

**CITY OF COLUMBIANA  
COL-FAIRFIELD SCH. RD. & LISBON ST.  
O.D.O.T. PID NO. 114039, FAN E210(166)**

**COUNTY OF COLUMBIANA  
STATE OF OHIO**

**PROJECT MANUAL**

**Notice to Bidders, Instructions to Bidders, Proposal,  
Contract, General Conditions, and Item Specifications**

**Prepared For:**

*Lance Willard, City Manager  
City of Columbiana  
28 West Friend Street  
Columbiana, Ohio 44408*

**DBE Goal: 7%**

**Prepared By:**

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**March 14, 2024**

## TABLE OF CONTENTS

LEGAL NOTICE TO BIDDERS.....	LN-1
INSTRUCTIONS TO BIDDERS	
I.) GENERAL INFORMATION REGARDING THE WORK TO BE PERFORMED.....	IB-1
A.) Scope of Work.....	IB-1
B.) City Requirements.....	IB-1
C.) Disadvantaged Business (DBE) Requirement.....	IB-1
D.) Permits.....	IB-5
E.) Taxes.....	IB-5
F.) Federal Davis-Bacon Prevailing Wage Rates.....	IB-5
G.) Failure to Complete on Time.....	IB-5
H.) Engineer’s Estimate.....	IB-5
II.) INSTRUCTIONS REGARDING PRE-BID ACTIVITIES.....	IB-5
A.) Obtaining Documents.....	IB-5
B.) Pre-Bid Meeting.....	IB-5
C.) Examination of the Project Documents and Site.....	IB-5
D.) Communications with Insurance Representatives.....	IB-6
E.) Bidder Evaluation of Potential Equipment, Materials, Suppliers and Subcontractors...	IB-6
F.) Plan Holder Comments and Addenda.....	IB-6
III.) INSTRUCTIONS REGARDING SUBMISSION OF THE BID.....	IB-7
A.) Submission of Bid.....	IB-7
B.) Proposal Form 1 – Certification of Bid and Warranty.....	IB-7
C.) Proposal Form 2 – Evidence of Bid Signatory Authority.....	IB-7
D.) Proposal Form 3 – Bidder / Supplier Surety Affidavit.....	IB-7
E.) Proposal Form 4 – Bidder’s Equipment Data.....	IB-8
F.) Proposal Form 5 – Bid Guaranty, Performance and Payment Bond, Warranty Bond...	IB-8
G.) Proposal Form 6 – Bidder Information.....	IB-9
H.) Proposal Form 7 – Bidder’s Past Experience.....	IB-9
J.) Proposal Form 8 – Listing of Subcontractors.....	IB-9
K.) Proposal Form 9 – Bidder’s Affidavit – Licensed Foreign Corporation.....	IB-9
L.) Proposal Form 10 – Safety Acknowledgement.....	IB-9
M.) Proposal Form 11 – Bidder’s Insurance Affidavit.....	IB-9
N.) Proposal Form 12 – Bidder Non-Delinquent Personal Property Tax Affidavit.....	IB-10
O.) Proposal Form 13 – Buy America Certification.....	IB-10
P.) Proposal Form 14 – Federally Required EEO Certification Form.....	IB-10
Q.) Ohio Department of Transportation 2023 Required Contract Provisions.....	IB-10
R.) Withdrawl of Bids after Bid Opening.....	IB-11
IV.) EVALUATION AND AWARD OF BIDS.....	IB-11
A.) Opening and Evaluation of Bids.....	IB-11
B.) Exception to Bid – Statement of Varying Terms.....	IB-11
C.) Notice and Award of Contract.....	IB-11
D.) Bid Tabulations.....	IB-11
V.) EXECUTION OF DOCUMENTS.....	IB-11
A.) Execution of the Contract Forms.....	IB-11
B.) Contract Form 1 – Notice of Award.....	IB-12
C.) Contract Form 2 – Evidence of Contract Signatory Authority.....	IB-12
D.) Contract Form 3 – Affidavit of Contractor.....	IB-12
E.) Contract Form 4 – Insurance Certificate.....	IB-12
F.) Contract Form 5 – Workers Compensation Certificate.....	IB-12
G.) Contract Form 6 – Certificate of Owner’s Legal Counsel.....	IB-12

V.) EXECUTION OF DOCUMENTS (cont'd)

H.) Contract Form 7 – Legislative Certification.....	IB-12
J.) Contract Form 8 – Certificate of Fiscal Officer.....	IB-12
K.) Contract Form 9 – Contract Agreement .....	IB-12
L.) Contract Form 10 – Notice to Proceed.....	IB-13
M.) Contract Form 11 – Change Order Form.....	IB-13
N.) Contract Form 12 – Completion Affidavit.....	IB-13

PROPOSAL

Proposal Form 1 – Certification of Bid and Warranty, Bid Proposal Forms, and Utility Note.....	P-1
Proposal Form 2 – Evidence of Bid Signatory Authority.....	P-3
Proposal Form 3 – Bidder / Supplier Surety Affidavit.....	P-4
Proposal Form 4 – Bidder’s Equipment Data .....	P-5
Proposal Form 5 – Bid Guaranty, Performance and Payment Bond, Warranty Bond.....	P-6
Proposal Form 6 – Bidder Information.....	P-9
Proposal Form 7 – Bidder’s Past Experience.....	P-11
Proposal Form 8 – Listing of Subcontractors.....	P-12
Proposal Form 9 – Bidder’s Affidavit – Licensed Foreign Corporation.....	P-13
Proposal Form 10 – Safety Acknowledgement.....	P-14
Proposal Form 11 – Bidder’s Insurance Affidavit.....	P-15
Proposal Form 12 – Bidder Non-Delinquent Personal Property Tax Affidavit.....	P-16
Proposal Form 13 – Buy America Certification.....	P-17
Proposal Form 14 – Federally Required EEO Certification Form.....	P-18
OHIO DEPARTMENT OF TRANSPORTATION 2023 REQUIRED CONTRACT PROVISIONS	
Additional Instructions for Bidders.....	P-19

CONTRACT

Contract Form 1 – Notice of Award.....	C-1
Contract Form 2 – Evidence of Contract Signatory Authority.....	C-2
Contract Form 3 – Affidavit of Contractor.....	C-3
Contract Form 4 – Insurance Certificate .....	C-5
Contract Form 5 – Workers Compensation Certificate.....	C-6
Contract Form 6 – Certificate of Owner’s Legal Counsel.....	C-7
Contract Form 7 – Legislative Certification.....	C-8
Contract Form 8 – Certificate of Fiscal Officer.....	C-9
Contract Form 9 – Contract Agreement.....	C-10
Contract Form 10 – Notice to Proceed.....	C-12
Contract Form 11 – Change Order Form.....	C-13
Contract Form 12 – Completion Affidavit.....	C-14

GENERAL CONDITIONS

Section G.01 – Definitions.....	GC-1
Section G.02 – Extent of Contract.....	GC-2
Section G.03 – Obligation of Contractor.....	GC-3
Section G.04 – Absence of Contractor .....	GC-3
Section G.05 – Notice to Contractor.....	GC-3
Section G.06 – Inspection.....	GC-4
Section G.07 – Engineer’s Decision.....	GC-4

GENERAL CONDITIONS (cont'd)

Section G.08 – Access to Work.....	GC-4
Section G.09 – Competent Men to be Employed.....	GC-4
Section G.10 – Laws and Ordinances.....	GC-4
Section G.11 – Labor: Conditions and Employment.....	GC-4
Section G.12 – Claims for Labor, Material and Damages.....	GC-5
Section G.13 – Workers Compensation and Insurance.....	GC-5
Section G.14 – Indemnification.....	GC-5
Section G.15 – Means and Methods.....	GC-6
Section G.16 – Insurance.....	GC-6
Section G.17 – Patent Fees and Royalties.....	GC-6
Section G.18 – Accidents and Claims to be Guarded Against.....	GC-7
Section G.19 – Materials and Workmanship.....	GC-7
Section G.20 – Defective Work or Materials.....	GC-7
Section G.21 – Interpretation of Contract as to Limitations of Work.....	GC-8
Section G.22 – Other Contracts.....	GC-8
Section G.23 – Suspension of Work.....	GC-9
Section G.24 – Abandonment of Work.....	GC-9
Section G.25 – Forfeiture of Contract.....	GC-9
Section G.26 – Completion of Contract by Owner.....	GC-10
Section G.27 – Entire Completion of Work.....	GC-10
Section G.28 – Time for Entire Completion of Work.....	GC-10
Section G.29 – Delays and Extension of Time for Entire Completion of Work.....	GC-11
Section G.30 – Prices.....	GC-11
Section G.31 – Social Security Act.....	GC-11
Section G.32 – Estimates and Payments.....	GC-12
Section G.33 – Approval and Acceptance of Work.....	GC-13
Section G.34 – Guarantee.....	GC-13
Section G.35 – No Waiver of Contract.....	GC-14
Section G.36 – No Estoppel.....	GC-14
Section G.37 – Certificate of Unexpended Appropriations.....	GC-14
Section G.38 – Subletting.....	GC-14
Section G.39 – Assignment.....	GC-15
Section G.40 – Prohibited Interests.....	GC-15
Section G.41 – Special Notice.....	GC-15
Section G.42 – Notification of Utilities.....	GC-16
Section G.43 – Maintenance of Traffic.....	GC-17
Section G.44 – Working Space.....	GC-17
Section G.45 – Information to be Furnished by the Contractor.....	GC-17
Section G.46 – LPA Record Retention.....	GC-18
Section G.47 – Video Recording of Construction Corridors.....	GC-18
Section G.48 – Contract Termination.....	GC-19
Section G.49 – Dispute Resolution and Administration Claims Process.....	GC-19 to GC-22

City Of Columbiana

ITEM SPECIFICATIONS

FEDERAL DAVIS-BACON PREVAILING WAGE RATES

**LEGAL NOTICE FOR ADVERTISEMENT OF BIDS  
CITY OF COLUMBIANA, OHIO  
COL-FAIRFIELD SCH. RD. & LISBON ST.**

Sealed bids will be received by the **City of Columbiana** for the above mentioned project until **2:00 p.m.**, Eastern Standard Time, on **April 4, 2024** in the office of the City Manager at **28 West Friend Street, Columbiana, Ohio 44408**. Bids shall be opened and read aloud immediately thereafter.

Bidders must purchase a set of complete Project Documents (Project Manual and Construction Drawings) which are on file and available in **the City Manager's Office at 28 West Friend Street, Columbiana, Ohio 44408, (330) 482-2173** for a fee of **\$140.00** for each set of Project Documents, which is **non-refundable**. Checks are to be made payable to **Dallis Dawson & Associates**. A pre-bid meeting is scheduled for this project on **March 28, 2024** at **2:00 p.m.** at the aforementioned address.

The work to be performed under this contract is located within the City of Columbiana, Ohio in the following locations and includes the following work: 1.) Along Fairfield School Road from the southern corporation limits and northerly to the intersection of Fairfield Avenue (approximately 0.83 miles) and includes pavement planing, resurfacing, full depth pavement repair, drainage improvements, and pavement markings. 2.) Along Lisbon Street from the southwestern city limits and northeasterly to the intersection of West Park Avenue (approximately 0.45 miles) and includes pavement planing, resurfacing, pavement repair, installation of curb ramps, drainage improvements, and pavement markings.

Each Bidder and pertinent sub-contractor(s) must be prequalified with the Ohio Department of Transportation's Office of Contracts, Contractor Qualification Section at the time of bid, at the time of award, and through the life of the contract for the pertinent ODOT WT Codes.

Each bidder shall be required to complete and file with their bid the enclosed Bid Guaranty, Performance and Payment Bond, Warranty Bond Form (Section 153.54 O.R.C.) issued by a Surety Company licensed and authorized to transact business in the State of Ohio. Each bid must be accompanied by either a Bid Bond in the amount of (100%) of the "Total Amount Bid" or a Bid Guaranty in the form of a certified check, cashier's check or letter of credit upon a solvent bank in an amount equal to (10%) of the "Total Amount Bid".

Attention is called to certain Federal requirements on this project, including but not limited to Federal prevailing wage rates, a DBE goal, and domestic steel and iron product requirements.

The City of Columbiana reserves the right to reject any or all bids and to waive any informality in the bidding.

Bids shall be sealed and marked as "**Col-Fairfield Sch. Rd. & Lisbon St.**" and mailed or delivered to:

**City of Columbiana, 28 West Friend Street, Columbiana, Ohio 44408  
Attention: Lance Willard, City Manager**

No bidder may withdraw their bid within ninety (90) days after the actual date of the opening thereof.

The Engineer's Total Estimated Construction Cost for this project is **\$1,460,317.25**.

By order of the Board of Control of the City of Columbiana:  
Lance Willard, City Manager

TO THE EDITOR: Please publish the foregoing on March 14, 2024, March 21, 2024, and March 28, 2024 and send three (3) proofs of publication to: **City of Columbiana, 28 West Friend Street, Columbiana, Ohio 44408; Attention: Lance Willard, City Manager.**

**INSTRUCTIONS TO BIDDERS  
CITY OF COLUMBIANA, OHIO  
COL-FAIRFIELD SCH. RD. & LISBON ST.**

**I.) GENERAL INFORMATION REGARDING THE WORK TO BE PERFORMED**

**A.) Scope of work:**

The work to be performed under this contract is located within the City of Columbiana, Ohio in the following locations and includes the following work: 1.) Along Fairfield School Road from the southern corporation limits and northerly to the intersection of Fairfield Avenue (approximately 0.83 miles) and includes pavement planing, resurfacing, full depth pavement repair, drainage improvements, and pavement markings. 2.) Along Lisbon Street from the southwestern city limits and northeasterly to the intersection of West Park Avenue (approximately 0.45 miles) and includes pavement planing, resurfacing, pavement repair, installation of curb ramps, drainage improvements, and pavement markings.

**B.) City Requirements:**

**1. Certificate of Compliance with Affirmative Action Programs:**

No Contract shall be entered into unless the Bidder possesses a valid Certificate of Compliance with Affirmative Action Programs, issued by the State EEO Coordinator, Certification Section, 77 South High Street, 24th Floor, Columbus, Ohio, 43215, dated no earlier than 180 days prior to the date fixed for the opening of bids. **A copy of the Certificate of Compliance shall be included with the proposal.**

**2. Specifications:**

The State of Ohio Department of Transportation Construction and Material Specifications (CMS), January 1, 2023 edition, shall govern this improvement along with any referenced ODOT Supplemental Specifications. All references in the CMS to the State of Ohio and its Officials shall be understood to mean the City of Columbiana and the corresponding City Officials.

**C.) Disadvantaged Business (DBE) Requirement:**

Each Bidder shall refer to the following ODOT DBE Utilization and Affirmation Procedure as well as to the Federal Required Contract Provisions at the end of the Proposal Section of the Project Manual relative to the DBE processes to be performed during and after Bidding. **The DBE Goal for the project is 7%.**



## Local-Let - Guidance for LPA's DBE Utilization and Affirmation Procedure

*This procedure is being released to assist the Local Public Agency (LPA) to ensure adherence to the DBE Policy. Timelines are critical to meet the regulations. These instructions must be followed to ensure all parties involved follow the correct process.*

### Prior to Bid Opening

Once federal authorization has been provided to the Local Public Agency (LPA), the LPA must complete the [Bid Opening Date Form](#) online.

If there is a change in the bid opening date, the LPA is responsible to resubmit the Bid Opening Date Form as soon as the new date is known.

### Letting Process

*Note: All documentation below must be submitted electronically. It is imperative that the LPA and Contractor follow this process.*

Prior to bid opening, all Local-Let Bidders (prime contractors) are required to submit the [LPA DBE Utilization Form](#) which details their DBE Utilization Plan (Utilization Plan).

1. The contractor's [LPA DBE Utilization Form](#) must list each DBE firm and contract dollar amount to be utilized by the contractor towards the project's DBE goal.
  - a. In the case there is going to be a DBE goal shortfall at bid opening, Good Faith Efforts (GFEs) must be submitted by the prime contractor on ODOT's [Good Faith Efforts](#) form (refer to [Good Faith Efforts Guidelines for Prime Contractors](#)) in addition to the LPA DBE Utilization Form.
  - b. GFEs must be submitted to ODOT's Goal Attainment Coordinator by email to [DOT.ContractsLettingMgr@dot.ohio.gov](mailto:DOT.ContractsLettingMgr@dot.ohio.gov) prior to bid opening.
2. The LPA must notify ODOT's Goal Attainment Coordinator the same day of the bid opening as to the contractor that was the Apparent Low Bidder (ALB), the bid dollar amount to be awarded, and time of bid opening using the following email address: [DOT.ContractsLettingMgr@dot.ohio.gov](mailto:DOT.ContractsLettingMgr@dot.ohio.gov)
3. The Office of Business & Economic Opportunity (OBEO) will inform the LPA by email if the Utilization Plan for the ALB submitted is approved. OBEO will notify the LPA within 24 hours on the status of the pending approval.

Note: OBEO will also copy the ODOT Office of Local Programs, District CCO and LPA Manager.



4. Once the LPA receives the Utilization Plan Approval from OBEO, the LPA must notify the ALB immediately that the Utilization Plan is approved. The LPA must also request the ALB submit DBE Affirmation Forms within five calendar days of the date of the bid opening.
5. The ALB must submit [Affirmation Forms](#) for all DBEs included in its Utilization Plan within five calendar days of the bid opening to ODOT's Goal Attainment Coordinator using the following email address: [DOT.ContractsLettingMgr@dot.ohio.gov](mailto:DOT.ContractsLettingMgr@dot.ohio.gov)
  - When emailing the Affirmation Forms, please include the PID in the subject line. It is important to have the Affirmation Forms emailed to [DOT.ContractsLettingMgr@dot.ohio.gov](mailto:DOT.ContractsLettingMgr@dot.ohio.gov) to ensure ODOT receives them within the timeframe required (five calendar days from bid opening).
  - If Affirmation Forms are not completed and received within five calendar days of the bid opening, the ALB will be considered non-responsive.
6. OBEO will review the submitted Affirmation Forms and compare to the Utilization Plan submitted. OBEO's typical turnaround time for reviewing the Affirmation Forms is approximately 24 hours. The process may take longer if OBEO identifies discrepancies, however, OBEO will communicate and work directly with the ALB to address any issues or concerns on the Affirmation Forms, if identified. The LPA will be copied on all correspondence between OBEO and the ALB.
7. Once the Affirmation Forms are approved, OBEO will send email communication notifying the ALB of its Utilization Plan approval. OBEO will copy the LPA, the ODOT Office of Local Programs and the District CCO and LPA Manager. Awards cannot be completed without an approved Utilization Plan.
8. After the award package is completed, and the encumbrance has been set up in ODOT's accounting system, the LPA can execute the contract. Work may begin for non-DBE subcontractors. For DBE sub-contractors, work may not begin until C-92s are approved (see process below).

## Approval Process C-92s (Request to Sublet Form)

1. For DBE sub-contract work, the prime contractor must submit C-92s (Request to Sublet Forms) to the LPA. The LPA will review and provide an initial approval and signature to the District Contractor Compliance Officer (CCO) for final approval. The LPA will copy the District LPA Manager and Construction Monitor.
2. The prime contractor will submit executed Subcontract Agreements/Purchase Orders for DBE contractors/suppliers to the LPA. (NOTE: Purchase Orders are only to be used for material supply. All others should be submitted on Subcontract Agreements). The LPA will review and once satisfied will submit the executed DBE Sub Agreements/Purchase Orders to the respective ODOT District CCO via email for review/approval.
3. ODOT's District CCO will review the Subcontracts/Purchase Orders to ensure the documentation matches the original Affirmation Forms/Utilization Plan. The District CCO will initial and date the Subcontracts/Purchase Orders and once all are received and approved will email approved Subcontracts/Purchase Orders back to the LPA and copy the Goal Attainment Coordinator. The LPA will notify the prime of their approval. The DBE(s) may now begin work on the project.

- If the DBE Subcontracts/Purchase Orders submitted to the District CCO do not match the approved Affirmation/Utilization Plan, the District CCO will either contact the prime directly (if it is a smaller issue which can be resolved easily) and copy the LPA on the correspondence, or, if it is a larger issue the District CCO will outline the issue with the LPA and the LPA Manager will work with the prime to clear up the issue.
  - The prime contractor is responsible for contacting the LPA if any DBE termination/substitution situation arises during the project. The LPA will work with the District CCO and/or Goal Attainment Coordinator to address these issues. The Request to Terminate/Replace DBE form, which can be found at [www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/Resources.aspx](http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/Resources.aspx), must be filled out & submitted to the LPA and Goal Attainment Coordinator.
4. DBE contractors may begin work once the LPA and ODOT have approved their C-92s & sub-agreements/executed PO's.

#### District Contractor Compliance Officers (CCOs)

District 1	Gary Kramer	<a href="mailto:Gary.Kramer@dot.ohio.gov">Gary.Kramer@dot.ohio.gov</a>	419-999-6809
District 2	Colette Woods	<a href="mailto:Colette.Woods@dot.ohio.gov">Colette.Woods@dot.ohio.gov</a>	419-373-4333
District 3	Kyezer Jarvi	<a href="mailto:Kyezer.Jarvi@dot.ohio.gov">Kyezer.Jarvi@dot.ohio.gov</a>	419-207-7149
District 4	Jeff Inman	<a href="mailto:Jeff.Inman@dot.ohio.gov">Jeff.Inman@dot.ohio.gov</a>	330-786-3175
District 4	Elizabeth Walton	<a href="mailto:Elizabeth.Walton@dot.ohio.gov">Elizabeth.Walton@dot.ohio.gov</a>	330-786-3157
District 5	Tom Romine	<a href="mailto:Tom.Romine@dot.ohio.gov">Tom.Romine@dot.ohio.gov</a>	419-999-6809
District 6	Jason Stith	<a href="mailto:Jason.Stith@dot.ohio.gov">Jason.Stith@dot.ohio.gov</a>	740-833-8062
District 7	Rhonda Voisard	<a href="mailto:Rhonda.Voisard@dot.ohio.gov">Rhonda.Voisard@dot.ohio.gov</a>	937-497-6871
District 7	Colette Woods	<a href="mailto:Colette.Woods@dot.ohio.gov">Colette.Woods@dot.ohio.gov</a>	419-373-4333
District 8	Anthony Cunningham	<a href="mailto:Anthony.Cunningham@dot.ohio.gov">Anthony.Cunningham@dot.ohio.gov</a>	513-933-6550
District 8	Frank Tacoronte	<a href="mailto:Frank.Tacoronte@dot.ohio.gov">Frank.Tacoronte@dot.ohio.gov</a>	513-933-6681
District 9	Marcia Montalto	<a href="mailto:Marcia.Montalto@dot.ohio.gov">Marcia.Montalto@dot.ohio.gov</a>	740-774-8915
District 10	Lisa Mayle	<a href="mailto:Lisa.Mayle@dot.ohio.gov">Lisa.Mayle@dot.ohio.gov</a>	740-568-3936
District 11	Sabrina Bell	<a href="mailto:Sabrina.Bell@dot.ohio.gov">Sabrina.Bell@dot.ohio.gov</a>	330-308-3944
District 12	David Marcus Duncan	<a href="mailto:David.Duncan@dot.ohio.gov">David.Duncan@dot.ohio.gov</a>	216-584-2156
District 12	Jermaine Thomas	<a href="mailto:Jermaine.Thomas@dot.ohio.gov">Jermaine.Thomas@dot.ohio.gov</a>	216-584-2199
District 12	Lucille Micatrotto	<a href="mailto:Lucille.Micatrotto@dot.ohio.gov">Lucille.Micatrotto@dot.ohio.gov</a>	216-584-2158

#### Goal Attainment Coordinator

Julie Dick	<a href="mailto:Julie.Dick@dot.ohio.gov">Julie.Dick@dot.ohio.gov</a>	614-644-5649
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**D.) Permits:**

The contractor shall obtain all of the necessary permits from the proper public authorities, and shall give all notices required by law or public ordinances. The charge or fee for any permit issued by the Owner shall be borne by the Contractor and shall be presumed to be included in the “Total Amount Bid” for this contract.

