

2021 Harding Rd Deck Replacement
November 8, 2021
10:00 A.M.

Company Name _____

Contact Name _____

Email Address _____

Street Address _____

City, State _____

Zip Code _____

Phone _____

Fax _____

To be considered a valid bidder, you must either pick up a contract book at our office and be added to the bidders list or fax this registration form to us at least **4 days prior to the bid opening** to be added to the bidders list. Subcontractors and suppliers are encouraged but not required to register as a contract holder.

To be a qualified bidder you must fax this sheet back to our office. If this is not done, your bid will be rejected.

Fax completed form to:

Defiance County Engineer's Office: (419) 782-3031

OFFICE OF THE COUNTY ENGINEER

PROPOSAL

**TO THE BOARD OF COUNTY COMMISSIONERS
COUNTY OF DEFIANCE**

For: Harding Road Deck Replacement
Bidder's
Name: _____
Street
Address: _____
P.O. Box: _____
City, State, Zip: _____
Project No. PID 104253
DBE Goal: 9%

Date of Letting: November 8, 2021
Place of Letting: Defiance County Board of Commissioners
500 Court Street
Defiance, Ohio 43512
Completion Date: August 12, 2022

Prepared By:
Defiance County Engineer
510 Court St., Ste. 201
Defiance OH 43512

Warren J. Schlatter, P.E., P.S.

BID DOCUMENTS

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ADVERTISEMENT

NOTICE TO BIDDERS

Sealed bids may be submitted on or before the bid opening date of **November 8, 2021** at 10:00 a.m. local time, at the Defiance County Board of Commissioners Office, 500 Court Street, Defiance, Ohio 43512, for the following project:

HARDING ROAD DECK REPLACEMENT

Bids shall be opened & bid prices publicly read immediately thereafter.

Bid documents, including contract terms & conditions, may be obtained from the Defiance County Engineer, at 510 Court Street, Ste. 201, Defiance, Ohio 43512 between 8:00 a.m. – 4:30p.m., Monday through Friday (holidays excluded).

Advertisements for bids, bid documents and plan holder's list also are posted on the internet at www.defiance-county.com/engineer/engineer.html under the Bid Projects heading.

The Contractor must be ODOT pre-qualified and the DBE Goal is 9%.

The Board reserves the right to reject any or all bids.

COUNTY OF DEFIANCE

Stephanie Metz, Clerk
Defiance County Commissioners

Warren J. Schlatter, P.E., P.S.
Defiance County Engineer

Bid Advertisement Date: Thursday, October 14, 2021
 Thursday, October 21, 2021
 Thursday, October 28, 2021

ENGINEER'S ESTIMATE: \$ 910,178.00

INTRODUCTION

It is the intent of these contract documents to serve as the basis for preparing a contractor's estimate of cost, or the contractor's bid; to show engineering intent and to set a level of equality of workmanship and performance; and as the basis for the written contract or agreement between owner and contractor.

They represent the composite of the requirements of the engineer, the owner and any and all funding agencies. An effort has been made, insofar as is practicable, to minimize any duplication or conflict in requirements or standards or performance and workmanship. Inasmuch as this is not always possible, there may be contained herein some conflicting requirements or standards. When such is the case, the more stringent requirements shall always govern, unless stated otherwise. Likewise, Supplemental Provisions will amend and/or add to the Standard Provisions and shall always have precedence over the provisions to which they are a supplement.

The engineer, acting as the owner's representative, shall interpret the intent of the contract documents in a fair and unbiased manner and shall decide any and all questions which may arise to quality and acceptability of materials furnished and work performed.

I. INSTRUCTIONS TO BIDDERS

1. SUBMISSION OF BID

Sealed Bids will be received at the Defiance County Board of Commissioners Office, on or before the advertised Bid date and time, as extended, for all labor, materials, equipment, supervision, coordination and other things necessary for the full and complete performance of the project described by the accompanying Bid advertisement (herein referenced as the "Project").

Bids must be submitted in sealed envelopes marked with the Project title, the name of the Bidder and his address. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed to the Board of County Commissioners 500 Court Street, Defiance, Ohio 43512. Bids shall be opened immediately upon expiration of the Bid submission time, with the names of bidders and their respective bid prices read publicly.

2. STANDARD SPECIFICATIONS & TERMS

The Construction & Material Specifications of the State of Ohio, Department of Transportation **2019**, shall serve as standard specifications for any contract awarded hereunder. Said Construction & Material Specifications shall be referenced herein as the "Standard Specifications". Supplemental specifications, requirements, terms, conditions and covenants of these Instructions to Bidders and of the accompanying Bid Documents shall control over conflicting terms found in the Standard Specifications.

Wherever the following terms appear in the Standard Specifications, said terms shall have the following meaning:

A. The terms "State", "State of Ohio", "Department" and "Department of Transportation" refer to the County, acting through its Board of Commissioners. The County also may be referenced as the "County" or the "Owner" herein.

B. The term "Director", "DCE" and "DDD" refers to the County Engineer.

C. The term "Engineer" refers to the County Engineer, or to his duly authorized representative.

D. The term "Laboratory" refers to such testing laboratory or consultant as shall be designated by the County Engineer or by the County Engineer's duly authorized representative.

