



12/29/2020

Project 213000      **Addendum No. 5**  
PID No. 102329  
SUM - SR 8/IR 76/IR 77 - 0.63/9.74/8.42  
Major Reconstruction  
Letting: March 4, 2021

Notice to all Bidders and Suppliers to please be advised of the attached Proposal Addendum.

The Department utilizes Bid Express (<http://www.bidx.com>) as the official medium for electronic bid submittal. All bidders must prepare bids and submit them online via Bid Express using AASHTOWare Project Bids software.

Addenda amendments must be acknowledged in the miscellaneous section of the Project Bids file and all amendments loaded in order for your bid to be considered for award of this project. Bid express will not accept bids that do not have amendments incorporated. Failure to incorporate changed quantities or items in your Project Bids submissions will result in the rejection of your bid.

**Proposal Addendum  
For  
SR 8/IR 76/IR 77-00.63/09.74/08.42; PID 102329  
Project 213000**

**Please be advised of the following:**

**Replace:** Proposal Note 031 – 04/17/2020 - PROMPT PAYMENT

**With:** Proposal Note 031 – 12/01/2020 - PROMPT PAYMENT - ODOT-LET CONSTRUCTION PROJECTS

**PN 031 – 12/01/2020 - PROMPT PAYMENT - ODOT-LET CONSTRUCTION PROJECTS**

The U.S. Department of Transportation's (DOT's) rules related to Disadvantaged Business Enterprises are published in the Code of Federal Regulations (CFR), 49 CFR Part 26. Within 49 CFR Part 26, 49 CFR 26.29 lays out the prompt payment requirements that apply to ODOT (the Department) and, by extension, its Prime Contractors and Subcontractors (including non-DBEs). The 49 CFR 26.29 requirements apply only to federally funded contracts (i.e., contracts with DOT financial assistance). The State of Ohio's laws related to prompt payment are published in Ohio Revised Code (ORC) 4113.61. ORC 4113.61 applies to all contracts. Prompt payment is also part of ODOT's standard specifications (Construction and Materials Specifications (C&MS) 107.21). The Prime Contractor must comply with this Proposal Note, ORC 4113.61, C&MS 107.21 and, where applicable, 49 CFR 26.29.

The Department monitors the payments made by Prime Contractors and Subcontractors for compliance with this Proposal Note, ORC 4113.61, C&MS 107.21 and, where applicable, 49 CFR 26.29. To facilitate this monitoring, the Department requires Prime Contractors to report their payments to specified subcontractors, and subcontractors to report their payments to specified lower-tier subcontractors. The payment data reported must include any retainage withheld and any previously withheld retainage released. All such reporting must take place within ODOT's implementation of the AASHTOWare Project (AWP) Civil Rights and Labor (CRL) system. Anyone needing access to AWP/CRL may submit a request to [DOT.Helpdesk@dot.ohio.gov](mailto:DOT.Helpdesk@dot.ohio.gov). Helpful information on reporting Subcontractor payments in CRL may be found (as of the date of this Proposal Note) at <http://www.dot.state.oh.us/Divisions/ConstructionMgt/CRL/Pages/Program-Information.aspx> under "Quick Reference Guides".

Prime Contractors must report payments to Subcontractors (DBE/EDGE and non-DBE/EDGE), suppliers (DBE/EDGE only, unless the supplier sublets to a lower-tier DBE/EDGE firm), and trucking firms (DBE/EDGE only, unless the trucking firm sublets to a lower-tier DBE/EDGE firm) (collectively, "subcontractors"). Subcontractors must report payments to lower-tier Subcontractors (DBE/EDGE and non-DBE/EDGE), suppliers (DBE/EDGE only), and trucking firms (DBE/EDGE only) (collectively, "lower-tier subcontractors"). The payer must enter and sign payments within 7 calendar days of making the payment. The payer must also enter and sign return of retainage within 7 calendar days of release back to the payee. (Note: Subcontractors must enter and sign payments within 7 calendar days of the later of the date the prime enters the subcontractor payment or the date the subcontractor pays the lower-tier sub.)

