

TERMS AND CONDITIONS

By bidding on this Contract, the parties hereby agree to the following terms and conditions:

- **SPECIFICATIONS:** The specifications contained herein are intended to be open and non-restrictive. Although at times model numbers may be used, they are merely intended to be guidelines to establish criteria and quality for competitive bidding. Alternative bids will be evaluated and may be acceptable so long as they are verified as equal or better than specified as determined by the Indiana Department of Transportation, herein referred to as INDOT. All vendors bidding alternate bids are requested to submit detailed specifications with the bid.
- **PRICING:** Unit price must be entered and extended, and the total price of the bid must be shown. Unit prices are to be bid on the basis of the unit specified. The period of time during which a price will continue as a firm bid must be stated in the bid. A binding contract will be created, if the bid is accepted, by the issuance of a purchase order at any time within the period so given. All bidders should carefully check their bid before submitting it to INDOT.
- **ITEMS NOT BID:** If a bidder does not desire to submit a bid for an item, he/she shall show the words "NO BID" in the unit column for that item.
- **F.O.B. DESTINATION:** INDOT prefers bids to be submitted on a delivered basis; therefore, all bids will be considered to be made on the basis of all shipping charges prepaid and allowed. If transportation charges are NOT allowed, the bidder must so state and show charges in the bid. The shipment must be prepaid and transportation charges added to the invoice. INDOT will pay for such transportation charges only on the basis of the lower price, whether it is the one shown in the bid or the charge shown on the prepaid freight bill. INDOT DOES NOT HAVE FACILITIES FOR COLLECT SHIPMENTS; THEREFORE, COLLECT SHIPMENTS WILL NOT BE ACCEPTED.
- **BID AND PERFORMANCE GUARANTEE:** INDOT reserves the right to require each bidder to furnish a certified (or other type) check or bid bond with his/her bid. If such is required, the type of guarantee will be specified in the detailed specifications. INDOT further reserves the right to require the successful bidder to furnish a performance bond.
- **CONTAINERS AND PACKING:** INDOT will not advance the cost of drums, carboys, cylinders, barrels, bags or other such returnable containers which, in the custom of the trade, are considered as the property of the Seller, except under the following conditions. Charges for such containers are to be covered by memo invoice; INDOT guaranteeing to return such containers when empty, transportation charges collect, to destination specified by the Seller. If INDOT fails to return containers within a reasonable time, it guarantees to pay for them. The bid must clearly state Seller's compliance with the foregoing conditions and the charges applying to such containers. No charge will be allowed for packing, crating, or cartage, unless specified by the Seller in his bid.
- **REJECTION OF BIDS:** INDOT reserves the right to accept or reject any or all bids, or any part thereof, and to award the items separately or all to one bidder. Bidders bidding on an "all or none" basis must state such fact in the bid. Any errors in extension or total may result in rejection of the bid.
- **SIGNING OF BIDS:** Bids may be rejected unless filled out in ink or by a typewriter. A bid may be rejected if it contains any alteration or erasure. TO BE VALID, EACH BID MUST BE MANUALLY SIGNED.
- **PAYMENTS:** All payment obligations are subject to the encumbrance of monies and shall be made in arrears in accordance with Indiana law and the State fiscal policies and procedures, and, in this regard, the Contractor agrees to execute such state payment (invoice) forms not inconsistent herewith. Contractor may not submit claim forms before the services have been performed.
- **TAXES:** INDOT is exempt from State, Federal and local taxes. INDOT will not be responsible for any taxes levied on the Contractor as a result of this Contract.
- **MULTI-TERM FUNDING CANCELLATION CLAUSE:** When the director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, the Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- **TERMS:** The only payment term consistent with State statutes and fiscal procedures are net cash basis. No interest or carrying charges are allowable under State Law. No other terms are acceptable.
- **NONDISCRIMINATION:** Pursuant to IC 22-9-1-10, Contractor and its subcontractors, if any, shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of Contract.
- **COMPLIANCE WITH LAWS:** The Contractor agrees to comply with all applicable Federal, State and local laws, rules, regulations, or ordinances, and all provisions required thereby to be included herein, are hereby incorporated by reference. The enactment of any State or Federal statute or the promulgation of regulations or rules thereunder, after execution of this Contract, shall be reviewed by the Attorney General and the Contractor to determine whether the provisions of the Contract require formal amendment.
