

CITY OF CLAYTON, OHIO

MOT 49-7.27

PID 112158

Federal Project: E200599

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2020

City of Clayton

City Manager

Amanda Zimmerlin

Bid Proposal

MOT 49-7.27

PID 112158

Federal Project: E200599

CITY OF CLAYTON, OHIO

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PID 112158

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DBE Goal = 5%

2020

Advertisement, Information for Bidders, Bid, Contract, Bonds, Specifications,
Documents

City of Clayton City Manager
Amanda Zimmerlin

THIS IS A COMPLETE SET OF DOCUMENTS
-----DO NOT SEPARATE-----

MOT SR49-7.27
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City of Clayton
Clayton Government Center, Clayton, Ohio
NOTICE TO BIDDERS
Section 307.86 of the Ohio Revised Code

Sealed proposals will be received at the Clayton Government Center, 6996 Taywood Rd., Englewood, OH 45322, **Monday, November 9, 2020 at 10:00am** for the: **MOT SR49-7.27** in accordance with the plans and specifications now on file in the City of Clayton Government Center. The Bidding documents may be reviewed and obtained at the Clayton Government Center located at 6996 Taywood Rd., Englewood, OH 45322 or on the City of Clayton's website, www.clayton.oh.us.

Each proposal must contain the full name of the party or parties submitting the proposal and all persons interested therein. Proposals shall be submitted on the forms furnished by the City and must be enclosed in sealed envelopes endorsed by the Bidder and marked:

"BID – MOT 49-7.27"

Bids may be submitted by mail or in person to the Clayton Government Center located at 6996 Taywood Rd., Englewood, OH 45322. The City intends to award the project on Friday, January 8, 2021 and requires that this project be started on March 1, 2021 and be completed by December 31, 2021.

All federal rules and requirements with respect to Equal Employment Opportunity (EEO) shall be in force with respect to this contract.

Bidders must comply with current Davis-Bacon Prevailing Wage Rates for Public Improvements in Montgomery County, Ohio as determined by the United States Department of Labor, Wage, and Hour Division.

Bidders must be prequalified with the Ohio Department of Transportation for appropriate work types.

Each Bidder is required to furnish, with his/her proposal, a Bid Guaranty in accordance with Section 153.54 of the Ohio Revised Code as a guarantee that if the proposal is accepted a Contract will be entered. The Bid Guaranty shall be in one of the following forms:

1. A certified check, cashiers' check or letter of credit in an amount equal to 10% of the total Bid amount, payable to the City of Clayton and the Ohio Department of Transportation, or;
2. A Bid bond in the amount of 100% of the Bid amount, payable to the City of Clayton and the Ohio Department of Transportation.

If the Bid Guaranty is furnished in Bond form, it shall be issued by a Surety Company or Corporation licensed in the State of Ohio to provide said surety.

The City of Clayton reserves the right to reject any or all Bids, to waive any irregularities in the Bids and to award the contract to the bidder, or bidders, who, in their opinion, offer the lowest and/or best proposal.

CITY OF CLAYTON CITY MANAGER
Amanda Zimmerlin

INSTRUCTIONS TO BIDDERS AND GENERAL CONTRACT CONDITIONS

1. EXAMINATION OF DOCUMENTS AND SITE CONDITIONS

- a. Bidders are cautioned to carefully review the site and all parts of the Contract Documents including, but not limited to, Instructions to Bidders and General Conditions, General Construction Provisions, Additional Provisions, Detailed Construction Specifications, Form of Proposal, Other Bid Documents, Sample Contract Documents, Prevailing Wage Rates, Plans, Drawings and all other codes, specifications and orders contained or cited herein.
- b. No allowance will be made subsequently for any error, oversight or negligence of the Bidder.
- c. Submission of a proposal represents that the Bidder has based his Bid upon materials, systems and equipment required by the Contract Documents without exception. Submission of a proposal will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of these "Instructions to Bidders" and associated documents.

2. BIDDING DOCUMENTS

- a. Copies
 - i. Bidders shall obtain complete set of Bidding Documents from City of Clayton at the physical address or the City's website and within the guidelines designated in the Notice to Bidders.
 - ii. Bidders shall use complete sets of Bidding Documents in preparing Bids. The City of Clayton does not assume any responsibility for errors or misrepresentations resulting from the use of incomplete sets of Bidding Documents.
- b. Interpretations
 - i. All questions about the meaning or intent of Bidding Documents or discovery of any ambiguities, inconsistencies, errors or omissions in the Bidding Documents shall be submitted in writing to the City.
 - ii. Replies will be issued by Addendum, if warranted, and will be emailed, mailed or delivered, to all parties recorded by the City as having received the Bidding Documents.
 - iii. Questions received less than 5 days prior to the date for opening Bids will not be answered.
 - iv. Only questions answered by formal written Addenda will be binding. Oral or other interpretations will be without legal effect.

3. PREPARATION OF BIDS

- a. All Bids must be submitted on the "Form of Proposal" furnished with the Contract Documents and submitted with all required attachments.
- b. All blank spaces shall be filled in, in ink or typewritten, in words and figures, or in figures only where no space is provided for words and signed by the Bidder. The wording of the Form of Proposal shall be used without change, alteration or addition. Any change in the wording or any omission of specified accompanying documents may be cause for the proposal to be rejected.
- c. Bidders shall note receipt of any and all Addenda in the appropriate place on the Form of Proposal.
- d. Bids shall be enclosed in a sealed opaque envelope endorsed with the Bidder's

name and the Title of the Project, and addressed to: **City of Clayton, 6996 Taywood Rd., Englewood, OH 45322.**

- e. All Bids shall contain the following:
 - i. Signed "ODOT's Required Contract Provisions"
 - ii. The completed Form of Proposal
 - iii. Bid Guaranty (as outlined below)
 - iv. Ohio Equal Employment Opportunity Certificate of Compliance
 - v. Non-Collusion Affidavit
 - vi. Other required documentation
- f. The Bidder shall take the following precautions in preparing Proposals:
 - i. Sign the Proposal and check to ensure that all blank spaces have been filled in with requested information and that the specified accompanying documents (per Section e, above) have been included in a sealed opaque envelope and addressed (per Section d, above).
- g. Where the Form of Proposal provides for quoting a unit price, the Bidder shall insert the unit price and extended price.
 - i. When applicable, make sure the Bid Guaranty is for the proper amount and is properly executed and signed, on all lines where signatures are required, by (1) the Bidder and (2) the Surety or Sureties.
 - ii. Bids by Corporations must be executed in the corporate name by president or vice president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be as shown below the signature.
 - iii. Bids by partnerships must be executed in the partnership name and signed by a partner, his title must appear under his signature and the official address of the partnership must be shown below the signature.
 - iv. All names must be typed or printed below the signature.
- h. Bonds and Guarantees
 - i. Bid Guaranty: The Bidder shall furnish a Bid Guaranty as prescribed in Section 153.54, 153.57 and 153.571 of the Ohio Revised Code, in the form of either:
 - 1. A bond for the full amount of the Bid in the form of a Bid Guaranty and Performance Bond or a Bid Bond included in the Bid Documents, or;
 - 2. A Certified Check, Cashier's Check or Letter of Credit in an amount equal to 10% of the Bid.
 - ii. If the successful Bidder submits a Bid Bond, Certified Check, Cashier's Check or Letter of Credit (per i above), then before a Contract is executed, he shall submit a Performance and Payment Bond in an amount equal to 100% of the Contract Price.
 - iii. All bonds and guarantees shall be issued by a Surety Company or Corporation licensed in the State of Ohio to provide said surety and shall be to the satisfaction of the City.
 - iv. All bonds shall be signed and sealed by an authorized agent of an acceptable Surety Bonding Company and signed by the Bidder.
 - v. Surety Bonding Company bonds shall be supported by credentials showing the Power of Attorney of agent and a certificate showing the legal right of the Bonding Company to do business in the State of Ohio and a financial statement of the Surety.
 - vi. The Bid Guaranty, as applicable, shall be in the name of, or payable to the order of, the City of Clayton and the Ohio Department of Transportation. The

name and address of the Surety and the name and address of the Surety's Agent should be typed or printed on each bond.