Reporting payments may not be required for non-DBE/EDGE suppliers and trucking firms, however, as required in C&MS 107.21 and in accordance with ORC 4113.61, contractors are required to make payment to each subcontractor and supplier within 10 calendar days after receipt of payment from the Department for work performed or materials delivered or incorporated into the project—this requirement includes non-DBE/EDGE suppliers and trucking firms. If a contractor does not comply with this requirement, penalties in accordance with ORC 4113.61 may apply.

The payer (whether Prime Contractor or Subcontractor) must report the following information:

- 1.) The name of the payee;
- 2.) The dollar amount of the payment to the payee;
- 3.) The date the payee was paid;
- 4.) The retainage or other amount withheld (if any), and the reason for the withholding (if other than for retainage).

The payer must report the return of retainage (or other amount withheld) as a standalone payment entry.

The payer must sign each reported payment. A payee cannot verify a payment until the payer signs it.

Payees must verify, in CRL, each payment reported by the payer within 30 days of the payment being signed by the payer. This verification must include:

- 1.) Whether the payment was received, and if so, whether it was as expected or not;
- 2.) The dollar amount of the payment received;
- 3.) The date the payment was received.

The Prime Contractor must include the above prompt payment and reporting requirements in all Subcontractor (DBE/EDGE and non-DBE/EDGE), supplier (DBE/EDGE only, unless the supplier sublets to a lower-tier DBE/EDGE firm), and trucking firm (DBE/EDGE only, unless the trucking firm sublets to a lower-tier DBE/EDGE firm) agreements that it enters into and further require that all such subcontractors include the same prompt payment and reporting obligation in their lower-tier Subcontractor (DBE/EDGE and non-DBE/EDGE), supplier (DBE/EDGE only), and trucking firm (DBE/EDGE only) agreements.

## **SUGGESTED SUB AGREEMENT LANGUAGE – FEDERAL-AID CONTRACTS**

Suggested language for the federal-aid Prime Contractor to include in its subcontractor agreements:

*As a Subcontractor, supplier\* and/or trucking firm\*, you (the payee) must verify receipt of payments from the Prime Contractor. This verification must be performed within ODOT's implementation of the AASHTOWare Project (AWP) Civil Rights and Labor (CRL) system or, if made available, a CRL interface. You must verify each payment within 30 days of the payment being signed by the Prime Contractor. This verification must include: 1.) Whether the payment was received, and if so, whether it was as expected or not; 2.) The dollar amount of the payment received; and 3.) The date the payment was received. Furthermore, you must report payments to your lower-tier Subcontractors (DBE and non-DBE), suppliers (DBE only), and trucking firms (DBE only). The payment data reported must include any retainage withheld and any previously withheld retainage released. All such reporting must take place within ODOT's implementation of the AASHTOWare Project (AWP) Civil Rights and Labor (CRL) system. You must enter and sign payments within 7 calendar days of the later of the date the prime enters its payment to you or the date the you pay the lower-tier sub. You must also enter and sign return of retainage within 7 calendar days of release back to the payee. Your payees must then verify each payment*

reported by you (the payer) within 30 days of the payment being signed by the payer. Your lower-tier Subcontractor (DBE and non-DBE), supplier (DBE only), and trucking firm (DBE only) sub agreements must include this prompt payment and reporting obligation.

*Suggested language for the subcontractor to include in its lower-tier sub agreements: “As a lower-tier subcontractor (DBE or non-DBE), supplier (except non-DBE) and/or trucking firm (except non-DBE), you (the payee) must verify receipt of payments from the payer (i.e., the maker of this sub agreement with you). This verification must be performed within ODOT’s implementation of the AASHTOWare Project (AWP) Civil Rights and Labor (CRL) system. Payees must verify each payment reported by the payer within 30 days of the payment being signed by the payer. This verification must include: 1.) Whether the payment was received, and if so, whether it was as expected or not; 2.) The dollar amount of the payment received; and 3.) The date the payment was received.”*

Anyone needing access to AWP/CRL may submit a request to [DOT.Helpdesk@dot.ohio.gov](mailto:DOT.Helpdesk@dot.ohio.gov). Helpful information on reporting Subcontractor payments in CRL may be found at <http://www.dot.state.oh.us/Divisions/ConstructionMgt/CRL/Pages/Program-Information.aspx> under ‘Quick Reference Guides’.