A numerical designation for an "item" referenced herein refers to the description of said item number as provided by the Standard Specifications.

Bidders are specifically referred to the definitions provided by section 101.03 of the Standard Specifications. Any undefined trade and technical words and terms shall be deemed to have the meaning established by trade usage in the highway/bridge construction and civil engineering consultation business.

3. FORM OF BID

Bids shall be submitted using the attached blank forms, designed for such purpose. These forms must be completed intact, without removal of any part, must recite the full name of the party making the Bid, and must be properly signed.

In each blank marked "unit price", bidders are required to provide a Bid price per referenced unit for the requested materials, labor or equipment, or referenced combination thereof. Failure to provide a price for each unit price item, or failure to provide prices for lump sum items, will render the Bid informal, allowing its rejection at the County's discretion.

Extended unit prices are calculated by multiplying the bidder's unit price entries times their respective approximate quantities. The resultant extended unit price figures, in addition to any lump sum prices, are added to calculate the amount of each Bid.

The sum of the unit prices and lump sum prices provided by each Bidder shall comprise that Bidder's Bid price for consideration of award of contract. If an error is made in the extension of unit prices, or in addition of the unit and lump sum prices, the accurate extended unit prices and total shall govern.

Quantities provided by the Bid Documents are estimates only. The Engineer reserves the right to eliminate, increase or decrease the actual quantity of any unit price item or to non-perform any lump sum item.

4. BIDDER QUALIFICATIONS

Bidders must be ODOT pre-qualified. Prequalification by the Ohio Department of Transportation, as described by ORC Sections 5525.02-.09, for performance of Work of the same type, character and magnitude as described hereby, is acceptable. In addition, each Bidder shall complete any Bidder qualification forms provided with the Bid Documents, and shall furnish documentation and evidence of qualifications as are required thereby.

Evidence of authority to conduct business as and out-of-state corporation in the state where work is to be performed shall be provided. State contractor license number, if any, must be shown on page 91.

5. EXAMINATION OF BID DOCUMENTS & SITE OF WORK

Bidders must carefully examine the Bid Documents and perform a reasonable site investigation before submitting a Bid. Submission of a Bid is an affirmative statement that the Bidder has investigated the Project site and is satisfied as to the character, quality, quantities and conditions to be encountered in performing the Work. A reasonable site investigation includes investigating the Project site, borrow sites, hauling roads and all other locations related to the performance of the Work.

6. BID GUARANTEE

Each Bid shall be accompanied by a bid guarantee, in the form of a bid bond, a certified check, a cashiers check or a letter of credit, in conformity with the requirements of ORC 153.54 and 153.571 (B). If a bid bond is used, the bond shall be in the full amount of the bid and signed by a Surety company authorized to do business in Ohio, and accompanied by the Surety's sufficient power of attorney affirming said signature. If a certified check, cashiers check or letter of credit is used, the instrument shall be drawn on a solvent bank in an amount not less than ten percent (10%) of the Bid. The bid guarantee shall be given as security that, if the Bid is accepted, the Bidder will enter into a contract in conformity with the Bid. Bids less than twenty-five thousand dollars (\$25,000.00) do not require a bid guarantee.

7. FACTORS FOR ACCEPTANCE OR REJECTION OF BIDS

A. Pursuant to ORC 307.90 (A), a contract shall be awarded to the lowest and best Bid.

B. Any Bid which is incomplete, conditional, obscure, or which contains additions not called for or irregularities of any kind, may be rejected.

C. The Board of Commissioners reserves the right to reject any and all Bids, and also the right to waive any informality in the Bid. The Board of Commissioners has the right to postpone the decision to award a contract for up to sixty (60) days.

D. No contract shall be awarded to any person, firm or corporation that is in arrears or is in default to the County upon any debt or contract, or that is in default as surety or otherwise upon any obligation to the County, or has failed to perform faithfully any previous contract with the County, or that has an unresolved finding of recovery with the State Auditor, or has been debarred by the County from consideration for contract awards.

E. A conditional or qualified Bid will not be accepted.

F. Award will be made as a whole to one Bidder.

8. WITHDRAWAL OF BIDS

A Bidder may request, in writing, to withdraw its Bid within five business days of the opening. Such requests will be reviewed by the Board of Commissioners for approval as permitted by ORC 9.31 and 153.54 (G). If approved, collection of the bid guarantee or bond will be waived.

9. OTHER COSTS & REQUIREMENTS

Bids must include all costs of performing the Work and all costs of fulfilling the requirements of laws, rules and regulations pertaining thereto. The following is a partial list of ancillary contract costs and requirements. Said list is provided for the convenience of Bidders, to assist in their inclusion of all components of costs and fulfillment of all requirements, though this list does not recite all such costs and requirements.

A. Bids must include the cost of all required bonds (performance and maintenance) (Must have ODOT and Defiance County Board of Commissioners as obligee).

B. Bids must include the cost to procure all permits and licenses, to pay all charges, fees and taxes, and to provide all notices necessary and incidental to the due and lawful prosecution of the Work.