- **GOVERNING LAWS:** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.
- **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless INDOT and its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses, caused by any act or omission of the Contractor and/or its subcontractors, if any. INDOT will not agree to provide indemnification nor to hold harmless the Contractor. The successful Contractor agrees to be responsible for all liability due to loss, damage, injuries or other casualties to the person or property of anyone arising out of the terms described in this Contract whether due in whole or in part to the negligent acts or omissions of the Contractor, its agents or employees, or other persons engaged in the performance of this Contract, including any claims arising out of the Workers Compensation Act, and any claims regarding any patent, copyright or trademark infringement.
- **WORK STANDARDS:** The Contractor agrees to execute its respective responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If INDOT becomes dissatisfied with the work product or the working relationship with those individuals assigned to work on this Contract, INDOT may request the replacement of any or all such individuals.
- **ASSIGNMENT:** The Contractor may, with prior written approval of INDOT, assign the rights to receive payments hereunder, provided, that such assignments shall not relieve the Contractor of its responsibility to perform any duty imposed upon it herein. No waiver of any rights held by INDOT, including rights of set-off or counterclaim will be granted to any assignee.
- **SUCCESSORS AND ASSIGNS:** The Contractor binds its successors, executors, and assigns to all covenants of this Contract. Except as above set forth, the Contractor shall not assign, sublet or transfer its interest in this Contract without the prior written consent of INDOT.
- **CHANGES IN WORK:** In the event INDOT requires a material change in scope, character or complexity of the work after the work has progressed, adjustments in compensation to the Contractor shall be determined by INDOT in the exercise of its honest and reasonable judgment and the Contractor shall not commence the additional work or the change of the scope of the work until authorized in writing by INDOT. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.
- **FORCE MAJEURE, SUSPENSION AND TERMINATION:** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of (or failure to perform the Services is caused by) natural disaster, actions or decrees of governmental bodies or communication line failure not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so effected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may be given written notice to terminate this Contract.
- **FOREIGN CORPORATIONS:** In accordance with Indiana Code, Section 4-13.4-6-6, to do business in or with the State of Indiana, Foreign Corporations must be registered with the Secretary of State in the State of Indiana.
- **NON-COLLUSION:** The Contractor certifies that the Contractor, being duly affirmed under oath says, that he/she is the contracting party; that he or she has not, nor has any other employee of the company represented by him or her, directly or indirectly, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he or she has not received or paid, any sum of money or other consideration for the execution of the annexed Contract other than that which appears upon the face of this Contract.
- **MAINTAINING A DRUG-FREE WORKPLACE EXEC. ORDER #90-5:**

Contractor hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this Contract a drug-free workplace, and that it will give written notice to the Indiana Department of Administration and the Indiana Department of Transportation within ten (10) days after receiving actual notice that an employee of Contractor has been convicted of a criminal drug violation occurring in Contractor's workplace.

In addition to the provisions of subparagraph (a) above, if the total Contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions and representations contained in the Drug-Free Workplace certification executed by Contractor in conjunction with this Contract and which is appended as an Attachment hereto.

It is further expressly agreed that the failure of Contractor to in good faith comply with the terms of subparagraph (a) above, or falsifying or otherwise violating the terms of the certification referenced in subparagraph (b) above shall constitute a material breach of this Contract.

The terms, conditions, and specifications of the request for bid, if any, and/or any award made in connection with this transaction are incorporated herein by reference and made a part hereof just as if they had been fully set out herein.