

Illinois State Toll Highway Authority

SPECIAL PROVISION
FOR
EARNED CREDIT PROGRAM

I. OBJECTIVE OF THE EARNED CREDIT PROGRAM: To encourage contractors, subcontractors and fabricators to hire qualified Earned Credit Program (ECP) candidates, and assist local workforce development efforts to employ and retain qualified and eligible traditionally underserved populations e.g. African Americans, Asians, Hispanic, eligible offenders, exonerated individuals, females, veterans and other Workforce Innovation and Opportunity Act (WIOA) eligible individuals referred to them by training/community organizations.

The Tollway Earned Credit Program can only facilitate referrals of ECP candidates; a referral is not a guarantee of employment or an endorsement by the Tollway of a particular candidate. The Tollway makes no guarantee of suitability of ECP candidates for employment and all employment screening decisions are made by the employing entity through their established human resources hiring procedures using appropriate due diligence.

The ECP is applicable to construction projects as determined by the Tollway.

II. CONTRACTOR ASSURANCE: The Contractor agrees to include the following assurance in each subcontract that the Contractor signs with a subcontractor: "The contractor or subcontractor shall not discriminate on the basis of race, sex, color, veteran status, national origin, or sexual orientation 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 Illinois Tollway deems appropriate."

III. DEFINITIONS:

- A. ACTIVE CREDITS: Earned credit available for submission and utilization on a construction bid.
- B. ACTIVE EARNED CREDIT CERTIFICATE REGISTER: Listing of all Active ECP Certificates indicating certificate number, value, owner and issue date.
- C. AFRICAN AMERICAN: Persons having origins in any of the Black racial groups of Africa.
- D. ASIANS: Persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos Cambodia, the Philippines, Samoa, Guam, or the U.S. Trust Territories of the Northern Marinas.

- E. AWARD CRITERIA: Contractor's base bid minus earned bid credit subject to the Earned Credit Cap identified for each solicitation.
- F. BID CREDITS: Virtual dollar credits earned through employing and retaining eligible ECP referrals.
- G. BASE BID: The bid amount prior to applying the ECP bid credits.
- H. CREDITS SUBMITTED: Bid credits included in a construction bid as evidenced by an Earned Credit certificate. The total amount of the certificate will be considered as tendered unless otherwise indicated on the physical certificate.
- I. 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 ECP credit.
- J. EARNED CREDIT CERTIFICATE: A numbered and notarized document that identifies contractor's name, Earned Credit Program participant(s) names and each individual's employment time frame along with applicable credit earned.
- K. ECP ALLOCATION: When ECP credits submitted by a prime contractor and subcontractor are applied proportionally to the total of all of the ECP credits originally submitted with the bid.
- L. ECP CANDIDATES: A job seeker who meets the criteria requirements to receive WIA adult services as determined by Illinois Department of Employment Security (IDES) and WIA and has graduated from a construction training program or has construction experience and can meet initial requirements for construction employment.
- M. ECP CAP: A contract-specific limit as determined by an approved Tollway formula on the amount of Earned Credit that can be applied as a bid credit. Any credits submitted above and beyond the bid earned credit cap will not be considered.
- N. ECP PARTICIPANT: An ECP CANDIDATE who is employed by an ECP participating contractor and is earning credits.
- O. ELIGIBLE OFFENDER: A person who has been convicted of a crime in Illinois or of an offense in any other jurisdiction that does not include any offense or attempted offense that would subject a person to registration under the Sex Offender Registration Act, the Arsonist Registration Act, or the Murderer and Violent Offender Against Youth Registration Act. "Eligible offender" does not include a person who has been convicted of committing or attempting to commit a Class X felony, aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, aggravated domestic battery, or a forcible felony.