C. Bids must include the cost of insurance coverage of the type and at least in the amounts set forth by section 107.12 of the Standard Specifications and by any special bid provisions.

D. The County is exempt from all sales, excise, and transportation taxes, with the exception of State of Ohio gasoline tax. Bid prices shall exclude all such taxes. Upon request, the County will fill out a tax-exempt certification.

E. "Declaration of Personal Property Tax Delinquency" form must be fully executed and notarized pursuant to ORC Section 5719.042, before an award can be made.

F. As required by ORC 2909.33 (C), Bidders must complete the attached Division of Homeland Security Declaration of No Assistance to a Terrorist Organization.

10. CLAIMS AND DISPUTE RESOLUTION PROCESS

For any disputes not resolved by verbal notice and review within 2 days, the resolution process shall begin with the Contractor sending a written letter to the Defiance County Engineer stating said disputes. The Defiance County Engineer shall work expeditiously to either resolve the disputes at the project level or after review with the District Construction Engineer of the Ohio Department of Transportation. This process is designed to facilitate the resolution of disputes before they become claims.

II. SUPPLEMENTAL CONTRACT PROVISIONS

1. AWARD REQUIREMENTS OF SUCCESSFUL BIDDER/CONTRACTOR

The following is a partial list of award contract requirements. Said list is provided for the convenience of Bidders, to assist in their inclusion of all components of costs of such requirements, though this list does not recite all such costs and requirements.

A. The successful Bidder/Contractor must provide a one hundred percent (100%) Performance Bond based on the contract amount, in conformity with the requirements of ORC section 153.54 (C) and 153.57 (A). ODOT and Defiance County Board of Commissioners must be named as obligee on Performance Bond. A Maintenance Bond in the amount to ten percent (10%) of the final contract amount, extending coverage for one (1) year beyond the acceptance date of the completed Project, must be provided by the Contractor as a prerequisite to final payment. Said Maintenance Bond shall assure the repair and/or correction of any defects, deficiencies or omissions in the Project Work.

B. The Contractor must provide evidence of all insurance coverage requirements of section 107.12 of the Standard Specifications.

C. The Contractor agrees to provide the County with full and complete documentation of payment of prevailing wages to all employees of the Contractor and of its subcontractors governed by Federal Davis-Bacon Prevailing Wage law.

D. The Contractor agrees to provide the County with a contact person, a telephone number, a mailing address and, if available, an electronic mail address for purposes of giving notice to the Contractor of any changes in prevailing wage rates. Where an electronic mail address is given, the Contractor agrees that the use of that method by the County satisfies any notice requirements of any change in prevailing wage rates. Upon commencement of contract work, the Contractor and its subcontractors subject to the contract's prevailing wage requirements must provide the prevailing wage coordinator with a schedule of wages, with certified copies of payroll being required throughout work on the Project.

E. The Contractor further agrees to stay informed of applicable prevailing wage rates and to immediately inform all its subcontractors and the Engineer of such changes. The Contractor agrees to defend and indemnify the County, its elected officials, agents and employees, against all claims, actions, demands, judgments, settlements, damages, liabilities, losses, and costs of any kind, including, but not limited to, reasonable fees of attorneys and experts, arising from or related to the Contractor's failure to inform its subcontractors of changes in prevailing wage rates.

F. The Contractor must furnish the County with a completed IRS Form W-9, "Request for Taxpayer Identification Number & Certification". The Internal Revenue Code requires the County to file an information return each January 31st on all payments made the previous year of \$600.00 or more. As required by Section 3406 of the Internal Revenue Code (26 U.S.C. 3406), the County shall withhold federal taxes of a rate of thirty-one percent (31%) if a correct taxpayer identification number is not provided. Back-up withholding requirements continue until the required information is received.

2. OTHER CONTRACTOR DUTIES

In addition to the duties cited by the Standard Specifications and elsewhere in these Bid Documents, the Contractor has the following duties:

A. When determined necessary by the Engineer, the Contractor shall provide a field office, suitably and of ample size and accommodations, from which the Engineer's inspections, as well as the Contractor's Work, may be carried out. The Contractor must keep a full set of Plans and Specifications available at the field office.

B. The Contractor must furnish, without extra compensation therefore, such assistance as the Engineer, or his assistants or inspectors may require, in measuring in and setting stakes or marks for indicating lines, grades or levels, for measuring or determining quantities for estimates, and for handling and inspecting materials to be used on the Work, whether such materials have been delivered upon the site of Work or are in local storage. The Contractor shall provide such facilities for weighing and measuring materials as the Engineer may deem necessary, to secure the proper fulfillment of the provisions and requirements of the Specifications.

C. The Contractor shall diligently protect and preserve all stakes, marks, bench marks and monuments set or used by the Engineer, and shall be responsible for securing therefore the proper lines, grades and levels for the structures to be built.

D. The Contractor must place or construct, in such manner and at such points as the Engineer may require, necessary sanitary conveniences for the use of employees on the Work site. They shall be properly secluded from public observation, shall be maintained sanitary and inoffensive at all times, and their use shall be strictly enforced. The Contractor must provide an ample supply of pure drinking water for employees at all times, and the source of such supply shall be subject, at all times, to the approval of the Engineer.