- vii. After a Contract is executed between the successful Bidder and the City, the certified checks or letters of credit of the unsuccessful Bidders will be returned. Bonds will be returned to unsuccessful Bidders upon request.
 - viii. If, at any time during the continuance of the work, any surety shall, in the opinion of the City become irresponsible or insolvent, the City shall have the right to require additional and sufficient surety or sureties which the Contractor shall furnish to the satisfaction of the City within ten (10) days after notice and, if in default thereof, the work may be suspended by the City.
 - i. Submission of Bid
 - i. The Bidder shall assume full responsibility for delivery of the bid at the time, date and location designated for the receipt of Bids
 - ii. Oral, telephonic, telegraphic or facsimile Bids are invalid and will not receive consideration.
 - iii. Bids received after the time and date for receipt of Bids will be considered invalid and will be returned unopened.
 - iv. Bids shall be submitted prior to the time and date listed, at the location designated in the advertisement.
 - j. Modification or Withdraw of Bid
 - i. Prior to the time and date designated for receipt of Bids, any Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for the receipt of Bids. Such notice shall be in writing with the signature of the Bidder.
 - ii. Withdrawn Bids may be resubmitted, up to the time designated for the receipt of Bids, if they are then fully in conformance with these Instructions to Bidders.
 - iii. Bid Guaranty shall be in an amount sufficient for the Bid as modified or resubmitted.
 - k. Addenda
 - i. Each Bidder shall carefully read and review the Bid Documents and immediately bring to the attention of the City any error, omission, inconsistency or ambiguity therein.
 - ii. Bidders should submit questions to the City in advance to allow sufficient time for consideration and response. All Addenda will be issued, except as hereafter provided, and emailed or otherwise furnished to persons who have obtained Bid Documents for the Project, at least seventy-two (72) hours prior to the published time for the opening of Bids, excluding Saturdays, Sundays, and legal holidays. If any Addendum is issued within such seventy-two (72) hour period, then the time for opening Bids may be extended one (1) week with no further advertising for Bids required.
 - iii. Any explanation, interpretation, correction or modification of the Bid Documents will be issued in writing in the form of an addendum, which shall be the only means considered binding. Explanations, interpretations, etc. made by any other means shall NOT be legally binding. All Addenda shall become a part of the Contract Documents.
 - iv. Copies of each Addendum will be sent only to Bidders to whom Bid Documents have been issued. The Bidder shall indicate the receipt of all Addenda in the space provided on the Form of Proposal.
4. METHOD OF AWARD
- a. The City reserves the right to reject any or all the Bids and to waive any formalities or

- irregularities in the Bids when of advantage to the City.
- b. Subject to the right of the City to reject all Bids and as provided above, the City will award the Contract to the lowest and best bidder.
 - c. The City will receive Bids for the Work in accordance with the Contract Documents. Bidders must furnish all information requested on or to accompany the Form of Proposal. Failure to do so may result in disqualification of the Bid.
 - d. If a Contract is awarded, the City will, upon request, supply the successful Bidder with a "Notice of Award" within thirty (30) days following the day of the Bid opening.
 - e. Simultaneously with delivery of executed counterparts of the Contract to the City, the successful Bidder shall deliver to the City the required Contract Bond, Hold Harmless Agreement, and other required documentation, including but not limited to, specific insurance documentation (per Section K, below).
 - f. If the successful Bidder is a corporation, the secretary of said corporation shall execute an Affidavit, stating that the officer or agent of said corporation was authorized to do so by either provision of corporation bylaws or by the adoption of a resolution of the Board of Directors of the corporation, whichever the case may be.
 - g. If the Bidder to whom the award is made fails to enter into a Contract as herein provided, the award may be annulled, and the Contract let to the next lowest and best Bidder in the opinion of the City; and such Bidder shall fulfill every stipulation embraced herein, as if he were the original party to whom the award was made.
5. EXECUTION OF CONTRACT
- a. The successful Bidder shall execute and return to the City the signed Contract within ten (10) days (Saturdays, Sundays, and legal holidays excluded) after receipt of the Contract. The form of the Contract is included in these Bid Documents, as an example and is not to be completed as part of this bid.
6. UNIT PRICES
- a. Where unit prices are requested in the Form of Proposal for a division of work on which the Bidder submits a Bid, the Bidder shall quote a unit price. Unless otherwise expressly provided in the Contract Documents, such unit prices shall include all labor, materials and services necessary for the storage, delivery and installation of the item and/or equipment used for such activity, or service for which the unit prices are requested. The unit prices quoted in the Form of Proposal shall be the basis for any change orders issued under the Contract except where such unit prices would cause substantial inequity to the City or the Contractor, in which case, unit prices shall be equitably adjusted by the City.
7. SUBCONTRACTORS
- a. The Contractor may utilize the services of specialty Subcontractors on those parts of work which, under normal construction practices, are not performed by a general Contractor, provided:
 - i. The Prime Contractor directly performs not less than 35% of the Work (dollar amount) provided by the contract.
 - ii. The Contractor shall not award work to any Subcontractor without prior approval of the City.
 - iii. The Contractor and/or his surety shall be fully responsible to the City for the act of his Subcontractors, and of persons either directly or indirectly employed by them.
 - iv. Nothing contained in these Contract documents shall create any contractual relation between the City and the Subcontractor.
 - v. Any assignment of this Contract will not release the Contractor or his surety from the faithful performance of the Contract.
8. PLANS

- a. After awarding of a Contract, a sufficient number of sets of working drawings and specifications will be supplied to the Contractor without charge.

9. INSURANCE

- a. Workers Compensation Insurance (State of Ohio Statutory Limit)
 - i. The Successful Bidder shall be required to submit a copy of the Workers Compensation certificate with each signed copy of the City-Contractor Agreement and prior to work commencing. A current certificate must be kept on file with the City during the duration of the Contract.
- b. Commercial General Liability Insurance
 - i. The Successful Bidder shall secure Commercial General Liability Insurance naming the City of Clayton, Ohio, as additional insured. This must include endorsements for Contractual liability and independent Contractor's coverage (including, but not limited to, Premises- Operations; Independent Contractor's Protective; Products and Completed Operations; Broad Form Property Damage):
 - 1. Bodily Injury and Property Damage, Combined Single Limits (CSL) of:
 - a. \$1,000,000 Each Occurrence
 - b. \$1,000,000 General Aggregate
 - c. \$1,000,000 Products Completed Aggregate
 - d. \$1,000,000 Personal and Advertising Injury Limit
 - ii. Products and Completed Operations Insurance shall be maintained for one year after final payment.
 - iii. Stop Gap Employers Liability Insurance shall also be required.
- c. Commercial Automobile Liability Insurance
 - i. The successful Bidder shall procure Commercial Automobile Liability Insurance which shall include all owned vehicles, non-owned vehicles and all hired vehicles, naming the City of Clayton, as additional insured, with limits of:
 - 1. \$1,000,000 Combined Single Limits
- d. Umbrella Excess Liability Insurance
 - i. The Successful Bidder shall procure Umbrella Excess Liability Insurance, with limits of:
 - 1. \$5,000,000 for Each Occurrence
 - 2. \$5,000,000 Aggregate when applicable
 - ii. Such Insurance shall follow the form of the primary insurance coverage.
- e. Basis
 - i. All coverage shall be written on an occurrence basis.
- f. Insurance Company Rating
 - i. The insurance company must have an AM BEST rating of A- or better.
- g. City and ODOT Named as Additional Insured
 - i. On these coverages, the additional insured shall be listed as "City of Clayton, Ohio, and the Ohio Department of Transportation its elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. Coverage shall be primary to the Additional Insureds and not contributing with any other insurance or similar protection available to the Additional Insureds whether other available coverage be primary, contributing or excess."
- h. Cancellation Notice
 - i. The Contractor shall provide, during the life of the Contract, or for a longer period as stipulated herein, the coverages as described above, which shall include an endorsement stating the following: "Thirty (30) days advance

written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to: The City of Clayton, Ohio, 6996 Taywood Rd., Englewood, OH 45322.”

- i. Coverage Expiration
 - i. If any of the above coverages expire during the term of this Contract, the Contractor shall deliver renewal certificates and/or policies to the City, at least ten (10) days prior to said expiration date.
- j. Submission of Documents
 - i. At a minimum, original signed certificates of insurance, as required herein, must be filed with the City at the time the Contract Documents are submitted and work will not begin until such certificates, completed as required, are received by the City. The City reserves the right to request facsimile or certified copies of all insurance policies.
- k. Indemnification
 - i. To the extent permitted by law, the Contractor agrees to indemnify, hold harmless and defend all work on all claims suits, loss, including costs for any damages which may be asserted, claimed or recovered against the City of Clayton, and the Ohio Department of Transportation its elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members including employees and volunteers thereof, by reason of personal injury, including bodily injury or death, and/or property damage which arises out of or is any way connected or associated with this Contract.

10. WORK SCHEDULE

- a. The Contractor shall furnish a Contractors Progress Schedule (Ghant Chart preferred) showing the percent of major components of the project to be completed within specified times. The Contractor shall prosecute the work in a vigorous and efficient manner, to ensure completion of the project within the time limit set and will keep the area of his operation in a neat and orderly condition. This shall include, but is not limited to, dust control.

11. FAILURE TO COMPLETE ON TIME

- a. The provisions of ODOT Item 108.07 shall be in force.

12. PAYMENTS

- a. Pay estimates shall be submitted monthly at intervals to provide for expedient handling and processing by the City. Payment will be paid directly to the Contractor by ODOT.
- b. The unit or lump sum prices stated in the Contract shall be used to determine the amount to be paid and shall constitute full and final compensation for the work. Payment shall be based upon plan quantities unless otherwise approved by the City.
- c. The City reserves the right to increase or decrease quantities or to not perform all or any portion of the items Bid.

13. RELEASE OF LIEN

- a. Before final payment of this Contract is made, the City will require the Contractor to submit an affidavit from all Subcontractors and dealers in materials who have furnished labor or materials for this Contract, showing that all claims and obligations arising in connection with the performance of their portion of the Contract have been satisfactorily settled.