**E.) Sales and Use Taxes:**

The Owner is exempt from Ohio State Sales and Use Taxes on materials and equipment to be incorporated in the work. Said taxes shall not be included in the bid.

**F.) Federal Davis-Bacon Prevailing Wage Rates:**

The Federal Davis-Bacon prevailing wage rate policy shall be strictly adhered to for this project. The Contractor must submit wage certification sheets with applications for payment. **Payments will not be processed without wage certification sheets.** The current wage rate determinations applicable to this project are included in this Project Manual.

**G.) Failure to Complete on Time:**

Failure to entirely complete this contract within the time stated in Proposal Form 1 of the Proposal from the date of the Notice to Proceed shall result in liquidated damages being deducted from the payments to the Contractor for each calendar day of overrun time in accordance with ODOT Specification 108.07 “Schedule of Liquidated Damages”, which is stated in Proposal Form 1 of the Proposal.

**H.) Engineer’s Estimate:**

The Engineer’s Total Estimated Construction Cost for this project is **\$1,460,317.25**. A detailed Engineer’s Estimate will be made public after the bid opening.

**II.) INSTRUCTIONS REGARDING PRE-BID ACTIVITIES**

**A.) Obtaining Documents:**

The bidding for and the performance of the resulting Contract will be governed by this document in its entirety, as modified by Addenda that may be issued during the bidding period. Therefore, all interested parties are required to purchase copies of the Project Documents (Project Manual and Construction Drawings) in accordance with the procedures noted in the Notice to Bidders. Any Addenda will be issued per Paragraph F.) of this section.

**B.) Pre-Bid Meeting:**

A pre-bid meeting is scheduled as noted in the Notice to Bidders.

**C.) Examination of the Project Documents and Site:**

It is the responsibility of anyone obtaining Project Documents, whether a potential bidder, a potential supplier, or a potential subcontractor, to do the following during the period prior to bid opening:

- Examine the Project Documents and other materials provided by the Owner.
- Visit and examine the site where the work is to be performed to become familiar with local conditions that may affect cost, progress, performance or furnishing of the work. Arrangements to examine areas not open to the general public shall be made through the Owner.

- Consider federal, state and local laws and regulations that may affect the cost, progress, performance or furnishing of the work.
- Study and carefully correlate observations made with the requirements of the Project Documents.
- Notify the Owner or the Owner's representative, in writing, of any conflicts, errors, discrepancies, omissions, or matters otherwise in need of clarification, interpretation or revision.

**D.) Communication with Insurance Representatives:**

The Instructions to Bidders and the General Conditions set forth various requirements regarding the bonds and insurance that are to be provided. Potential bidders are encouraged to contact their insurance representatives early in the bidding period. Comments and questions, including proposed modifications and clarifications, should be brought to the attention of the owner or the Owner's representative in a timely manner so that responses can be brought to the attention of all bidders via Addenda.

**E.) Bidder Evaluation of Potential Equipment, Materials, Suppliers and Subcontractors:**

The successful bidder shall be responsible for the acceptability of the equipment, materials to be incorporated into the work, and any and all subcontractors to be used in performing the work. Equipment and materials which do not conform with the Project Manual requirements and subcontractors who are rejected for cause under the provisions of Section G.41, Subletting, are to be replaced by the Contractor at no additional cost to the Owner.

Bidders should inform potential suppliers of the requirement for the City of Columbiana's approval prior to installation of any and all materials which will come into contact with potable water. Evidence of such approval is to accompany shop drawing submittals. See Sec. G.45.

Various specifications reference "brand name" equipment. These are descriptive references to the general nature and quality of the equipment or materials required by the Specifications. Bidders may not rely on these "brand references" as a representation that the named equipment will be approved for incorporation into the work. Approval of all equipment matters, regardless whether named or proposed equal, will depend on the conformance with the technical requirements of the specifications. Therefore, Bidders are required and shall be presumed to have determined for themselves the merits of all equipment and materials upon which the submitted bid is based.

Similarly, Bidders are expected and are presumed to have made the necessary evaluation of the subcontractors upon which the submitted bid is based. Such an evaluation can include, among other things, the capabilities, solvency, and performance records of potential subcontractors.

**F.) Plan holder Comments and Addenda:**

As noted in the Instructions to Bidders, Section II, Subsection C, each plan holder has an obligation to give the Owner or its representative notice of observation made for which addition, modification, clarification or interpretation which benefit the plan holders' understanding of the work. The response to such items will be made in Addenda distributed to all plan holders. Plan holders cannot rely on any oral clarification or interpretation of the Project Documents and/or Drawings made by representatives of the Owner or the Consulting Engineer.

Matters which a plan holder wishes to have included in Addenda shall be submitted to the Consulting Engineer at the plan holder's earliest convenience, but no less than seven days prior to the date scheduled for bid opening. Such matters should be presented in writing and can be sent to **Dallis Dawson & Associates** by "email" at **dallisdawson@gmail.com**.

Any and all Addenda that may be issued will be mailed, faxed, and/or emailed (as feasible) to all plan holders who obtained Project Documents in accordance with the procedures set forth in the Notice to Bidders. Mailing will be by priority mail or its equivalent. Upon request, Addenda can be sent by overnight mail service, provided billing is made to the plan holder.

Any and all Addenda that may be issued shall become a part of the Project Documents and must be attached to each proposal as stated in Section III. Failure of any bidder to receive any Addenda does not relieve the bidder from any obligation under the bid as submitted.

### **III.) INSTRUCTIONS REGARDING SUBMISSION OF THE BID**

#### **A.) Submission of Bid:**

Bids shall be submitted at the time and place indicated in the Notice to Bidders, and shall be enclosed in an opaque sealed envelope, box, or other suitable container, marked with the Project title, and the name and address of the bidder. The bid submittal shall consist of the completed Proposal forms, and Addenda received bound in the Project Manual and returning the entire Project Manual.

If the bid is delivered to the designated location by other than personal delivery, there shall be an outer covering to the materials, with the notation "Bid Enclosed".

The party submitting a bid is solely responsible for the delivery of the bid at the specified location prior to the deadline for receipt of bids.

#### **B.) Proposal Form 1 – Certification of Bid and Warranty:**

The Certification of Bid and Warranty sheet is the only form upon which the proposed bid price can be offered. Bidder's quote sheets, letters, or other materials cannot be used in lieu of the Proposal Form 1. When descriptive literature is included with the bid submittal, they shall be considered only for informational purposes. Payment, warranty and other terms that may appear on such forms that vary from the terms of the Project Manual shall be considered null and void. The Bidder's and, if applicable, the Subcontractor's ODOT Qualification Certificate shall be attached to this form.

#### **C.) Proposal Form 2 – Evidence of Bid Signatory Authority:**

The authority of the bid signatory must be established. Proposal Form 2 provides the means by which the bidder can identify the type of business organization it is (corporation, partnership, etc.) and provides instructions as to how signature authority is commonly established.

#### **D.) Proposal Form 3 - Bidder / Supplier Surety Affidavit**

Each Bidder shall complete all of the blanks of Proposal Form 3 which declares the true offer of the Bidder.

**E.) Proposal Form 4 – Bidder’s Equipment Data:**

Each bidder shall fill in all the blanks on the attached equipment data sheet with the names of the equipment he proposed to furnish under the various items of the work for which such information is requested.

**F.) Proposal Form 5 – Bid Guaranty, Performance and Payment Bond, Warranty Bond:**

Each proposal shall be accompanied by a bid guaranty which shall consist of one of the following:

- Ohio Statutory Bid Guaranty and Contract Bond, substantially in the form prescribed by ORC 153.54.

NOTE: Proposal Form 5 requires that the penal amount be an amount not less than the bid price. It is a bid error to write in an amount equal to 10% of the “Total Amount Bid”.

- A certified check or cashier’s check in an amount not less than 10% (ten percent) of the “Total Amount Bid” for all items upon which the proposal is made. Such a bid guaranty check shall be made payable to the City of Columbiana without condition.

The amount of the bid guaranty shall be the “Total Amount Bid” (Proposal Form 1). Bidders using the Ohio Statutory Bid Guaranty and Contract Bond form can leave the penal amount blank, if such is acceptable to the bidder and the surety. The statutory bond, per ORC 153.54, is read as having a penal amount equal to the price bid, if no amount is written.

The Performance and Payment Bond and Warranty Bond will be executed as stated on Proposal Form 5.

In case a bidder to whom a contract award is made shall fail to execute and secure a contract within ten (10) days after notice of award in writing, the award shall be vacated and the bid guaranty, in an amount not to exceed ten percent (10%) of the “Total Amount Bid”, forfeited.

The bid and other bonds required under this Contract shall meet the following requirements:

- Surety issuing the bond must be licensed to do business within the State of Ohio. A current Certificate of Compliance from the Ohio Department of Insurance shall accompany the bond.
- The surety must have an agent located within the State of Ohio and the agent shall be identified as part of the bond submittal.
- The surety shall provide a property executed power of attorney evidencing the authority of the surety’s agent to execute the bond.
- The surety must be listed on the current edition of U.S. Treasury Circular 570 and the penal amount of the bond shall be within the limit noted on the Circular.

**G.) Proposal Form 6 – Bidder Information:**

The bidder shall submit the required information on the included Proposal Form 6 showing Bidder Information, and shall supplement the information there given to a degree as may be required by the Owner after the receipt of bids. Low Bidders may be interviewed by the Owner and shall furnish such information as the Owner may deem necessary to have prior to making an award.

It is the practice of the City of Columbiana to request the low bidder to provide information required by the State of Ohio, under Chapter 5525 of the Ohio Revised Code, including the confidential financial statement and experience questionnaire.

**H.) Proposal Form 7 – Bidder’s Past Experience:**

The Bidder shall list their past experience similar in character to this project as stated on Proposal Form 7.

**J.) Proposal Form 8 – Listing of Subcontractors:**

The bidder shall complete Proposal Form 8 for subcontracts which are in excess of \$50,000.00.

**K.) Proposal Form 9 – Bidder’s Affidavit – Licensed Foreign Corporation:**

**(1) Foreign Corporation**

Each bidder who is a foreign corporation, that is, a corporation not chartered in Ohio but licensed to do business in Ohio under the provisions of Chapter 1703 of the Ohio Revised Code, is required to submit with his bid an affidavit, attached hereto, duly executed by the President, Vice-President, or General Manager of the corporation stating in accordance with the provisions of the Revised Code of the State of Ohio, obtained a certificate authorizing it to do business in the State of Ohio. (These certificated or certified copies of them are obtainable from the Office of the Secretary of State, Columbus, Ohio).

**(2) All other Bidders**

All bidders, including foreign corporations, consent, as noted on the proposal form, to service the process by a court of competent jurisdiction located in Ohio for the adjudication of all disputes arising under this Contract, except in instances where arbitration or other alternative form of dispute resolution is mutually acceptable.

**L.) Proposal Form 10 – Safety Acknowledgement:**

Each Bidder is required to completely fill in the blanks for this Proposal Form which acknowledges safety precautions taken during the construction of this project.

**M.) Proposal Form 11 – Bidder’s Insurance Affidavit:**

The bidder shall provide a notarized statement from an authorized representative of an insurance company(s) licensed to do business in the State of Ohio which states the following:

- (1) The representative has reviewed and understands the insurance requirements (including the cancellation/non-renewal and additional insured provisions), of Sec. G.16.

- (2) The representative certifies that, should the Contract be awarded to the contractor on whose behalf the certificate is being provided, the insurance specified will be provided.
- (3) The representative shall acknowledge that the requisite insurance certificates will be submitted within three business days following bid opening.
- (4) The names and A.M. Best Co. ratings of companies which are expected to provide the required insurance.

If any clarifications or changes regarding the insurance requirements set forth in Sec. G.16 are to be made, they will be made for the benefit of all bidders by addenda. Therefore, all bidders would be well advised to consult their insurance agent as soon as possible so that all questions and concerns that may be raised can be given due consideration.

**N.) Proposal Form 12 - Bidder Non –Delinquent Personal Property Tax Affidavit:**

The successful bidder shall submit to the Owner a notarized statement stating whether the bidder has or has not been charged with any delinquent personal property taxes on the general tax list of the City of Columbiana, Ohio at the time the bid was submitted. If the bidder has been charged with a delinquency, the statement shall state the amount of the due and unpaid delinquent taxes and any due and unpaid interest and penalties on the delinquency.

The required statement shall be made with the attached form, or its equivalent, on the bidder's letterhead, omitting either paragraph "A" or "B" as appropriate. The statement is to be signed by authorized signatory of the bidder and the statement is to be notarized.

If the Bidder enters into a Contract with the Owner, the statement will be incorporated as part of the Contract, and if the Bidder is delinquent the aforementioned personal property taxes, it will be the sole decision of the Owner as to when payments will begin to be made under the Contract. This statement is required by Section 5719.042 of the Ohio Revised Code. The statute supersedes any conflicting aspect of this specification.

**O.) Proposal Form 13 – Buy America Certification:**

Each Bidder is required to complete this form which certifies on behalf of itself and all contractors (at all tiers) that the Buy America requirements in 23 CFR 635.410 will be met, using the provisions listed.

**P.) Proposal Form 14 - Federally Required EEO Certification Form:**

Each Bidder is required to complete this form which acknowledges the EEO requirements for the project.

**Q.) Ohio Department of Transportation 2023 Required Contract Provisions**

The Contractor is referred to this section of the Proposal for additional requirements of the Ohio Department of Transportation. The Contractor shall carefully read and fill out any paperwork necessary for compliance of this section of the Proposal.



**R.) Withdrawal of Bids after Bid Opening:**

A bidder may withdraw its bid after the bid opening without creating a liability against the bid guaranty provided for any one of the following reasons:

- The price bid was substantially lower than other bids due to clerical error, provided notice is given in writing to the Owner by the end of the second business day after the bids were opened and read. Withdrawal under such circumstances shall be governed by Section 9.31 of the Ohio Revised Code.
- Any other reasons permitted by law.

**IV.) EVALUATION AND AWARD OF BIDS**

**A.) Opening and Evaluation of Bids:**

The bids shall be opened and publicly read at the time and place specified in the Notice to Bidders.

The City will evaluate the bids and award the contracts on the basis of the lowest and best bid. The primary basis of award shall be price.

The City shall be the sole judge of the effect of bid irregularities upon acceptance or rejection on a bid, and reserves the right to waive any such irregularities and to require the correction of a waived irregularity. The City reserves the right to reject any or all bids.

**B.) Exception to Bid – Statement of Varying Terms:**

Bidders cannot take exception in their bid submittal to the terms and conditions of the work to be performed under the Contract to be awarded. Any such comments are properly made in the context of a timely comment that can be considered for inclusion in an addendum for the benefit of all bidders.

**C.) Notice and Award of Contract:**

Award of Contract will be made when the Owner notifies, in writing, the successful bidder, of its intent to execute this Contract with the bidder, pursuant to authorizing legislation.

**D.) Bid Tabulations:**

Bid tabulations are available upon request. In tabulating the bids, the actual sum of the “Amount Bid” for each item will supersede a conflicting total written as the Unofficial “Total Amount Bid”. The pre-printed estimated quantity times the “Unit Price Bid Total (Words)” will supersede a conflicting “Amount Bid” for each item. Similarly, the “Unit Price Bid Total (Words)” will supersede a conflicting “Unit Price Bid Total (Figures)”. These general rules shall apply unless a different intent can be determined from the materials submitted.

**V.) EXECUTION OF DOCUMENTS**

**A.) Execution of the Contract Forms:**

The Owner will provide the successful bidder with the appropriate Contract Forms for execution within a reasonable amount of time following award of the Contract. A bidder to whom a Contract is awarded will be required to execute a written Contract Agreement and complete the other required Contract Forms, within ten (10) days from the date of service of notice to that effect. If a bidder to whom a Contract award is made is unable to meet this requirement, he shall forfeit his bid guaranty in an amount not to exceed ten percent (10%) of his bid.

**B.) Contract Form 1 – Notice of Award:**

The Owner shall completely fill in all of the blanks of this form under the section “Notice of Award” **PRIOR TO** any parties signing the Contract Agreement, and then this form shall be given to the Bidder being awarded the Contract so as to complete the “Acceptance of the Notice of Award”. The “Acceptance of the Notice of Award” shall be completed by the Bidder being awarded the Contract within the (10) day period as previously stated.

**C.) Contract Form 2 – Evidence of Contract Signatory Authority:**

The authority of the Contract signatory must be established. Contract Form 2 provides the means by which the bidder can identify the type of business organization that it is (corporation, partnership, etc.), and it provides instructions as to how signature authority is commonly established. This form is to be completed with the other Contract forms by the Bidder to which the Contract was awarded **PRIOR TO** any parties signing the Contract Agreement. This form shall be completed by the Bidder being awarded the Contract within the (10) day period as previously stated. All forms requiring a signature or name of the Authorized Contract Signatory shall have this person’s name or signature on those forms. **The Owner should check all of the forms to be completed by the Bidder being awarded the Contract to ensure that this name or signature is the true Authorized Contract Signatory.**

**D.) Contract Form 3 – Affidavit of Contractor:**

The Bidder being awarded the Contract shall completely fill in all of the blanks of this form **PRIOR TO** any parties signing the Contract Agreement and within the (10) day period previously stated.

**E.) Contract Form 4 - Insurance Certificate:**

An insurance certificate shall be provided proving, with such supplemental notes as may be necessary, that the required insurance is in full force and effect and shall be provided **PRIOR TO** any parties signing the Contract Agreement and within the (10) day period previously stated.

**F.) Contract Form 5 - Workers Compensation Certificate:**

A certificate shall be provided evidencing the availability of the benefits of the workers compensation program for persons employed by the Contractor. This shall be provided **PRIOR TO** any parties signing the Contract Agreement and within the (10) day period previously stated.

**G.) Contract Form 6 - Certificate of Owner’s Legal Counsel:**

The Owner shall have their legal counsel completely fill in all of the blanks of this form **PRIOR TO** any parties signing the Contract Agreement.

**H.) Contract Form 7 - Legislative Certification:**

The Owner shall have their appropriate official completely fill in all of the blanks of this form **PRIOR TO** any parties signing the Contract Agreement.

**J.) Contract Form 8 – Certificate of Fiscal Officer:**

The Owner shall have their appropriate official completely fill in all of the blanks of this form **PRIOR TO** any parties signing the Contract Agreement

**K.) Contract Form 9 - Contract Agreement:**

The Owner and the Bidder to whom the Contract is awarded are to completely fill out the Contract Agreement **AFTER** all of the other necessary Contract forms are completed by the Bidder being awarded the Contract and the Owner. See Section L, “Contract Form 10 - Notice to Proceed”.

**L.) Contract Form 10 - Notice to Proceed:**

After all of the Contract Forms and Certificates have been received from the Bidder being awarded the Contract and reviewed by the Owner, the Contract Agreement shall be executed by both parties. Following the execution of the Contract by both parties, the Owner will issue a Notice to Proceed by completely filling out Contract Form 10 under the heading "Notice to Proceed". All time periods for performance will be determined in accordance with the Notice to Proceed, unless otherwise specified. The Contractor is to completely fill out the "Acceptance of the Notice to Proceed" in the presence of the Owner.

**M.) Contract Form 11 – Change Order Form:**

This form is to be used **ONLY BY THE OWNER AND/OR THE ENGINEER** when it has been determined that it is necessary to add or reduce the amount of the Contract price or to increase or decrease the amount of the time necessary to complete the Contract.

**N.) Contract Form 12 – Completion Affidavit:**

After the project is complete as determined by the Engineer and the Owner, this form is to be completed to close out the project. **This form does not clear the Contractor of his obligations to fulfill the Warranty Bond.** The Warranty Bond will remain in effect until the time period stated on the Proposal Form.

**PROPOSAL  
CITY OF COLUMBIANA, OHIO  
COL-FAIRFIELD SCH. RD. & LISBON ST.**

**CERTIFICATION OF BID AND WARRANTY  
(Proposal Form 1)**

The undersigned, \_\_\_\_\_ having  
(Name of authorized bid signatory)

performed a careful examination and investigation of the project site and having read and studied the plans, specifications and the conditions of the Project Documents, hereby agrees to furnish all services, labor, materials, equipment, management, supervision, facilities, incidentals, shop drawings, and samples necessary to perform and construct the entire project in strict compliance with the plans, specifications and conditions of the Project Documents. The undersigned further agrees to provide a one year warranty on the work from the date of final acceptance and shall replace or repair any defective work or materials at no cost to the City of Columbiana.

It is understood by the undersigned that the quantities labeled “Estimated Quantities” in the Proposal Bid Form are to be used to determine the “Total Amount Bid” for each Proposal of this Contract and for the purpose of determining the lowest Bidder. It is understood that these quantities are **estimated** only, and the Bidder that is awarded the Contract shall not be entitled to any claim for loss of profits or for other damages should the quantity of work done prove to be greater or less than given in the “Estimated Quantities” column.

The undersigned hereby acknowledges receipt of and acceptance of the following Addenda:

Addendum No.	Date	Addendum No.	Date
_____	_____	_____	_____
_____	_____	_____	_____

Each Bidder and pertinent sub-contractor(s) must be prequalified with the Ohio Department of Transportation’s Office of Contracts, Contractor Qualification Section at the time of bid, at the time of award, and through the life of the contract for the pertinent ODOT WT Codes.

**Note: Bidder to attach O.D.O.T. Qualification Certificate to the back of Bid Proposal Form 6.**

**(Continue to Bid Proposal Forms)**

BID PROPOSAL FORM FOR CITY OF COLUMBIANA: COL-FAIRFIELD SCH. RD. AND LISBON ST.

ITEM NUMBER	ESTIMATED QUANTITIES	UNIT	DESCRIPTION	UNIT PRICE BID TOTAL (FIGURES)	UNIT PRICE BID TOTAL (WORDS)*	AMOUNT BID UNIT PRICE BID x ESTIMATED QUANT.
<b>ROADWAY</b>						
201	LUMP	SUM	Clearing and Grubbing			
202	349	S.Y.	Pavement Removed			
202	2,737	S.Y.	Pavement Removed, As Per Plan			
202	592	S.F.	Walk Removed			
202	322	FOOT	Curb Removed			
202	211	FOOT	Pipe Removed, 24" and Under			
202	4	EACH	Catch Basin Removed			
204	3,047	S.Y.	Subgrade Compaction			
204	400	C.Y.	Excavation of Subgrade			
204	400	C.Y.	Granular Embankment			
204	2,800	S.Y.	Geotextile Fabric			
209	210	FOOT	Ditch Cleanout, As Per Plan			
209	21.2	STA.	Linear Grading, As Per Plan			
209	208	S.Y.	Linear Grading, Misc.: Lisbon Street			
608	170	S.F.	4" Concrete Walk, As Per Plan			
608	249	S.F.	6" Concrete Walk, As Per Plan			
608	138	S.F.	Curb Ramp, As Per Plan, (Type A1)			
608	102	S.F.	Curb Ramp, As Per Plan, (Type B3)			
608	8	S.F.	Detectable Warning, As Per Plan			

BID PROPOSAL FORM FOR CITY OF COLUMBIANA: COL-FAIRFIELD SCH. RD. AND LISBON ST.