E. The Contractor is reminded of its duty to notify the registered underground utility protection service and owners of underground utility facilities at least two working days in advance of commencement of construction operations that may involve such facilities, to allow surface marking of facility locations.

3. DISCRIMINATION PROHIBITED

The Contractor understands and agrees that, in the hiring of employees for the performance of work under the contract or any subordinate contract hereunder, the Contractor, its subcontractors and persons acting on behalf of the same shall not discriminate in the hiring or retention of subordinate contractors or employees "by" or "for" reason of race, creed, sex, disability (as defined by ORC 4112.01) or color; nor shall said parties discriminate against any citizen of the State of Ohio in the employment of labor or workers who otherwise qualify and who are available to perform the work to which the contract relates.

Further, the Contractor and its subcontractors and persons acting on behalf of the same shall not discriminate against or intimidate any employee hired for performance of the Work under the contract on account of race, creed, sex, disability (as defined by ORC (4112.01) or color.

In addition, the Contractor agrees, as a prerequisite of award, to complete the attached "Equal Employment Opportunity Compliance Certificate", and to fulfill all requirements thereof.

4. INSPECTION

The Engineer, assistants and agents shall have, at all times, immediate access and right to enter upon the Work site and other Work premises occupied by the Contractor as well as upon the site of all sources from which materials are being obtained for the contract. The Contractor shall provide safe and proper facilities for permitting such entrance and for inspecting and testing purposes. Subcontractors and suppliers shall have similar obligations imposed by subordinate contracts. The Contractor shall furnish the Engineer with all reasonable facilities for ascertaining that the materials and Work are in accordance with the requirement and intention of the Specifications and contract, even to the extent of uncovering or removing portions of finished Work.

The Contractor shall give definite information, at any time, as to the place from which, or persons from whom, any material is being or will be procured. All materials to be used may be subjected to such tests as the Engineer may require assuring that such materials conform, in all respects, to the requirements of the Specifications, or that they are equal to samples submitted by the Contractor. All materials which do not conform to such requirements shall be rejected, and the Contractor shall remove such rejected materials from the vicinity of the Work within twenty-four (24) hours thereafter.

The inspection and supervision of the Work and materials by the Engineer, assistants and inspectors is intended to aid the Contractor in accomplishing the fulfillment of duties and obligations under the contract, but such inspection and supervision shall not relieve the Contractor from contract obligations.

Defective Work shall be made good and unsuitable materials may be rejected, notwithstanding that such Work and materials have been previously overlooked by the Engineer and accepted or estimated for payment. If the Work, or any part thereof, is found, at any time before the acceptance of the whole Work and for the period of the Maintenance Bond thereafter, to be defective, or to contain defective materials, the Contractor shall make good such defects under the direction of the Engineer.

Upon being attached to, or incorporated in the Work, or affixed in or to the soil, all materials shall become property of the County. Thereafter the Contractor shall have no right of property therein, unless they are afterward rejected by the Engineer. The Contractor bears risk of loss of and damage to the Work until completion and final acceptance of the Work.

The Contractor shall schedule inspection 24 hours in advance of the performance of the respective Work. At the pre-construction meeting, the Engineer shall provide the Contractor with phone numbers and names of a contact person and of the Engineer's inspectors. The Contractor shall inform the Engineer of his Work schedule and the hours of operation before the Contractor may begin Work.

When Work is scheduled and the Contractor desires to change the approved schedule, the Contractor shall contact the Engineer's inspector at or before 7:30 a.m. of the scheduled Work date to cancel or adjust the hours of inspection. If the Contractor fails to contact the Engineer's inspector as stated above or if the notice is within two (2) hours of the scheduled inspection and is insufficient to cancel attendance by the Engineer's inspector, the Contractor will be charges for

two (2) hours of inspection time at the current inspection rate. This cost will be subtracted from the Contractor’s monthly pay estimate.

5. SIGNIFICANT CHANGES IN CHARACTER OF THE WORK.

The Engineer may alter the Work as necessary to complete the Project. The Engineer will make appropriate adjustments according to 108.06 and 109.05, if such alterations significantly change the character of the Work.

If the alterations or changes in quantities significantly change the character of the Work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the Work or by affecting other Work cause such other Work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the Contract. Before performing significantly changed Work, reach agreement with the Department concerning the basis for the adjustment. If the Contractor disagrees as to whether an alteration constitutes a significant change, use the notification procedures specified in 104.02.G.

The term “significant change” is defined as the follows:

1. when the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
2. when the product of the quantity in excess of the estimated quantity of a contract item and the unit price exceeds the limits set forth in Table 104.02-1. If the increase does not exceed the limits set forth in Table 104.02-1, then the Department will pay for the increased Work at the Contract Price.

Table 104.02-1

Contract Price	Contract Limits
Up to \$500,000	\$25,000
\$500,001 to \$2,000,000	5% of Total Contract Price
Over \$2,000,000	\$100,000

If the decrease in quantity of any unit price Contract Item exceeds 25 percent of the estimated quantity, and the total of all such adjustments for all Contract Items is more then \$400, then after the determination of final quantities according to 109.12.C, the Engineer will adjust the unit prices for the affected Contract item by multiplying the bid unit price by the factor obtained from Table 104.02-2.