14. ACCEPTANCE

- a. No acceptance will be made for a portion of the project prior to final completion. The project will be accepted as a whole, and it is the Contractor's responsibility to maintain such portions completed until final acceptance.

15. NONPERFORMANCE

- a. If at any time the City, or the designated representative thereof, is of the opinion that the work to be done under this Contract is being improperly performed, and if the Contractor, upon notice, does not take the proper measures to remedy the situation, the City may proceed to place upon the project site the required tools, labor, equipment, and materials to complete the required work in accordance with the plans and specifications, which work and all cost incident thereto shall be charged to the Contractor and his bond.

16. DISPUTES AND CLAIMS RESOLUTION

- a. The Dispute or Claim shall be made in writing to the Clayton Public Service Director.
- b. If the Contractor disagrees with the resolution of Public Service Director, he may appeal to the City Manager.
- c. The decision of the City Manager is final.

17. CHANGE ORDERS

- a. Contractor shall submit all change orders in writing to Clayton Public Service Director.
- b. Public Service Director shall evaluate change order for validity and authorize payment of all change orders.
- c. If Public Service Director disagrees with change order submitted by contractor, he may refer change order to the Clayton City Manager.
- d. The decision of the City Manager is final.

GENERAL CONSTRUCTION PROVISIONS

1. GENERAL CONSTRUCTION SPECIFICATIONS
 - a. Except as noted herein, the 2016 State of Ohio Department of Transportation Construction and Material Specifications shall govern the making of this improvement.
 - b. See ODOT's Required Contract Provisions (Section 1)
2. PRICE ADJUSTMENTS
 - a. ODOT CM&S Item 401.20 shall not be applicable for this project nor will any price adjustments be made to compensate for the price volatility of paving materials, fuel, steel, or other construction materials and/or services.
3. PROTECTION OF PROPERTY
 - a. Bidders are required to inform themselves fully of the conditions relating to the construction and labor under which the work will be performed. If awarded the Contract, they must also employ so far as possible such methods and means in carrying out this work as will cause the least amount of interruption or interference to traffic on adjacent highways and residents or businesses adjacent to the project. The successful bidder shall inform adjacent property owners of work schedules and major interruptions to them, schedules for such work and how they will be individually affected.
4. UTILITY NOTIFICATION
 - a. The Contractor shall be responsible for all utility notification and coordinating his work with and around them.
 - b. The Contractor shall be responsible for all expenses relating to any damage to any utility because of actions taken in connection with this contract.
5. SAFETY
 - a. It shall be the duty of the Contractor to erect and maintain adequate lights, signs and barricades to insure the safety of the public during the progress of the work, and until final acceptance by the City.
 - b. All signs and devices used in maintaining traffic shall conform to the latest edition of the "Manual of Uniform Traffic Control Devices" and it shall also be used as a direct reference when any unforeseen traffic situations arise during the project.
 - c. It shall be the duty of the Contractor to follow, and have all persons on the job site follow, all applicable rules and regulations regarding worker safety including but not limited to those as provided by the State of Ohio Occupation Safety and Health Administration (OSHA).

ADDITIONAL PROVISIONS

1. NON-SEGREGATED FACILITIES
 - a. See ODOT's Required Contract Provisions (Section 7)
2. EQUAL EMPLOYMENT OPPORTUNITY
 - a. See ODOT's Required Contract Provisions (Section 6, 8, 9, 10, 11, 12)
3. MINIMUM WAGE RATES
 - a. See ODOT's Required Contract Provisions (Section 13, 14, 15)
4. REMOVED MATERIALS
 - a. Any and all materials remain the property of the City of Clayton until the Public Service Director has determined that they are to be discarded at which time they will become the property of the Contractor and can be disposed of in any appropriate fashion.
5. FEDERAL-AID
 - a. The required contract provisions for Federal-aid construction contracts (contained in ODOT's 2013 LPA Template) are hereby incorporated by reference.
6. PRICE ADJUSTMENTS
 - a. ODOT CMS Item 401.20 shall not be applicable for this project nor will any price adjustments be made to compensate for the price volatility of fuel, steel, or other construction materials and/or services.

DETAILED CONSTRUCTION SPECIFICATIONS

Also, see plans for Detailed Construction Specifications

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1. All materials furnished and work performed shall conform to the 2016 State of Ohio Department of Transportation Construction and Material Specifications, except as modified herein.
 - a. The successful bidder shall provide the City of Clayton Public Service Director a copy of the 441 job mix formula (data sheets) for each plant that provides asphalt for this project. All mixes shall follow the job mix formula for medium traffic.
 - b. Recycled asphalt shall not exceed 10% of any mix produced.
 - c. An asphalt sample from each 750-ton batch of 441 (4 samples per 3,000-ton lot) shall be taken throughout the project. The City will supply the sample containers. Samples will be taken from the paver hopper and the contractor will be responsible for taking the sample and coordinating the collection of the sample with the city representative. Sample size will be approximately 8 pounds. The contractor shall obtain samples from alternate sides of the hopper to insure representative samples are obtained. All testing shall be performed by a laboratory selected by the City of Clayton, utilizing the reflux titration method. All cost of this initial testing shall be the responsibility of ODOT and/or the City. All load slips from the plant shall show the percent of AC asphalt contained in said load.
 - d. The 441 job mix formula shall be used as a basis for acceptance and for determining partial payment for deviations in bitumen content. The following chart will be used by the City in determining the pay factor to be applied to the unit price. Pay factors will be calculated from this chart, not the pay factors as shown in the ODOT Construction and Materials Specifications.

<u>Pay Factor</u>	<u>MEAN DEVIATION IN 4 TESTS FROM JOB MIX FORMULA BITUMEN CONTENT</u>
1.00	±0.30
0.98	±0.31 to 0.35
0.94	±0.36 to 0.40
0.84	±0.41 to 0.45
0.70	±0.46 to 0.50

As indicated above, the Contractor will be taking one test out of each 750-ton batch applied throughout the project and payment shall be made on the 4 tests per 3,000-ton quantity. Payments will be made on the entire 3000 tons based upon the corresponding average of the four test results.

- e. It shall be the responsibility of the Contractor to adjust monument boxes, valve boxes, and manholes to grade at the time of the resurfacing. Cost of this work shall be included in the appropriate bid item. The Contractor shall be responsible for the material and installation for any adjustments to manholes, water valve boxes, and monument boxes.
2. The Asphaltic Concrete for intersections shall be placed at the same time as the adjacent mainline pavement as directed by the Clayton Public Service Director.
3. Traffic shall be maintained at all times to the satisfaction of the Clayton Public Service

Director. The item of maintaining traffic shall be in accordance with the Ohio Manual of Uniform Traffic Control Devices (OMUTCD) and include the furnishing of lights, signs, barricades, cones, and flagmen equipped with "Walkie-Talkie" radio gear that will ensure constant communication between the flagmen at all times in order to provide unimpeded flow of traffic twenty-four (24) hours daily.

4. All work done under these specifications shall be under the supervision of the Clayton Public Service Director, acting either directly or through his properly authorized agent.
5. Payment for the work required for completion of this project shall be made for actual quantities of material furnished in accordance with these specifications and after inspection and final approval of the Clayton Public Service Director.
6. In any controversy arising between the parties to this contract, regarding an interpretation of these specifications and the method of application, the decision of the City of Clayton shall be final.
7. If at any time the City of Clayton is of the opinion that the work to be done under this contract is being improperly performed and if the supplier upon notice shall not take the proper measures to remedy same, the City may proceed to place upon the road to be marked the required tools, labor, equipment and materials to complete the required work in accordance with the specifications, which work and all costs incidental thereto shall be charged to the supplier and his bond.
8. Prior to commencing work on this project, the successful bidder shall schedule a preconstruction conference with the City. This meeting will be held at the Clayton Government Center, 6996 Taywood Rd., Englewood, OH 45322.

ODOT's REQUIRED CONTRACT PROVISIONS (ODOT Spec Book and LPA Spec Book)

ODOT'S 2019 CONSTRUCTION AND MATERIAL SPECIFICATIONS (C&MS) AND ITS SUPPLEMENTS

With the exception of Section 100 "General Provisions" included in the matrix below, ODOT's Construction and Material Specifications (CM&S) 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 CMS 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.

Excluded 2019 Specifications			
Section 102.01	Section 103.01	Section 105.19	
Section 102.03	Section 103.02	Section 107.04	
Section 102.06	Section 103.04	Section 107.13	
Section 102.09	Section 103.05	Section 108.01	
Section 102.10	Section 103.06	Section 108.02(B)	
Section 102.11	Section 103.07	Section 108.02(E)	
Section 102.13	Section 104.02(A)	Section 108.02(G)	
Section 102.14	Section 105.05	Section 108.08	
Section 102.17			

2. STEEL AND IRON PRODUCTS MADE IN THE UNITED STATES

Furnish steel and iron products that are made in the United States according to the applicable provisions of Federal regulations stated in 23 CFR 635.410 and State of Ohio laws, and ORC 153.011 and 5525.21. "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States. Both the State and Federal requirements contained in (A.) and (B.) of this section apply to this contract.

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.