ITEM NUMBER	ESTIMATED QUANTITIES	UNIT	DESCRIPTION	UNIT PRICE BID TOTAL (FIGURES)	UNIT PRICE BID TOTAL (WORDS)*	AMOUNT BID UNIT PRICE BID x ESTIMATED QUANT.
<b>EROSION CONTROL</b>						
659	80	C.Y.	Topsoil			
659	3,137	S.Y.	Seeding and Mulching, Class 1			
659	0.53	TON	Commercial Fertilizer			
659	0.73	ACRE	Lime			
659	25.42	M GAL.	Water			
670	478	S.Y.	Ditch Erosion Protection			
832	10,000	EACH	Erosion Control			
<b>DRAINAGE</b>						
601	11	S.Y.	Riprap, Type D, As Per Plan			
601	6	C.Y.	Crushed Aggregate Slope Protection, As Per Plan			
611	1,078	FOOT	12" Conduit, Type B			
611	28	FOOT	12" Conduit, Type C			
611	57	FOOT	12" Conduit, Type D			
611	75	FOOT	15" Conduit, Type B			
611	43	FOOT	15" Conduit, Type C			
611	53	FOOT	24" Conduit, Type B			
611	39	FOOT	24" Conduit, Type C			
611	16	FOOT	Conduit Misc.: Pipe Removed, Cleaned, and Re-Installed			
611	85	FOOT	Conduit Misc.: Pipe Cleanout			

BID PROPOSAL FORM FOR CITY OF COLUMBIANA: COL-FAIRFIELD SCH. RD. AND LISBON ST.

ITEM NUMBER	ESTIMATED QUANTITIES	UNIT	DESCRIPTION	UNIT PRICE BID TOTAL (FIGURES)	UNIT PRICE BID TOTAL (WORDS)*	AMOUNT BID UNIT PRICE BID x ESTIMATED QUANT.
<b>DRAINAGE (CONT'D)</b>						
611	1	EACH	Catch Basin, No. 3, As Per Plan			
611	1	EACH	Catch Basin, No. 3A, As Per Plan			
611	15	EACH	Catch Basin, No. 2-2B			
611	3	EACH	Catch Basin, No. 2-3			
611	3	EACH	Catch Basin Adjusted to Grade, As Per Plan			
611	1	EACH	Inlet Reconstructed to Grade, As Per Plan (Sta. 59+83)			
611	1	EACH	Inlet Reconstructed to Grade, As Per Plan (Sta. 60+19)			
611	6	EACH	Manhole, No. 3, As Per Plan			
611	22	EACH	Manhole Adjusted to Grade, As Per Plan			
611	1	EACH	Manhole Misc.: Manhole No. 3, 72" Base I.D., Eccentric Cone Top			
SPECIAL	2,000	POUND	Miscellaneous Metal			
<b>PAVEMENT</b>						
254	8,127	S.Y.	Pavement Planning, Asphalt Concrete, As Per Plan (T=1-1/2" +/-)			
254	7,016	S.Y.	Pavement Planning, Asphalt Concrete, As Per Plan (T=3" +/-)			
255	100	S.Y.	Full Depth Pavement Removal and Rigid Replacement, Class QC MS, As Per Plan			
301	225	C.Y.	Asphalt Concrete Base, PG64-22, (449)			
304	512	C.Y.	Aggregate Base, As Per Plan			
305	164	S.Y.	Concrete Base Misc.: 8" Concrete Base, Class QC MS			
305	50	S.Y.	Concrete Base Misc.: 12" Concrete Base, Class QC MS			

BID PROPOSAL FORM FOR CITY OF COLUMBIANA: COL-FAIRFIELD SCH. RD. AND LISBON ST.

ITEM NUMBER	ESTIMATED QUANTITIES	UNIT	DESCRIPTION	UNIT PRICE BID TOTAL (FIGURES)	UNIT PRICE BID TOTAL (WORDS)*	AMOUNT BID UNIT PRICE BID x ESTIMATED QUANT.
<b>PAVEMENT (CONT'D)</b>						
407	1,036	GAL.	Tack Coat			
407	1,550	GAL.	Tack Coat, 702.13			
441	677	C.Y.	Asphalt Concrete Surface Course, Type 1, (448), As Per Plan, (PG64-22)			
441	888	C.Y.	Asphalt Concrete Intermediate Course, Type 2, (448)			
452	65	S.Y.	6" Non-Reinforced Concrete Pavement, Class QC MS			
609	269	FOOT	Curb, Type 6			
SPECIAL	398	S.Y.	Pavement Planing, Asphalt Concrete, (Railroad Bridge)			
SPECIAL	8,127	S.Y.	Hauling and Stockpiling of Pavement Planing Cuttings (T=1-1/2" +/-)			
SPECIAL	7,414	S.Y.	Hauling and Stockpiling of Pavement Planing Cuttings (T=3" +/-)			
<b>SANITARY SEWER</b>						
611	20	FOOT	Conduit Misc.: Sanitary Force Main Relocation			
<b>WATER WORK</b>						
638	5	EACH	Valve Box Adjusted To Grade, As Per Plan			
638	20	FOOT	Water Work Misc.: Existing Waterline Relocation			
<b>TRAFFIC CONTROL</b>						
644	1.67	MILE	Edge Line, 4"			
644	1.15	MILE	Center Line			
644	80	FOOT	Stop Line			
644	339	FOOT	Crosswalk Line, 12"			



**BID PROPOSAL FORM FOR CITY OF COLUMBIANA: COL-FAIRFIELD SCH. RD. AND LISBON ST.**

ITEM NUMBER	ESTIMATED QUANTITIES	UNIT	DESCRIPTION	UNIT PRICE BID TOTAL (FIGURES)	UNIT PRICE BID TOTAL (WORDS)*	AMOUNT BID UNIT PRICE BID x ESTIMATED QUANT.
<b>MAINTAINING TRAFFIC</b>						
614	200	C.Y.	Maintaining Traffic Misc.: Temporary 304 Aggregate Base			
614	2.30	MILE	Work Zone Centerline, Class 1, 642 Paint			
614	1.15	MILE	Work Zone Centerline, Class 1, 740.06, Type 1			
616	10	M GAL.	Water			
<b>MISCELLANEOUS</b>						
614	LUMP	SUM	Maintaining Traffic			
619	4.0	MONTH	Field Office, Type B			
623	LUMP	SUM	Construction Layout Stakes and Surveying			
624	LUMP	SUM	Mobilization			
<b>TOTAL AMOUNT BID</b>						
			TOTAL AMOUNT BID (Sum of all Amounts Bid)			

\* Denotes Unit Price Bid Total in Words shall govern over actual numeric figures written.

Note: No payments will be made to directly reimburse the Contractor for the cost of bonds, insurance and other similar requirements of this Contract, which are not completed work or stored equipment. The Contractor shall be compensated for these items as part of the overhead included in the progress payments for completed work. See Section G.32 of the General Conditions in the Project Manual.

**(Proposal Form 1, cont'd)**

The undersigned further agrees to perform all of the work as stipulated in the plans, specifications and Project Documents for the **COL-FAIRFIELD SCH. RD. & LISBON ST.** within the schedule noted below and subject to the liquidated damages noted below unless extended in writing for excusable delay as provided for in the General Conditions.

The Contract performance schedule is as noted below:

The Contract work shall commence immediately upon the date stipulated in the Notice to Proceed. The Contract work shall be entirely complete (substantial completion and the completion of punch list items) within **120 calendar days of commencement.** Failure to do so shall subject the Bidder to an assessment of liquidated damages of **Six Hundred Dollars (\$600.00)** per calendar day (based upon an eight hour work day) for each and every day of unexcused delay for the entire completion of the Contract work.

The "Total Amount Bid", based on the "Estimated Quantity" given times the "Unit Price Bid" specified in the Proposal by the Bidder amounts to the sum of:

\_\_\_\_\_

(Unofficial "Total Amount Bid", numeric and written)

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Name of Bidder)

\_\_\_\_\_  
(Signature of Authorized Bid Signatory)

**EVIDENCE OF BID SIGNATORY AUTHORITY  
(Proposal Form 2)**

The Bidder shall indicate which of the following is the source of the signatory's authority to sign the **Bid** on behalf of the Bidder. The Bidder shall follow the instructions noted.

\_\_\_\_\_ The party bidding is a sole partnership. Below the signature affixed on the Proposal sheet, a sole partnership's owner shall write "sole owner" or "doing business as (name of Bidder)".

\_\_\_\_\_ The party bidding is a partnership and the party signing is one of the partners. Below the signature affixed on the Proposal sheet, a signatory for a partnership shall write "member of the firm".

\_\_\_\_\_ The party bidding is a corporation. The party signing is authorized to sign on behalf of the corporation. A copy of the resolution of the corporation's board of directors which delegates signatory authority to the individual signing **is to be attached** to this bid form. The resolution can be a general delegation of authority for signing bids, or it can be a specific authorization for this project. The Secretary of the corporation shall authenticate the resolution as currently being in full force and effect.

\_\_\_\_\_ Signatory authority for the party bidding is evidenced by other means noted below:





**BID GUARANTY, PERFORMANCE AND PAYMENT BOND, WARRANTY BOND  
(Proposal Form 5)**

**KNOW ALL MEN BY THESE PRESENTS**, That we, \_\_\_\_\_  
(Name of Bidder)

as **PRINCIPAL**, and \_\_\_\_\_ as **SURETY**, are  
(Name of Surety Company)

hereby held and firmly bound unto the **City of Columbiana, Ohio as obligee, herein after called the City, and the Ohio Department of Transportation as an additional obligee, herein after called ODOT**, in the penal sum of the dollar amount of the bid submitted by the Principal to the City on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ to undertake the project known as **COL-FAIRFIELD SCH. RD. & LISBON ST.**

The penal sum referred to herein shall be the eligible percentage of the dollar amount of the Principal's bid to the City, incorporating any additive or deductive alternate bids made by the Principal on the date referred to above to the City, which are accepted by the City. In no case shall the penal sum exceed one hundred percent of Principal's bid, including alternates. For the payment of the penal sum well and truly be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

**THE CONDITIONS OF THE ABOVE OBLIGATION** are such that, whereas, the above named Principal has submitted a bid for the above named project:

**TEN PERCENT BID GUARANTY:**

Now, therefore, if the City accepts the Proposal of the Principal and the Principal fails to enter into a proper Contract in accordance with the Proposal, plans, details, specifications, warranty, and bills of materials; and in the event the Principal pays to the City the difference not to exceed ten percent of the penalty hereof between the amount specified in the bid and such larger amount for which the City may in good faith Contract with the next eligible Bidder to perform the work covered by the bid; or in the event the City does not award the Contract to the next eligible Bidder and resubmits the project for bidding, the Principal pays to the obligee ten percent of the amount specified in the bid, then this obligation shall be null and void. If the City accepts the bid of the Principal and the Principal within ten days after the awarding of the Contract enters into a proper Contract in accordance with the bid, plans, details, specifications, warranty, and bills of materials, which said Contract is made a part of this bond the same as though set forth herein; Then the Bid Guaranty shall become null and void and the bond shall progress to a one hundred percent Performance and Payment Bond.

**ONE HUNDRED PERCENT PERFORMANCE AND PAYMENT BOND:**

Now also, if the said Principal shall well and faithfully do and perform the things agreed by the City to be done and performed according to the terms of said Contract; and shall pay all lawful claims of subcontractors, materials suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said Contract; we agreeing and assenting that this undertaking shall be for the benefit of any materials suppliers or laborers having a just claim, as well as for the City and ODOT herein. Otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the penal liability of the surety for any and all claims hereunder shall in no event exceed one hundred percent of the amount bid including alternates. The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of said Contract or in or to the plans or specifications therefore shall in any wise affect the obligations of said

**(Proposal Form 5, cont'd)**

surety on its bond. Upon completion of the Contract requirements and payment of all lawful claims; thence the Performance and Payment Bond shall become null and void and the bond shall progress to a one hundred percent Warranty Bond.

**ONE HUNDRED PERCENT WARRANTY BOND:**

Finally, if the said Principal's workmanship and materials shall remain free of defects due to faulty construction practices and/or inferior materials for a period of one year from the date of final acceptance by the City; then this obligation shall be null and void. Otherwise, upon notification from the City to the Principal and Surety in writing, the Principal shall repair and/or replace any defective workmanship and/or materials at no cost to the City within thirty days of notification. Upon completion of the repairs or the one year expiration date, which ever shall occur last; then this obligation shall become null and void. Otherwise, upon notification from the City to the Surety in writing that the Principal has been notified of defective workmanship and/or materials and has failed to repair and/or replace said defects within the time prescribed; then the Surety shall pay the penal sum of the cost to repair the defective work including all necessary incidentals to the City which is not to exceed the penal sum of one hundred percent of the Principal's bid including alternates; then this obligation shall become null and void. The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of said Contract or in or to the plans or specifications therefore shall in any wise affect the obligations of said surety on its bond.

Witness our signatures, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, signed in the presence of:

Witness	(Name of Principal/Bidder)
Witness	(Signature of Principal/Auth. bid signatory)
Witness	(Name of Surety)
Witness	(Address of Surety)
	(Name of Surety Agent)
	(Signature of Surety Agent)

Said bond to be properly and duly executed by an approved surety company licensed to conduct business in the State of Ohio.

**(Proposal Form 5, cont'd)**

**BOND INSTRUCTIONS**

**Attach Bid Bond or Bid Guaranty to this page.**

Attach corporate seal of Principal if corporation.

Attach corporate seal of surety company if it is signing as surety.

( 1 ) If a corporation, insert on previous page, "A corporation organized under the laws of the State of (name of State) with its Principal place of business at ( address )."

( 2 ) If a surety company, insert on previous page, "A corporation organized under the laws of the State of (name of State) and duly authorized to transact business within the State of Ohio."

If the above bond is executed by private individuals as sureties, the affidavits in jurisdiction of sureties must be filled out in detail; in lieu of said affidavits, a certificate of the City Auditor of the City in which said sureties, or one of them, reside, or have property, may be furnished to the effect that in his judgment such sureties possess the qualifications required by Section 1341.01 Ohio Revised Code which reads as follows: "Sureties must be residents of this State, and worth, in the aggregate, double the sum to be secured, beyond the amount of their debts, and have property liable to execution in this State equal to the sum to be secured."

If signed by a surety company said bond must be accompanied by (1) a certificate of the superintendent of insurance, that such surety company is authorized to transact business in this State; and (2) the power of attorney of the agent of such company showing his authority to execute said bond on its behalf, which power of attorney must be dated not more than ninety days previous to signing the Contract; and (3) a recent financial statement of the surety company. In the event the bond exceeds ten percent (10%) of the capital and surplus of the surety company signing the bond, the excess amount must be reinsured in some other surety company licensed to do business in Ohio and a certificate showing such reinsurance must accompany said bond.



**BIDDER INFORMATION**  
**(Proposal Form 6)**

**Note: Bidder to attach a copy of O.D.O.T. Qualification Certificate to the back of this page.**

1.) The Bidder shall provide the following information as part of this bid.

- a.) Name of Bidder \_\_\_\_\_
- b.) Business Address \_\_\_\_\_
- c.) Business Telephone No. \_\_\_\_\_
- d.) Person, Address, and Telephone No. to whom Official Notices are to be sent \_\_\_\_\_  
\_\_\_\_\_
- e.) Person, Address, and Telephone No. for further Information regarding this Proposal \_\_\_\_\_  
\_\_\_\_\_
- f.) State(s) of incorporation (w/dates of incorporation) \_\_\_\_\_  
\_\_\_\_\_
- g.) Principle place of business \_\_\_\_\_

2.) Form of Business Organization

- \_\_\_\_\_ Corporation
- \_\_\_\_\_ Partnership
- \_\_\_\_\_ Other \_\_\_\_\_

3.) The Bidder shall provide all of the names and addresses of all persons interested as Principals (officers, partners, and associates) in this Proposal. Write first name in full, and give titles or offices.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(Proposal Form 6, cont'd)**

4.) All of the aforementioned names, including the signatory to this bid, are citizens of the United States, except the following (provide names and addresses of those not a citizen of the United States):

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5.) Names and addresses of other persons, firms or companies interested in this Contract:

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The undersigned certifies that the Bidder has the facilities, ability and financial resources available for the fulfillment of the Contract if such be awarded to him.

Upon request, the Bidder will be expected to amplify the foregoing statements as necessary to satisfy the Owner concerning his ability to successfully perform the work in a satisfactory manner.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Name of Bidder)

\_\_\_\_\_  
(Signature Authorized bid signatory)

(SEAL)  
(Seal required if Bidder  
is a corporation)





**BIDDER'S AFFIDAVIT - LICENSED FOREIGN CORPORATION\***  
**(Proposal Form 9)**

The undersigned certifies that \_\_\_\_\_ is a foreign  
(Name of Bidder)

corporation incorporated in the State (Commonwealth) of \_\_\_\_\_, whose principle  
place of business is \_\_\_\_\_ and is required  
to obtain a license to transact business in the State of Ohio under Chapter 1703 of the Ohio Revised Code.

The undersigned Bidder further certifies that said license has been obtained and is in effect, and,  
in accordance with Chapter 1703 of the Ohio Revised Code, has designated a statutory agent upon whom  
process against Bidder corporation may be served within the State of Ohio. The name and address of the  
designated statutory agent is:

\_\_\_\_\_  
\_\_\_\_\_

Process served upon the designated statutory agent named above shall be effective service unless  
the Owner has been informed (by certified mail or its equivalent) of a change in the agent upon whom  
process can be served.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature of Authorized bid signatory)

Note: This statement is to be reproduced on the Bidder's letterhead; signed by the President, Vice  
President, or General Manager; notarized; and submitted with the bid.

\* Any corporation that is not incorporated in the State of Ohio is a foreign corporation.



**BIDDER'S INSURANCE AFFIDAVIT  
(Proposal Form 11)**

(Bidder shall insert insurance affidavit here; see "Instruction to Bidders: Instructions Regarding Submission of Bid", Section M.)





**(Proposal Form 13)**  
**Buy America Certification**

PID: \_\_\_\_\_ Project Name: \_\_\_\_\_

Project Description: \_\_\_\_\_

The undersigned Proposer hereby certifies on behalf of itself and all contractors (at all tiers) that it will meet Buy America requirements in 23 CFR 635.410, using one of the following provisions:

\_\_\_\_\_ **The product contains no steel or iron products manufactured outside the United States.** To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. The Buy America process does not apply to this project. If there is ANY foreign steel or iron in your product you may not check this box.

\_\_\_\_\_ **The product has minimal use of steel or iron products manufactured outside the United States.** The Buy America regulation does “not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project. If this minimal use clause applies to your project, then please provide documentation indicating that this requirement is being met. The Buy America process does not apply to your project.

\_\_\_\_\_ **The product meets the standards for the FHWA Manufactured Products waiver.** FHWA policy provides for a Buy America waiver for certain manufactured products. To be eligible for the Manufactured Products waiver, the product must consist of less than 90% steel or iron content when it is delivered to the job site for installation. Please [click here](#) for the full guidance on manufactured products. If your product meets this manufactured products definition, please provide documentation of how the product is a manufactured product and submit to ODOT for approval.

\_\_\_\_\_ **The product has foreign steel or iron; a Buy America waiver is required.** ODOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department. The waiver process can take time and the project may not move forward until a waiver is completed.

A false certification is a criminal act in violation of 18 USC 1001. Should this Agreement be investigated, Proposer has the burden of proof to establish that it is in compliance.

Proposer: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_

Name of Authorized Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**FEDERALLY REQUIRED EEO CERTIFICATION FORM  
(Proposal Form 14)**

The bidder hereby certifies that he or she **has** ....., **has not** ....., participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that he or she **has** ....., **has not** ....., filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements. **The bidder must circle the appropriate "has" or "has not" above.**

Note: This form is a part of the Ohio Department of Transportation Required Contract Provisions included as part of the Project Manual and **must** be completed by the Bidder.

**OHIO DEPARTMENT OF TRANSPORTATION  
2023 REQUIRED CONTRACT PROVISIONS**

**ODOT's LPA Template (ODOT Spec Book and LPA Spec Book)  
Required Contract Provisions.**

**1. ODOT'S 2023 CONSTRUCTION AND MATERIAL SPECIFICATIONS (C&MS) AND ITS SUPPLEMENTS**

ODOT's Construction and Material Specifications (C&MS) and its supplements are hereby incorporated by reference, in their entirety, as if rewritten herein. **The incorporation of this document by reference does not interfere with the order of precedence set forth in Section 105.04 of the C&MS Manual.**

In accordance with the Locally Administrated Transportation Projects Manual of Procedures (LATPM), when bidding this project, the contractor should replace the terms "the department", "the engineer", "the DCE" and "the DCA" with the term "the Local Public Agency (LPA)." Furthermore, nothing in this document is intended to alter the LPA's adherence to Ohio Revised Code, local ordinance or other applicable requirements which are properly established.

**2. PN 100 FOR LPA PROJECTS (Not required, but strongly encouraged)**

(PN 100 outlines general provisions to a construction contract. Local public agencies (LPAs) may choose to incorporate this document to include LPA specific preferences.

[2023 PN 100 for LPA Projects](#)

If including PN 100, download the template above. Green sections cannot be edited. Blue sections may be edited by the LPA. Yellow sections must have the LPAs own language incorporated. Once complete, insert the completed document in its entirety here. If not including PN 100, this item must be deleted from the bid doc template.)

**3. PN 133 – 10/20/2023 – Products Made in the United States**

The requirements of this note replace the domestic material requirements in 106.09 of the Construction & Material Specifications.

This note is automatically inserted into all projects that have federal funding in the construction phase or any prior phase. If there was federal participation in environmental studies, right of way acquisition, preliminary engineering or other phase defined in the environmental document, this note should be included in the proposal.

Furnish products that are made in the United States according to the applicable provisions of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, which includes the Build America, Buy America Act Pub. L. 117-58, §§ 70901-52.

**A. Federal Requirements.** All steel or iron products incorporated permanently into the Work must be made of steel or iron produced in the United States and all subsequent manufacturing must be performed in the United States. Manufacturing is any process that modifies the chemical content; physical shape or size; or final finish of a product. Manufacturing begins with the initial melting and mixing and continues through the bending and coating stages. If a domestic product is taken out of the United States for any process, it becomes a foreign source material.

All manufactured products used in the project are not required to be produced in the United States.

All construction materials must be manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—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);
- Fiber optic cable (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; and
- Drywall.

To provide clarity to item, product, and material manufacturers and processors, we note that items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

**B. Exceptions.** The Director may grant specific written permission to use non-domestic steel or iron products in any type of construction in accordance with 23 CFR 635.410(b)(4). The Director may grant such exceptions under the following condition:

- The cost of products to be used does not exceed 0.1 percent of the total Contract cost, or \$2,500, whichever is greater. The cost is the value of the product as delivered to the project.

The Director may grant specific written permission to use non-domestic construction materials and manufactured products in any type of construction in accordance with 2 CFR Part 184. The Director may grant such exceptions under the following conditions:

- The total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project; or
  - applicable costs are defined as the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement
  - the actual cost of the materials, not the anticipated cost of those materials.
- The total amount of the Federal financial applied to the project, through awards or subawards, is below \$500,000;

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.

**C. Proof of Domestic Origin.** Furnish certification to the Engineer showing the domestic origin of all products covered by this section before they are incorporated into the Work. The Daily Source Report form itself is not acceptable certification of domestic origin. Non-domestic product(s) incorporated into the Work does not relieve the Contractor of any responsibility to correct the Work up to and including removal and replacement of the non-domestic product(s). Products without a traceable domestic origin will be treated as a non-domestic product.

#### 4. CERTIFICATION AGAINST DEBARMENT AND SUSPENSION

The bidder hereby certifies by signing this proposal that, except as noted below, under penalty of perjury and under other such penalties as the laws of this state and the United States of America provide, that the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds is **not** currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal

agency; that the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds has **not** been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years; that the company or any person associated therewith in the capacity of owner, partner, director, manager, auditor, or any position involving the administration of federal funds does **not** have a proposed debarment pending; that the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator has **not** been indicted, convicted, or had a civil judgment rendered against the company or themselves by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

If there are exceptions to any of the above clauses, please include a statement with the bid package detailing these exceptions.

Exceptions will not necessarily result in denial of award but will be considered in determining bidder responsibility. For any exception noted, indicate below to whom it applies, initiating agency and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. Execution of this proposal on the signature portion thereof shall also constitute signature of this certification as permitted by Title 28 United States Code, Section 1746.

## 5. PREQUALIFICATION

Only prequalified contractors are eligible to submit bids for this project. Prequalification status must be in force **at the time of bid, at the time of award, and through the life of the construction contract.** For work types that ODOT does not prequalify, the LPA must still select a qualified contractor. Subcontractors are not subject to the prequalification requirement. The “prime” contractor must perform no less than 30 percent of the total original contract price.