Table 104.02-2

% Decrease	Factor	% Decrease	Factor
25 to 28	1.02	61	1.14
29 to 32	1.03	62	1.15
33 to 35	1.04	63	1.16
36 to 38	1.05	64	1.17
39 to 41	1.06	65	1.18

42 to 44	1.07	66	1.19
45 to 47	1.08	67	1.20
48 to 50	1.09	68	1.21
51 to 53	1.10	69	1.22
54 to 56	1.11	70	1.23
57 to 59	1.12	71	1.24
60	1.13	72 and over	1.25

6. NO WAIVER RIGHTS

No act of the Engineer, or his assistants or inspectors, shall operate as waiver of any provisions of the contract, nor shall any breach of this contract operate as a waiver of any other subsequent breach. Any and all remedies provided in this contract are cumulative, in addition to other remedies herein provided. The mention of any specific liability or duty of the Contractor, in any part of the Specifications or contract, shall not be construed as a limitation or restriction upon general liability or duty imposed upon the Contractor by said Specifications and contract. Should any part of the Work be sublet by the Contractor, such action shall in no way release the Contractor from liability or obligation hereunder. The Contractor shall be liable for the acts, omissions and negligence of any subcontractor, and shall be responsible therefore as though no subcontract existed.

7. DAMAGES FOR LATE COMPLETION; EXTENSIONS OF TIME

Time is of the essence to this contract. The rate of progress shall be such as to complete the Project Work within the time limit specified herein.

In the event that the Work is not substantially completed within the time limit aforesaid, with said incompleteness prohibiting beneficial use and occupancy of the Project, in compensation for the public's loss of use of the Project, the Contractor shall forfeit liquidated damages in the amount set forth by section 108.07 of the Standard Specifications.

Such amounts shall be deducted by the Engineer from the partial or final estimates to be allowed the Contractor.

The Board of County Commissioners may for good cause shown, extend the time of completion. Any such extension in time shall not be deemed a waiver by the County of any other rights provided for under this contract, and shall not operate to release any Surety from any bond obligations.

The completion date for this project is **AUGUST 12, 2022 or 120 days**, with a seventy-five (75) day road closure limit.

8. NIGHT, SUNDAY & HOLIDAY WORK

No Work will be permitted on Sundays or legal holidays, except as authorized by the Engineer or the Board of Commissioners. No Work will be permitted after dark except under terms and conditions agreed to in writing by the Engineer, Board of Commissioners and Contractor. No extra compensation will be allowed to the Contractor for night, Sunday or Holiday Work, regardless of cause of such Work.

9. PARTIAL PAYMENTS

Before the day, stipulated by the owner, of each month, the contractor shall make a written estimate of the amount of value of the work and materials incorporated into the work during the preceding month, broken down into bid items. The contractor shall submit his estimate to the engineer immediately upon its preparation, and after each such partial estimate has been certified to in writing by the engineer the owner shall, on or before the first day of the month next following, pay the contractor as specified below.

No partial payment will be made when the amount due the contractor since the last estimate amounts to less than five hundred dollars.

From the total of the amount determined to be payable on a partial payment, 8 percent of the first 50 percent of such total amount will be deducted and retained by the owner until the final payment is made except. The balance of the amount payable, less all previous payments, shall be certified for payment.

Upon completion and acceptance of the project by the owner and engineer, (i.e., the signing of the "Certification of Substantial Completion" by all parties involved), the owner shall release one half (1/2) of the retainer. The remaining one half (1/2) of the retainer shall be retained by the owner for the following periods after the date of approval and acceptance of the project.

<u>Acceptance Date</u>	<u>Period</u>
From Feb. 15 to Aug. 15	90 Calendar Days
From Aug. 16 to Feb. 14	180 Calendar Days

The owner agrees that upon expiration of the above period, the contractor shall be entitled to the whole sum of the reserve, less any part expended by the owner in making repairs.

Should any defective work or material or acceptable work that has been damaged by the Contractor's operations be discovered previous to the final acceptance or should a reasonable doubt arise previous to the final acceptance as to the integrity of any part of the completed work, the estimate and payment for such defective or questioned work shall not be allowed until the effect has been remedied and cause for doubt removed.

It is understood and agreed that the contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the engineer to be a part of the final quantity for the item of work in question.

No partial payment shall bind the owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment.

10. REMOVAL OF EXISTING STRUCTURES

All existing structures encountered within the established lines, grades or grading sections shall be removed by the Contractor, unless such existing structures are otherwise specified to be relocated, adjusted up or down, salvaged, abandoned in place, re-used in the work or to remain in place. The cost of removing such existing structures shall not be measured or paid for directly, but shall be included in the various contract item, unless the plans state a pay item for said structure.

Should the Contractor encounter an existing structure (above or below ground) in the work for which the disposition is not indicated on the plans, the Engineer shall be notified prior to disturbing such structure. The disposition of existing structures so encountered shall be immediately determined by the Engineer in accordance with the provisions of the contract.