B. State Requirements. All steel products used in the Work for load-bearing structural purposes must be made from steel produced in the United States. State requirements do not apply to iron.

C. Exceptions. ODOT may grant specific written permission to use foreign steel or iron products in bridge construction and foreign iron products in any type of construction. ODOT may grant such exceptions under either of the following conditions:

1. 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.

2. The specified products are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet the requirements of the Contract Documents. ODOT may require the Contractor to obtain letters from three different suppliers documenting the unavailability of a product from a domestic source, if the shortage is not previously established.

D. Proof of Domestic Origin. Furnish documentation to the Engineer showing the domestic origin of all steel and iron products covered by this section, before they are incorporated into the Work. Products without a traceable domestic origin will be treated as a non-domestic product.

3. 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 there with 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 there with 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 constitute also signature of this certification as permitted by Title 28 United States Code, Section 1746.

4. PREQUALIFICATION

Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification 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 pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. The "prime" contractor must perform no less than 30 percent of the total original contract price.

5. PN033 - 4/18/2008- AS PER PLAN DESIGNATION

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

For the last several years the "As Per Plan" designation has been added to some item descriptions in the proposal to assist the Contractors to easily identify 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.

6. FEDERALLY REQUIRED EEO CERTIFICATION FORM

The bidder hereby certifies that he **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 **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.**

7. 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 subcontractors 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.

8. PN 026 - 10/15/2004 - CERTIFICATION OF NONSEGREGATED FACILITIES

(a) Certification of Nonsegregated 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 Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his 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 Nonsegregated Facilities" -

- (a) A Certification of Nonsegregated 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 Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his 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.

9. 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 in 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.

10. 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.

11. PN 020 – 11/21/2011 - NOTICE OF REQUIREMENT OF AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

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.

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 <http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Pages/default.aspx>. These goals are based on 2000 census data and represent the area, per craft, minority and female availability pool.

Minority and female utilization obligations by craft per county (applicable to project):

<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CountyAvailability->

[ByTrade.pdf](#)

Statewide utilization obligations by craft (applicable to the Contractor's statewide workforce):

<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/StatewideAverages-ByTrade.pdf>

Effective 11/21/2011 the New Hire Definition will be as follows:

An individual who has a break in service (not on an employer's payroll) for a period of 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 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 new hires, the contractor shall identify that employee as a new hire on that specific project only. Subsequent work, barring a break in service of 12 months or more, would not qualify the employee as a new hire for that contractor.

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 as outlined in the attached subcontract agreement the Contractor shall provide immediate written notification to the ODOT and the Prime Contractor when referral practices of the union or unions with which the Contractor has a collective bargaining agreement impede the company's efforts to meet its equal opportunity obligations.

The 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.

https://www.dol.gov/ofccp/TAguides/new_contractors_guide.htm page E-32

The Department of Administrative Services (DAS), Equal Opportunity 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) 123:2-3-02. Specifically, this unit's responsibilities include 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, as well as maintaining a working environment free of discrimination, harassment and intimidation. The DAS may perform contract compliance reviews on contractors involved with state funded ODOT projects. Requirements for affirmative action obligations governing DAS contract compliance reviews are those listed in the O.A.C. for the Metropolitan Statistical Area in which a project is located.

<http://das.ohio.gov/Divisions/EqualOpportunity/ConstructionCompliance.aspx>

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 Ohio Department of Administrative Services covering the contractor's total workforce within the state of Ohio. 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 state contract. <http://das.ohio.gov/Divisions/EqualOpportunity/InputForm29.aspx>

The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs, 200 N. High Street, Room 409, Columbus, Ohio 43215, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor, employer identification number of the subcontractor, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract and the geographical area in which the subcontract is to be performed.

12. PN 029 - 10/15/2004 - ON-THE JOB TRAINING (OJT) PILOT PROGRAM

The requirements of this Training Special Provision supersede subparagraph 7b of the Special Provision entitled Special Employment Opportunity Responsibilities and implements 23 U.S.C. 140(a).

The following must be included as part of the Contractor's equal employment opportunity affirmative action training program:

The Contractor must provide on-the-job training aimed at developing full journey persons in the type or job classification in which they work.

The contractor is not required to have a specific number of trainees assigned to this project. The number of trainees will be distributed among the work classifications on the basis of the Contractor's needs and the availability of the journey persons in the various classifications. The Contractor will be credited for each trainee employed by him or her who is currently enrolled or becomes enrolled in an approved program.

Training and upgrading of minorities and women toward journey person status is a primary objective of this Training Special Provision. Accordingly, the Contractor must make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and will not be used, to discriminate against any applicant for training, regardless of whether the applicant is a member of a minority group or not.

No employee will be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey person status or in which he or she has been employed as a journey person. The Contractor must satisfy this requirement by including appropriate questions in the employee's application or by other suitable means. Regardless of the method used, the Contractor's records must document the findings in each case.

The minimum length and type of training for each classification will be established in the training program selected by the Contractor.

No payment by the LPA will be made to the Contractor for providing this training. However, if the Contractor fails to provide adequate training and cannot show good faith efforts on its part to provide adequate training, it will be subject to a formal compliance review to determine the Contractor's efforts in meeting the EEO laws and regulations.

The Contractor must provide the following reports:

1. CR1 Report
 - a. To be completed on each trainee
 - b. To be filled out at the start of training and finish of training or at the end of the year, whichever comes first
 - c. To be submitted to the ODOT District in which the Contractor's home office is located.
2. Tracking will be on an annual basis. The Contractor must submit the subsequent CR1 to the ODOT District in which the Contractors home office is located.

The prime or subcontractor conducting the training must be involved in at least one Federal project per calendar year in order to get FHWA training credit. Participation in the OJT Program is not project or contract specific.

All Contractors are encouraged to participate in the OJT program. Such a program will be considered when examining the contractor's Good Faith Efforts toward meeting its contractual affirmative action obligations.

All Contractors shall submit their own Training Program or Apprenticeship Certificate, for approval, to the ODOT District in which the company's home office is located.

All OJT Trainees must have the appropriate certification. Apprenticeship Certificates can be obtained from the State of Ohio, Bureau of Apprenticeship and Training. The union apprenticeship agreement is not acceptable verification of an apprentice's enrollment in a union sponsored training program. A copy of the Apprenticeship Certificate along with a statement indicating the number of months/years the employee has been in the apprenticeship program must be submitted to the ODOT EEO Coordinator in the company's home district and to the prevailing wage coordinator in the district responsible for the project within 90 days of the apprentice beginning work on the project.

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, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be 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, then 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 by 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. LPA must formally incorporate into 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 website noted below on payrolls submitted to the 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:

<http://www.wdol.gov/>

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.

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 check. All payroll records and canceled pay checks shall be maintained for at least three years after final acceptance as defined in section 109.12 of the Ohio Department of Transportation Construction and Materials Specifications. 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 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 weeks after the start of work. These payrolls shall be on a Form WH-347 or equivalent and shall show the following:

- a. Employee name, address, classification, and hours worked.
- b. The basic hourly and overtime rate paid, total pay, and the manner in which fringe benefit payments have been irrevocably made.
- c. The project number and pay week dates.
- d. 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 that it is ultimately the responsibility of the Contractor to ensure that 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

1. The prospective bidder certifies, by signing and submitting this bid 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. 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.

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

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

In accordance with Title 23 United States Code, Section 112 and Ohio Revised Code, 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 or his 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 constitute also signature of this Non-Collusion Affidavit as permitted by title 28 United States Code, Section 1746.

REPORTING BID RIGGING

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) 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 DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT 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 that this contractual obligation be placed in all subcontractor and materialman contracts that it enters into and further requires that 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, that 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 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 that provides 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 DFSP 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 and in good standing in the Ohio Bureau of Workers' Compensation's DFSP Discount Program or a similar program approved by the Bureau of Workers' Compensation within 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 DFSP prior to the time that 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 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 the Ohio Department of Transportation. 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 Ohio Revised Code §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 that the claims or causes of action related to the goods or services that are the subject to the contract. In addition, the Contractor warrants and represents that it will require any and all of its subcontractors and first tier suppliers to assign any and 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 that 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 the Ohio Department of Transportation, 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 – 07/19/2019 - DBE TRUCKING

The Code of Federal Regulations Title 49, Section 26.55(d)(4)(5)(6) governs trucking operations.

The 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 that 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 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 Disadvantaged Business Enterprise (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 that 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 DBEs consent, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the DBEs name and identification number as well.

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

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

supplementing 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 MSV (Materials and Supplies Vendor) 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.

In the past, 60% of the cost of materials and supplies purchased from a DBE MSV (100% from a DBE MSV manufacturer) would usually 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 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 <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/Resources.aspx>.

24. PN 013 – 03/15/2019 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION PLAN AND GOOD FAITH EFFORTS

Please see optional Appendix A - " Checklist for Bidders – Federally Funded Projects with a DBE Goal", to ensure compliance with the requirements outlined in PN 013.

