

CONTRACT REQUIREMENTS

Contractor shall comply with Attachment A (“Federal Requirements”), which include new requirements addressing the federal Build America, Buy America Act (“BABA”), enacted as part of the Infrastructure Investment and Jobs Act of 2021 (“IIJA”), as attached.

Where applicable, Contractor shall comply with the Davis-Bacon Act and Federal Funding Accountability and Transparency Act (FFATA) as set forth in Attachment A. Applicable Davis-Bacon Act wages are set forth in Attachment E and the FFATA Data Sheet is included as Attachment B.

Contractor shall submit a FFATA Data Sheet to DEP prior to a purchase order being issued. Contractor shall submit certified payrolls to the Department’s Representative. No payment will be made to the Contractor until all Certified Payrolls for work completed are received by the Department. An optional “Certified Payroll Form” that the Contractor may use to fulfill this requirement is included as Attachment D.

Additionally, pursuant to the Governor’s Executive Order 2023-17, *Commonwealth Workforce Transformation Program* (July 31, 2023), awards under this solicitation have been funded by the IIJA or the Inflation Reduction Act (“IRA”) of 2022. Should you receive funding as a result of your submission, your organization may be eligible for additional funding from the Commonwealth Workforce Transformation Fund (“CWTF”). For more information, visit www.pa.gov/newjobs or email newjobs@pa.gov.

EQUIPMENT

Contractor shall furnish all necessary labor, tools and equipment, and perform all the required work in an expeditious, substantial, and skillful manner in accordance with the bid proposal and all pertinent documents found in the agreement.

Contractor shall make repairs and replacements at its expense and with a minimum of time lost.

Time lost due to breakdown or replacement of parts will not be considered as basis for payment.

The Department may reject any item of equipment when, in the opinion of the Department’s Representative, the item is not in satisfactory operating condition.

BID AWARD

Contract will be awarded to the lowest responsive and responsible bidder meeting all requirements.

DEP is not responsible for the maintenance of the eMarketplace website.

The Department of General Services Supplier Service Center is available to assist vendors with registration, bidding and account management. For questions regarding registration help, send an

email to ra-pscsrportal@pa.gov or call (877) 435-7363, choose Option 1. For questions regarding bidding help, send an email to srmhelp@pa.gov or call (877) 435-7363, choose Option 2. DEP is not responsible for the support or functionality of any DGS website.

All bids must be submitted electronically ONLY before closing date and time.

QUALIFICATIONS OF CONTRACTOR

After bid opening and prior to award, the Department may request three client references.

CONTRACT QUANTITIES

The quantities are estimated only and may increase or decrease depending upon the needs of the Department. Contractor will be reimbursed at the unit price bid for actual work performed.

CONTRACT TERM

The contract will commence upon execution and expire December 31, 2025.

INSURANCE REQUIREMENTS

Contractor shall purchase and maintain at its expense the following types of insurance, issued by companies acceptable to the Commonwealth.

1. Workers' Compensation Insurance sufficient to cover all of the employees of Contractor working to fulfill this Contract.
2. Comprehensive General Liability Insurance, including bodily injury and property damage insurance, to protect the Commonwealth and the Contractor from claims arising out of the performance of the Contract. The amount of public bodily injury insurance must not be less than \$1,000,000 per occurrence. The amount of property damage insurance must not be less than \$500,000 per occurrence. If the policy is issued for bodily injury and property damage combined, the amount must not be less than \$1,500,000 per occurrence. Coverage must include underground, explosion and collapse hazards.
3. Automotive Liability Insurance, including bodily injury and property damage insurance, to protect the Commonwealth and the Contractor from claims arising out of the performance of the Contract. The amount of automobile bodily injury insurance must not be less than \$500,000 per person and \$1,000,000 per occurrence. The amount of automobile property damage insurance must not be less than \$500,000 per occurrence. If the policy is issued for bodily injury and property damage combined, the amount must not be less than \$1,500,000 per occurrence.