Except as provided in the subsection titled RIGHTS IN AND USE OF MATERIALS FOUND IN THE WORK of this Section, it is intended that all existing materials or structures that may be encountered (within the lines, grades or grading sections established for completion of the work) shall be utilized in the work as otherwise provided for in the contract and shall remain the property of the Owner when so utilized in the work.

11. RIGHTS IN AND USE OF MATERIALS FOUND IN THE WORK

Should the Contractor encounter any material such as (but not restricted to) sand, stone, gravel, slag or concrete slabs (asphalt, clay tile, building or paving bricks or building or paving stones) within the established lines, grades or grading sections, the use of which is intended by the terms of the contract to be either embankment or waste, be may at his option either:

- A. Use such material in another contract item, providing such use is approved by the Engineer and in conformance with the contract specifications applicable to such use; or,
- B. Remove such material from the site, upon written approval of the Engineer, and providing written notice to the Director of Environmental Protection at least seven (7) days prior to moving; or,
- C. Use such material for his own temporary construction site; or,
- D. Use such material as intended by the terms of the contract.

Should the Contractor wish to exercise option A, B or C, he shall request the Engineer's approval in advance of such use.

Should the Engineer approve the Contractor's request to exercise option A, B or C, the Contractor shall be paid for the excavation or removal of such material at the applicable contract price. The Contractor shall replace, at his own expense, such removed or excavated material with an agreed Equal volume of material that is acceptable for use in constructing embankment, backfills

or otherwise to the extent that such replacement material is needed to complete the contract work. The Contractor shall not be charged for his use of such materials so used in the work or removed from the site.

Should the Engineer approve the Contractor's exercise of option A, the Contractor shall be paid, at the applicable contract price for furnishing and installing such material in accordance with requirements of the contract item in which the material is used.

It is understood and agreed that the Contractor shall make no claim for delays by reason of his exercise of option A, B or C.

The Contractor shall not excavate, remove or otherwise disturb any material, structure or part of a structure which is located outside the lines, grades or grading sections established for the work, except where such excavation or removal is provided for in the contract, plans or specifications.

12. FINAL CLEAN UP

Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures and stumps or portions of trees. He shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily, unless the Contractor has obtained the written permission of such property owner.

13. RIGHT OF PROPERTY IN MATERIALS

Nothing in this contract shall be considered as vesting in the Contractor any right of property in materials used after they have been affixed or attached to the work, nor in materials that have been estimated for partial payment; but all such materials shall upon being so affixed, attached or estimated, become the property of the Owner. All materials removed from old construction and all materials or articles of value found in the excavation or on the site of the work shall be brought to the attention of the Engineer; and, if he shall so order, shall be the property of the Owner and shall be placed conveniently for removal. If not claimed by the Owner, such material or articles shall be removed and disposed of by the Contractor at his own expense.

14. CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS

The required contract provisions for federal-aid construction contracts (contained in ODOT’s 2019 LPA template) are hereby incorporated by reference. The following rules and regulations shall apply to all work to be done under this contract. If any provisions of these rules and regulations conflict with any other clauses of this contract, the ODOT 2019 LPA Template shall govern.

By signing the specified contract proposal, of which the ODOT 2019 LPA Template (ODOT Spec Book and LPA Spec Book) has been incorporated, the bidder agrees to all of the below provisions.

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

1. 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 Non-segregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities (for a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).

(b) Bidders are cautioned as follows: By signing this bid, the bidder has agreed to the provisions of the "Certification of Non-segregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees' facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

(c) Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective

subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

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

- (a) A Certification of Non-segregated Facilities as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.
- (b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Non-segregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his 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 Construction Contractors Technical Assistance Guide.

https://www.dol.gov/sites/dolgov/files/OFCCP/Construction/508_cctag_12032020.pdf

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 [Click Here for copy of 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:

beta.SAM.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 A-87 or equivalent and shall show the following:

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

[Click for Form A-87](#) then scroll down page to Pre-Uniform Guidance and click "Timecard Example A-87 Compliant".

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 DFWP prior to a lower-tier Subcontractor providing labor at the Site.

The LPA will declare a bid non-responsive and ineligible for award if the Contractor is not enrolled 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 DFWP 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 it’s 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 – 1/31/2021- DBE TRUCKING

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

The Disadvantaged Business Enterprise (DBE) trucking firm must be able to quote and negotiate its own prices. The DBE trucking firm must also provide a quote for each project 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 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.