- P. ELIGIBLE: IDES representative reviews applicable documentation to determine WIA adult service eligibility, as defined by the Workforce Investment Act, (administered by the Department of Commerce and Economic Opportunity) as well as evidence of U.S. citizenship or legal residence in the state, selective service registration as applicable, dislocated/displaced worker status, drug-free status, and other employment barriers.
- Q. EXONERATED INDIVIDUALS: A person who is legally cleared from guilt, blame, liability or punishment for a criminal or otherwise illegal or wrongful act.
- R. FRINGE BENEFITS: A form of compensation for the performance of services such as vacation pay, sick pay, holiday pay or health benefits. This amount is not included in the Earned Credit calculation.
- S. HISPANIC: Persons of Mexican, Puerto Rican, Cuban, Central American, South American or other Spanish culture or origin, regardless of race.
- T. ILLINOIS workNet/IDES: State of Illinois program that receives WIA funding to provide program eligibility and suitability assessments to individuals seeking employment, training and supportive services to enhance the individual's success in securing and retaining employment.
- U. INACTIVE CREDITS: Earned credit not available for submission due to utilization on a construction bid or superseded by current earned credits.
- V. NET WAGES PAID: Gross wages (excluding fringe benefits) paid to the ECP participant(s) from the original hiring contractor/fabricator.
- W. NEW HIRE BONUS CREDIT: One-time \$5,000 bid credit earned through the employment of an eligible first-time ECP CANDIDATES and retaining them for not less than 160 hours.
- X. QUALIFIED: Individual who meets basic construction employment requirements as identified by the specific trade, unions, local or construction management thereof.
- Y. REFERRALS: Individuals referred to contractors by various agencies via community based networks that are determined to be candidates for the ECP, have been determined to meet eligibility criteria, are drug free and are otherwise suitable candidates for construction-related employment opportunities.
- Z. SUITABILITY: Illinois workNet provides extensive career counseling modules and counseling and makes an official determination of the likelihood of an individual's success in a particular career choice based on test scores and verbal responses to targeted questions.

AA.TOLLWAY: The Illinois State Toll Highway Authority.

BB. TRADITIONALLY UNDERSERVED POPULATIONS: Groups as identified in the Workforce Investment Act who meet the Workforce Investment Act eligibility criteria and the successor Workforce Innovation and Opportunity Act (WIOA) of July 2014.

CC.VETERANS: Individuals who have served in the U.S. military and are in possession of a DD214 Form.

DD.WORKFORCE INVESTMENT OPPORTUNITY ACT (WIOA): Formally known as the Workforce Investment Act (WIA) originally signed into law in 1998 this act creates and funds services provided through the IDES Illinois workNet. The WIA Act is the predecessor of the WIOA signed into law of July 22, 2014.

IV. EARNED CREDIT PROGRAM INCENTIVES: All contractors, subcontractors and fabricators interested in participating in the EARNED CREDIT PROGRAM may earn BID CREDITS which may be applied to Tollway construction contracts advertised for public bidding.

Unused ECP BID CREDITS do not expire.

A contractor/fabricator who employs a first-time ECP CANDIDATE shall earn credits for wages paid to the participant. The original ECP participating contractor/fabricator who hired and employed an ECP CANDIDATE as part of the ECP shall earn BID CREDITS for wages paid to the participant up to 5 years as stipulated in Section V. A contractor may re-hire an ECP PARTICIPANT previously terminated and continue to earn credits for that participant. If the ECP PARTICIPANT is not re-hired, a different contractor/fabricator may hire the ECP PARTICIPANT and may become eligible to earn credits for that participant.

As an example: Contractor A hired and employed an ECP CANDIDATE for one year and did not re-hire the ECP PARTICIPANT the following year, the ECP PARTICIPANT may earn credits for Contractor B.

V. CALCULATING EARNED CREDIT: Interested contractors, subcontractors and fabricators may employ ECP PARTICIPANTS i on any public or private job located within the State of Illinois and accumulate BID CREDITS at the following rates to be applied to future Tollway construction contracts advertised for public bidding:

- A. Operating Engineers and Structural Steel Ironworkers: 50 cents for every dollar of wages paid;
- B. All other skilled trades and fabricators: 40 cents for every dollar of wages paid;
- C. Skilled Laborers: 30 cents for every dollar of wages paid.

Contractors are eligible for a \$5,000 NEW HIRE BONUS CREDIT when they employ eligible first-time ECP CANDIDATES, retain them for not less than 160 hours and provide written documentation of employment and wages paid.

ECP PARTICIPANTS shall be eligible to earn BID CREDITS for a period not to exceed five (5) years from the first date of initial hire by the first contractor participating in the ECP program inclusive of any layoff periods.

As an example: ECP HIRE 1 worked for Contractor A for one (1) year and was laid off for six (6) months. Upon employment with Contractor B, ECP HIRE 1 continues to be eligible to earn BID CREDITS for the remainder of the five (5) year eligibility term (three (3) years and six (6) months).

VI. BIDDING PROCEDURES: All bids must comply with the applicable public bidding statutes, rules and regulations and the specific requirements of this solicitation to be considered responsive. Bids that fail to meet these minimum requirements may be considered non-responsive.

Each bid solicitation will have a contract-specific cap as determined by the approved Tollway formula on the amount of Earned Credit that can be applied as a bid credit. This particular solicitation has a cap of \$_____. Any credits applied above and beyond the bid EARNED CREDIT CAP will not be considered.