DBE UTILIZATION PLAN

All Bidders shall submit a DBE Utilization Plan at the time of bid setting forth specific information demonstrating how the Bidder will achieve the DBE goal. By submitting a DBE Utilization Plan, the Bidder is affirming that they will be using the DBE firms identified in the Utilization Plan to meet the DBE contract goal. The DBE Utilization Plan shall be submitted with Formstack at time of bid submission. Any bids received without electronic submission of the DBE Utilization Plan at or before bid time, will be deemed unresponsive. **Bidders shall submit their DBE Utilization Plans via: https://odot.formstack.com/forms/dbe_copy.** This file contains the current list of certified DBEs and is updated regularly. The DBE Utilization Plan must be filled out completely and submitted prior to bid opening.

The DBE Utilization Plan shall include the following information:

1. The names and addresses of the certified DBE firm(s) that will be used to meet the DBE goal;
2. A description of the work that 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 firm(s) being used to meet the goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant or other capacity; and
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 Small & Disadvantaged Business Enterprise within five (5) calendar days after the notification of the alternates.

DBE AFFIRMATION

The Apparent Low Bidder shall ensure the DBE firms being utilized to meet the DBE goal affirm their participation in the bid within five (5) calendar days after the bid opening to ODOT. The contract dollar amount(s) and/or DBE firm(s) included in the Apparent Low Bidder'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 Apparent Low Bidder shall utilize the Request to Terminate/Substitute DBE Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx> and submit for review and approval by the Office of Small & Disadvantaged Business Enterprise within five (5) calendar days of the bid opening.

The Apparent Low Bidder shall utilize the DBE Affirmation Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>. 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 Apparent Low Bidder shall submit a separate DBE Affirmation Form for each DBE it is utilizing for the DBE goal and 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 that the information is required in order for ODOT to complete its assessment. Bidders shall have five (5) calendar 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) calendar days of bid opening, the Apparent Low Bidder shall submit a Request to Terminate/Substitute DBE Form, as set forth herein. The Request to Terminate/Substitute DBE Form shall be submitted within five (5) calendar days after bid opening in order for the Apparent Low Bidder to still be considered for contract award. The Apparent Low Bidder shall include as its reason for termination the DBE firm's failure to provide a timely affirmation and should include all efforts the Apparent Low Bidder made to obtain the affirmation from the DBE firm and shall attach proof of these efforts, if available. If the Apparent Low Bidder intends to replace the DBE Firm, it shall include the replacement firm's information on the form. In the event the Apparent Low Bidder 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 calendar 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 Apparent Low Bidder's Good Faith Efforts in meeting the goal.

DBE BIDDERS

In the event that the Bidder is also a certified DBE firm, the Bidder is required to complete a DBE Utilization Plan as set forth above. In this instance, however, the certified DBE Bidder would not need

to submit a DBE Affirmation Form for the work it is planning to self-perform in order to meet the goal. ODOT will consider the submission of the bid as the certified DBE Bidder's written confirmation that it is participating in the contract. However, a DBE Affirmation Form must be submitted for all other DBE firms that are being utilized toward the DBE goal.

JOINT VENTURES

In the event that 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 that 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)

In the event that the DBE contract goal established by ODOT is not met, the Apparent Low Bidder shall demonstrate that 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 Apparent Low Bidder does not meet the goal at bid time, the Apparent Low Bidder shall submit its Good Faith Efforts (GFE's) documentation within five (5) calendar days of the bid opening. Submission of DBE affirmation(s) with additional participation sufficient to meet the DBE contract goal does not cure the Apparent Low Bidder's failure to meet the goal at bid time or eliminate the Apparent Low Bidder's responsibility of submitting GFE's within five (5) calendar days of the bid opening.

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

- (1) All written quotes received from certified DBE firms;
- (2) All written (including email) communications between the Apparent Low Bidder 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 Apparent Low Bidder 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) calendar days of bid opening. ODOT has provided Good Faith Efforts Guidance located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>.

All other Bidders shall submit documentation of GFE's if notified that the information is required in order for ODOT to complete its bid assessment. Bidders shall have five (5) calendar days from the date of notification to submit all required GFE documentation. Notification will be by phone or 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 that the Apparent Low Bidder has failed to demonstrate adequate GFE's to meet the goal, the Apparent Low Bidder will have an opportunity

for administrative reconsideration prior to the contract being awarded.

As part of this reconsideration, the Apparent Low Bidder 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 Apparent Low Bidder 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 Apparent Low Bidder within five (5) business days of receiving written documentation or holding the in-person meeting.

ODOT will send the Apparent Low Bidder a written decision on reconsideration explaining the basis for finding that the Apparent Low Bidder 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 Apparent Low Bidder/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 Apparent Low Bidder/Awarded Contractor obtains written consent as provided in this paragraph. In order to request termination or substitution of a DBE firm, the Apparent Low Bidder/Awarded Contractor shall utilize the Request to Terminate/Substitute DBE Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>

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, that the Apparent Low Bidder/Awarded Contractor has good cause to terminate the DBE firm.

For purposes of this paragraph, 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 that the listed DBE firm is not a responsible contractor;

- 7) The listed DBE firm voluntarily withdraws from the project and provides to you 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 that the awarded contractor can self-perform the work for which the DBE contractor was engaged or so that 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) calendar days, which may be extended for an additional seven (7) calendar days if necessary at the request of the contractor, and ODOT shall provide a written determination to the contractor stating whether or not 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 <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>. 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 Apparent Low Bidder/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 Apparent Low Bidder/Awarded Contractor must give the DBE five (5) calendar days to respond to the notice, advising ODOT and the Apparent Low Bidder/Awarded Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why ODOT should not approve the Apparent Low Bidder/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 subcontractors 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 that 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 Apparent Low Bidder to do any of the following shall result in the bid being rejected 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 to Terminate/Substitute DBE Form(s) as required by this Proposal Note; and
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 – 9/1/2020 – Local-let Construction Projects (Required if DBE goal on the project)

The U.S. Department of Transportation's (DOT's) rules related to Disadvantaged Business Enterprises are published in the Code of Federal Regulations (CFR), 49 CFR Part 26. Within 49 CFR Part 26, 49 CFR 26.29 lays out the prompt payment requirements that apply to ODOT (the Department), 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 Construction and Materials Specifications (C&MS).

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 prime contractors to report their payments to all subcontractors with the submission of each invoice. The payment data reported must include any retainage withheld and any previously withheld retainage released. All such reporting must take place through a web-based submission on GoForms. Effective immediately, invoices for all projects advertising after 10/1/2020, will not be approved and processed for payment unless this reporting form has been submitted and received by the Department.

The Prime Contractor must report the following information:

- 1.) The name of the payee;
- 2.) The dollar amount of the payment to the payee;
- 3.) The date the payee was paid;
- 4.) The amount of retainage withheld / returned (if any).

The Prime Contractor must sign each reported payment and submit to ODOT via the GoForms website.

If the Prime Contractor fails to submit the aforementioned documentation with each invoice, they will be determined to be non-compliant and invoices will not be processed for payment.

26. WAIVER OF CM&S 614.03

ODOT's 2016 Construction and Material Specifications 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

1. **Compliance with Regulations:** The CONTRACTOR will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, 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").

2. **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.

3. **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.
4. **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 the Federal Highway Administration (hereinafter "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.
5. **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:
 - (a) Withholding of payments to the CONTRACTOR under the contract until the CONTRACTOR complies, and/or
 - (b) Cancellation, termination or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions:** The CONTRACTOR will include the provisions of paragraphs (1) through (5) 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, that, 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, and, 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 095 – 03/30/2020 Potential Impacts and Delays Due to COVID-19

In an effort to anticipate the potential impacts to the Project caused by the COVID-19 threat and in following direction from the Governor and other authorities, the Contractor is on notice of the need to comply with all federal, state and local orders generated to prevent the spread of contagious or infectious diseases, including the Stay at Home Order from the Ohio Director of Health dated March 22, 2020, and subsequent orders, located through the following website:

<https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home/public-health-orders/directors-order-to-stay-at-home>

Contractor is on notice that the Project is considered essential and that the contractor and his employees, subcontractors and suppliers are considered essential businesses and performing essential functions as defined under the Stay at Home Order.

Notwithstanding any other provisions of the contract documents, in the event of project delay or impacts to performance due to a voluntary or mandatory COVID-19 virus Directives, Orders, quarantine or closure directed by government authorities, either party may, by providing notice to the other party as required under CMS 108.02(F), extend the Completion Date for a period of up to thirty (30) days. Extensions under this paragraph shall be considered an excusable, non-compensable

delay in accordance with CMS 108.06(B). If any portion of the Work is still not able to be performed upon the expiration of the extension, either party may provide notice to the other party requesting a termination for convenience under 108.09. The termination for convenience remains at the sole discretion of the LPA's Person in Responsible Charge in conjunction with the Office of Local Programs.

The Contractor and LPA will exercise best efforts to utilize remote services to perform Work that otherwise cannot be performed in person due to a voluntary or mandatory COVID19 virus quarantine, closure, or impact as directed by Stay at Home Order.