Truck Monitoring:

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

1. A DBE firm may be a regular dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any 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:

- o 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.
- o 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
 - o provided by the DBE MSV
- o To be eligible to receive 60% credit toward DBE goals for a materials and supplies subcontract:
 - The DBE MSV must be certified with the correct (wholesale or retail) NAICS code for the item
 - The DBE MSV must be certified with the correct descriptor for the item
 - The role the DBE MSV will play on the specific procurement in question must be consistent with the regular sale or lease of the item, as indicated by the information provided by the DBE MSV
 - The item must not be drop-shipped

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

DBE TRUCKING DISCLOSURE AFFIDAVIT

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

- Prime Contractors will be required to provide a master list of all anticipated DBE trucking firms to the District Construction Monitor (DCM) at the time of the Pre-Construction Meeting.
- If no DBE trucking is anticipated on a project, the Prime will check the box “No Anticipated DBE Trucking Affidavit” on the first submittal of the Prompt Payment Spreadsheet. If DBE trucking/hauling does occur, the Prime must notify the LPA within seven (7) days of the DBE trucking activity. The Prime will then complete the Affidavits as required below on each Prompt Payment Spreadsheet.
- Prime Contractors will be required to complete the Affidavit disclosing the DBE trucking operations when completing the new Prompt Payment Spreadsheet. the previous month. The Prime will Complete the Trucking Affidavit section on the Prompt Payment Spreadsheet on each reimbursement submittal. The Prime Contractor will select one of the following options on the Trucking Affidavit section of the form.
 - The DBE firm performed trucking by utilizing their own equipment and workforce and/or work was subcontracted to another DBE (i.e. only trucking that can be counted for DBE participation was utilized).
 - No other information is required. The Prime will sign and submit the Affidavit.
 - The DBE firm utilized DBE & Non-DBE trucking.
 - If selected, the Prime will provide a list of Non-DBE trucking that was utilized (i.e., not all trucking will earn DBE credit).
 - No trucking was performed.
 - No other information is required. The Prime will sign and submit the Affidavit.
- The DCM will perform a check of the Affidavit when reviewing the Prompt Payment Spreadsheet when submitted for reimbursement. The LPA and/or Compliance Managers will follow up on any red flags. For example, if the LPA compares information collected during the CUF process with the affidavit and sees any discrepancies.
- Trucking will continue to be monitored at project sites by construction field staff and the LPAs.

SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the prime contractor to follow the DBE Trucking Disclosure Affidavit requirements may result in the issuance of sanctions as follows:

- 1st Level Occurrence: The Department will issue a Letter of Reprimand to the contractor (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the prime completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking and does not notify the LPA within seven days of the activity);
- 2nd Level Occurrence: The Department may withhold an estimate in the amount due to the DBE trucking firm that the Affidavit was not submitted for (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the prime completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking and does not notify the LPA within seven days of the activity);
- 3rd Level Occurrence: If a pattern of not submitting the Affidavit(s) persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

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

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

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

DBE AFFIRMATION FORM - The new DBE Affirmation Form is now available at <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/Resources.aspx>.

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

1. Obtain a MyODOT account
 - a. Click [Link](#)
 - b. Click "Launch MyODOT"
 - c. Click: "Click Here"
 - d. Complete Account Application under "Request an Account"
2. Getting GoFormz Access
 - a. Email GoFormz.Help@dot.ohio.gov put Create GoFormz Account in the subject line
 - b. Login for Goformz will be emailed back
 - c. Click www.goformz.com

Addition guidance can be found by [Click Here](#)

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

Guidance for Bidders – Federally Funded Projects with a DBE Goal, to ensure compliance with the requirements outlined in PN 013 [Click Here](#)

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 <https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/business-economic-opportunity/dbe/dbe-resources> (form name is DBE Termination Form) 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 <https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/business-economic-opportunity/dbe/dbe-resources>. You will then need to click the link of the webpage “DBE Affirmation Form (PN 013) – Projects sold after September 1, 2018 or thereafter. 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

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

<https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/business-economic-opportunity/dbe/dbe-resources>

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 <https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/business-economic-opportunity/dbe/dbe-resources>. Once on the webpage, scroll down to the form named "DBE Termination Form (PN013)"

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 <https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/business-economic-opportunity/dbe/dbe-resources>. The DBE Affirmation Form, “DBE Affirmation Form (PN013) – Projects sold on September 1, 2018 or thereafter”, 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

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 GoFormz. Invoices 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 (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.

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

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

SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the prime contractor to follow Prompt Payment requirements 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, 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; and
- the number of times the Contractor has been previously sanctioned by ODOT.

26. **WAIVER OF CM&S 614.03**

ODOT's 2019 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>

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. PN 032 – 01/31/2021 – C92s Required on - Local-let Construction Projects

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

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

A template for this form may be found and submit via the GoFormz website located at www.goformz.com.

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

- | | |
|---|---|
| <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> X. Compliance with Government wide Suspension and Debarment Requirements XI. Certification Regarding Use of Contract Funds for Lobbying <p>ATTACHMENTS</p> <ul style="list-style-type: none"> 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.

Appendix A**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>.

III. SCOPE OF WORK

1. GENERALLY

The Contractor shall furnish, at its own cost and expense, all management, labor, tools, forms, equipment, appliances, machinery, transportation, materials and other things necessary, of whatever nature, to perform the Work, and shall perform and complete, within the time limit specified, all of the Work indicated or implied by the Notice to Bidders, Instructions to Bidders, General & Supplemental Provisions, Standard Specifications, Scope of Work, Plans & Specifications, and Estimated Quantities prepared for this Project, including the removal of surplus or condemned materials, and the thorough cleaning of the site of the Work and structures built.

In no case will any Work, in excess of such requirements, be paid for unless ordered in writing by the County Engineer as hereinafter specified.