## 6. PN 033 - 4/18/2008- AS PER PLAN DESIGNATION

**(Not required by FHWA, but strongly suggested if As Per Plan is used by the LPA)**

The “As Per Plan” designation is sometimes added to item descriptions in the proposal to assist contractors with easily identifying standard items that have been altered by plan notes.

The “As Per Plan” designation has proven to be a very useful tool for the contractors. However, its use was never intended to relieve the contractors of their responsibility to read, bid, and construct all items in accordance with all governing plan notes. Therefore, the absence of an “As Per Plan” designation on some item descriptions in the proposal for which there are clear and controlling plan notes does not relieve the contractors of the responsibility to read, bid, and construct those particular items in accordance with the governing plan notes.

Be advised that the item descriptions in the bidding proposal must be read or interpreted with the governing plan notes and the Construction and Material Specification Manual. A claim based upon an “order of precedence” basis will be denied. In the event that a conflict, either real or perceived, exists between the item description and the governing plan note, the contractors are to request clarification through the pre-bid process.

## 7. FEDERALLY REQUIRED EQUAL EMPLOYMENT OPPORTUNITY (EEO) CERTIFICATION FORM

The bidder hereby certifies that he or she **has** ....., **has not** ....., participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that he or she **has** ....., **has not** ....., filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements. The bidder must circle the appropriate “has” or “has not” above.

**8. PN 017 - 10/15/2004 - FEDERALLY REQUIRED EEO CERTIFICATION CLAUSE**

The Federally Required EEO Certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7 (b) (1)) and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7 (b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**9. PN 026 - 10/15/2004 - CERTIFICATION OF NON-SEGREGATED FACILITIES**

- A. Certification of Non-segregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities (for a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).
- B. Bidders are cautioned as follows: By signing this bid, the bidder has agreed to the provisions of the "Certification of Non-segregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his or her employees' facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.
- C. Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

*"Notice to Prospective Subcontractors and Material Suppliers of Requirement for Certification of Non-segregated Facilities" -*

- A. A Certification of Non-segregated Facilities as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.
- B. Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Non-segregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his or her employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.
- C. Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

**10. PN 003 - 10/15/2004 - TITLE VI RELATED STATUTES NON-DISCRIMINATION STATEMENT**

The LPA, under Title VI of the Civil Rights Act and related statutes, ensures that no person within the LPA shall on the grounds of race, color, national origin, sex, disability, or age be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity it administers.

**11. CERTIFICATION OF COMPLIANCE WITH AFFIRMATIVE ACTION PROGRAMS**

In accordance with Ohio Administrative Code §9.47, before any Contract is awarded, the LPA will require the Bidder to furnish a valid Certificate of Compliance with Affirmative Action Programs, issued by the State EEO Coordinator dated prior to the date fixed for the opening of bids.

**12. PN 020- 10/21/2022- NOTICE OF REQUIREMENT OF AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY AND WORKFORCE DIVERSITY REQUIREMENTS ON ALL FEDERALLY FUNDED PROJECTS (CLOSE MONITORING AND ENFORCEMENT CURRENTLY APPLIES TO PROJECT AMOUNT GREATER THAN \$10M ONLY).<sup>1</sup> PLEASE NOTE THAT ODOT MAY REQUEST INFORMATION AT ANY TIME FOR PROJECTS UNDER \$10M, AS NEEDED.**

The bidder’s attention is called to the affirmative action obligations required by the specifications set forth in 23 CFR Part 230, 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974.

**WORKFORCE UTILITATION GOALS**

Utilization goals applicable to the project, expressed in percentages, for minority and female participation for each construction craft can be found on ODOT’s website at [Contracts | Ohio Department of Transportation](#). These goals are based on 2020 census data and represent the area, per craft, minority, and female availability pool.

- **Census Availability Percentages for minority and female workers** by craft per county (applicable to project):  
<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CensusForAllCounties.xlsx>  
<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CensusForAllCounties.pdf>
- **Statewide utilization obligations/ goals for minority workers** by county (applicable to each project).
- **Statewide utilization obligation/ goal for female workers is 6.9%** and applies the same for each county.

**Source: US Department of Labor’s, Office of Federal Contract Compliance Programs, Technical Assistance Guide for Construction Contractors (pp. 126 – 127)**  
[Construction Contractors Technical Assistance Guide \(dol.gov\)](#)

Ohio 064 Youngstown-Warren, OH:

SMSA (Standard Metropolitan Statistical Area) Counties:

9320 Youngstown - Warren, OH \_\_\_\_\_ 9.4

OH Mahoning; OH Trumbull.

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<sup>1</sup> All Federally Funded projects greater than \$10K are required to meet the workforce requirements; however close monitoring and enforcement of those over \$10M are defined by ODOT regularly tracking hiring progress with quarterly workforce utilization reports provided to district and contractor staff at progress meetings along with submission of Good Faith Efforts, at the end of a project. GFEs are only requested in the event of a shortfall in female and minority workforce percentages.



Non-SMSA Counties _____	6.7
OH Columbiana; PA Lawrence; PA Mercer.	
065 Cleveland, OH:	
SMSA Counties:	
0080 Akron, OH _____	7.8
OH Portage; OH Summit.	
1320 Canton, OH _____	6.1
OH Carroll; OH Stark.	
1680 Cleveland, OH _____	16.1
OH Cuyahoga; OH Geauga; OH Lake; OH Medina.	
4440 Lorain-Elyria, OH _____	9.3
OH Lorain.	
4800 Mansfield, OH _____	6.3
OH Richland.	
Non-SMSA Counties: _____	11.3
OH Ashland; OH Ashtabula; OH Coshocton; OH Crawford; OH Erie; OH Holmes; OH Huron; OH Tuscarawas; OH Wayne.	
066 Columbus, OH:	
SMSA Counties:	
1840 Columbus, OH _____	10.6
OH Delaware; OH Fairfield; Franklin; OH Madison; OH Pickaway.	
Non-SMSA Counties _____	7.3
OH Athens; OH Fayette; OH Guernsey; OH Hocking; OH Jackson; OH Knox; OH Licking; OH Marion; OH Meigs; OH Morgan; OH Morrow; OH Muskingum; OH Noble; OH Perry; OH Pike; OH Ross; OH Scioto; OH Union; OH Vinton.	
067 Cincinnati, OH:	
SMSA Counties:	
1640 Cincinnati, OH-KY-IN _____	11.0
IN Dearborn; KY Boone; KY Campbell; KY Kenton; OH Clermont; OH Hamilton; OH Warren.	
3200 Hamilton - Middletown, OH _____	5.0
OH Butler.	
Non-SMSA Counties _____	9.2
IN Franklin; IN Ohio; IN Ripley; IN Switzerland; KY Bracken; KY Carroll; KY Fleming; KY Gallatin; KY Grant; KY Lewis; KY Mason; KY Owen; KY Pendleton; KY Robertson; OH Adams; OH Brown; OH Clinton; OH Highland.	
068 Dayton, OH:	
SMSA Counties:	
2000 Dayton, OH _____	11.5
OH Greene; ON Miami; OH Montgomery; OH Preble.	
7960 Springfield, OH _____	7.8
OH Champaign; OH Clark.	
Non-SMSA Counties _____	9.9
OH Darke; OH Logan; ON Shelby.	
069 Lima, OH:	
SMSA Counties:	
4320 Lima, OH _____	4.4
OH Allen; OH Auglaize; OH Putnam; OH Van Wert.	
Non-SMSA Counties _____	3.5
OH Hardin; OH Mercer.	
070 Toledo, OH:	
SMSA Counties:	
8400 Toledo, OH-MI _____	8.8
MI Monroe; OH Fulton; OH Lucas; OH Ottawa; OH Wood.	
Non-SMSA Counties _____	7.3

MI Lenawee; OH Hancock; OH Henry; OH Sandusky; OH Seneca; OH Wyandot.

**The New Hire Definition for the purposes of on-the-job training and workforce utilization is as follows:**

An individual who has a break in service (not on an employer's payroll) for a period of twelve (12) months or longer and the person affected is not a salaried employee but belongs to a union craft. Individuals compensated for training or incidental work which does not cause a break in unemployment compensation, i.e., paid by voucher check or petty cash, are considered new hires if the individual's break in service is twelve (12) months or longer.

The time frame for a new hire shall be associated with the first project worked for that contractor regardless of whether it is public or private. When reporting a newly hired employee, the contractor shall identify that employee as a new hire on that specific project only. Subsequent work, barring a break in service of twelve (12) months or more, would not qualify the employee as a new hire for that contractor.

**Compliance:** The contractor's compliance shall be based on the implementation of affirmative action obligations required by the specifications set forth in 23 CFR Part 230, and its good faith efforts to meet these obligations. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and females on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the affirmative action obligations shall be a violation of the contract and regulations in 23 CFR Part 230. The good faith efforts put forth by the contractor will be measured against the total work hours performed.

Under FHWA, ODOT is the authority tasked with ensuring that the contractor adheres to the aforementioned regulations. In addition to complying with the Required Contract Provisions, the contractor shall provide immediate written notification to ODOT when referral practices of the union(s) with which the contractor has a collective bargaining agreement impede the company's efforts to meet its equal opportunity obligations.

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), administers and enforces equal employment opportunity laws that apply to Federal government contractors and subcontractors supplying goods and services, including construction, to the Federal Government under 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of VEVRAA. The OFCCP monitors compliance with these laws primarily through compliance evaluations, during which a compliance officer examines the contractor's affirmative action efforts and employment practices. Under Executive Order 11246, the OFCCP may perform contract compliance reviews on contractors involved with federally funded ODOT projects.

Requirements for affirmative action obligations governing OFCCP contract compliance reviews are those listed in the Federal Register for the Economic Area.

[Federal Register :: Government Contractors, Affirmative Action Requirements](#) (2000)

[Federal Register :: RIN 1250-AA10](#) (2020 updates)

#### ADDITIONAL REQUIREMENTS FOR ODOT PROJECTS WITH STATE FUNDING

The Ohio Department of Development (ODOD), Minority Business Division, is responsible for ensuring state contractors implement and adhere to the State of Ohio's affirmative action program pursuant to [Ohio Administrative Code \(OAC\) 123: Chapters 123:2-3-01 through 123:2-3-07](#). Specifically, this unit's responsibilities includes the issuance of certificates of compliance under [ORC 9.47](#) and [153.08](#), conducting project site visits, and compliance reviews (desk audits) to ensure contractors utilize minorities and women in the construction trades, and maintain a working environment free of discrimination, harassment, and intimidation. The ODOD may perform contract compliance reviews on contractors involved with state or state assisted projects. Requirements for affirmative action obligations governing ODOD contract compliance reviews are those listed in OAC 123:2-3-02, for the Metropolitan Statistical Area in which a project is located.

All prime and subcontractors regardless on the number of employees or the state contract amount are required to submit monthly utilization reports (Input Form 29) to the Ohio Department of Development covering the contractor's total workforce within the state of Ohio (private sector and public sector projects). The reports must be filed electronically by the 10th of each month, beginning with the contract award and continuing until the contractor or subcontractor completes performance of the contract, as set forth in OAC 123:2-9-01.

I-29 monthly reports must be submitted via the Ohio Business Gateway portal: <https://ohio.gov/wps/portal/gov/site/business/resources/ohio-business-gateway> / [Ohio Business Gateway | Ohio.gov | Official Website of the State of Ohio](#)

*Steps to Submit the I-29 Form:*

1. Visit [Ohio Business Gateway](#)
2. Log in using username and password (OH|ID)
3. Ensure "Equal Opportunity Division" is among available service areas
4. Ensure "Input 29" is among available transactions
5. Select "Input 29" and complete the form
6. Click "File" button on the Summary page to see a confirmation page
7. Submit supporting documentation (if required) to: [das-eod.bccu@das.ohio.gov](mailto:das-eod.bccu@das.ohio.gov)

I-29 reports are used by ODOT to create monthly utilization work hour reports to monitor adherence to on-the-job training requirements and workforce diversity requirements. Prime contractors and subcontractors shall provide monthly utilization work hour reports for the contractor's or subcontractor's total workforce within the state of Ohio to the compliance officer of the contracting agency (ODOT). A contractor's or subcontractor's failure to submit a monthly utilization work hour report shall be a basis for invoking any of the sanctions set forth in rule 123:2-7-01 of the Ohio Administrative Code.

### **13. PN 059 - 10/15/2004 - WAGE DETERMINATION APPEALS PROCESS**

- 1.) Has there been an initial decision in the matter? This can be:
  - \* An existing published wage determination
  - \* A survey underlying a wage determination
  - \* A Wage and Hour Division letter setting forth a position on a wage determination matter
  - \* A conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response for this initial contact is not satisfactory, the process described in 2.) and 3.) should be followed.

Regarding any other matter not yet ready for the formal process described within this section, initial contact should be made with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determination  
Wage and Hour Division  
U. S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D. C. 20210

- 2.) If the answer to the question in 1.) is yes, an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (see 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U. S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requester considers relevant to the issue.

- 3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

#### 14. PN 061 –10/22/2012- WAGE SCALE ON ALL FEDERAL-AID PROJECTS

The wage rates for this project were determined by the Secretary of Labor in accordance with Federal-Aid requirements. The LPA must formally incorporate them into the contract documents.

*Contractors shall use only the classifications and wage rates set forth in the United States Department of Labor (USDOL) wage decision found at the website noted below on payrolls submitted to the ODOT District Office. Additionally, please note that the wage modification in effect at the time of the project sale date shall be used by all contractors.*

This USDOL wage decision may be viewed by accessing the United States Department of Labor (USDOL) website at:

<https://sam.gov/content/wage-determinations>

This contract requires the payment of the total of the basic hourly rates plus the fringe benefits payments for each classification in accordance with the following regulations which by reference are made part of this contract:

- 1) The U.S. Department of Labor Regulations, Title 29, Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution.
- 2) Form FHWA-1273 (most recent revision at contract execution) Part IV. Payment of Predetermined Minimum Wage and Part V. Statements and Payrolls. (Form FHWA-1273 shall be physically incorporated in all contracts, subcontracts, and lower-tier subcontracts.)

The failure to pay prevailing wages to all laborers and mechanics employed on this project shall be considered a breach of contract. Such a failure may result in the termination of the contract and debarment.

The contractor and all subcontractors shall pay all wages and fringe benefits by company funds transfer or legal tender. All payroll records and company funds transfer transactions or legal tender transactions shall be maintained for at least three (3) years after final acceptance as defined in Section 109.12 of the ODOT C&MS. The contractor's and all subcontractor's payroll records and canceled pay checks shall be made available for inspection by the Department and the U.S. Department of Labor, upon request, anytime during the life of the contract, and for three (3) years thereafter by the U.S. Department of Labor. Additionally, the contractor and all subcontractors shall permit such representatives to interview any employees during working hours while the employee is on the job.

The wage and fringe rates determined for this project shall be posted by the contractor in a prominent and accessible place on the project, field office, or equipment yard where they can be easily read by the workers.

The contractor and all subcontractors shall submit to the District Construction Office certified payrolls each week beginning three (3) weeks after the start of work. These payrolls shall be on a Form WH-347 or equivalent and shall show the following:

- 1) Employee name, address, classification, and hours worked.
- 2) The basic hourly and overtime rate paid, total pay, and the manner in which fringe benefit payments have been irrevocably made.
- 3) The project number and pay week dates.
- 4) Original signature of a company officer on the certification statement.

Additionally, a copy of the "Apprentice Certification" obtained from the Ohio State Apprenticeship Council must accompany all certified payrolls submitted for all apprentices working on this project.

Please be aware it is ultimately the responsibility of the contractor to ensure all laws relating to prevailing wages in the USDOL Regulations, Title 29, parts 1 and 5, are strictly adhered to by all subcontractors on the project.

If the contractor or any subcontractor fails to comply with any of the provisions contained in this proposal note, the Department may terminate the contract, debar the contractor or subcontractor, and/or withhold or suspend pay estimates after written notice and a reasonable opportunity to comply has been provided.

**The applicable wage and fringe rates for this project are to be incorporated in their entirety as an attachment to the executed contract.**

## 15. LIMITATION ON USE OF CONTRACT FUNDS FOR LOBBYING

- A. The prospective bidder certifies, by signing and submitting this bid proposal, to the best of his or her knowledge and belief that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. The prospective bidder also agrees by submitting his or her bid proposal that he or she shall require the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such subcontractors shall certify and disclose accordingly.

## 16. PN 045 - 10/15/2004 - NON -COLLUSION AFFIDAVIT

In accordance with Title 23 USC, Section 112 and ORC, Chapter 1331 et. seq: and Sections 2921.11 and 2921.13, the bidder hereby states, under penalty of perjury and under other such penalties as the law provides, that he/she or his/her agents or employees have not entered, either directly or indirectly, into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal. Execution of this proposal on the signature portion thereof shall also constitute signature of this Non-Collusion Affidavit as permitted by title 28 USC, Section 1746.

### REPORTING BID RIGGING

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

**17. PN 014 - 10/15/2004 - DRUG-FREE WORKPLACE**

The prime contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace. The prime contractor shall make a good faith effort to ensure that all its employees while working on this project will not purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

The prime contractor shall also require this contractual obligation be placed in all subcontractor and materialman contracts it enters into and further requires all subcontractors and materialmen place the same contractual obligations in each of their lower-tier contracts.

**18. PN 034 - 05/25/2011 – DRUG FREE SAFETY PROGRAM**

During the life of this project, the contractor and all its subcontractors who provide labor on the project site must be enrolled in and remain in good standing in the Ohio Bureau of Worker's Compensation (OBWC) Drug-Free Safety Program (DFSP) or a comparable program approved by the OBWC.

In addition to being enrolled in and in good standing in an OBWC-approved DFSP or a comparable Drug Free Workplace Program (DFWP) approved by the OBWC, the LPA requires each contractor and subcontractor that provides labor to subject its employees who perform labor on the project site to random drug testing of five (5) percent of its employees. The random drug testing percentage must also include the on-site supervisors of the contractors and subcontractors. Upon request, the contractor and subcontractor shall provide evidence of required testing to the LPA.

Each subcontractor shall require all lower-tier subcontractors who provide labor on the project site with whom the subcontractor is in contract for the work to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFWP prior to a lower-tier subcontractor providing labor at the site.

The LPA will declare a bid non-responsive and ineligible for award if the contractor is not enrolled in and in good standing in the OBWC's DFSP Discount Program or a similar program approved by the OBWC within eight (8) days of the bid opening. Furthermore, the LPA will deny all requests to sublet when the subcontractor does not comply with the provisions of this proposal note.

Failure of the contractor to require a subcontractor to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFWP prior to the time the subcontractor provides labor at the site shall result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the State for five (5) years after the date of the breach.

**19. OHIO WORKERS' COMPENSATION COVERAGE**

The contractor must secure and maintain valid Ohio workers' compensation coverage until the project has been finally accepted by ODOT. A certificate of coverage evidencing valid workers' compensation coverage must be submitted to the LPA before the contract will be executed by the LPA.

The contractor must immediately notify the LPA in writing if it or any subcontractor fails or refuses to renew their workers' compensation coverage. Furthermore, the contractor must notify the LPA in writing if its or any of its subcontractor's workers' compensation policies are canceled, terminated, or lapse.

The failure to maintain valid workers' compensation coverage shall be considered a breach of contract which may result in the contractor or subcontractor being removed from the project, withholding of pay estimates, and/or termination of the contract.

**20. PN 038 - 10/15/2004 - UNRESOLVED FINDING FOR RECOVERY**

The contractor affirmatively represents to the LPA that it is not subject to a finding for recovery under ORC §9.24, or that it has taken the appropriate remedial steps required under §9.24 or otherwise qualifies under that section. The contractor agrees that if this representation is deemed to be false, the contract shall be void ab initio as between the parties to this contract, and any funds paid by the state hereunder shall be immediately repaid to the LPA, or an action for recovery may be immediately commenced by the LPA and/or for recovery of said funds.

**21. PN 039 - 10/15/2004 - ASSIGNMENT OF ANTITRUST CLAIMS IN STATE CONTRACT LANGUAGE**

The contractor should recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by ODOT and/or the LPA. As consideration for the Award of the Contract and intent to be legally bound, the contractor acting herein by and through the person signing this contract on behalf of the contractor as a duly authorized agent, hereby assigns, sells, conveys, and transfers to ODOT and/or the LPA any and all right, title, and interest to any and all claims and causes of action the contractor now has or hereafter requires under state or federal antitrust laws provided the claims or causes of action related to the goods or services are the subject to the contract. In addition, the contractor warrants and represents that it will require all of its subcontractors and first-tier suppliers to assign all federal and state antitrust claims and causes of action to ODOT and/or the LPA. The provisions of this article shall become effective at the time the LPA executes this contract without further acknowledgment by any of the parties.

All contracting entities shall assign their rights and responsibilities to ODOT and/or the LPA for all antitrust claims and causes of action regarding subcontractors.

**22. PN 024 – 04/21/2006 – US ARMY CORPS OF ENGINEERS AND OHIO ENVIRONMENTAL PROTECTION AGENCY PERMITS**

The above referenced permits are incorporated and made a part of this contract as special provisions incorporated herein. Therefore, in the event the contractor or its agents refuse or fail to adhere to the requirements of the US Army Corps of Engineers 404 Permit and/or the Ohio Environmental Protection Agency's 401 Water Quality Certification and an assessment or fine is made or levied against ODOT and/or the LPA, the contractor shall reimburse the Department within thirty (30) calendar days of the notice of assessment or fine, or the Department may withhold the amount of the fine from the contractor's next pay estimate. All money collected or withheld from the contractor shall be delivered to the permitting agencies issuing the assessment or fine.

These fines are not to be construed as a penalty but are liquidated damages to recover costs assessed against the Department due to the contractor's refusal or failure to comply with the permits.

**23. PN 007 – 1/31/2021- DBE TRUCKING**

Title 49 CFR Section 26.55(d)(4)(5)(6) governs trucking operations.

The Disadvantaged Business Enterprise (DBE) trucking firm must be able to quote and negotiate its own prices. The DBE trucking firm must also provide a quote for each project on which the firm is to be utilized toward the project DBE goal.

The DBE will be responsible for the management and supervision of their trucking operation on each contract. A DBE is not performing a Commercially Useful Function (CUF) if the contract exists for the purpose of creating the appearance of DBE participation.

The DBE must own and operate at least one fully licensed, insured, and operational truck used on the contract.

The DBE receives credit for the total value of the transportation services the DBE provides on the contract using trucks the DBE owns, insures, and operates using drivers it employs (not 1099/independent contractors).

The DBE may lease trucks on a long-term basis (a year or more) and receive full DBE credit as long as employees of the DBE operate the truck.

A lease must indicate the DBE has exclusive use of and control over the truck, including responsibility of maintenance and insurance. This does not preclude the leased truck from working for others during the term of the lease with the DBE's consent as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the DBE's name and identification number as well.

The DBE must carry a copy of the lease agreement in the leased truck when working onsite.