*\*If you are only on this project as a supplier and/or a trucking firm, and you are not DBE-certified, and you are not subletting to any DBEs, this requirement does not apply to you.*

## **SUGGESTED SUB AGREEMENT LANGUAGE – NON-FEDERAL-AID CONTRACTS**

Suggested language for the non-federal-aid Prime Contractor to include in its subcontractor agreements:

*As a Subcontractor, supplier\* and/or trucking firm\*, you (the payee) must verify receipt of payments from the Prime Contractor. This verification must be performed within ODOT’s implementation of the AASHTOWare Project (AWP) Civil Rights and Labor (CRL) system. You must verify each payment within 30 days of the payment being signed by the Prime Contractor. This verification must include: 1.) Whether the payment was received, and if so, whether it was as expected or not; 2.) The dollar amount of the payment received; and 3.) The date the payment was received. Furthermore, you must report payments to your lower-tier Subcontractors (EDGE and non-EDGE), suppliers (EDGE only), and trucking firms (EDGE only). The payment data reported must include any retainage withheld and any previously withheld retainage released. All such reporting must take place within ODOT’s implementation of the AASHTOWare Project (AWP) Civil Rights and Labor (CRL) system. You must enter and sign payments within 7 calendar days of the later of the date the prime enters its payment to you or the date the you pay the lower-tier sub. You must also enter and sign return of retainage within 7 calendar days of release back to the payee. Your payees must then verify each payment reported by you (the payer) within 30 days of the payment being signed by the payer. Your lower-tier Subcontractor (EDGE and non-EDGE), supplier (EDGE only), and trucking firm (EDGE only) sub agreements must include this prompt payment and reporting obligation.*

*Suggested language for the subcontractor to include in its lower-tier sub agreements: “As a lower-tier subcontractor (EDGE or non-EDGE), supplier (except non-EDGE) and/or trucking firm (except non-EDGE), you (the payee) must verify receipt of payments from the payer (i.e., the maker of this sub agreement with you). This verification must be performed within ODOT’s implementation of the AASHTOWare Project (AWP) Civil Rights and Labor (CRL) system. Payees must verify each payment reported by the payer within 30 days of the payment being signed by the payer. This verification must include: 1.) Whether the payment was received, and if so, whether it was as expected or not; 2.) The dollar amount of the payment received; and 3.) The date the payment*

was received.”

Anyone needing access to AWP/CRL may submit a request to [DOT.Helpdesk@dot.ohio.gov](mailto:DOT.Helpdesk@dot.ohio.gov). Helpful information on reporting Subcontractor payments in CRL may be found at <http://www.dot.state.oh.us/Divisions/ConstructionMgt/CRL/Pages/Program-Information.aspx> under ‘Quick Reference Guides’.

*\*If you are only on this project as a supplier and/or a trucking firm, and you are not EDGE-certified, and you are not subletting to any EDGE firms, this requirement does not apply to you.*

## **SANCTIONS AND ADMINISTRATIVE REMEDIES**

Failure by the prime contractor to follow Prompt Payment requirements may result in the issuance of sanctions as follows:

- 1st Level Occurrence: The Department will issue a Letter of Reprimand to the contractor (applies if there is a failure to report payments in CRL and/or failure to timely pay subcontractor(s));
- 2nd Level Occurrence: The Department may withhold an estimate in the amount due to the subcontractor(s) that was not reported or paid (applies if there is a failure to report payments in CRL and/or failure to timely pay subcontractor(s));
- 3rd Level Occurrence: The contractor may be required to pay interest in the amount of 18% per annum of the payment due, beginning on the eleventh day following the receipt of payment from the owner and ending on the date of full payment of the payment due plus interest (applies if a pattern of not paying subcontractor(s) persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment).

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- the Contractor’s past project practices;
- the magnitude and the type of offense;
- the degree of the Contractor’s culpability;
- any steps taken to rectify;
- the Contractor’s record of performance on other projects; and
- the number of times the Contractor has been previously sanctioned by ODOT.