Impacts to the Project generated by the Stay at Home Order shall not be considered an "issue" under 108.02 (F) for Projects sold after the date of this Note. Contractors are on notice that their bids should include any impacts they foresee or should have reasonably foreseen due to the Stay at Home Order or existing or reasonably foreseeable orders by any other federal, state or local official. If any emergency order or declaration of any government official is lifted at any time, the LPA will provide written notice to the Contractor that this Note shall be considered void thirty (30) days after receipt of the written notice. If the Stay at Home Order from the Ohio Director of Health dated March 22, 2020 is lifted at any time, this Note shall be considered null and void thirty (30) days after the lifting of those orders.

30. PN 015 – 04/17/2020 - CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS

The required contract provisions for federal-aid construction contracts (contained in Form FHWA 1273 revised May 2012 and located here) are hereby incorporated by reference as if rewritten herein. Form FHWA-1273 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.

31. REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS (Electronic Form FHWA 1273 – May 1, 2012)

- I. General
- II. Nondiscrimination
- III. Nonsegregated 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. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (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).

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.

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). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal 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).

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

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. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 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.

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

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.

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 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, 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 (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 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 35 and 29 CFR 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.

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, 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 who 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.

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, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure 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. 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, 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, 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 there under. 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, 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 and 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. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor 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 contracting agency deems appropriate.

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 \$10,000 or more.

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, 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). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

a. All laborers and mechanics employed or working upon the site of the work, 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 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.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. 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 shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). 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 classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall 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. (1) The contracting officer shall 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 shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore 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 utilized 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) 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 shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. 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.

(3) 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 shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall 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.

c. 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 shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. 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,

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.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, 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.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, 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 section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) 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 section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall 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. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly

payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed 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 Regulations, 29 CFR part 3;

(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 of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, 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 may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed 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 Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall 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 the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall 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, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior

approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. 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. 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 journeymen 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.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 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.

9. Disputes concerning labor standards. 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 he or she) 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 section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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 watchmen 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.

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. 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 watchmen and guards, employed in violation of the clause

set forth in paragraph (1.) of this section, in the sum of \$10 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.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or 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, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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" 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:

(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.

2. 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. 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.

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

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 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.

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 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).

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 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 1, 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

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

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean

Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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.

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.

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.

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.

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 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee 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 grantee or subgrantee 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.

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.

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. 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 Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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. 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) 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;

(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; 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.

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

2. 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)

a. By signing and submitting this proposal, the prospective lower tier 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.

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 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 grantee or subgrantee 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 grantee or subgrantee 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.

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.

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 Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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.

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall 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 20).

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.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

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.

Checklist for Bidders- Federally Funded Projects with a DBE Goal

- Quotes have been obtained by DBE firms for participation on the project
- NAICS codes have been verified on the Ohio Unified DBE Directory that the DBE firms to be utilized can be applied toward the project goal for the specific work wanted:
<http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx>
- DBE Utilization Plan has been completed & submitted electronically prior to bid opening via:
https://odot.formstack.com/forms/dbe_copy (This applies to all Bidders including DBE Firms)
- The Utilization Plan submitted as described above, meets or exceeds the DBE Goal established for the project
- If the DBE Goal has not been met that Good Faith Efforts have been submitted prior to bid to opening to: Dot.contractslettingmgr@dot.ohio.gov
- The affirmation form that is required 5 calendar days after bid opening has been downloaded ready to send out to all DBE firms listed on the Utilization Plan:
<http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>.

CERTIFICATION OF COMPLIANCE WITH SECTION 3517.13 OF THE OHIO REVISED CODE

THE CITY OF CLAYTON (the "Subdivision") has entered into a contract for the provision of goods and/or services with _____ (the "Provider"), an individual, partnership, unincorporated business, an association, a professional association, estate, trust, corporation, or business trust, the situs of the principal office and place of operations of which is located at _____. The undersigned authorized agent of the Provider certifies on behalf of the Provider that all of the following persons, if applicable, are in compliance with Divisions (I) and (J) of Section 3517.13 of the Ohio Revised Code with respect to all public officials who have or had authority to award that contract and all public officials who may authorize or receive goods and/or services under that contract:

- A. Myself;
- B. Each partner or owner of the partnership or association;
- C. Each shareholder of the association;
- D. Each executor of administrator of the estate;
- E. Each trustee of the trust;
- F. Each owner of more than twenty percent (20%) of the corporation or business trust;
- G. Each spouse of any of the above listed persons;
- H. Each child, between seven (7) and seventeen (17) years of age, of any of the above listed persons;
- I. Any political action committee associated with the partnership, the unincorporated business, the estate, the trust, the corporation, or the business trust; and,
- J. Any combination of the persons and entities identified in (A) through (I) above.

The undersigned certifies such compliance on and since _____ (and on the date the Subdivision and the Provider entered into the Contract referenced above if it has not been entered into fully by them). This certification shall be a part of the above-referenced Contract between the Subdivision and the Provider.

By: _____ Date Signed: _____
AUTHORIZED REPRESENTATIVE

WARNING

By signing this Certification of Compliance with Ohio Revised Code Section 3517.13, you are making a representation as to the truth of the statements contained herein. Making a false certification is a felony crime punishable by up to eighteen months in prison, and/or up to \$2,500.00 for an individual or \$7,500.00 for an organization. R.C. § 3517.992(R)(3).

THIS DOCUMENT SHOULD BE RETAINED FOR RECORD PURPOSES.

HOLD HARMLESS AGREEMENT CLAUSE

To the maximum extent permitted by law, the contractor _____ agrees to indemnify and hold harmless and defend The City of Clayton, its officials, agents, servants, and employees from payment of any sum or sums of money to any persons whomsoever, on account of all claims, actions, or suits growing out of injuries to persons, including death, or property damage caused by the contractor, his employees, agents or subcontractors for any negligent act, error or omission in the performance and prosecution of the work herein contracted for including (but without limiting the generality of the foregoing) all claims for service, labor performed, materials furnished, provisions and supplies, injuries to persons, including death, or damaged property, claims, suits, costs, attorney's fees, cost of investigation and of defense.

It is further the intent of this agreement to hold the contractor responsible for the payment of any and all claims, suits, or liens due to any negligent act, error or omission in any way attributable to or asserted against The City of Clayton and/or its officials, agents, servants or employees as a result of the performance of this contract or asserted against both the City of Clayton and the contractors.

In addition to holding the City of Clayton harmless, the contractor will provide defense for the City of Clayton, its officials, agents, servants and/or employees and will pay the costs of that defense.

COMPANY: _____

SIGNED: _____

PRINT: _____

TITLE: _____

ADDRESS: _____

DATE: _____

For the construction of
MOT 49-7.27
in Montgomery County Ohio

The signer of this Proposal as Bidder declares that he/she has examined the Contract documents including, but not limited to, Instructions to Bidders and General Conditions, General Construction Provisions, Additional Provisions, Detailed Construction Specifications, Form of Proposal, Other Bid Documents, Sample Contract Documents, Plans, Drawings and all other codes, specifications and orders contained or cited herein.

The Bidder further declares that he/she has examined the site of work, and that he proposes to do all the work and furnish all the materials called for by said Plans and Specifications, in the manner and on the conditions required for the following prices:

Base Bid Standard Mast Arms Painted Black						
QUANTITIES WORKSHEET						
Item	Item No.	Description	Quant.	Unit	Unit Price	Amount
1	202	Catch Basin Removed	1	EACH		
2	202	Roadway, Misc: Removed	1	LUMP		
3	203	Roadway, Misc.: Excavation, including embankment construction	147	CY		
4	204	Subgrade Compaction	370	SY		
5	204	Excavation of Subgrade	155	CY		
6	204	Granular Embankment	155	CY		
7	204	Proof Rolling	2	HR		
8	204	Geogrid, as per plan	185	SY		
9	301	Asphalt Concrete Base, PG64-22 (2 equal lifts)	58	CY		
10	304	Aggregate Base, as per plan	102	CY		
11	407	Tack Coat	20	GAL		
12	441	1-3/4" Asphalt Concrete Intermediate Course, Type 2, (448)	16	CY		
13	442	1-1/4" Asphalt Concrete Surface Course, 9.5 MM, Type A (448)	12	CY		
14	608	Curb Ramp	818	SF		
15	611	4" Conduit, Type B, 707.45, as per plan	50	FT		
16	611	4" Conduit, Type E	80	FT		
17	611	6" Conduit, Type B, 707.45, as per plan	50	FT		
18	611	8" Conduit, Type B, 707.45, as per plan	50	FT		
19	611	12" Conduit, Type B, as per plan	20	FT		
20	611	Catch Basin, No. 2-2B	1	EA		
21	614	Maintaining Traffic	1	LUMP		
22	614	Work Zone Center Line, Class 1, 642 Paint	.11	MILE		
23	614	Work Zone Edge Line, Class 1, 4", 642 Paint	.10	MILE		
24	614	Law Enforcement Officer with Patrol Car for Assistance	8	HR		
25	623	Construction Layout Stakes & Surveying, as per plan	1	LUMP		
26	625	Bracket Arm, 15', as per plan	4	EA		
27	625	Conduit, 2", 725.051, as per plan	78	FT		
28	625	Conduit, 3", 725.051, as per plan	42	FT		
29	625	Conduit, 4", 725.051, as per plan	8	FT		