Truck Monitoring:

Credit for expenditures with DBEs for materials or supplies toward the DBE goal is described as follows:

1. A DBE firm may be a regular dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
2. When the materials or supplies are obtained from a DBE Materials and Supplies Vendor (MSV) manufacturer the prime contractor may receive credit for 100 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
3. When the materials or supplies are purchased from a DBE MSV regular dealer or supplier, the prime contractor may receive credit for up to 60 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a regular dealer or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Historically, 60% of the cost of materials and supplies purchased from a DBE MSV (100% from a DBE MSV manufacturer) would normally be counted toward DBE goals. Effective September 1, 2018:

- Prime contractors must obtain information about the method of procurement for each item to be procured from a DBE MSV. The DBE Affirmation Form has been modified to accommodate this information.
- To be eligible to receive 100% credit toward DBE goals for a materials and supplies subcontract:
  - The DBE MSV must be certified with the correct (manufacturer) NAICS code for the item
  - The DBE MSV must be certified with the correct descriptor for the item
  - The role the DBE MSV will play on the specific procurement in question must be consistent with the manufacture of the item, as indicated by the information provided by the DBE MSV
- To be eligible to receive 60% credit toward DBE goals for a materials and supplies subcontract:
  - The DBE MSV must be certified with the correct (wholesale or retail) NAICS code for the item
  - The DBE MSV must be certified with the correct descriptor for the item
  - The role the DBE MSV will play on the specific procurement in question must be consistent with the regular sale or lease of the item, as indicated by the information provided by the DBE MSV
  - The item must not be drop-shipped



- The above scenario applies to both bulk items (petroleum products, steel, cement, gravel, stone, asphalt, and others that ODOT may consider to be bulk items) and non-bulk items. For bulk items, there is an additional scenario whereby a contract with a DBE MSV could receive 60% credit. To be eligible to receive 60% credit toward DBE goals for a bulk item materials and supplies subcontract:
  - The DBE MSV must be certified with the correct (wholesale or retail and trucking) NAICS codes for the item
  - The DBE MSV must be certified with the correct descriptor for the item
  - The role the DBE MSV will play on the specific procurement in question must be consistent with the regular sale or lease of the item, as indicated by the information provided by the DBE MSV
  - The DBE MSV must deliver the bulk item from a non-DBE vendor to the prime contractor using distribution equipment that it both owns [or for which it has a long-term (1 year or more) lease] and operates with its regular (not ad hoc) employees
- If not eligible for 100% or 60% credit, an item may still be eligible for credit toward DBE goals, but only for the fee or commission the DBE MSV receives for its services, and only if the following additional criteria are met:
  - The DBE MSV must be certified with NAICS code 425120 Wholesale Trade Agents and Brokers
  - The DBE MSV must convincingly explain how the prime contractor benefits by transacting business with it rather than directly with the non-DBE vendor from which the DBE MSV is re-selling
- The usual good faith efforts process applies.
- All credit toward DBE goals is conditional. Actual credit will be determined based upon invoices, receipts, and/or transportation documents/bills of lading, which must be submitted to ODOT as they are received throughout the course of the project.

#### *DBE TRUCKING DISCLOSURE AFFIDAVIT*

In order to ensure the prime contractors are monitoring DBE trucking/hauling operations on projects with federal funding, prime contractors must complete the DBE Trucking Disclosure Affidavits Section (“Affidavit”) when completing and submitting the Prompt Payment Spreadsheet for reimbursement. The Affidavit will be completed by the prime contractor on the Prompt Payment Spreadsheet and, once submitted, will be routed to the project’s SharePoint site. This information will be used to affirm DBE and non-DBE trucking utilized by each DBE firm performing those duties during the previous month. The LPA and ODOT will monitor trucking with the following requirements for all Local-let projects:

- Prime contractors will be required to provide a master list of all anticipated DBE trucking firms to the District Construction Monitor (DCM) at the time of the Pre-Construction Meeting.
  - If no DBE trucking is anticipated on a project, the prime contractor will check the box “No Anticipated DBE Trucking Affidavit” on the first submittal of the Prompt Payment Spreadsheet. If DBE trucking/hauling does occur, the prime contractor must notify the LPA within seven (7) days of the DBE trucking activity. The prime contractor will then complete the Affidavits as required below on each Prompt Payment Spreadsheet.
- Prime contractors will be required to complete the Affidavit disclosing the DBE trucking operations during the previous month when completing the new Prompt Payment Spreadsheet. The prime contractor will complete the Trucking Affidavit section on the Prompt Payment Spreadsheet on each reimbursement submittal. The prime contractor will select one of the following options on the Trucking Affidavit section of the form.
  - The DBE firm performed trucking by utilizing their own equipment and workforce and/or work was subcontracted to another DBE (i.e., only trucking that can be counted for DBE participation was utilized).
    - No other information is required. The prime contractor will sign and submit the Affidavit.

- The DBE firm utilized DBE & Non-DBE trucking.
    - If selected, the prime contractor will provide a list of non-DBE trucking that was utilized (i.e., not all trucking will earn DBE credit).
  - No trucking was performed.
    - No other information is required. The prime contractor will sign and submit the Affidavit.
- The DCM will perform a check of the Affidavit when reviewing the Prompt Payment Spreadsheet when submitted for reimbursement. The LPA and/or Compliance Managers will follow up on any red flags. For example, if the LPA compares information collected during the CUF process with the affidavit and sees any discrepancies. ([Prompt Payment, DBE Tracking and CUF | Ohio Department of Transportation](#))
- Trucking will continue to be monitored at project sites by construction field staff and the LPAs.

#### *SANCTIONS AND ADMINISTRATIVE REMEDIES*

Failure by the prime contractor to follow the DBE Trucking Disclosure Affidavit 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 submit the Affidavits and/or the Affidavits are not submitted timely; if the prime contractor completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking, and does not notify the LPA within seven (7) days of the activity).
- 2nd Level Occurrence: The Department may withhold an estimate in the amount due to the DBE trucking firm the Affidavit was not submitted for (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the prime contractor completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking and does not notify the LPA within seven (7) days of the activity).
- 3rd Level Occurrence: If a pattern of not submitting the Affidavit(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.

*DBE MSV DIRECTORY* - <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx> (select MSV only)

*DBE AFFIRMATION FORM* - The new DBE Affirmation Form is now available at [DBE Affirmation Form - Projects Sold on or after 9/1/18 | Ohio Department of Transportation](#).

Opening Prompt Payment (PP) Spreadsheet (Trucking Affidavit Section on PP Spreadsheet) through GoFormz:

1. Obtain a MyODOT account
  - a. Click [Link](#)
  - b. Click "Launch MyODOT"
  - c. Click: "Click Here"
  - d. Complete Account Application under "Request an Account"

2. Getting GoFormz Access

- a. Email [GoFormz.Help@dot.ohio.gov](mailto:GoFormz.Help@dot.ohio.gov) put Create GoFormz Account in the subject line
- b. Login for GoFormz will be emailed back
- c. Click [www.goformz.com](http://www.goformz.com)

Additional guidance can be found by [Clicking Here](#)

**24. PN 013 – 10/20/23 DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION PLAN AND GOOD FAITH EFFORTS – LPA Projects**

DEFINITION OF *DAYS*

Unless otherwise noted, *days* means calendar days, but in computing any period of time described in this proposal note, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday. See <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays> for a list of Federal holidays. State holidays are those designated in division (A) of section 124.19 of the Revised Code (<https://codes.ohio.gov/ohio-revised-code/section-124.19>), with modifications as designated in the first two sentences of division (B)(4) of section 124.18 of the Revised Code (<https://codes.ohio.gov/ohio-revised-code/section-124.18>). (State holidays are generally the same as Federal holidays.)

DBE UTILIZATION PLAN

The bidder's DBE Utilization Plan **must be submitted by the bidder prior to bid opening at [https://odot.formstack.com/forms/dbe\\_copy](https://odot.formstack.com/forms/dbe_copy)**. By submitting a DBE Utilization Plan, the Bidder affirms it will be using the DBE firms identified in the Utilization Plan to meet the DBE contract goal. The Bidder further affirms it will not deviate from the Utilization Plan without ODOT's prior written consent.

Unless the bidder is a certified DBE firm, **a bid opened without a DBE Utilization Plan submitted prior to bid opening will be deemed unresponsive.**

The DBE Utilization Plan shall include the following information:

1. The names of the certified DBE firms(s) that will be used to meet the DBE goal
2. A description of the work each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract
3. Whether the DBE firms(s) being used to meet the goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant, or other capacity
4. The dollar amount of the participation of each DBE firm used to meet the DBE goal.

PROJECTS AWARDED ON ALTERNATES

In the event the project is awarded on alternates, which increases or decreases the total dollar amount of the bid, a revision to the DBE Utilization Plan and DBE Affirmation Form(s) shall be submitted and approved by the Office of Business & Economic Opportunity within five (5) days after the notification of the alternates.

DBE AFFIRMATION

The Apparent Low Bidder (ALB) shall ensure the DBE firms being utilized to meet the DBE goal affirm their participation in the bid within five (5) days after the bid opening to ODOT. The contract dollar amount(s) and/or DBE firm(s) included in the ALB's DBE Utilization Plan must match the contract dollar amount(s) and/or DBE firm(s) included on the DBE Affirmation Form(s). If the contract dollar amount(s) and/or DBE firm(s) do not match, the ALB shall utilize the Request for Consent to Terminate/Reduce a DBE Commitment form located at [DBE Commitment Reduction or Termination Form | Ohio Department of Transportation](#) and submit for review and approval by the Office of Business & Economic Opportunity within five (5) days of the bid opening.

The ALB shall utilize the DBE Affirmation Form located at [DBE Affirmation Form - Projects Sold on or after 9/1/18 | Ohio Department of Transportation](#). The DBE Affirmation Form will be utilized as written confirmation from each listed DBE firm that it is participating in the contract in the type and amount of work provided in the bidder's DBE Utilization Plan. The ALB shall submit a separate DBE Affirmation Form for each DBE it is utilizing for the DBE goal as well as their Good Faith Efforts package if they were not able to attain the DBE Goal via DBE participation.

All other bidders shall submit a DBE Affirmation Form(s) if notified the information is required in order for ODOT to complete its assessment. Bidders shall have five (5) days from the date of notification to submit all required DBE Affirmation Forms to ODOT. Notification will be by email.

In the event a DBE firm fails to confirm the information contained in the DBE Affirmation Form within five (5) days of bid opening, the ALB shall submit a Request for Consent to Terminate/Reduce a DBE Commitment form, as set forth herein. The Request for Consent to Terminate/Reduce a DBE Commitment form shall be submitted within five (5) days after bid opening in order for the ALB to still be considered for contract award. The ALB shall include as its reason for termination the DBE firm's failure to provide a timely affirmation and should include all efforts the ALB made to obtain the affirmation from the DBE firm and shall attach proof of these efforts, if available. If the ALB intends to replace the DBE Firm, it shall include the replacement firm's information on the form. In the event the ALB is unable to affirm a DBE firm included in its original DBE Utilization Plan at bid submission and it results in a goal shortfall, Good Faith Efforts (GFE's) must be submitted by the fifth day after bid opening. All GFE documentation submitted for consideration should demonstrate the efforts the bidder made prior to the time of bid submission to secure sufficient DBE participation on the project to meet the DBE goal although the bidder was unable to do so. A DBE firm's failure to timely confirm information contained in the DBE Affirmation Form will be considered as good cause to terminate the DBE firm and will also be considered a part of the ALB's Good Faith Efforts in meeting the goal.

#### DBE BIDDERS

In the event the Bidder is a certified DBE firm, the Bidder is not required to complete a DBE Utilization Plan as set forth above and would not need to submit a DBE Affirmation Form for the work it is planning to self-perform in order to meet the goal.

#### JOINT VENTURES

If the bidder is a Joint Venture, the Joint Venture will only be considered a Certified DBE firm if the Joint Venture itself has been certified. The Joint Venture may, however, utilize a Certified DBE firm that is also a partner in the Joint Venture as part of its DBE Utilization Plan. The Certified DBE Firm/Joint Venture Partner, however, does not need to submit a DBE Affirmation Form for any work the Certified DBE Firm/Joint Venture Partner is going to perform to meet the goal. ODOT will consider submission of the Joint Venture's bid as the Certified DBE Firm/Joint Venture Partner's confirmation that it is participating in the contract.

#### GOOD FAITH EFFORTS (GFE's)

If the DBE contract goal established by ODOT is not met, the ALB shall demonstrate it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

If the ALB does not meet the goal at bid time, the ALB shall submit its Good Faith Efforts (GFE's) documentation within five (5) days of the bid opening. Submission of DBE affirmation(s) with additional participation sufficient to meet the DBE contract goal does not cure the ALB's failure to meet the goal at bid time or eliminate the ALB's responsibility of submitting GFE's within five (5) days of the bid opening.

The ALB shall demonstrate its GFE's by submitting the following information within five (5) days after the bid opening:

1. All written quotes received from certified DBE firms
2. All written (including email) communications between the ALB and DBE firms
3. All written solicitations to DBE firms, even if unsuccessful
4. Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract
5. Phone logs of communications with DBE firms

The ALB shall utilize the Pre-Bid GFE Template to document their GFE's. This template and supporting documentation shall be sent along with any DBE Affirmation Forms within five (5) days of bid opening. ODOT has provided Good Faith Efforts Guidance located at [Good Faith Efforts \(GFE\) for Contractors | Ohio Department of Transportation](#)

All other bidders shall submit documentation of GFE's if notified the information is required in order for ODOT to complete its bid assessment. Bidders shall have five (5) days from the date of notification to submit all required GFE documentation. Notification will be by email.

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the bidder has made adequate good faith efforts to meet the goal.

#### ADMINISTRATIVE RECONSIDERATION

ODOT will review the GFE documentation and issue a written determination on whether adequate GFE's have been demonstrated prior to contract award. If ODOT determines the ALB has failed to demonstrate adequate GFE's to meet the goal, the ALB will have an opportunity for administrative reconsideration prior to the contract being awarded.

As part of this reconsideration, the ALB may provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. Such written documentation or argument must be provided to ODOT, attention to the Office of Chief Legal Counsel, 1980 West Broad Street, MS 1500, Columbus, Ohio 43223 (with copy to the Office of Contract Sales, MS 4110), within two (2) business days of ODOT's written determination that GFE's were not adequately demonstrated. The ALB may also include in their written documentation a request for an in-person meeting to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT's Office of Chief Legal Counsel will respond to the ALB within five (5) business days of receiving written documentation or holding the in-person meeting.

ODOT will send the ALB a written decision on reconsideration explaining the basis for finding that the ALB did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the United States Department of Transportation.

#### TERMINATION OR REPLACEMENT OF A DBE

By submitting a DBE Utilization Plan, the bidder is committing to use the DBE firms identified in the plan. The ALB/Awarded Contractor shall utilize the specific DBEs listed in the DBE Utilization Plan to perform the work and supply the materials for which each is listed unless the ALB/Awarded Contractor obtains written consent as provided in this paragraph. In order to request termination or substitution of a DBE firm, the ALB/Awarded Contractor shall utilize the Request for Consent to Terminate/Reduce a DBE Commitment form located at [DBE Commitment Reduction or Termination Form | Ohio Department of Transportation](#).

This termination/replacement procedure applies only to DBE firms or the amount of work being utilized to meet the goal.

Without ODOT's written consent to terminate/replace a DBE firm being utilized to meet the goal, the Awarded Contractor shall not be entitled to any payment for DBE listed work or material unless it is performed or supplied by the listed DBE.

#### GOOD CAUSE

ODOT may provide written consent to terminate a DBE only if it agrees, for reasons stated in a concurrence document, the ALB/Awarded Contractor has good cause to terminate the DBE firm.

For purposes of this section, good cause to terminate a DBE includes the following circumstances:

- 1) The listed DBE firm fails or refuses to provide the required DBE Affirmation Form or to execute a written contract
- 2) The listed DBE firm fails or refuses to perform the work of its subcontract in a manner consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or

- refusal of the DBE firm to perform its work on the subcontract results from the bad faith or discriminatory action of the awarded contractor
- 3) The listed DBE firm fails or refuses to meet the awarded contractor's reasonable, nondiscriminatory bond requirements.
  - 4) The listed DBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness
  - 5) The listed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law
  - 6) ODOT has determined the listed DBE firm is not a responsible contractor
  - 7) The listed DBE firm voluntarily withdraws from the project and provides to the contractor written notice of its withdrawal
  - 8) The listed DBE is ineligible to receive DBE credit for the type of work required
  - 9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
  - 10) Other documented good cause that ODOT determines compels the termination of the DBE firm. Provided that good cause does not exist if the awarded contractor seeks to terminate a DBE it relied upon to obtain the contract so the awarded contractor can self-perform the work for which the DBE contractor was engaged or so the awarded contractor can substitute another DBE or non-DBE contractor after contract award.

#### REPLACEMENT

When a DBE firm is terminated or fails to complete its work on the contract for any reason, the Awarded Contractor must make GFEs to find another DBE firm to replace the original DBE. These GFEs shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The GFEs shall be documented by the Awarded Contractor. If ODOT requests documentation under this provision, the Awarded Contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days if necessary, at the request of the contractor, and ODOT shall provide a written determination to the contractor stating whether GFEs have been demonstrated.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions and substitutions of DBE firms put forward by bidders in the DBE Utilization Plan.

#### ADDITION

In the event additional DBE participation is required for the project, the Awarded Contractor shall utilize the DBE Affirmation Form located at [DBE Affirmation Form - Projects Sold on or after 9/1/18 | Ohio Department of Transportation](#). The DBE Affirmation Form will be utilized as written confirmation from each DBE firm that it is participating in the contract in the kind and amount of work on the project.

#### WRITTEN NOTICE TO DBE

Before transmitting to ODOT its request to terminate and/or substitute a DBE firm, the ALB/Awarded Contractor must give notice in writing to the DBE firm with a copy to ODOT of its intent to request to terminate and/or substitute and the reason(s) for the request.

The ALB/Awarded Contractor must give the DBE five (5) days to respond to the notice, advising ODOT and the ALB/Awarded Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why ODOT should not approve the ALB/Awarded Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), ODOT may provide a response period shorter than five (5) days.

#### GOAL ATTAINMENT POST AWARD

The Awarded Contractor shall make available upon request a copy of all DBE subcontracts. The Awarded Contractor shall ensure that all subcontracts or agreements with DBEs require that the subcontract and all lower-tier subcontracts be performed in accordance with this Proposal Note.

Approval of a DBE Utilization Plan does not ensure approval of C-92 Requests to Sublet, nor does approval of a DBE Utilization Plan indicate the DBE goal has been met. ODOT will monitor goal attainment throughout the life of the project. It is the responsibility of the Awarded Contractor to advise ODOT of any changes to the DBE Utilization plan throughout the life of the project. The DBE goal of a project is stated as a percentage of the contract. In the event the contract amount increases or decreases, the actual dollar amount of the DBE goal for the project may increase or decrease accordingly.

#### SANCTIONS AND ADMINISTRATIVE REMEDIES

##### *PRE-BID*

Failure by the ALB to do any of the following shall result in the bid being rejected as non-responsive in accordance with ORC §5525.08:

1. Failure to submit a complete DBE Utilization Plan at the time of bid
2. Failure to submit DBE Affirmation Form(s) and/or failure to submit Request for Consent to Terminate/Reduce a DBE Commitment form(s) as required by this Proposal Note; or
3. Failure to meet the goal and/or failure to demonstrate GFEs to meet the goal as required by this Proposal Note.

##### *POST-BID*

Failure by the Awarded Contractor to carry out the requirements of this Proposal Note, including the submission of adequate good faith efforts to meet the goal for a project, is a material breach of the contract and may result in the issuance of sanctions as follows:

- 1st Tier: Letter of Reprimand
- 2nd Tier: Damages equivalent to the DBE shortfall
- 3rd Tier: If a pattern of paying damages 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 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 including, but not limited to:
  - annual DBE participation
  - annual DBE participation on projects without goals
  - the number of complaints ODOT has received regarding the contractor
  - the number of times the contractor has been previously sanctioned by ODOT

#### **25. PN 031 - 6/27/2023 – PROMPT PAYMENT - LOCAL-LET CONSTRUCTION PROJECTS**

The U.S. Department of Transportation's (USDOT's) rules related to Disadvantaged Business Enterprises are published in 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), its subrecipients (LPA's), and, by extension, both 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 prime contractor must comply with this Proposal Note and the Department's prompt payment requirements as published in 107.21 of the C&MS.

Second-tier subcontract means a subcontract awarded directly by the subcontractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a contractor's general and administrative expenses or indirect costs.

The Department will monitor payments made by prime contractors and subcontractors for compliance with this Proposal Note, C&MS 107.21 and, where applicable, 49 CFR 26.29. To facilitate this monitoring, the

Department requires both prime **and** subcontractors to report their payments to all subcontractors/second-tier subcontractors with the submission of each invoice. The payment data reported must include any retainage withheld (*when allowable under the Department's [Retainage Policy dated 4/14/21](#)*) and any previously withheld retainage released. All such reporting must take place through a web-based submission on GoFormz. Please note: submission through GoFormz is required for all Local-let projects. Invoices will not be approved and processed for payment unless this reporting form has been submitted and received by the Department.

The prime/subcontractor must report the following information:

- The name of the payee
- The dollar amount of the payment to the payee
- The date the payee was paid
- The amount of retainage withheld (if any)

Ohio's 10-day prompt payment requirement is based on the payer's payment issuance date and NOT the payee's payment receipt date.

The prime/subcontractor must sign each reported payment and submit to ODOT via the GoFormz website.

The second-tier subcontractor is responsible for completing the affirmation of payment form in GoFormz.

The prime is responsible for ensuring that all subcontractors and second-tier subcontractors are correctly completing all prompt payment forms via the GoFormz website.

If the prime or subcontractor(s) fail to submit the aforementioned documentation with each invoice, they will be determined to be non-compliant and invoices will not be processed for payment.

Payees must verify each payment reported by the payer within thirty (30) days of the payment being signed by the payer. This verification must include:

- Whether the payment was received, and if so, whether it was or was not as expected
- The dollar amount of the payment received
- The date the payment was received

The prime contractor shall fully complete the last prompt payment form upon receipt of final payment.

#### SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the prime contractor and/or subcontractor(s) to follow Prompt Payment requirements may result in the issuance of sanctions as follows:

- 1st Tier: Notice of Violation followed by a Letter of Reprimand
- 2nd Tier: If corrective actions are not taken within the specified three (3) business days, a pay estimate in the amount due to the subcontractor(s) that was not reported or paid may be withheld.
- 3rd Tier: If a pattern of paying damages 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 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
- the number of times the contractor has been previously sanctioned by ODOT



## 26. WAIVER OF C&MS 614.03

ODOT's 2023 C&MS section 614.03, third paragraph, does not apply to any project which is not physically located on the National Highway System (NHS), and/or does not impact NHS traffic in any way.

## 27. ODOT AS OBLIGEE ON BOND

The contractor shall furnish a performance and payment bond in an amount at least equal to 100 percent of the estimate as security for the faithful performance of its contract. In addition to the project owner, ODOT shall be named as an obligee.

## 28. NON-DISCRIMINATION PROVISIONS

**A. Compliance with Regulations:** The contractor will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the USDOT Title 49 CFR, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the contractor will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

**B. Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate, either directly or indirectly, in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

**C. Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a contract or subcontract including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

**D. Information and Reports:** The contractor will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor will so certify to the State or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

**E. Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the LPA will impose such contract sanctions as it or State/FHWA may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to the contractor under the contract until the contractor complies, and/or
- (2) Cancellation, termination, or suspension of the contract, in whole or in part.

**F. Incorporation of Provisions:** The contractor will include the provisions of paragraphs (A) through (E) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor will take such action with respect to any subcontractor procurement as the LPA or State/FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the LPA/State to enter into such litigation to protect the interests of the LPA and the

State. In addition, the LPA/State may request the United States to enter into such litigation to protect the interests of the United States.

**29. PN 015 - 04/17/2020 - CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS**

The required contract provisions for federal-aid construction contracts are hereby incorporated by reference as if rewritten herein. The current version of Form FHWA-1273 (available at <https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>) shall be physically incorporated in all contracts, subcontracts, and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreement for supplies or services related to a construction contract). The prime contractor shall be responsible for ensuring that the FHWA-1273 is physically incorporated into all lower-tier subcontracts.

**SANCTIONS AND ADMINISTRATIVE REMEDIES**

Failure by the prime contractor to include the provisions of FHWA-1273 in their contract or in their lower-tier subcontracts may result in the issuance of sanctions as follows:

- 1st Tier: Letter of Reprimand
- 2nd Tier: Damages equivalent to the daily liquidated damages amount found in section 108.07 for each incident of non-compliance
- 3rd Tier: If a pattern of paying damages persists or the contractor has falsified, misrepresented, or withheld information, the LPA 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 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 the LPA.