- A. The Base Bid is to be clearly identified on line #1 of the P page;
- B. Line #2 is to include the total amount of BID CREDITS applied to the bid;
- C. Line #3 is to include the Award Criteria (Line #1 minus Line #2 equals Line #3).

All EARNED CREDIT CERTIFICATES submitted to calculate the bid credit included on Line #2 must be included in the original bid package. All earned credits utilized to become or remain the successful bid 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. The EARNED CREDIT CERTIFICATE will be redeemed up to the amount needed to allow the contractor's bid to be the lowest bid for award of the contract and any unused remaining balance will be returned in the form of a new bid certificate to the contractor.

VII. JOINT VENTURE, SUBCONTRACTOR AND FABRICATOR PARTICIPATION: Joint Venture partners may independently submit ECP CERTIFICATES towards the joint venture bid subject to the overall ECP CAP. Subcontractors and fabricators may participate in the EARNED CREDIT PROGRAM as long as they adhere to the requirements specified herein for prime contractors. Subcontractor and fabricator EARNED CREDIT CERTIFICATES may be provided to prime contractors and used/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. In the event that a subcontractor becomes disqualified from contract participation by no

fault of the prime, (i.e. delinquent debt, etc.) the actual ECP credits utilized by the disqualified subcontractor that factored into the apparent winning bid will not be refunded to the subcontractor's ECP certificate balance.

For the ECP credits to be considered for utilization toward a bid, the submission must include an ECP certificate owned by the prime bidder.

In the event the prime contractor submits a subcontractor and/or fabricator's EARNED CREDIT CERTIFICATES in a Tollway bid solicitation, the prime contractor is required to perform the following:

- A. Ensure that the subcontractor and/or fabricator are aware of and have provided permission to the bidder as indicated on the EARNED CREDIT CERTIFICATE to use the EARNED CREDIT CERTIFICATE in the bid solicitation;
- B. Identify the scope of work and dollar amount committed to each subcontractor and/or fabricator where an EARNED CREDIT CERTIFICATE is being calculated in the bid credit;
- C. Ensure that the EARNED CREDIT CERTIFICATE is in ACTIVE mode. (This can be done through checking the Tollway Earned Credit website (www.illinoistollway.com) and click on "Doing Business") prior to submitting EARNED CREDIT CERTIFICATE in a Tollway bid solicitation); and
- D. Ensure that the total amount of EARNED CREDIT CERTIFICATES do not exceed the contract-specific ECP CAP. In the event of a successful bid, the excess credits shall be returned in proportion to what was originally submitted by the prime(s) and subcontractor(s).
- E. The prime contractor shall insert a copy of this ECP Special Provisions in each and every subcontract under this contract and it shall become a material term of the subcontracts.

ECP credits submitted by the prime contractor and/or subcontractor are applied proportionally to the amounts originally submitted on the bid.

VIII. EARNED CREDIT RECORDING: To calculate a participating firm's BID CREDITS the Contractor is **required** to submit the following information prior to the Tollway's issuance of an EARNED CREDIT CERTIFICATE:

- A. Completed Request for bid certificate (Request for ECP CERTIFICATE - Form 0006) inclusive of ECP CANDIDATE information and NEW HIRE BONUS CREDIT request selection.
- B. Certified Payroll as evidence of wages paid that includes:
 - i. Contractor name
 - ii. Week ending date;
 - iii. Project and location
 - iv. Project or Contract No.
 - v. Name and Individual Identifying Number of Worker-last 4 digits only
 - vi. Work Classification
 - vii. Hours worked

- viii. Total hours
- ix. Rate of Pay
- x. Gross Amount Paid
- xi. Deductions
- xii. Total Deductions
- xiii. Net Wages Paid
- xiv. Signature page

ECP credit will only be given for ECP PARTICIPANTS up to 12 months retroactively from the hire date with evidence of WIA eligibility and receipt of documents as provided in section VIII. This period is inclusive of the ECP PARTICIPANT'S five (5) year eligibility period as provided in section V.

All hours worked may be subject to review and confirmed by the Tollway.

Failure to properly substantiate paid wages with the required information as stated in VIII. on Tollway forms will result in a delay of processing and may result in the loss of earned credits. The Contractor shall maintain a record of wages paid to Tollway referrals in accordance with the contract auditing record retention requirements.