Item	Item No.	Description	Quant.	Unit	Unit Price	Amount
30	625	Conduit, Jacked or Drilled, 725.052, as per plan 2"	78	FT		
31	625	Conduit, Jacked or Drilled, 725.052, as per plan 3"	42	FT		
32	625	Conduit, Jacked or Drilled, 725.052, as per plan 4"	8	FT		
33	625	Luminaire, Conventional, Solid State (LED), as per plan	4	EA		
34	625	Pull Box, 725.08, 18"	3	EA		
35	625	Pull Box, 725.08, 24"	1	EA		
36	625	Ground Rod	11	EA		
37	630	Ground Mounted Support, No. 3 Post	36	FT		
38	630	Sign Attachment Assembly, Mast Arm, as per plan	7	EA		
39	630	Sign, Flat Sheet	33	SF		
40	630	Sign, Street Name, as per plan	4	EA		
41	630	Removal of Ground Mounted Sign & Storage	5	EA		
42	630	Removal of Ground Mounted Sign & Refraction	1	EA		
43	630	Removal of Ground Mounted Post Support & Disposal	2	EA		
44	632	Vehicular Signal Head, (LED), 3-Section, 12" Lens, 1-Way, Polycarbonate, as per plan	9	EA		
45	632	Vehicular signal head, (LED), 5-Section, 12" Lens, 1-Way, Polycarbonate, as per plan	3	EA		
46	632	Pedestrian Signal Head (LED), Type D2, Countdown, as per plan	8	EA		
47	632	Covering of Vehicular Signal Head	12	EA		
48	632	Covering of Pedestrian Signal Head	8	EA		
49	632	Pedestrian Push Button, as per plan	8	EA		
50	632	Signal Cable, 3-Conductor, No. 10 AWG	880	FT		
51	632	Signal Cable, 3-Conductor, No. 14 AWG	1302	FT		
52	632	Signal Cable, 5-Conductor, No. 14 AWG	1334	FT		
53	632	Signal Cable, 7-Conductor, No. 14 AWG	1330	FT		
54	632	Signal Support Foundation, as per plan	4	EA		
55	632	Pedestal Foundation	4	EA		
56	632	Power Cable, 3-Conductor, No. 6 AWG	45	FT		
57	632	Service Cable, 3-Conductor, No. 6 AWG	155	FT		
58	632	Power Service, as per plan	1	EA		
59	632	Combination Signal Support, Type TC-81.22, Design 12, as per plan	2	EA		
60	632	Combination Signal Support, Type TC-81.22, Design 14, as per plan	2	EA		
61	632	Pedestal, 8', Transformer Base, as per plan	4	EA		
62	632	Removal of Traffic Signal Installation, as per plan	1	EA		
63	633	Cabinet, Type TS-2, as per plan	1	EA		
64	633	Cabinet Foundation	1	EA		
65	633	Controller Work Pad, as per plan	1	EA		
66	633	Uninterruptible Power Supply (UPS), 1000 Watt, as per plan	1	EA		
67	638	Water Work, Misc.: Water Valve Adjusted to Grade	1	EA		
68	644	Edge Line, 4"	.08	MILE		
69	644	Center Line	.08	MILE		
70	644	Channelizing Line, 8"	265	FT		
71	644	Stop Line	113	FT		
72	644	Crosswalk Line	628	FT		
73	644	Lane Arrow	6	EA		
74	644	Removal of Pavement Marking	905	FT		
75	644	Removal of Pavement Marking	2	EA		

Item	Item No.	Description	Quant.	Unit	Unit Price	Amount
76	659	Seeding & Mulching, Class 1, as per plan	1790	SY		
77	809	Advance Radar Detection, as per plan	2	EA		
78	809	Stop-Line Radar Detection, as per plan	4	EA		
79	809	ATC V6.24 Controller, as per Plan	1	EA		
		QUANTITIES TOTAL				

QUANTITIES TOTAL: _____

QUANTITIES TOTAL IN WORDS: _____

Alternate Bid #1 – Decorative Mast Arm QUANTITIES WORKSHEET						
Item	Item No.	Description	Quant.	Unit	Unit Price	Amount
80	625	Bracket Arm Misc.: Bracket Arm, 15', Decorative, (Replaces Item No.26)	4	EA		
81	625	Luminaire, Decorative, as per plan (Replaces Item No. 33)	4	EA		
82	632	Combination Signal Support, Misc.: Combination Signal Support, Type TC-81.22, Design 12, Decorative (Replaces Item No. 59)	2	EA		
83	632	Combination Signal Support, Misc.: Combination Signal Support, Type TC-81.22, Design 14, Decorative (Replaces Item No. 60)	2	EA		
84	632	Pedestal, Misc. Pedestal, 8' Decorative (Replaced Item No. 61)	4	EA		
85	632	Signalization, Misc.: Pedestrian Signal Head (LED), Type D2, Countdown (Replaces Item No. 46)	8	EA		

QUANTITIES TOTAL: _____

QUANTITIES TOTAL IN WORDS: _____

FORM OF PROPOSAL

Page 1

Submitted By: _____ this _____ day of _____, 2020.
Contracting Firm

To: The City of Clayton, Ohio, 6996 Taywood Rd., Englewood, OH 45322

Having read and examined the specifications and drawings for the:

MOT 49-7.27

and having also received, read and taken into account Addenda and likewise having inspected the site and the conditions affecting and governing this Project, the undersigned hereby proposes to furnish all materials and to perform all labor, as specified and described in the said Specifications and/or shown on said Drawings for all work necessary to complete the Project on a timely manner and in accordance with the Contract Documents regardless of whether expressly provided for in such Specifications and Drawings.

Before completing the Form of Proposal, the Undersigned represents that it has carefully reviewed the Notice to Bidders, Instructions to Bidders and General Conditions, City-Contractor Agreement, Supplementary Construction Specifications, Prevailing Wage Rates, Equal Employment Opportunity Provisions, and all other documentation related to this Project. The Undersigned further agrees that if this proposal is accepted such undersigned will comply with all such documents and the requirements therein. Failure to comply with provisions of the Bid Documents may be cause for disqualification of Bid.

The Undersigned agrees that, if the Proposal is accepted, such undersigned will furnish the required Bonds, Insurance Certificates, and other Contract Documents as will be required and as is noted in the Instructions to Bidders and General Conditions.

In submitting this Bid, the undersigned agrees to execute and complete the Contract in the form included in the Contract Documents and to complete its work within a period of consecutive calendar days after the receipt of the "Notice to Proceed".

Having completed and compiled a Material Quantities total, for materials and labor, based upon the unit prices provided, have:

Base Bid Standard Mast Arms Painted Black

Written Words

\$ _____
Figures

Alternate Bid #1 – Decorative Mast Arm

Written Words

\$ _____
Figures

FORM OF PROPOSAL

Page 2

Check one of the following:

____ The Undersigned is signing as sole proprietor or is his authorized representative. The name of the sole proprietor must be shown below.

____ The Undersigned is signing as a partner in a partnership or is his authorized representative.

____ The Undersigned is signing for a corporation and is the president, vice president or other authorized representative; or he must show his authority, by affidavit, to bind the corporation.

The Undersigned is signing for some other legal entity and shows, by affidavit, his authority to bind such entity.

Name of Contracting Firm: _____

Address of Contracting Firm _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone: _____

Fax: _____

If the Bidder is a partnership or Joint Venture, state the Name and Address of each Partner or Participant in the Joint Venture below:

BID GUARANTY AND PERFORMANCE BOND MOT 49-7.27

(Sections 153.54 and 153.571 Ohio Revised Code) KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned:

_____ (Contractor) _____ (Surety)

as principal and as sureties, are hereby held and firmly bound unto the City of Clayton, Ohio, and the Ohio Department of Transportation as obligee in the penal sum of the dollar amount of the Bid submitted by the principal to the obligee on this ____ day of _____, 2020 to take on the project known as **MOT 49-7.27** the penal sum referred to herein shall be the dollar amount of the principal's Bid to the obligee, incorporating any additive or deductive alternate proposals made by the principal on the date referred to above to the obligee, which are accepted by the obligee. In no case shall the penal sum exceed the amount of
\$ _____ Dollars

(If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's Bid, including alternates. Alternatively, if the blank is filled in, the amount stated must not be less than the full amount of the Bid including all add alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

THE CONDITIONS OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal has submitted a Bid for work on the above named project.

Now, therefore, if the obligee accepts the Bid of the principal and the principal fails to enter into a proper Contract in accordance with the Bid, plans, details, specifications, and bills of material; and in the event the principal pays to the obligee the difference not exceed ten percent (10%) of the penalty hereof between the amount specified in the Bid and such larger amount for which the obligee may in good faith Contract with the next lowest Bidder to perform the work covered by the Bid; or in the event the obligee does not award the Contract to the next lowest Bidder and resubmits the project for Bidding, the principal pays to the obligee the difference not to exceed ten percent (10%) of the penalty hereof between the amount specified in the Bid, or the costs, in connection with their resubmission, or printing new Contract documents, required advertising, and printing and mailing notices to prospective Bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if the obligee accepts the Bid of the principal and the principal within ten (10) days after the awarding of the Contract enters into a proper Contract in accordance with the Bid, plans, details, specifications, and bills of material, which said Contract is made a part of this bond the same as thought set forth herein;

Now also, if the said principal shall well and faithfully do and perform the things agreed by Contract to be done and performed according to the terms of said Contract; and shall pay all lawful claims of Subcontractors, materialmen, 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 materialman or laborer having a just claim, as well as for the obligee

herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

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 way affect the obligations of said surety on its bond.