**30. PN 032 – 01/31/2021 – C92s REQUIRED ON LOCAL-LET CONSTRUCTION PROJECTS**

State and Federal law requires that all contractors and subcontractors participating on state or federally funded projects be evidenced in writing and in conformity with all applicable state and federal laws and regulations.

Effective immediately, all projects advertising after 2/1/2021 will require that a Request to Sublet (C92) form is completed for each subcontractor and DBE materials supplier working on the project prior to the start of work.

A template for this form may be found and submit via the GoFormz website located at [www.goformz.com](http://www.goformz.com).

**31. REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS (Electronic Form FHWA 1273 – October 23, 2023) (SEE NEXT PAGE)**

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**II. NONDISCRIMINATION** (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurances Required:**

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. 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 recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

### 3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker ( e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.



(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### 4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.** a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

**11. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

\* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

### 3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

**4. Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

**5. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

#### **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

#### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

**1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

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**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

\* \* \* \* \*

**3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

\* \* \* \* \*

**4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



**ADDITIONAL INSTRUCTIONS FOR BIDDERS**

**THE FOLLOWING PROJECT DOCUMENTS SHALL BE ADDED TO THE CONTRACT  
UPON AWARD OF THE CONTRACT TO THE LOW BIDDER.**

**DO NOT COMPLETE THE FOLLOWING DOCUMENTS AT THIS TIME. THEY ARE ONLY  
INCLUDED AS REFERENCE INFORMATION.**

**UPON AWARD OF CONTRACT THE LOW BIDDER SHALL BE REQUIRED TO EXECUTE  
THE FOLLOWING PAGES.**

**FAILURE TO EXECUTE THE FOLLOWING PAGES WITHIN THE TIME LIMITS  
PRESCRIBED SHALL CAUSE THE LOW BIDDER TO FORFEIT THE BID BOND.**

**CONTRACT  
CITY OF COLUMBIANA, OHIO  
COL-FAIRFIELD SCH. RD. & LISBON ST.**

**NOTICE OF AWARD  
(Contract Form 1)**

**Name of Contractor:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

The Owner has considered the bid submitted by you on \_\_\_\_\_, 20\_\_  
for the above described work in response to its advertisement for bids. You are hereby notified that your  
bid has been accepted for the items in the amount of \$\_\_\_\_\_.

You are required to execute the following and return them within ten (10) calendar days from the  
date of this notice to you:

- |  |                                       |
|--|---------------------------------------|
| 1.) Acceptance of Notice of Award            | 4.) Insurance Certificate             |
| 2.) Evidence of Contract Signatory Authority | 5.) Worker's Compensation Certificate |
| 3.) Affidavit of Contractor                  |                                       |

If you fail to execute and return the above information within ten (10) calendar days from the date  
of this notice, the Owner will be entitled to consider all of your rights arising from the Owner's  
acceptance of your bid as abandoned and as a forfeiture of your bid guaranty subject to the liabilities set  
forth in Section 153.54 of the Ohio Revised Code. The Owner will be entitled to such other rights as  
granted by law.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Owner:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Typed Name/Title:** \_\_\_\_\_

**ACCEPTANCE OF NOTICE OF AWARD**

Receipt of the above Notice of Award is hereby acknowledged on this \_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Signature of authorized Contract signatory)

**EVIDENCE OF CONTRACT SIGNATORY AUTHORITY  
(Contract Form 2)**

The Contractor shall indicate which of the following is the source of the signatory's authority to sign the **Contract** on behalf of the Contractor. The Contractor shall follow the instructions noted.

\_\_\_\_\_ The party contracting is a sole partnership. Below the signature affixed on the Contract sheet, a sole partnership's owner shall write "sole owner" or "doing business as (name of Bidder)".

\_\_\_\_\_ The party contracting is a partnership and the party signing is one of the partners. Below the signature affixed on the Contract sheet, a signatory for a partnership shall write "member of the firm".

\_\_\_\_\_ The party contracting is a corporation. The party signing is authorized to sign on behalf of the corporation. A copy of the resolution of the corporation's board of directors which delegates signatory authority to the individual signing **is to be attached** to this Contract form. The resolution can be a general delegation of authority for signing Contracts, or it can be a specific authorization for this project. The Secretary of the corporation shall authenticate the resolution as currently being in full force and effect.

\_\_\_\_\_ Signatory authority for the party contracting is evidenced by other means noted below:



**(Contract Form 3, cont'd)**

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Signature of authorized Contract signatory)

Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires on \_\_\_\_\_, 20\_\_ (SEAL)

**INSURANCE CERTIFICATE  
(Contract Form 4)**

(The Bidder being awarded the Contract shall attach their Insurance Certificate to this page)

**WORKERS COMPENSATION CERTIFICATE  
(Contract Form 5)**

(The Bidder being awarded the Contract shall attach their Workers Compensation Certificate to this page)

**CERTIFICATE OF OWNER'S LEGAL COUNSEL  
(Contract Form 6)**

I the undersigned, \_\_\_\_\_, the duly authorized and acting legal representative of the City of Columbiana, Ohio, do hereby certify as follows:

I have examined the above Contract and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements have been duly executed by the City of Columbiana or their authorized representative, and that said representative has full power and authority to execute said agreements on behalf of the City of Columbiana, and that the foregoing agreements constitute valid and legally binding obligations upon the City of Columbiana or their representative executing the same in accordance with terms, conditions and provisions thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Legal Counsel, City of Columbiana



**LEGISLATIVE CERTIFICATION  
(Contract Form 7)**

I hereby certify that the City of Columbiana, Ohio authorized for the advertisement for bids and to enter into Contract for the project herein described.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
City Manager, City of Columbiana

**CERTIFICATE OF FISCAL OFFICER  
(Contract Form 8)**

As Fiscal officer of the City of Columbiana, Ohio, I hereby certify that sufficient funds have been

lawfully appropriated for the purpose of meeting the obligations of the agreement with

\_\_\_\_\_ duly authorized by Ordinance No. \_\_\_\_\_.  
(Name of Contractor)

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Director of Finance, City of Columbiana

**CONTRACT AGREEMENT  
(Contract Form 9)**

This agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ within the City of Columbiana, Ohio by and between the City of Columbiana (hereinafter called the City or LPA and in that behalf duly authorized by motion passed on \_\_\_\_\_, 20\_\_ by the City Council) and \_\_\_\_\_ a corporation/partnership/individual of \_\_\_\_\_, and successors, executors, administrators and assigns, hereinafter called Contractor.

Witnesseth: That the said Contractor has agreed and by these presents does agree with the City, for the consideration herein before mentioned and contained, and under penalty expressed in a bond hearing even date with these presents, and herein contained, or hereunto annexed, to furnish at his own cost and expense, the specified services associated with the above referenced Contract.

Article 1: As the LPA, O.D.O.T. or the United States government may legitimately request from time to time, the Contractor agrees to make available for inspection and/or reproduction by the LPA, O.D.O.T. or the United States government, all records, books, and documents of every kind and description that relate to this Contract.

Article 2: The Contractor agrees to perform the work within the time specified in the proposal from the date of written Notice to Proceed from the City and to prosecute the same within reasonable speed and diligence so as to insure the completion of the work in accordance with the time stipulated in the Proposal and to the satisfaction of the City.

Article 3: The City agrees to pay, and the Contractor agrees to accept as full compensation the bid price for the work. Said payment shall be made in accordance with Sec. G.34 of the General Conditions.

Article 4: It is agreed that if the Contractor fails to perform the work within the specified time for substantial completion and/or acceptance, or before the time as either may be extended in accordance with the specifications, the City shall deduct from the monies due or to become due to the Contractor under this Contract, any damages, penalties, or other changes assessed against the Contractor under the terms of the Specifications. Should the aggregate of the liquidated damages be greater than the monies due or to become due to the Contractor under this Contract, the Contractor shall be liable for payment of the difference upon demand of the City.

Article 5: If the Contractor shall fail to comply with any of the terms, conditions or stipulations of this Contract according to the true intent and meaning thereof, then the City may avail itself of any or all remedies provided in that behalf in the Contract, and shall have the right and power to proceed in accordance with the provisions thereof.

**(Contract Form 9, cont'd)**

Article 6: It is further mutually agreed by the parties hereto that the Project Documents applicable to the work of this Contract are those listed below:

- Notice to Bidders
- Instructions to Bidders
- Proposal
- Contract
- General Conditions
- Item Specifications
- Addendum No. 1 Date: \_\_\_\_\_
- Addendum No. 2 Date: \_\_\_\_\_
- Addendum No. 3 Date: \_\_\_\_\_
- Construction Plans

Said listed documents form a part of this Contract and the provisions thereof are as binding on the parties to this Contract as if they were fully set forth or repeated herein.

In witness whereof, the parties hereto have executed this agreement the day and year first mentioned above.

**CITY OF COLUMBIANA BOARD OF CONTROL:**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Director of Finance

\_\_\_\_\_  
Witness

**CONTRACTOR:**

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(Signature of authorized Contract signatory)

\_\_\_\_\_  
Witness

Approved as to form:

\_\_\_\_\_  
Legal Counsel, City of Columbiana

**NOTICE TO PROCEED  
(Contract Form 10)**

**Name of Contractor:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

You are hereby notified to commence work in accordance with the Contract Agreement, dated \_\_\_\_\_, 20\_\_ on or before \_\_\_\_\_, 20\_\_ and **immediately** after the aforementioned commencement date, and you are to complete the work within **120** consecutive calendar days of the aforementioned commencement date. The date of completion of all work is therefore \_\_\_\_\_, 20\_\_.

Failure to commence work within the time noted above may result in Forfeiture of Contract at the discretion of the Owner.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Owner:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Typed Name/Title:** \_\_\_\_\_

**ACCEPTANCE OF NOTICE TO PROCEED**

Receipt of the above Notice to Proceed is hereby acknowledged on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Signature of authorized Contract signatory)

**CHANGE ORDER FORM  
(Contract Form 11)**

**Change Order Number:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Project:** \_\_\_\_\_

**Owner:** \_\_\_\_\_

**Name of Contractor:** \_\_\_\_\_

The following changes are hereby made to the Project Documents:

**Justification:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CHANGE TO CONTRACT PRICE:**

\$ \_\_\_\_\_ **Original Contract Price:**

\$ \_\_\_\_\_ **Previous Change/extras**

\$ \_\_\_\_\_ **This Change/extras**

\$ \_\_\_\_\_ **Subtotal**

\$ \_\_\_\_\_ **Deductions**

\$ \_\_\_\_\_ **Net Total**

**CHANGE TO CONTRACT TIME:**

The **Contract Time** will be (Increased) or (Decreased) by: \_\_\_\_\_ calendar days.

The **Contract Completion Date** will be: \_\_\_\_\_

**CHANGE ORDER VERIFICATION:**

**Requested By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
(Contractor Authorized Signature)

**Recommended By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
(Construction Engineer Authorized Signature)

**Accepted By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
(Owner Authorized Signature)

**Approved By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
(Funding Agency Authorized Signature, if applicable)



**GENERAL CONDITIONS  
CITY OF COLUMBIANA, OHIO  
COL-FAIRFIELD SCH. RD. & LISBON ST.**

Note: The headings of the articles herein are intended for convenience of reference only and shall not be considered as having any bearing on their interpretation.

These specifications are an integral part of the Project Documents relating to construction of the **COL-FAIRFIELD SCH. RD. & LISBON ST.**, all as set forth in the Proposal and Contract.

**DEFINITIONS:** (Sec. G.01) Whenever in the Project Documents in the following terms, or pronouns in place of them are used, their intent and meaning shall be interpreted as follows:

**APPROVED:** The approval by the Engineer; unless otherwise specified, use of term “directed”, “required”, “permitted”, or words of like import shall be considered as similarly defined.

**AS DESIGNATED OR AS SHOWN:** This phrase has reference to information or directions indicated on the construction plans or in the specifications covering the construction of the improvements included in the Project.

**BIDDER:** An individual, firm, partnership, or corporation, acting directly or through a duly authorized representative, legally submitting a Proposal.

**BOND:** Name given to the Bid Guaranty / Performance and Payment / Warranty Bond. The Bid Guaranty is for the bid submittal to faithfully enter into a Contract the Owner if chosen by the Owner, and to guarantee the Bidder’s bid; The Performance and Payment Bond is for the faithful performance of a contract and for the payment of all laborers, material, and men, properly executed by the Contractor, as Principal, and the Surety Company as Surety. The Warranty Bond is for the faithful guarantee that all work performed will be warranted for a period stated in the Proposal form.

**CITY, OWNER, OR LPA:** City of Columbiana, Ohio, and its duly authorized representatives. Party of the first part to this Contract.

**CONSTRUCTION PLANS:** All drawings or reproductions thereof furnished by the Consulting Engineer, pertaining to the Project and such detailed drawings as may be issued by the Consulting Engineer as the work proceeds.

**CONSULTING ENGINEERS:** Dallis Dawson & Associates, P.O. Box 2568, East Liverpool, Ohio 43920.

**CONTRACT:** Agreement between the Owner and the Bidder chosen by the Owner to perform the construction of the entire Project.

**CONTRACTOR:** Party of the second part of this Contract. Bidder chosen by the Owner who enters into a Contract with the Owner to perform the construction of the entire Project. This person or organization acts directly or through agents or employees, and is primarily liable for the acceptable performance of the Project and for the payment of all debts pertaining to the Project.

**DIRECTOR OF FINANCE OR TREASURER:** Director of Fianance for the City of Columbiana, Ohio.



LAW DIRECTOR, ATTORNEY OR CORPORATION COUNSEL: The Legal Counsel for the City of Columbiana, Ohio.

NOTICE: Shall mean written notice, and service of same shall be accomplished as provided under Sec. G.05, "Notice to Contractor", of the General Conditions of this Contract.

PROGRAM FOR CONSTRUCTION: The planned order or sequence of construction steps throughout the life of the Project.

PROGRESS SCHEDULE: The detailed schedule which coordinates the commencement and completion dates and periods for each critical construction step of the Program for Construction within the specified time for completion of the Project. The progress schedule shall be prepared in accordance with Ohio Department of Transportation's Construction and Material Specification 108.02B.

PROJECT: The furnishing of all materials, the construction and testing and labor, together with all appurtenances and all related work required to be performed under this Contract.

PROJECT DOCUMENTS: The documents covering the performance of the Project, hereinafter defined, and payments therefore, including Notice to Bidders, Instructions to Bidders, Proposal, Contract, General Conditions, Item Specifications, Construction Plans, Addenda, and supplementary agreements which may be entered into, all of which documents are to be treated as one instrument whether or not set forth at length in the form of Contract.

PROPOSAL: The prepared form furnished by the Owner properly filled in, executed and submitted as a bid for the performance of the Project.

RESIDENT ENGINEER OR ENGINEER: Engineer employed by the Owner, to act as an agent of the Owner in providing on-site observation of the construction of the Project.

SPECIFICATIONS: The General Conditions, Item Specifications, Addenda and all written agreements made or to be made, pertaining to the method or manner of performing the work of the Project or to the quantities or qualities of materials to be furnished for the Project.

SURETY: The corporate body which is bound with and for the Contractor and which engages to be responsible for the Contractor's acceptable performance of the Project and for his payments of all debts pertaining to the Project.

**EXTENT OF CONTRACT (Sec. G.02)** The Notice to Bidders, Instructions to Bidders, Proposal, Contract, General Conditions, Item Specifications, Construction Plans, Addenda, and supplementary agreements are, and shall be taken to be part of each Contract. All work and materials mentioned in the specifications and not shown on the construction plans, all work and materials shown on the construction plans and not mentioned in the specifications, and all work and materials necessary for the completion of the work according to the true intent and meaning of the construction plans and specifications shall be furnished, performed and complete, as if the same were both mentioned in the specifications and shown on the construction plans.

Should anything be omitted from the construction plans or specifications which is necessary to a clear understanding of the work, or should any error appear either in any of the various instruments furnished or in the work done by other contractors affecting the work included under this Contract, the Contractor shall promptly notify the Engineer of such omission or errors. In the event of the Contractor's failure to do so, the Contractor shall make good any damage to or defect in the work caused thereby. The

Contractor will not be allowed to take advantage of any error or omission on the construction plans, as full instructions will be furnished by the Engineer should such error or omission be discovered, and the Contractor shall carry out such instructions as if originally specified.

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be included therein, and the Contract shall be read and enforced as though such provisions or clause were inserted therein; and if through mistake to otherwise any such requirement of law is not inserted or is incorrect, then upon the application of either party, the Contract shall be physically amended forthwith to provide such insertion or correction.

**OBLIGATION OF CONTRACTOR (Sec. G.03)** The Contractor shall, at his own cost and expense, and in strict conformity with the hereinafter contained or hereto annexed specifications and with the construction plans, furnish all the materials, labor, and superintendence and all sheeting, shoring, bracing, scaffolding, tools, derricks, tackle, implements, machinery and appliances of every kind necessary or proper for the purpose, and in a good substantial and workmanlike manner and within the time hereinafter specified, perform and complete the work required under this Contract.

He shall complete the entire work to the satisfaction and approval of the Owner or its duly authorized representative, and shall accept in consideration thereof, and as full compensation therefore, the sum stipulated in the proposal for the work and materials named in the Contract and proposal herein contained or hereto annexed, the said sum being the amount at which the Contract therefore was awarded to the Contractor at the public letting thereof.

The Contractor shall appoint **ONE** duly authorized representative or superintendent prior to commencement of the project. The representative or superintendent chosen shall remain on the project for its entirety. There shall be no change in personnel of the authorized representative or superintendent unless approved by the Owner **and** the Engineer.

The Contractor shall submit a progress schedule, as defined in the definitions, to the Owner and the Engineer prior to commencement of the project.

A pre-construction meeting shall be scheduled prior to commencement of the project. At this meeting, the Contractor is to have the duly authorized representative or superintendent present for introduction, and the Contractor is to submit the progress schedule for the project.

**ABSENCE OF CONTRACTOR (Sec. G.04)** In the absence of the Contractor there shall at all times be a duly authorized representative on the work approved by the Owner and Engineer, who shall receive and execute all orders given by the Engineer, and such orders so given to and received by said representative shall be deemed to have been given to and received by the Contractor.

**NOTICE TO CONTRACTOR (Sec. G.05)** The residence or place of business given in the bid or proposal upon which the Contract is founded is hereby designated as the place where all notices, letters and other communications shall be served, mailed to, or delivered. Any notice, letter or other communication addressed to the Contractor and delivered at the above named place or deposited in a postpaid wrapper in any post office box regularly maintained by the United States Post Office Department shall be deemed sufficient service thereof upon the Contractor, and the date of mailing shall be the date of service. The place named may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor and delivered to the Owner and the Engineer. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter or other communication upon the Contractor personally.

**INSPECTION (Sec. G.06)** The Engineer and his duly authorized representative will inspect, or cause to be inspected, the materials furnished and the work done under this Contract, and he is also hereby authorized and empowered to reject and refuse all work and materials and the method of applications or any part thereof, under or in fulfillment of this Contract, that does not comply in kind, quality, quantity, time or place, with the specifications and the construction plans. The inspection, approval or acceptance of any part of the work herein contracted for, or the materials used therein, or any payment on account thereof, shall not prevent the rejection of said materials at any time thereafter during the existence of this Contract and prior to the release of the Performance and Payment Bond, should said work or materials be found to be defective or not in accordance with the requirements of this Contract.

**ENGINEER'S DECISION (Sec. G.07)** The Engineer, as an agent of the Owner shall, in all cases, determine the amount, quality, acceptability and fitness of the several kinds of work, materials and equipment which are to be paid for under this Contract. He shall also determine all questions in relation to said work and the performance thereof, and decide every question which may arrive relative to the fulfillment of this Contract on the part of the Contractor, all subject to the approval of the Owner.

**ACCESS TO WORK (Sec. G.08)** The Contractor shall, at all times, give to the Federal or State Authorities, to the Owner, to the Engineer, and to the assistants and inspectors under them, all the necessary facilities for determining, both on the work and at the places of manufacture, that all work to be done and all materials to be furnished under this Contract are strictly in accordance with the terms of the Contract and with the construction plans and specifications. The Contractor shall notify the Engineer in writing at least seven (7) days prior to the commencement of manufacture of any equipment or materials of the time and place where the manufacture is to take place in order that a representative of the Owner may be present to inspect the manufacturer, should the Owner so desire.

**COMPETENT MEN TO BE EMPLOYED (Sec. G.09)** The Contractor shall employ a qualified superintendent and only competent and skillful men to do the work, and whenever the Owner shall notify the Contractor in writing that any man on the work is, in his opinion, disobedient, incompetent, unfaithful, disorderly, disrespectful, or otherwise unsatisfactory, the Contractor, on receiving such notice shall forthwith dismiss such person and shall not again employ him on any part of the work without the written consent of the Owner.

**LAWS AND ORDINANCES (Sec. G.10)** The Contractor shall keep himself fully informed of, and shall carefully observe and comply with all Federal, State, County and local laws, ordinances and regulations which in any manner affect the conduct of the work, and all such orders or decrees as exist at present and those which may be enacted later, of bodies having any jurisdiction or authority over the work, and shall indemnify and save harmless the Owner, its Engineers, and all its officers, agents and servants against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree, whether by himself or his employees.

**LABOR: CONDITIONS AND EMPLOYMENT (Sec. G.11)** The provisions of this Contract as to hours, wages and employment shall apply with equal force to all workmen engaged in the performance of this Contract, whether employed by the original Contractor or by any Subcontractor.

There shall be no discrimination by reason of race, creed, sex, color, national origin or political affiliations, in the employment of persons who are qualified by training and experience for such work.

The legal rights of all workers under this Contract to organize and to bargain collectively, to be protected from the requirements to join a company union and to enjoy freedom of expression and action with respect to wages, hours and conditions of labor shall not be infringed.

**CLAIMS FOR LABOR, MATERIAL AND DAMAGES** (Sec. G.12) The Contractor shall, from time to time, as required by the Owner, furnish affidavits and satisfactory evidence that all persons who have done work or furnished materials under this Contract, or have suffered damage on account of the Contractor's operations, have been fully paid or secured; and in case such evidence is not furnished as aforementioned, such amount as the Owner may consider necessary to meet the lawful claims of the persons aforementioned will be retained from the monies otherwise due the Contractor until the liabilities aforementioned have been fully satisfied. It is understood and agreed, however, that the Owner neither hereby assumes obligation toward such claimants, nor in any way undertakes to pay such claims out of any funds due or that may become due the Contractor, or out of its own funds.

**WORKERS' COMPENSATION AND INSURANCE** (Sec. G.13) The Contractor shall comply with the State law known as the Workers' Compensation Act, and shall pay into the State Insurance Fund the necessary premiums required by the Act to cover all employees working on this Contract and under the control of the Contractor, and shall relieve the Owner from any costs due to accidents or other liabilities mentioned in said Act. He shall also furnish at the time of delivery of this Contract and at such other times as may be requested, the official certificate or receipt showing the payments previously referred to herein, and he shall furnish to the Owner proof as required that adequate compensation insurance is provided.

If the Contractor sublets any of the work on this Contract, the Subcontractor there under shall be required to procure and maintain, during the life of such Subcontract, Worker's Compensation and Insurance for all of his employees engaged upon the work unless these are covered by the compensation insurance of the Prime Contractor.

Any class of employees engaged in work on this Contract which is not covered by the Workers' Compensation Act shall be insured by the Contractor or his Subcontractors under Employer's Liability Insurance and/or United States Longshoreman's and Harbor Worker's Compensation Act, and any other Act requiring coverage for liability under admiralty or Federal Jurisdiction.

