

**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 individuals enrolled in the CW Program, including African Americans, Asians, Hispanics, 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, Hispanics, Ex-offenders, exonerated individuals, Females, Veterans and other traditionally underserved populations.
- Partnering for Growth – Construction (P4G-Con): providing a mutually beneficial working relationship between a Mentor and a disadvantaged business enterprise (DBE), a veteran-owned small business (VOSB), or Small Business Initiative (SBI) Protégé firm via assistance to and training of the DBE, VOSB or SBI, thereby improving the firm’s management and operating skills and leading to an increase in capacity and the ability to remain a self-sufficient, competitive and profitable business enterprise.

For more information, reference the Operational Guide for each program on the TOLLWAY’s website, <https://www.illinoistollway.com>

**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 CREDITS 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 on the contract. Any BID CREDITS SUBMITTED above and beyond the BID CREDIT CAP will be disregarded.

*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#ECPContractors>

### **4. BIDDING PROCEDURES**

All bids must comply with 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 submitted credits that exceed the BID CREDIT CAP will be disregarded.

4.3 If needed, contractors can check the appropriate ACTIVE BID CREDIT CERTIFICATE REGISTER on the TOLLWAY's website to ensure submitted BID CREDIT CERTIFICATES 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 CREDITS 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.

## **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 utilize the subcontractor/fabricator in the performance of the contract. If a prime contractor is prohibited from utilizing the subcontractor/fabricator, for reasons beyond the prime contractor's control, the prime contractor may still use BID CREDITS provided by the subcontractor/fabricator.
- 5.3 In the event 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 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 BID CREDITS provided by any subcontractor/fabricator for 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 the standards set forth in Sections 5.4.2 and 5.4.2.1 will result in all BID CREDITS SUBMITTED being disregarded.
  - 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 submitted with a bid;

- 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 (<https://www.illinoistollway.com>) and click on "Doing Business") prior to submitting a BID CREDIT CERTIFICATE in a TOLLWAY bid solicitation;

5.4.4 Ensure that the total amount of BID CREDIT CERTIFICATES does not exceed the 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 or superseded by current ACTIVE BID CREDITS.

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 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 would have \$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.

## **7. FRAUDULENT USE OF BID CREDIT CERTIFICATES**

Any contractor who knowingly submits 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 utilize 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 abuses such as the foregoing to the Office of the Inspector General and applicable law enforcement authorities.