Sealed and signed this ____ day of _____, 2020.

PRINCIPAL:

Name of Contracting Firm: _____

Address of Contracting Firm: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone: _____

Fax: _____

Witness to Signature: _____

SURETY:

Name of Surety Company: _____

Address of Surety Company: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone: _____

Fax: _____

Witness to Signature: _____

**NON-COLLUSION AFFIDAVIT
MOT 49-7.27**

State of _____

County of _____ ss:

_____, being first duly sworn, deposes and says that he is
_____ of _____
(Title) (Company)

the party making the foregoing proposal or Bid; that such Bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; that such Bid is genuine and not collusive or sham; that said Bidder has not colluded, conspired, connived, or agreed, directly or indirectly, with any Bidder or person, to put in a sham Bid, or that such other person shall refrain from Bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the Bid price of affiant or any other Bidder, or to fix any overhead, profit or cost element of said Bid price, or of that of any other Bidder, or to secure any advantage against the owner, any company or any person or persons interested in the proposed Contract; and that all statements contained in said proposal or Bid are true; and further that such Bidder has not, directly or indirectly, submitted this Bid, or the contents thereof, or divulged information or data relative thereto to any corporation, partnership, company, association or organization, or to any member or agent thereof.

Affiant Signature Affiant Print or Type

Sworn to and subscribed before me this _____ day of _____, 2020.

Notary Signature Notary Print or Type

A Notary Public in and for _____ County in the State of Ohio.

My commission expires: _____ (Seal)

SAMPLE CONTRACT DOCUMENTS

Review but DO NOT execute at this time.

These documents shall be executed after award is made.

CONTRACT for MOT SR49 – 7.27
PID 112158

THIS CONTRACT, made and entered into this ____ day of _____, 2020

between the City of Clayton, hereinafter designated as the City and

_____ of _____
(Name of Contractor) (City and State of Contractor)

hereinafter designated as the Contractor:

WITNESSETH: That the parties of these presents, each in consideration of the undertakings, promises and agreements, on the part of the other herein contained, have undertaken, promised and agreed and do hereby undertake, promise and agree, the City for itself, its successors and assigns, and the Contractor his heirs, executors, administrators, successors and assigns as follows:

That the Contractor in consideration for sums of money herein specified (said base Contract amount being \$ _____ .) to be paid by said City, shall and will

at his own cost and expense, furnish all labor, materials, tools and equipment for and build for the City the:

MOT SR49 – 7.27

in accordance with the Bid Documents hereto attached and therein mentioned, which Bid Documents are hereby made a part of this Contract, all of said work to be fully completed to the satisfaction and acceptance of the City.

The City agrees to pay the Contractor for performance of work in accordance with these Contract Documents, a sum of money equal to the amount of the actual work done and materials furnished, as determined by the City, under each item listed in the Bid multiplied by the unit price applicable to each such item as set forth in the Bid attached hereto.

The Contractor agrees to accept the payment referenced to above as full compensation satisfaction and discharge for all work done and material furnished, (whether mentioned in the Estimated Quantities or not) and also for all costs and expenses incurred and loss or damage sustained by reason of action of elements, or because of the nature of the work, or because of any unforeseen obstruction or expense incurred by or in consequence of the suspension of the work as herein specified, and also for well and faithfully completing the work, and the whole thereof, in accordance with the terms conditions and provisions of this Agreement and the instructions, orders or directions of the City thereunder, and also for maintaining the work in good condition until final payment is made and for (1) year after the date of substantial completion, except as in this Agreement otherwise specifically provided.

This Agreement will be considered null and void unless accompanied by a properly endorsed "Fiscal Officer's Statement - Certificate of Available Funds" in an amount to meet the above cost of the Contract.

IN WITNESS THEREOF, the said parties have hereunder set their hands and seals and have executed this Agreement the day and year first above written.

CONTRACTOR:

Name of Contracting Firm: _____

Address of Contracting Firm: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone: _____ Fax: _____

CITY:

Name of City: City of Clayton, Ohio

Address of City: 6996 Taywood Rd., Englewood, Oh 45322

Signature: _____

Printed Name: Amanda Zimmerlin

Title: City Manager

Date: _____

Phone: (937) 863-3500 Fax: (937)836-6773

FISCAL OFFICER'S STATEMENT
CERTIFICATE OF AVAILABLE FUNDS
(Section 5705.41 Ohio Revised Code)

I, _____, do hereby certify that I am the Finance Director for the City of Clayton, Ohio, and that the amount of money and funds to wit: \$_____ .
(_____ Dollars) required to meet the

Local share of this contract, namely the project known as:

MOT 49-7.27

have been lawfully appropriated for such purpose and is in the treasury, or in process of collection to credit of an appropriate fund free from any previous encumbrances.

Signature: _____

Printed Name: _____ (Seal)

Date: _____

Account No. _____

CONTRACT AFFIDAVIT

(To be filled in and executed if the Contractor is a Corporation)

State of _____

County of _____ ss.

_____, being duly sworn, deposes and says that as
(name)

_____ of _____
(title) (name of corporation)

a Corporation organized and existing under and by virtue of the laws of the State of

_____, and having its principal office at

(address)

Affiant further says that he is familiar with the records, minute books and by-laws of said corporation.

Affiant further says that he/she is _____, of the Corporation, and as such is duly authorized to sign the Form of Proposal contained herein.

Affiant Signature

Affiant Print or Type

Sworn to and subscribed before me this ____ day of _____, 2020.

Notary Signature

Notary Print or Type

A Notary Public in and for _____ County in the State of Ohio.

My commission expires: _____ (Seal)

PERFORMANCE AND PAYMENT BOND

(Sections 153.54 and 153.57 Ohio Revised Code)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned:

_____ (Contractor) _____ (Surety)

as principal and as sureties, are hereby held and firmly bound unto the City of Clayton, Ohio, and the Ohio Department of Transportation in the penal sum of \$ _____, (_____ Dollars) for the payment of which well and truly to be made we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns in connection with the project known as:

MOT SR49 – 7.27

Signed this ____ day of _____, 2020.

THE CONDITIONS OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal did on the ____ day of _____, 2020, enter into a Contract with the City of Clayton, Ohio, which said Contract is made a part of this bond the same as though set forth herein.

Now, if the said principal shall well and faithfully do and perform the things agreed by Contract to be done and performed according to the terms of said Contract; and shall pay all lawful claims of Subcontractors, materialmen, 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 materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

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.

Sealed and signed this ____ day of _____, 2020.

PRINCIPAL:

Name of Contracting Firm: _____

Address of Contracting Firm: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone: _____

Fax: _____

Witness to Signature: _____

SURETY:

Name of Surety Company: _____

Address of Surety Company: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone: _____

Fax: _____

Witness to Signature: _____

DIRECT PAYMENT OF CONTRACTOR

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's contractor shall be paid directly to the contractor in the prorata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this agreement, and shall indicate that the payment is to be made to the contractor. In addition, the invoice must state the contractor's name, mailing address and Federal tax ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

We City of Clayton request that all payments for the Federal/State share of the construction costs of this agreement performed by _____

Contractor's name

be paid directly to _____
Contractor's Name

Contractor Name: _____

OAKS Vendor ID: _____

Mailing Address: _____

LPA signature _____

LPA Name: City of Clayton

OAKS Vendor ID: 0000047339

Mailing Address: 6996 Taywood Rd
Englewood, OH 45322

Approved, ODOT signature



Department of Commerce

Division of Industrial Compliance

Bureau of Wage and Hour Administration
6606 Tussing Road - PO Box 4009
Reynoldsburg, OH 43068-9009
Phone 614-644-2239 | Fax 614-728-8639
TTY/TDD 800-750-0750
www.com.ohio.gov
An Equal Opportunity Employer and Service Provider

John R. Kasich, Governor
Andre T. Porter, Director

Affidavit Of Compliance

PREVAILING WAGES

I, _____
(Name of person signing affidavit) (Title)

do hereby certify that the wages paid to all employees of

(Company Name)

for all hours worked on the

(Project name and location)

project, during the period from _____ to _____ are in
(Project Dates)

compliance with prevailing wage requirements of Chapter 4115 of the Ohio Revised Code. I further certify that no rebates or deductions have been or will be made, directly or indirectly, from any wages paid in connection with this project, other than those provided by law.

(Signature of Officer or Agent)

Sworn to and subscribed in my presence this _____ day of _____,
20 _____.

(Notary Public)

The above affidavit must be executed and sworn to by the officer or agent of the contractor or subcontractor who supervises the payment of employees. This affidavit must be submitted to the owner (public authority) before the surety is released or final payment due under the terms of the contract is made.

LAW1003