**IDEMNIFICATION** (Sec. G.14) The Contractor shall indemnify and hold harmless the Owner, the Resident Engineer and the Consulting Engineers, and their officers, representatives, agents and employees from and against all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, omission of the Contractor, and Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the Owner, the Resident Engineer or the Consulting Engineers, or any of their officers, representatives, agents or employees by any employee of the Contractor, and Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation of the Contractor under this Section shall not be limited in any way by any limitation on the amount of type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**MEANS AND METHODS (Sec. G. 15)**

A. The means and methods of construction shall be such as the Contractor may choose; subject, however, to the Resident Engineer's, or Consulting Engineer's right to reject means and methods proposed by the Contractor which will not produce finished work in accordance with the terms of the Contract.

B. The Engineer's approval of the Contractor's means and methods of construction or his failure to exercise his right to reject such means and methods, shall not relieve the Contractor of his obligation to accomplish the result intended by the Contract; nor shall the exercise of, or failure to exercise such right to reject, create a cause of action for damages.

C. The Contractor shall be solely responsible for means, methods, or both actually used. To diminish his liability, the Contractor shall have the right to deny access to the work or parts of it to third parties at all times during construction except to third parties to inspect, certify, or observe it when required by law, or to those who require reasonable access to a particular part or parts of the work by reason of specific contractual relationship to the work or to maintain existing facilities.

**INSURANCE (Sec. G.16)** In accordance with the Ohio Department of Transportation Construction & Material Specifications Item 107.12 and all other ODOT policies governing insurance requirements, each prime Contractor shall have and maintain insurance coverage during the life of this Contract. All references made to the Ohio Department of Transportation and its Officials shall be understood to mean the City of Columbiana and its Officials. Any additional insurance coverages required by the City of Columbiana in excess of ODOT's insurance requirements shall be governed by the City of Columbiana requirements.

The insurance shall be written by a solvent and otherwise acceptable company(ies) authorized to do business in the State of Ohio, with an A.M. Best Co. rating of "A V" or better. Evidence of insurance shall be provided before the issuance of the Notice to Proceed. Such evidence shall consist of the Certificate of Insurance plus the Certificate of Compliance provided by the Ohio Department of Insurance for the company(ies) in question.

Failure to provide evidence of the maintenance of the required insurance will suspend the Owner's obligation to pay for any and all work performed after the cessation of the required coverage's for which evidence had previously been provided, and can be the basis of a non-compensable order to suspend work or for termination for cause.

**PATENT FEES AND ROYALTIES (Sec. G. 17)** The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Contract or the incorporation in the Contract of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Project Documents for use in the performance of the Contract and if to the actual knowledge of the Owner or its Engineers its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Project Documents. The Contractor shall indemnify and hold harmless either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Contract or resulting from the incorporation in the Contract of any invention, design, process, product or device not specified in the Project Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

**ACCIDENTS AND CLAIMS TO BE GUARDED AGAINST (Sec. G.18)** The Contractor shall at all times exercise reasonable precautions for the safety of the public and of employees on the work, and he shall comply with all applicable provisions of Federal, State and local safety laws. All machinery used during construction, all machinery incorporated into the work and all machinery subject to physical hazards shall be guarded in accordance with codes approved by the A.N.S.I., unless such codes are incompatible with Federal, State, or local laws or regulations.

The Contractor will be held responsible for all accidents resulting from negligence or carelessness in the performance of the work, or in caring for the same, or from any improper or inferior workmanship or inferior materials used. The Contractor shall employ at all times as on the work such strong and suitable barriers and at night time such caution lights as will effectively prevent any accident to life, limb or property in consequence of said work, or in the use or occupancy of any waterway, street, alley, highway or public or private grounds. All loss or damage to the work arising from fires, floods, storms or other natural causes or from any detention, obstruction or other difficulties which may be encountered in the prosecution of the work shall be borne by the Contractor.

**MATERIALS AND WORKMANSHIP (Sec. G.19)** All materials and equipment furnished under this Contract shall be as specified or required, or in the absence of particular specification, shall be the best of their respective kinds, of new stock, unused and not deteriorated, and all work contemplated and described shall be done in a good, substantial and workmanlike manner.

Specific reference in the specifications to any article, device, product, material, fixture, form, or type of construction, etc. by name, make or catalog number, shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor, in such cases, may at his option use any article, device, product, material, fixture, form or type of construction, which in the judgment of the Engineer, expressed in writing, is equal to that named. However, the Contractor will be required to demonstrate to the satisfaction of the Engineer that the materials, devices or equipment he proposes to furnish are in fact similar and equal to those designated. It is understood and provided, moreover, that the decision of the Owner on all such questions of similarity or equality shall be final; and that in the event of any adverse decision, no claim of any sort shall be made or allowed against the Engineer, or the Owner.

If, subsequent to the signing of the Contract and by reason of conditions of availability, time of delivery or other element of supply, the Contractor offers substitution for the standards stipulated in the Contract, the acceptability of such substitution may be conditioned upon adjustment of the Contract price to reflect any difference between the cost of the article stipulated for standard and the cost of the article offered in substitution if the Engineer finds such difference in costs due to general differences in quality, efficiency, history of performance or service for repairs or replacement, it being the intent herein that savings in cost which result from substitution subsequent to the signing of the Contract shall accrue in major part to the advantage of the Owner.

**DEFECTIVE WORK OR MATERIALS (Sec. G.20)** If, at any time before the release of the Performance and Payment Bond for the work, any materials or workmanship should be discovered which do not comply with the specifications and construction plans, they shall be immediately removed by the Contractor when notified to do so by a written notice from the Engineer; and they shall be replaced at the Contractor's expense. Any work condemned by the Engineer as unsuitable or improperly done shall be removed and repaired or otherwise remedied as the Engineer may direct.

Any material condemned by the Engineer shall be removed from the site of the work within two (2) days after notice to that effect is given. The Engineer's decision may be reviewed by the Owner, whose ruling shall be final. Should work or materials not readily accessible or available to examination be suspected to be defective or not in accordance with this Contract, the Engineer may require the Contractor to uncover, take work down or to make openings in the finished work for the purpose of examination at such points as may be designated.

If the Contractor shall neglect or refuse to remove or replace defective work or materials within seven (7) days from the date of the written notice from the Engineer to do so, then the Engineer may remove or cause the same to be removed and satisfactorily replaced by Contract or otherwise, as he may deem expedient, and he may, and is empowered to, charge the expense thereof to the Contractor. The expense so charged will be deducted and paid by the Owner out of such moneys as are or may become due under this agreement; or, if such moneys are not sufficient to meet said expense, the additional moneys shall be furnished by the Contractor. If the Contractor refuses or neglects to provide the necessary monies, they shall be provided by his Surety.

**INTERPRETATION OF CONTRACT AS TO LIMITATIONS OF WORK (Sec. G.21)** Should it be deemed necessary in the execution of the work, by reason of any condition or circumstances arising or discovered after the making of the Contract, to make any variation desirable or necessary for the stability, safety, economy or betterment of the work, which variations increase or decrease the quantities of the work specified or change the location thereof to an extent not unreasonable affecting the conditions of the work, and further interpreted by the Engineer as involving no classes of work other than those called for by this Contract, the Contractor shall, upon written order from the Engineer to that effect, make such variations. If such variations diminish the quantity of work to be done, no claim for damages or for anticipated profits on the work that may be dispensed with shall thereby accrue to the Contractor, and the value of the work dispensed with will not be included in any payments made to the Contractor. If such variations increase the amount of work, the value of such increase shall be determined and fixed by the Engineer in accordance with the quantity of such work actually done and at the unit prices stipulated in the Contract.

Such alteration or changes as are mentioned in this section shall not vitiate or annul the obligations of the Contract nor the agreement for the work.

Should the Contractor consider himself to be entitled to extra compensation on account of the aforementioned alterations or changes, he shall notify the Owner by making his claim in writing with copy to the Engineer, before proceeding with the work in question. The Owner will review the claim or cause it to be reviewed after which he will rule on the claim and issue orders to the Contractor. Should the Contractor proceed with the said work in compliance with the order of the Owner, it is to be construed as his acceptance of the order and of the stipulated compensation for the said work.

Should, in the opinion of the Owner, any contemplated change in the quantities of the work or alterations thereof materially change the scope or character of the work or any part thereof, or materially affect the compensation for same, then the work shall be classed as extra work.

**OTHER CONTRACTS (Sec. G.22)** It is understood and agreed that the Contractor shall execute his work in such a manner and in such order as will not interfere with work in progress and will permit the Owner to perform other work or to enter into other contracts for work and materials to be constructed or placed in, on or about the work herein described, with the least interference possible and with complete cooperation whenever it is desirable to prosecute said work, either simultaneously with the work under this Contract or otherwise.

It is agreed that the Contractor shall not be entitled to any damages or extra compensation from the Owner on account of any work performed by the Owner or by other Contractors that in any way affects the work under this Contract, provided that such work of the Owner and other Contractors shall, in the opinion of the Owner, be performed in a proper and expeditious or necessary manner. The Owner shall decide all questions between the Contractor hereunder and other Contractors, and the order of carrying on the work shall always be subject to this direction and approval.

If, in the judgment of the Owner the joint occupation of the site of the work by the Owner or by two (2) or more Contractors working on different Contracts at the same time actually impedes progress on the work herein described, then the Owner may extend the time for the completion of the work and in an amount which accords with and compensates for the delays so caused.

In case the Contractor by his own acts or the acts of any person or persons in his employ, shall unnecessarily delay, in the opinion of the Owner, the work of the Owner or other Contractors by not properly cooperating with or by not affording them sufficient opportunity or facility to perform work as may be specified, the Contractor shall, in that case, pay all costs and expenses incurred by such parties due to such delays. The Contractor hereby authorizes the Owner to deduct the amount of such cost and expenses from any moneys due or to become due him under this Contract. The Owner shall decide the extent of such delay or delays and the amount of such cost and expenses, and his decision shall be binding upon both parties to this Contract. Nothing contained in this paragraph shall, however, relieve said Contractor from any liability or damage resulting to the Owner on account of such delay or delays.

**SUSPENSION OF WORK (Sec. G.23)** The Owner shall have the right to suspend the whole or any part of the work to be done hereunder at the convenience of the Owner, or when, in the opinion of the Owner, the Contractor is not doing the work in accordance with the provisions of the Project Documents.

**ABANDONMENT OF WORK (Sec. G.24)** Should the Contractor abandon or in any manner fail to complete the said work, the Owner is hereby authorized and empowered to pay any tradesman or laborers for work done who have been employed by said Contractor upon the herein work, and to pay any claims against the Contractor for material furnished, out of any funds that would otherwise be due or become due said Contractor under this Contract, and in every such case said Owner is hereby authorized and empowered to ascertain the amount or amounts so due or owing to such tradesmen or laborers, or for material, from said Contractor, in such manner and upon such proof as the Owner may deem sufficient. The amount or amounts so found by the Owner to be due and payable to such tradesmen or laborers, or for materials furnished, shall be final and conclusive against the Contractor, and may thereafter be paid by the Owner to said tradesmen or laborers, or to liquidate claims for labor performed or materials furnished; and any estimates may be withheld from said Contractor until all such claims for labor or material on this Contract have been satisfied.

**FORFEITURE OF CONTRACT (Sec. G.25)** The Owner shall at any time during the continuance of the Contract for the work herein provided for, and prior to the date of acceptance of the work as hereinafter provided, have the right and power to declare the whole or any part of the same forfeited for the violation of any of the conditions, term, requirements, or limitations herein contained, or if the performance of the Contract is unnecessarily or unreasonably delayed, or if the Contractor is not progressing with the work as fast as is necessary to insure its completion within the time specified as required by this Contract, or if the Contractor is showing bad faith in carrying out the Contract, or if the work is not fully completed within the time fixed in this Contract for its completion, or within the time to which such completion may be extended as hereinafter provided, or further, if the Contractor shall fail or refuse to remedy or repair defective work or materials when so ordered as herein provided. If the Owner



shall declare the said Contract forfeited, in whole or in particular, such declaration of forfeiture shall in no way relieve or affect the liability of the Contractor and his Sureties for breach of any of the covenants and conditions of said Contract.

**COMPLETION OF CONTRACT BY OWNER (Sec. G.26)** If the work to be done hereunder shall be abandoned by the Contractor, or if this Contract shall be assigned or the work sublet by him, otherwise than as herein specified, or if at any time, and for reasons hereinbefore specified, the Owner declares the Contract forfeited, the Owner may notify the Contractor to discontinue all work or any part thereof, or may notify the Contractor to remedy or correct the conditions or breaches enumerated by a written notice served upon the Contractor. In the event that the work is ordered discontinued as herein provided, or in case that the said conditions or breaches are not remedied and corrected to the satisfaction of the Owner within seven (7) days from the service of the said written notice, the Owner will thereupon have the power to contract for the completion of the work, or such parts thereof, in the manner prescribed by law, or to employ such and so many persons as he may deem advisable by contract or otherwise, to work at and complete the work herein described, or such part thereof, and to use such materials, machinery, tools and appliances as he may find upon the site of the work, and to procure other materials, machinery, tools, and appliances for the completion of the same, and to charge the expense so incurred to the Contractor. The expense so charged will be deducted and paid by the Owner out of such moneys as may be due or may at any time thereafter become due to the Contractor under and by virtue of this Contract or any part thereof. In case such expense exceeds the amount due and payable to which would become due and payable under this Contract if completed by the Contractor, the amount of such excess shall be repaid to the Owner, and in case such expense shall be less than the sum which would have been payable under this Contract, if the same had been completed by the Contractor, then the Contractor shall be entitled to receive the difference. When any particular part of the work is being carried out by the Owner, by contract or otherwise, under the provisions of this clause of the Contract, the Contractor shall continue the remainder of the work in conformity with the terms of this Contract, and in such manner as in no way to hinder or interfere with the persons or workmen employed, as above provided, by the Owner by contract or otherwise, to do any part of the work, or to complete the same under the provisions of this article of Contract.

**ENTIRE COMPLETION OF WORK (SUBSTANTIAL COMPLETION AND COMPLETION OF PUNCH LIST ITEMS) (Sec. G.27)** Completion of the herein specified work of this Contract is defined as that stage when the structures, equipment and facilities supplied, installed, modified or constructed under this Contract, together with all appurtenances, are tested and ready to be placed in continuous satisfactory operation by the Owner in the manner intended and when punch list items have been completed.

**TIME FOR ENTIRE COMPLETION OF WORK (Sec. G.28)** The work shall be carried on with such force and in such manner and order and at such points that within the time allotted by the entire completion date (substantial completion and completion of punch list items) specified in the proposal, or as may be modified or extended as hereinafter provided, the whole work and its parts shall be performed in accordance with the terms of this Contract.

It is mutually agreed by and between the parties hereto that time is an essential part of this Contract, and that, if a Contractor shall fail to complete the work or any part thereof within the fixed time given, the Owner may retain as liquidated damages incident to such delay, from the monies that are or which may become due said Contractor, such sum per day as specified in the proposal for each and every calendar day the entire completion of work is delayed beyond the time stipulated in the proposal for such completion.

It is agreed by and between the parties hereto that inasmuch as expenses and inconveniences and other damages will be sustained by the Owner in the event that said Contractor fails to perform the work herein specified within the time stipulated in the proposal, such as inconvenience to the public, engineering expenses, interest charges, wages of clerks in the engineering and other departments, salaries of inspectors, delay caused to other work by failure to perform this Contract, and other elements, some of which are indefinite and in some cases difficult to substantiate, the sum per day specified in the Contract for each day's delay shall be considered as liquidated damages and not as a penalty and shall become due said Owner as full payment for all such expenses and damages sustained by the failure of said Contractor to complete the work as herein specified. (Note: Overtime work is not included in the costs for liquidated damages but is a separate responsibility by the Contractor under any circumstance; see Section G.12 "Overtime Work" in the General Conditions for additional information.)

**DELAYS AND EXTENSION OF TIME FOR ENTIRE COMPLETION OF WORK (Sec. G.29)**

The Owner shall have the right to defer the beginning of, or to suspend the whole or any part of the work herein contracted to be done whenever, in the opinion of the Owner, it may be necessary or expedient for the Owner to do so. If the Contractor is delayed in the completion of the work by any act or neglect of the Owner, or the Engineer, or of any agent or employee of theirs, or by any other Contractor employed by the Owner, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay by common carrier, unavoidable casualties, or by weather related causes agreed upon by the Engineer, or by any cause beyond the Contractor's control, or by any delay authorized by the Owner pending arbitration, or by any cause which the Owner shall decide to justify the delay, then for all such delays and suspensions which actually prevent progress of the work, the Contractor shall be allowed one (1) day additional to the time herein specified for each and every day of such delay so caused in the completion of the work, the same to be ascertained by the Owner, and a similar allowance of extra time will be made for such other delays as may be found to have been caused by the Owner.

The Contract is to be entirely complete (substantial completion and completion of punch list items) by the dates noted in Proposal Form 1 of the Project Manual unless a time extension is otherwise granted by the Owner.

**PRICES (Sec. G.30)** The Owner will pay and the Contractor shall receive the prices stipulated in the proposal herein contained or hereto annexed, as full compensation for furnishing all the materials and equipment and performing all the superintendence and labor which may be required in the prosecution and completion of the work of this Contract, as described and shown in the specifications and construction plans, or as ordered, and also for the making and submitting of all shop drawings and other required data and samples, and for the furnishing of all superintendence and for all loss and damages arising out of the nature of the work aforesaid, or from the action of the elements or from any unseen obstruction of difficulty encountered in the prosecution of the work, and for all expenses incurred by or in consequence of the suspension or discontinuance of the work as herein specified.

**SOCIAL SECURITY ACT (Sec. G.31)** Each Contractor shall be and remain an independent Contractor with respect to all services performed hereunder, and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities, now or hereafter imposed under any State or Federal law, which are measured by the wages, salaries, or other remuneration paid to persons employed by the Contractor on work performed under the terms of this Contract, and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said representative laws by any duly authorized State or Federal officials; said Contractor also agrees to indemnify and save harmless the Owner from any contributions or taxes or liability therefore.

**ESTIMATES AND PAYMENTS (Sec. G.32)** Within the first ten (10) days of each month, the Contractor shall submit to the Engineer, a full, accurate and detailed estimate of the amount and value of the work done and the materials incorporated into the work during the previous calendar month, whenever said monthly work exceeds Five Thousand Dollars (\$5,000.00) in value. More frequent estimates may be made at the option of the Owner, at any time during the progress of the work, and payment may at any time be withheld if the work is not proceeding in accordance with this Contract.

No payments shall be made to directly reimburse the Contractor for the cost of bonds, insurance and other requirements of this Contract, which are not completed work or stored equipment. The Contractor shall be compensated for these items as part of the overhead included in the progress payments for completed work.

The Engineer will check the estimate and deliver it to the Owner. After the Owner has approved the estimate, he shall file a certified copy with the Financial Officer and the Owner will pay to the Contractor the following compensation:

A. General

The unit or lump sum price stated in the Contract shall be used in determining the amount to be paid and shall constitute full and final compensation for all the work.

Partial payment to the Contractor for work performed under the lump sum price shall be based on a schedule prepared by the Contractor and approved by the Engineer who shall apportion the lump sum price to the major components entering into or forming a part of the work under the lump sum price.

B. Payment for Labor

Partial payment to the Contractor for labor performed under either a unit or lump sum price Contract shall be made at the rate of one hundred percent (100%) of the estimates prepared by the Contractor and approved by the Engineer.

C. Payment for Stored Equipment

In addition to all other payments on account of work performed, there shall be allowed by the Owner and paid to the Contractor a sum at the rate of one hundred percent (100%) of the invoice costs, not to exceed the bid price in a unit price Contract or the listed price from the subdivision of the bid in a lump sum Contract, for equipment delivered on the site of the work (within the State of Ohio), other points in the vicinity of the work, or other approved storage site, provided such equipment have been inspected and found to meet the specifications.

D. Estimates and Security

Upon receiving from the Contractor a submission of the estimates described in paragraphs B and C above, the Owner shall approve a full, accurate and detailed estimate of the various kinds of labor performed and material furnished under the Contract, with the amount due for each kind of labor and material and the materials and amount due in the aggregate, which estimate shall be based upon actual measurement of such labor and materials, and shall give the amounts of the preceding estimate, and the amount of labor performed and materials furnished since the last estimate. The Owner shall, at his sole discretion, delete from such estimate any items which are in dispute with respect to either performance or amount due.

#### E. Payments Withheld

Partial payments may be reduced or withheld entirely, if, in the opinion of the Owner, construction is not proceeding according to the Contract, or for any other violation of the Contract, or for failure of the Contractor to comply with orders of the Owner, or pending settlements of claims or liens filed against the Contractor.

**APPROVAL AND ACCEPTANCE OF WORK (Sec. G.33)** Following the total completion of all work of the Contract, the Engineer will prepare the final estimate. After all Contract performances have been satisfactorily completed (in full conformance with the Project Documents), and as soon thereafter as practicable, the Owner will inspect the entire work in all parts and details, or cause the same to be inspected. If said work and all Contract performances are found to be satisfactory, complete, and in accordance with the provisions and terms of the Project Documents, the Owner will certify the work as acceptable and will accept it in writing to the Contractor.

Upon approval of this final estimate, the Owner will pay, within thirty (30) days after acceptance of the work, the full amount of monies due the Contractor, provided the Contractor has furnished evidence of extending the Performance and Payment Bond to a Warranty Bond for the specified period stated in the Proposal form, has submitted all required special warranties and guarantees, has provided all payroll records, and has certified that all Subcontractors and Suppliers have been paid in full. The Contractor shall use the Completion Affidavit (Contract Form 12) to certify that these things have been performed.

**GUARANTEE (Sec. G. 34)** Before payment of the final estimate is released to the Contractor, as above provided, the Contractor shall extend the Performance and Payment Bond to become a Warranty Bond in the amount of one hundred percent (100%) of the Contract price guaranteeing the repair and correction or replacement of any defect in material, equipment and workmanship becoming evident at any time during the one (1) year guarantee period and at full cost to the Contractor and at no cost to the Owner. The bond shall be in effect for a period of one (1) year commencing on the Contract acceptance date. A guarantee or maintenance bond acceptable to the Owner may be used in lieu of extending the Performance and Payment Bond.

Within twelve (12) months after the acceptance of the work as hereinbefore provided, and provided further that any repairs necessitated by defects in materials or workmanship as determined by the Engineer shall have been made, the Owner, certifying that the terms of the Contract have been complied with and the work and performances of the Contract itself satisfactorily and fully completed, will inform the Contractor, in writing, of the Owner's final acceptance of the work and such written notice will serve to release the surety on the Performance and Payment Bond and will terminate this Contract and release all parties hereunder.

If, however, the review and re-inspection as described herein or any prior inspection discloses defects due to the non-fulfillment of this Contract, or noncompliance with its requirements, the Owner shall so notify the Contractor in writing, and thereupon the Contractor shall, at his own expense, repair or replace and shall make good all defects of workmanship, material and guarantee, and shall rectify any noncompliance and such repairs and fulfillment shall be a prerequisite to the release of the surety on the Performance and Payment Bond. Should the Contractor after due notice refuse or neglect to make good the defects as notified and to the satisfaction of the Owner, then the Owner may and is empowered to proceed in the manner prescribed in the event of abandonment or forfeiture of the work by the Contractor, and completion by the Owner and the payment of claims for material and labor and other expenses as provided in such procedures shall be a prerequisite to the termination of guarantee and to the release of the surety on the Performance and Payment Bond.

**NO WAIVER OF CONTRACT (Sec. G. 35)** Neither extension of time for any reason beyond the date fixed herein for the completion of a Contract, nor the delivery and acceptance of any article or materials, nor any payment for, nor acceptance of the whole or any part of the work by the Owner, nor any possession taken by the Owner or its employees or agents, shall be deemed to be a waiver by the Owner of the right to abrogate the Contract for abandonment or for delay or non-performance in the manner herein provided, nor shall it operate to void or annul any of the terms of the Contract.

