _____,

(“X” ONE AND COMPLETE REMAINING INFORMATION)

as Principal, and _____
(Name of Surety)

a corporation organized and existing under the laws of the State of _____ with Tollway to do business in the State of Illinois, as Surety, are held and firmly bound unto The Illinois State Toll Highway Authority in the penal sum of <Enter Phase Two Amendment dollar amount spelled out> Dollars, (\$ <Enter Phase Two Amendment dollar amount>), lawful money of the United States, well and truly to be paid unto said The Illinois State Toll Highway Authority, for the payment to which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH that whereas, Principal has entered into a written Phase Two Amendment with The Illinois State Toll Highway Authority for the Work designated as

(Insert Contract Number, Phase Two Amendmenet Number, and Description)

which Phase Two Amendment is by reference made a part hereof and is hereinafter referred to as “the Phase Two Amendment”.

NOW, THEREFORE, if Principal promptly and faithfully performs said Work in accordance with the provisions of the Phase Two Amendment and any authorized changes in the Phase Two Amendment that are subsequently made during the original term of the Phase Two Amendment and any extensions thereof that may be granted by the Tollway, with or without notice to the Surety, and complies with all the provisions, conditions and requirements of the Phase Two Amendment and any authorized changes in the Phase Two Amendment that are subsequently made, with or without notice to the Surety, then this obligation for Surety’s performance of the Phase Two Amendment shall be void; otherwise it shall remain in full force and effect.

Surety hereby waives notice of any changes in the Phase Two Amendment, including extensions of time for the performance thereof.

IN WITNESS WHEREOF, we have duly executed the foregoing obligation and affixed our seals
this ____ day of _____, _____.

Surety _____

Principal _____

Address _____

Address _____

By _____
(Seal) Attorney in Fact

By _____
(Signature) (Seal)

(Name & Title)

Agent for
Surety _____

Attest _____
Corporate Secretary

Address _____

(Attach Surety's Power of Attorney)

**(Attach Notary Certificate
authenticating Signature of Attorney-In-Fact)**

**(Attach Notary Certificate
authenticating Signature of Representative of Principal
if not attested by Corporate Secretary)**

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

CONTRACT NO. XX-XX-XXXX
PHASE TWO AMENDMENT NO. XX

PAYMENT BOND

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, That we, _____,
(Name of Principal)

- a corporation organized and existing under the laws of the State of _____ and authorized to do business in the State of Illinois,
- a limited liability company admitted to transact business in the State of Illinois and in good standing with the State of Illinois,
- a partnership consisting of _____,
- an individual doing business as _____,
- a joint venture consisting of _____,

(“X” ONE AND COMPLETE REMAINING INFORMATION)

as Principal, and _____
(Name of Surety)

a corporation organized and existing under the laws of the State of _____ with Tollway to do business in the State of Illinois, as Surety, are held and firmly bound unto The Illinois State Toll Highway Authority in the penal sum of <Enter Phase Two Amendment dollar amount spelled out> Dollars, (\$ <Enter Phase Two Amendmenet dollar amount>), lawful money of the United States, well and truly to be paid unto said The Illinois State Toll Highway Authority, for the payment to which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH that whereas, Principal has entered into a written Phase Two Amendment with The Illinois State Toll Highway Authority for the Work designated as

(Insert Contract Number, Phase Two Amendment Number, and Description)

which contract is by reference made a part hereof and is hereinafter referred to as “the Phase Two Amendment”.

NOW, THEREFORE, if Principal promptly pays not less than the prevailing wages for the Work to be performed in accordance with the Phase Two Amendment and the laws of the State of Illinois, and promptly pays all sums of money due or to become due for any labor, materials, apparatus, fixtures or machinery, and transportation with respect thereto, furnished to said Principal for the purpose of performing said Work in accordance with the provisions of the Phase Two Amendment and any authorized changes in the Phase Two Amendment that are subsequently made during the original term of the Phase Two Amendment and any extensions thereof that may be granted by the Tollway, with or without notice to the Surety, then this obligation shall be void; otherwise it shall remain in full force and effect.

Surety hereby waives notice of any changes in the Phase Two Amendment, including extensions of time for the performance thereof.

IN WITNESS WHEREOF, we have duly executed the foregoing obligation and affixed our seals

this ____ day of _____, _____.

Surety _____

Principal _____

Address _____

Address _____

By _____

By _____

(Seal) Attorney in Fact

(Signature) (Seal)

(Name & Title)

Agent for
Surety _____

Attest _____

Corporate Secretary

Address _____

(Attach Surety's Power of Attorney)

**(Attach Notary Certificate
authenticating Signature of Attorney-In-Fact)**

**(Attach Notary Certificate
authenticating Signature of Representative of Principal
if not attested by Corporate Secretary)**