The required insurances must name the Commonwealth of Pennsylvania as an additional insured. The insurance must not contain any endorsements, or any other form designed to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in

regard to the work performed for the Commonwealth. Prior to the commencement of work under this Contract, the Contractor shall provide the Commonwealth with current Certificates of Insurance. These Certificates must contain a provision that coverages afforded under the policy shall not be cancelled or changed until at least thirty (30) days written notice has been given to the Commonwealth.

By Certified Mail, the Department shall furnish the Contractor with a list of landowners. Contractor's insurance policy must list the landowners as additional insureds.

STEEL PRODUCTS PROCUREMENT ACT

In accordance with the Act of March 3, 1978 (P.L. 6 No. 3), as amended, known as the "Steel Products Procurement Act" (73 P.S. 1881 et seq.), Contractor, subcontractor(s), or supplier(s) shall use or permit to be used ONLY steel products produced in the U.S. "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed by a combination of two or more of such operations, from steel made in the U.S. by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process including cast iron products. With each shipment of steel or cast-iron products delivered to the project site, Contractor shall provide evidence to the Department's Representative that such steel products comply with this act. When unidentified steel products are supplied, Contractor shall provide documentation which includes but is not limited to: invoices, bills of lading and mill certification that the steel was melted and manufactured in the U.S., which establishes that Contractor has fully complied with the act. If a steel product is identifiable from its face, Contractor shall provide certification that it has fully complied with the act. The definition of steel products must include machinery and equipment listed in U.S. Department of Commerce Standard Industrial Classification 25 (furniture and fixture), 35 (machinery, except electrical) and 37 (transportation equipment) and made of, fabricated from or containing steel components. If a product contains both foreign and U.S. steel, such product is considered a U.S. steel product only if at least 75% of the cost of the articles, materials and supplies have been mined, produced or manufactured, as the case may be, in the U.S. Transportation equipment will be determined to be a U.S. steel product if it complies with Section 165 of Public Law 97-424 (96 Stat. 2136).

Compliance with the Steel Products Procurement Act will not be required for steel products used as construction tools and which will not serve a permanent functional use in the project. Steel casing must comply with the Steel Products Procurement Act only when it is permanently incorporated into the project such as a water well for a permanent water supply.

The Department shall not provide for, or make any payments to, any person who has not complied with the Steel Products Procurement Act. Any such payments made to any person by the Department which should not have been made as a result of the act will be recoverable directly from Contractor or subcontractor(s) who did not comply with the act. In addition to the above penalties any person who willfully violates the provisions of the act will be subject to other penalties outlined in the act.

SAFETY/COMPLIANCE

Contractor shall perform all work in accordance with all applicable federal, state and local statutes, ordinances, rules and regulations.

PAYMENT TERMS

Payment will be on a reimbursement basis for services performed.

For Mobilization and Demobilization, the Contractor will be paid 40% upon completion of Mobilization and 60% will be paid upon completion of Demobilization. Contractor shall submit invoices upon completion of the project or the last Friday of each month that a project runs, whichever occurs first.

BUY AMERICA DOMESTIC PROCUREMENT PREFERENCE

Contractor shall comply with the federal “Buy American Build American Act” P.L. 117-58 (also known as the Bipartisan Infrastructure Law or Infrastructure Investment and Jobs Act) regarding any work performed on or after May 14, 2022.

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program. In the event of any conflict between this section’s requirements and those described in DEP’s 2016 General Conditions for Construction, including but not limited to Subsections 4.10.K.16 and 5.14.B.3, this section’s requirements are controlling.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and

removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit www.doi.gov/grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

Waivers

When necessary, with the approval of the Department of Environmental Protection, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at: www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers. If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver will not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to www.doi.gov/grants/buyamerica and are subject to public comment periods of no less than 15 days. Waiver requests will also be reviewed by the Made in America Office.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award).
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).

6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DOI Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant PSC or NAICS code for each.
11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued.

Approved waivers will be posted at www.doi.gov/grants/BuyAmerica/ApprovedWaivers; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

Questions pertaining to waivers must be directed to the financial assistance awarding officer.

Definitions

“Construction materials” includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Construction Materials” does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.