**NO ESTOPPEL (Sec. G. 36)** Neither the Owner nor any department or officer thereof shall be precluded or estopped, by any return, or certification made or given by the Owner's officers, agents, Engineer or appointees under any provision of the Contract, from at any time (before the completion and acceptance of the work, payment therefore, or before the release of the Performance and Payment Bond, pursuant to any such return or certificate) showing the true and correct amount and character of the work done and materials furnished by the Contractor or any other person under this Contract, or that any such return or certification is untrue and incorrect or improperly made in any particular, or that the work and materials, or any part thereof, do not in fact conform to the Project Documents, and the Owner shall not be precluded or estopped, notwithstanding any such return or certification and payment in accordance therewith, from demanding and recovering from the Contractor such damages as it may sustain by reason of his failure to comply with the Project Documents.

**CERTIFICATE OF UNEXPENDED APPROPRIATIONS (Sec. G.37)** This Contract or any agreements subsidiary thereto shall not be binding or of any force unless the Finance Director for the Owner endorses thereon a certification that there remains unexpended or in process of collection and unapplied a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of executing the Contract or subsidiary agreement, as certified by the officers making the same.

**SUBLETTING (Sec. G.38)** The Contractor shall utilize the services of specialty and other Subcontractors to the extent that the Contractor deems appropriate, subject to the following limitations. The Contractor shall be solely responsible for the selection of Subcontractors and shall be as fully responsible to the Owner for the acts and omissions for his Subcontractors, and of persons employed by them, either directly or indirectly, as the Contractor is for the acts and omissions of persons directly employed by the Contractor. The Contractor cannot subcontract more than seventy percent (70%) of the value of the Contract. Each Bidder and pertinent sub-contractor(s) must be prequalified with the Ohio Department of Transportation's Office of Contracts, Contractor Qualification Section at the time of bid, at the time of award, and through the life of the contract for the pertinent ODOT WT Codes.

The Owner has the right to reject and require replacement of a Subcontractor whose competency, qualifications and work record are indicative of less than adequate performance. The reasons by which the Owner may object to a Subcontractor include, but are not limited to, prior litigation regarding contract performance, other manifestations of a failure to have satisfactorily performed on a contract or default on a contract. The basis for Subcontractor rejection can emanate from the Subcontractor's performance on a previous contract with the Owner, but is not limited to such contracts.

Subsequent to bid opening, and prior to Contract award, the successful bidder shall provide the Owner with a list of all Subcontractors to be used on the Project. This list shall give the name and addresses of the Subcontractor, the name and phone number of a designated contact person, and the dollar amount and general description of the scope of work to be performed. The Contractor shall provide the Owner with timely notice of any change in the roster of Subcontractors during the course of construction, including significant expansion/reduction of the scope of work of a previously identified Subcontractor. The information to be provided should be similar to that described above.

The Contractor shall be as fully responsible to the Owner for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind Subcontractors to the Contractor by the terms of the prime agreement between the Owner and the Contractor insofar as applicable to the work of the Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provisions of the Project Documents.

Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the Owner.

Within ten (10) days after the Contractor receives payment for work performed under this Contract, he shall pay each material and equipment supplier and each Subcontractor the amount allowed the Contractor for material and equipment furnished and on account of work performed by the Subcontractor to the extent of the supplier's or Subcontractor's interest therein.

**ASSIGNMENT (Sec. G.39)** The Contractor or his thoroughly qualified and designated representative shall give his personal attention constantly to the faithful prosecution of the work. He shall not assign, transfer, convey, or otherwise dispose of this Contract, or of his right, title, or interest in, or to the same or any part thereof, without the previous written approval of the Owner.

The Contractor shall not assign, by power of attorney or otherwise, any of the monies to become due and payable under this Contract, unless by approval and with the written consent of the Owner, and such consent or approval, if given, will in no way relieve the Contractor from any of the obligations of said Contract.

Assignment of this Contract or any part thereof or of any funds to be received there under by the Contractor shall contain a clause to the effect that it is agreed that the funds to be paid the assignee are subject to a prior lien for services rendered or materials supplied for the performance of the work called for in said Contract in favor of all person, firms, or corporations rendering such services or supplying such materials.

**PROHIBITED INTERESTS (Sec. G.40)** Neither employees of the Owner nor of the Consulting Engineers who may be authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction equipment or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise an executive, supervisory, or other similar functions in connection with the construction of the Project shall become directly or indirectly interested personally in this Contract or in any part hereof.

**SPECIAL NOTICE (Sec. G.41)** Bidders are required to inform themselves fully of the conditions relating to construction and labor under which the work will be or is now being performed, and each Contractor must employ, so far as possible, such methods and means in the carrying out of his work as will not cause any interruption of, or interference with, any other Contractor.

**NOTIFICATION OF UTILITIES** (Sec. G.42) Pursuant to ORC Section 153.64, the Owner and the Consulting Engineer have contacted utility agencies of underground and overhead facilities for information relating to the existence and location of their facilities within the construction area. The Owner and the Consulting Engineer have used reasonable diligence to reflect such information as was received from the utility agencies on the construction plans and specifications. The Owner and the Consulting Engineer have relied upon the utility agencies to provide information about the existence and location of their underground and/or overhead facilities and accept no responsibility for and make no representation or warranty as to the accuracy or completeness of such information.

The registered and non registered utility agencies which have been contacted by the Owner and the Consulting Engineer are listed in the **“General Notes” in the construction plans** along with a contact name, address and telephone number of each utility agency.

Prior to the commencement of construction for the project, the Owner will coordinate a pre-construction meeting with representatives of the following agencies: Owner, Contractor, Construction Engineer, pertinent utility agencies, and any other necessary agencies. In addition to the other aforementioned agencies, the Contractor shall provide the pertinent utility agencies the necessary Contractor emergency contact information and project schedule. The Contractor is also required to contact the Ohio Utilities Protection Services (O.U.P.S.) at 1-800-362-2764 forty eight (48) hours prior to construction. The Contractor will be responsible for notifying all non-registered utility agencies.

If the Project will require the temporary or permanent relocation of any underground or overhead utility facility located within the construction area, the details of the specific utility relocation(s) along with their projected completion schedule will have been coordinated by the Owner and the Consulting Engineer during the engineering design phase of the project. This information will be provided in a Utility Note located in the Proposal section of this Project Manual immediately following the Bid Proposal Forms. In the event that the schedule of any utility relocation work coincides with the Contractor’s construction schedule, the Contractor shall coordinate their construction operations with the appropriate utility’s relocation construction operations.

The Contractor shall be responsible for all losses, costs and expenses, direct or indirect, arising out of or in any way related to damage or injury to any underground or overhead utility facility in the following circumstances:

- (a) the Contractor fails to comply with the previous paragraphs hereof; or
- (b) the Contractor had actual notice of the location of any underground or overhead utility facility and the Contractor failed to acknowledge the utility’s location during construction procedures.

The Contractor hereby agrees to indemnify and save harmless the Owner, Consulting Engineer, and Construction Engineer from and against all liabilities, claims or demands arising out of or in any way related to such damage or injury and further liability or damages that the Owner, Consulting Engineer, and Construction Engineer may directly or indirectly sustain, suffer of incur as a result thereof.

The Contractor shall immediately alert all occupants of nearby premises as to any emergency that the Contractor may create or discover at or near such premises. The Contractor shall report immediately to the appropriate utility agency any breaks or leaks with its facilities or any dent, gouge, groove, or other damage to such facilities or to their coating, cathodic protection, etc. made or discovered during the course of construction by the Contractor.

**MAINTENANCE OF TRAFFIC (Sec. G.43)** Maintenance of traffic shall be in accordance with the Project Documents, but in any case, the Contractor must so limit his operations as to provide at all times a minimum of one (1) suitable unobstructed and well maintained lane for traffic in each direction on all improved streets unless specifically or otherwise authorized in writing by the Owner. When necessary, or upon orders of the Resident Engineer, the Contractor shall build temporary sidewalks and roadways or detours of adequate thickness, width and with proper drainage, and it shall be suitable for traffic and/or for his hauling operations. The Contractor shall maintain them without ruts, holes and dust at all times and at no cost to the Owner.

**WORKING SPACE (Sec. G.44)** The Contractor's use of the site of the work and of public streets is subject to the regulations of the Owner and must be restricted to the construction easements and street rights-of-way lines as actually pertaining whether or not they conform to those shown on Construction plans. Should the Contractor desire or require space for storage or construction additional to those provided, such additional space must be arranged for by the Contractor at his expense. All agreements for such additional space must be in writing and a copy must be filed with the Owner and with the Engineer.

**INFORMATION TO BE FURNISHED BY THE CONTRACTOR (Sec. G.45)** The Contractor shall, as part of the performance of this Contract, submit for the approval of the Owner, as hereinafter provided, and as soon as possible after being awarded the Contract, and with due regard to the sequence in which such information will be required for construction.

The Contractor's drawings must relate to actual field conditions, and it is the responsibility of the Contractor to check and to make any field measurements that are necessary to assure proper connections, fit functioning and performance of all work and equipment involved in the execution of the work of this Contract.

Drawings, specifications and/or catalog pages should be clear and complete enough to enable the Engineer to determine that materials proposed to be furnished conform to specification requirements and that equipment to be delivered to the site are actually those approved. Copies of construction plans will not be sufficient for submission as Contractor's drawings. Catalog number of materials or equipment will not suffice as drawings must be in sufficient detail to establish conformance with the specifications as to dimensions, reinforcing, materials, tying-in with piping, performance and the details required in the item specifications.

The drawings shall be submitted with no less than five (5) copies, in proper sequence and time, and with due regard to the time required for checking, transmittal and approval.

Drawings shall be clear and legible and shall show, as necessary, working dimensions, arrangement, material, finish and erection data, and like information which is needed to define what is to be furnished and establish whether or not it is in accord with the requirements of the work, and likewise, whether it will meet limitations of space, connection requirements, etc. Specifications, where needed, shall particularize materials and establish any characteristics of performance where such are pertinent. Suitable catalog data sheets may, in certain instances, be sufficient to define the article which it is proposed to furnish.

The Contractor's submission, as herein specified, for approval, shall be made to the Engineer by the Contractor only.

If, after checking, drawings are found to conform to the Contract requirements, the Engineer will stamp them "Approved" for general conformance of the Project Documents. After drawings are so approved, the engineer will retain one (1) copy, will transmit one (1) to the Resident Engineer, one (1) to



the Owner, and the balance to the Contractor. If only dimensions or notes in reasonable number are needed, such revisions will be made by the Engineer, and drawings will be recommended for approval "As Corrected". Drawings so approved by the Engineer need not be resubmitted.

If the drawings are returned to the Contractor marked "not approved", the Engineer shall state herein the reasons for non-conformance of the drawings. The Contractor shall correct the drawings as required and shall resubmit the drawings for review. No material shall be delivered to the job site prior to the Engineers approval of said material for general conformance to the plans and specifications.

It is emphasized that the Engineer's approval of the Contractor's submitted data is for general conformance to the Project Documents. Although the Engineer may check submitted data in more or less detail, his work shall in no way relieve the Contractor's obligation and responsibility to coordinate the work and to engineer the details of the work in such a manner that the purpose and intent of the Contract will be achieved.

**LPA RECORD RETENTION (Sec. G.46)** As the LPA, ODOT or the United States Government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States Government, all records, books, and documents of every kind and description that relate to this contract.

**VIDEO RECORDING OF CONSTRUCTION CORRIDORS (Sec. G.47)** The Contractor shall provide all of the necessary labor, tools, equipment, and materials necessary to provide video recording in accordance with the construction drawings and as specified herein.

Recording: Construction in any area shall not start until the area has been video recorded and the recordings have been submitted.

Visual Inspection: Prior to video recording, all areas to be video recorded shall be investigated visually with notation made of features not readily visible by recording methods. This shall include, but not be limited to, culverts (size, type and condition) and manholes that may be partially buried. Record all measurements made during the inspection.

Approvals: All video recording shall be conducted in the presence of the Resident Engineer unless waived in writing by the Resident Engineer. At the start of video recording, the Contractor shall submit a sample video recording of a portion of this project for the Resident Engineer to review. The sample video recording shall be approved before any other videotaping is allowed.

Equipment: DVD disk or Computer Flash Drive – Audio-video recording shall be original, previously unrecorded, standard quality, and shall be digitally recorded onto a standard DVD disk which is compatible with all DVD players or to a Computer Flash Drive which is compatible with standard computer playback video programs. Video cassette tapes (VHS, BETA, etc.) and recordings requiring special adaptors for playback will not be accepted. If duplicate copies are required by the Owner, all copies shall be limited to direct copies of the DVD disk or Computer Flash Drive and marked as such. All DVD disks (including cases) or Computer Flash Drives shall be properly identified by number, location, and project name in a manner acceptable to the Resident Engineer. An index including date of recording, subjects, and locations by footage and an inventory of all recordings completed, referenced by location and number, shall be furnished to the Resident Engineer upon completion of the work and delivery of the recording. All recordings and written records shall become property of the Owner.

Video Recording Device – The video recording device shall have digital capabilities to either directly record to a standard DVD or have the capability to be transferred to a standard DVD or Computer Flash Drive. Video recording devices shall have audio recording capabilities and shall record the video in color.

Audio – Each video shall begin with the current date, project name, name of the Owner for which the project is being constructed, and shall be followed by the general location (i.e. name of the street or property owner, location of cross country line, viewing side, and direction of progress). The engineering stationing (where required) shall be noted on the audio track. Houses and buildings shall be identified audibly by address, when available.

Date and Time – All video recordings shall by electronic means continuously display the month, day, year, hours, minutes, and seconds.

Coverage:

General – Video coverage shall include, but not be limited to, all existing driveways, sidewalk, curbs, ditches (drainage patterns are of particular concern), streets (including condition of paving for full width), landscaping, trees, culverts, catch basins, headwalls, fences, visible utilities, all buildings (interior and exterior), and all miscellaneous objects located within the zone of influence of construction. Of particular concern, are existing faults, fractures, defects, or other imperfections.

Streets – Unless otherwise noted, streets and street areas shall be recorded by audio-video for the full width of the zone of influence of construction, including both sides of the street. The term street shall be understood to mean street, highway, avenue, boulevard, road, alley, lane, driveway, parking lot, etc. and all adjacent areas within the possible zone of the influence of construction.

Easements – Easements shall be recorded by audio-video for the full width of the permanent easement and/or work agreement areas and for all other adjacent areas lying within the zone of influence of construction. Easements shall be understood to mean all areas not within road right-of-ways that require tape coverage. Also, included within this coverage shall be any areas that are intended to be used for construction access, storage, or waste disposal.

Copies: Four (4) copies of the finished video shall be distributed to the following: one (1) copy to the Owner, two (2) copies to the Resident Engineer, and one (1) copy shall be retained by the Contractor.

**CONTRACT TERMINATION (Sec. G.48)** Termination of the Contract for convenience of the Department (City of Columbiana) as described in Section 108.09 of the 2023 DOT CMS is hereby incorporated into the specifications.

**DISPUTE RESOLUTION AND ADMINISTRATION CLAIMS PROCESS - CITY OF COLUMBIANA (Sec G.49)**

The following pages describe the City of Columbiana’s Dispute Resolution and Administration Claims Process to be utilized on this Ohio Department of Transportation, Local Public Agency project.

## A DISPUTE RESOLUTION AND ADMINISTRATION CLAIMS PROCESS FOR THE CITY OF COLUMBIANA

Whenever an issue is elevated to a dispute, the parties shall exhaust the *City of Columbiana's* Dispute Resolution and Administrative Claim process set forth below prior to filing an action any court of competent jurisdiction. The following procedures do not compromise the Contractor's right to seek relief in any court of competent jurisdiction.

All parties to the dispute must adhere to the Dispute Resolution and Administrative Claim process. Do not contact *City of Columbiana* personnel who are to be involved in a Step 2 or Step 3 review until a decision has been issued by the previous tier. *City of Columbiana* personnel involved in Step 2 or Step 3 reviews will not consider a dispute until the previous tier has properly reviewed the dispute and issued a decision.

Whereas, Failure to meet any of the timeframes outlined below or to request an extension may terminate further review of the dispute and may serve as a waiver of the Contractor's right to file a claim.

Disputes and claims by subcontractors and suppliers may be pursued by the Contractor on behalf of subcontractors or suppliers. Disputes and claims by subcontractors and suppliers against the *City of Columbiana* but not supported by the Contractor will not be reviewed by the *City of Columbiana*. Disputes and claims of subcontractors and suppliers against the Contractor will not be reviewed by the *City of Columbiana*.

Continue with all work, including that which is in dispute. The *City of Columbiana* will continue to pay for work not in dispute.

The *City of Columbiana* will not make the adjustments allowed by 104.02.B, 104.02.C, and 104.02.D of the 2016 ODOT Construction and Materials Specifications if the Contractor did not give notice as specified above. This provision does not apply to adjustments provided in Table 104.02-2 of the 2016 ODOT CMS.

**Step 1 (On-Site Determination):** The *acting engineer* will meet with the Contractor's superintendent within two (2) working days of receipt of the Contractor Written Early Notice set forth in 108.02.F of the 2016 ODOT CMS. They will review all pertinent information and contract provisions and negotiate in an effort to reach a resolution according to the Contract Documents. The *acting engineer* will issue a written decision of Step 1 within fourteen (14) calendar days of the meeting and receipt of substantiating documentation. If the dispute is not resolved, either abandon or escalate the dispute to Step 2.

**Step 2 (City of Columbiana Dispute Resolution Committee):** The *City of Columbiana* Dispute Resolution Committee will be responsible for hearing and deciding disputes at the Step 2 level. The committee will consist of *the City Manager*,

*the Street Department Superintendent, and the City's Attorney* or designees (other than the project personnel involved).

Within seven (7) calendar days of receipt of the Step 1 decision, submit a written request for a Step 2 meeting to the *acting engineer*. The *acting engineer* will assign the dispute a dispute number. Within fourteen (14) calendar days of receipt of the request for a Step 2 meeting, submit the dispute documentation as follows:

- a) Submit three (3) complete copies of the documentation of the dispute to the *acting engineer*.
- b) Identify the dispute on a cover page by county, project number, Contractor name, subcontractor or supplier (if involved in the dispute), and dispute number.
- c) Clearly identify each item for which additional compensation and/or time is requested.
- d) Provide a detailed narrative of the disputed work or project circumstance at issue. Include the dates of the disputed work and the date of early notice.
- e) Reference the applicable provisions of the plans, specifications, proposal, or other contract documents in dispute. Include copies of the cited provisions in the dispute documentation.
- f) Include the dollar amount of additional compensation and length of contract time extension requested.
- g) Include supporting documents for the requested compensation stated in letter (f) above.
- h) Provide a detailed schedule analysis for any dispute involving additional contract time, actual or constructive acceleration, or delay damages. At a minimum, this schedule analysis must include the Schedule Update immediately preceding the occurrence of the circumstance alleged to have caused delay and must comply with accepted industry practices. Failure to submit the required schedule analysis will result in the denial of that portion of the Contractor's request.
- i) Include copies of relevant correspondence and other pertinent documents.

Within fourteen (14) calendar days of receipt of the Contractor's dispute documentation, the committee will conduct the Step 2 meeting with the Contractor personnel who are authorized to resolve the dispute. The committee will issue a written decision of Step 2 within fourteen (14) calendar days of the meeting. If the dispute is not resolved, either abandon or escalate the dispute to Step 3.

**Step 3 Hired Neutral Third Party (Mediation):** Submit a written Notice of Intent to File a Claim to the *acting engineer*, who will serve as the Dispute Resolution Coordinator (DRC), within fourteen (14) calendar days of receipt of the Step 2 decision.

The dispute becomes a claim when the DRC receives the Notice of Intent to File a Claim.

Submit six (6) complete copies of the claim documentation to the DRC within thirty (30) calendar days of receipt of the Notice of Intent to File a Claim. This timeframe may be extended upon mutual agreement of the parties and with approval of the DRC.

In addition to the documentation submitted at Step 2:

- a) Enhance the narrative to include sufficient description and information to enable understanding by a third party who has no knowledge of the dispute or familiarity with the project.
- b) Certify the claim in writing and under oath using the following certification:

*“I, (Name and Title of an Officer of the Contractor) certify that this claim is made in good faith, that all supporting data is accurate and complete to the best of my knowledge and belief, and that the claim amount accurately reflects the contract amendment for which (Contractor Company name) believes the City of Columbiana is liable.”*

Sign and date this claim certification and have the signature notarized pursuant to the laws of the State of Ohio. The date the DRC receives the certified claim documentation is the date of the *City of Columbiana’s* Receipt of the Certified Claim for the purpose of the calculation of interest as defined in 102.02.G.4 of the 2016 ODOT CMS.

- c) An overview of the project.
- d) Response to each argument set forth by the Contractor.
- e) Any counterclaims, accompanied by supporting documentation, *City of Columbiana* wishes to assert.

The *acting engineer* will then choose Mediation in the manner in which those methods are practiced by the *acting engineer* and allowed by law. The DRC will coordinate the agreement of the parties to the Mediation, and the selection of a Mediator. The fees of the Mediator will be shared equally between the *City of Columbiana* and the Contractor. The DRC will obtain a written agreement, signed by both parties, that establishes the Mediation process. The Mediator will have complete control of the claim upon execution of the Mediation agreement.

The decision of the Mediator is the final step of the *City of Columbiana’s* Dispute Resolution Process. The decision may be appealed by the *City of Columbiana* who is not bound by any offers of settlement or findings of entitlement made during Steps 1, 2, and 3 of the Dispute Resolution Process.

## **ITEM SPECIFICATIONS**

## Item Specifications

The State of Ohio Department of Transportation Construction and Material Specifications (CMS), January 1, 2023 edition, shall govern this improvement along with any referenced ODOT Supplemental Specifications. The following parts of Section 100 of the ODOT C&MS shall govern over any conflicts with the Project Manual: 103.03; 104.02 (B),(C) and (D); 106.09; 107.01; 107.05; 107.10 (Partial requirements associated with Cultural and Ecological Resources, Public Lands, FEMA 100-year Floodplain, and Hazardous Waste Materials); 107.12; 107.19; 107.20; 107.21; and 108.10. The Contractor shall refer to the ODOT Contract Provisions included in the Project Manual for the portions of Section 100 not applicable to this contract. Any other conflicts between other portions of Section 100 of ODOT C&MS and the Project Manual shall be governed by the Project Manual or by any other City requirements. All references in the C&MS to the State of Ohio and its Officials shall be understood to mean the City of Columbiana and the corresponding City Officials. The following is a general list of item specifications from the O.D.O.T. CMS that are to be used by the Contractor for construction of this project.

- Item 201 – Clearing and Grubbing
- Item 202 – Removal of Structures and Obstructions
- Item 204 – Subgrade Compaction and Proof Rolling
- Item 209 – Linear Grading
- Item 254 – Pavement Planing
- Item 255 – Full Depth Pavement Removal and Rigid Replacement
- Item 301 – Asphalt Concrete Base
- Item 304 – Aggregate Base
- Item 305 – Portland Cement Concrete Base
- Item 407 – Tack Coat
- Item 441 – Asphalt Concrete-Mix Design and Quality Control
- Item 452 – Non-Reinforced Portland Cement Concrete Pavement
- Item 601 – Slope and Channel Protection
- Item 608 – Walks, Curb Ramps, and Steps
- Item 609 – Curbing, Concrete Medians, and Traffic Islands
- Item 611 – Pipe Culverts, Sewers, Drains, and Drainage Structures
- Item 614 – Maintaining Traffic
- Item 616 – Dust Control
- Item 619 – Field Office
- Item 623 – Construction Layout Stakes and Survey Monuments
- Item 624 – Mobilization
- Item 638 – Water Mains and Service Branches
- Item 644 – Thermoplastic Pavement Marking
- Item 659 – Seeding and Mulching
- Item 670 – Erosion Protection

### Supplemental Specifications

- SS 800 – Revisions to the 2023 Construction & Material Specifications
- SS 832 – Temporary Erosion Control

**Note:** The items listed above are general descriptions and are for information purposes only. The Contractor must refer to the Bid Proposal Form in this Project Manual or to the General Summary in the Construction Drawings for a detailed description of each item to be used for bidding purposes and for construction purposes.

**FEDERAL DAVIS-BACON PREVAILING WAGE RATES**