

## Federal Requirement

### Federal Transit Administration (FTA) Bonding Requirements

#### Bonding Requirements (> \$100,000)

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts.

#### **Bid Bond Requirements (Construction)**

- a) **Bid Security:** A Bid Bond must be issued by a fully qualified surety company acceptable to NAIPTA and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.
- b) **Rights Reserved:** In submitting this Bid, it is understood and agreed by bidder that the right is reserved by NAIPTA to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of NAIPTA.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of NAIPTA, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of NAIPTA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor. It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by NAIPTA as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense NAIPTA for the damages occasioned by default, then the undersigned bidder agrees to indemnify NAIPTA and pay over to NAIPTA the difference between the bid security and NAIPTA's total damages, so as to make NAIPTA whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested will render the bid unresponsive.

#### **Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

- a) **Performance bonds**
  - i) The penal amount of performance bonds shall be 100 percent of the original contract price, unless NAIPTA determines that a lesser amount would be adequate for the protection of NAIPTA.
  - ii) NAIPTA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. NAIPTA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- b) **Payment bonds**
  - i) The penal amount of the payment bonds shall equal:
    - (1) Fifty percent of the contract price if the contract price is not more than \$1 million; or
    - (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - (3) Two and one half million if the contract price is more than \$5 million.
  - ii) If the original contract price is \$5 million or less, NAIPTA may require additional protection as required by subparagraph 1 if the contract price is increased.

**Performance and Payment Bonding Requirements (Non-Construction)** The Contractor may be required to obtain performance and payment bonds when necessary to protect the NAIPTA's interest.

- a) The following situations may warrant a performance bond:
  - i) NAIPTA property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
    - (1) A contractor sells assets to or merges with another concern, and NAIPTA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
    - (2) Substantial progress payments are made before delivery of end items starts.
    - (3) Contracts are for dismantling, demolition, or removal of improvements.
- b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
  - i) the penal amount of performance bonds shall be 100 percent of the original contract price, unless NAIPTA determines that a lesser amount would be adequate for the protection of NAIPTA.
  - ii) NAIPTA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. NAIPTA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the NAIPTA's interest.
- d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
  - i) The penal amount of payment bonds shall equal:
    - (1) Fifty percent of the contract price if the contract price is not more than \$1 million; or
    - (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - (3) Two and one half million if the contract price is increased.

#### **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. NAIPTA shall determine the amount of the advance payment bond necessary to protect NAIPTA.

#### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. NAIPTA shall determine the amount of the patent indemnity to protect NAIPTA.

#### **Warranty of the Work and Maintenance Bonds**

- a) The Contractor warrants to NAIPTA, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by NAIPTA, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- b) The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for

a minimum period of one (1) year after Final Payment by NAIPTA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to NAIPTA. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to NAIPTA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).