IX. PROCEDURE FOR REQUESTING EARNED CREDIT CERTIFICATES: The participating contractor or fabricator determines whether there are upcoming Tollway bid opportunities that the firm is interested in pursuing as a prime/sub/supplier of fabricated goods; and whether it would like to "cash in" some (or all) of the BID CREDITS earned to date by one (or all) of the ECP PARTICIPANTS employed by the participating firm. The firm confirms the ECP bid certificate is the most current or contacts the Tollway's Diversity Department and makes an official request for a bid certificate as outlined in Section VIII, via e- mail at ecp@getipass.com, fax at 630-271-7548 or postal service at Illinois Tollway - Diversity Earned Credit Program, 2700 Ogden Avenue, Downers Grove, Illinois, 60515

X. ISSUANCE AND TRACKING OF EARNED CREDIT CERTIFICATES: The EARNED CREDIT CERTIFICATE shall be numbered for tracking purposes, and signed and notarized by the Tollway prior to issuance to the requesting firm. The requesting firm shall receive the requested certificate within the following schedule:

- Contractors requesting new EARNED CREDIT CERTIFICATES for ECP Credit earned in the prior month must submit their certified payroll (as listed in section VIII.B) and supporting information to the Tollway by the 15th of the following month.
- Tollway's schedule for issuing new certificates is as follows:
 1. Monthly requests covering 30 days, submitted by the 15th day of the month will be issued within one week;
 2. All other requests will be considered on a case-by-case basis.

Earned Credits are non-transferable. The original firm issued the EARNED CREDIT CERTIFICATE is the sole owner of the bid credits and shall not transfer,

sell, loan or otherwise engage in transactions not specified in this document. ECP Credits transferred as part of merger or acquisition of a firm is allowed.

XI. LONGEVITY OF EARNED CREDIT CERTIFICATES: EARNED CREDIT CERTIFICATES will be INACTIVE once utilized in a successful bid. Should the same EARNED CREDIT CERTIFICATE be submitted in multiple bids on the same date, the first bid opened containing the EARNED CREDIT CERTIFICATE will be considered for bid. All other bids containing a duplicate EARNED CREDIT CERTIFICATE will be placed in a suspended mode until the award recommendation of the prior bids has been issued; at such time, all duplicate EARNED CREDIT CERTIFICATES will be INACTIVATED as applicable and the remaining bid credit(s) and award criteria will be recalculated for subsequent bids. It is foreseeable that a contractor may apply the same Earned Credit(s) to multiple solicitations that have the same bid opening date. Where multiple solicitations have the same bid opening date, the Tollway will open bids in numerical order with the lowest project number per the last four digits of the contract, being opened first. The certificate will be redeemed up to the amount needed 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 certificate to the contractor.

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

In the event that a subcontractor becomes disqualified from contract participation by no fault of the prime, (i.e. delinquent debt, etc.) and the subcontractor actually utilized ECP credits in the bid process, the actual ECP credits utilized by the disqualified subcontractor that factored into the apparent winning bid will not be refunded to the subcontractors ECP certificate balance.

XII. FRAUDULENT USE OF EARNED CREDIT CERTIFICATES: Any contractor who knowingly submits an INACTIVE EARNED CREDIT CERTIFICATE shall be permanently barred from participating in the EARNED CREDIT PROGRAM.

Any contractor who submits a subcontractor/fabricator's EARNED 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 the EARNED CREDIT PROGRAM.

Any contractor found to be reporting EARNED CREDIT PROGRAM wages that were not in fact paid or submitting forged EARNED CREDIT CERTIFICATES shall be permanently barred from participating in the EARNED CREDIT PROGRAM. The Tollway may report such reporting abuses to the Office of the Inspector General and applicable law enforcement authorities.

XIII. POTENTIAL SUPPORTIVE SERVICE INCENTIVES PROVIDED BY ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY/ILLINOIS WORKNET: Participating contractors and fabricators may be eligible to receive additional incentives from the ECP hires enrolling in the Illinois workNet automated tracking system, Illinois Job Link. The following is a non-exhaustive list of potential reimbursements that the contractor/fabricator may be able to obtain after submission of the necessary receipts/documentation:

- A. Costs associated with mandatory physicals;
- B. Costs associated with mandatory training;
- C. Costs associated with tools, work clothes and work boots; and
- D. Tax incentives associated with hiring specified area codes or group members.

Contractors and fabricators should contact the applicable Illinois workNet for more information. Such reimbursements are not payable by the Tollway.

Situations not outlined in the EARNED CREDIT PROGRAM Special Provisions will be reviewed on a case-by-case basis by Tollway staff.