All Work shall be of the best quality throughout. Unless otherwise provided herein, all materials shall be new.

2. SCHEDULE OF PERFORMANCE

At the pre-construction meeting, the Contractor must provide the Engineer with a printed schedule showing the interrelation and planned performance of all major items of Work, with completion reasonably scheduled thereon to occur by the scheduled completion date recited herein. The Engineer shall review and consider acceptance of the schedule as provided by section 108.02 (B) (1) of the Standard Specifications.

I. General

The progress schedule required for this project is the simple bar chart type as described in Section II of this note. Prepare and submit a progress schedule to the DCE for review at or before the pre-construction conference. The Engineer will review the schedule and within 14 calendar days of receipt, will either accept the schedule or provide the Contractor with comments. Acceptance of the schedule does not revise the Contract Documents. Provide clarification or any needed additional information within 10 days of a written request by the Engineer. The Department will withhold Estimates until the Engineer accepts the schedule. The Engineer will not measure or pay for the preparation of the schedule and schedule updates directly, but the cost of preparing and updating the schedule is incidental to all Contract Items. The requirements of this note are in addition to progress schedule requirements in 108.02 of the Construction & Material Specifications.

II. Schedule Requirements

Include the following Administrative Identifier Information:

1. Project Number
2. County
3. Route Number
4. FHWA Number
5. PID Number
6. Contract Number
7. Date of Contract
8. Completion Date
9. Contractor's Name
10. Contractor's Dated Signature
11. ODOT's Dated Acceptance Signature

Provide a working day schedule that shows the various activities of Work in sufficient detail to demonstrate a reasonable and workable plan to complete the Project by the Completion Date. Show the order and the sequence for accomplishing the Work. Describe all activities in sufficient detail so that the Engineer can readily identify the Work and measure the progress of each activity. The bar chart schedule must reflect the scope of work, required phasing, maintenance of traffic requirements, interim completion dates, the Completion Date, and other project milestones established in the Contract Documents. Include activities for submittals, working and shop drawing preparation, submittal review time for the Department, material procurement and fabrication, and the delivery of materials, plant and equipment, and other similar activities. The schedule must be detailed on letter or legal sized paper.

Activity requirements are discussed in further detail as follows;

1. Activity Description

Assign each activity an unambiguous descriptive word or phrase. For example, use "Excavate Area A", not "Start Excavation".

2. Activity Original Duration

Indicate a planned duration in calendar days for each activity. Do not exceed a duration of 20 working days for any activity unless approved by the Engineer. Do not represent the maintenance of traffic, erosion control, and other similar items as single activities extending to the Completion Date. Break these Contract Items into component activities in order to meet the duration requirements of this paragraph.

III. Updated Progress Schedule

Submit an updated progress schedule when ordered by the Engineer. The Engineer may request an updated progress schedule when progress on the work has fallen more than 14 calendar days behind the latest accepted progress schedule. Information in the updated schedule must include a "% work completed" value for each activity.

IV. Recovery Schedule

If the progress schedule projects a finish date for the Project more than 14 calendar days later than the Completion Date, submit a revised schedule showing a plan to finish by the Completion Date. The Department will withhold Estimates until the Engineer accepts the revised schedule. The Engineer will use the schedule to evaluate time extensions and associated costs requested by the Contractor.

IV. PLANS & SPECIFICATIONS

1. GENERALLY

The Plans and Specifications are intended to explain and supplement each other, and to indicate and provide for the construction of the various related parts of the Project in a complete and connected manner. Should any detail be omitted, any discrepancies or errors appear, or misunderstandings arise, in or with respect to such Plans and Specifications, the additions, corrections, or explanations necessary to provide for the construction in accordance with such intent shall be made by the Engineer, and such additions, corrections and explanations shall be final and binding upon the Contractor, subject to dispute resolution.

2. "OR EQUAL"

Whenever an article, material or equipment is defined herein by describing a proprietary product, or by using the name of manufacturer or vendor, the term "or equal", if not inserted, shall be implied. The specific article, material or equipment mentioned shall be understood as indicating the type, function, minimum standard of design, efficiency and quality desires and shall not be construed in such a manner as to exclude manufacturer's products of comparable quality, design and efficiency. The Contractor shall comply with the requirements of the contract documents, relative to the approval of materials and equipment by the County, before the same are incorporated in the Work.

Special Note: Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this project for those certified as DBE's pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under chapter 5525 of the ORC.

List the largest performance bonds you have obtained in the past three years.

Date	Owner and Location	Amount of Bond	Type of Work Done	Required Date of Completion

Are there any outstanding liens against you or your projects? _____

If answer is yes to any of the above, please furnish details. (If there is insufficient space on this page, attach additional sheets.)

AFFIRMATION OF BIDDER QUALIFICATIONS FORM

I, the undersigned, hereby affirm that I am an officer or sole proprietor of the Bidder identified below, that I am duly authorized by said Bidder to execute this document, and that the answers given on the Bidder Qualifications forms are complete and true.

Signed this _____ day of _____, 20____.

Bidder: _____

(Signed) _____

Printed Name: _____

Title: _____

**EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS
FOR SERVICE AND SUPPLY CONTRACTS**

EQUAL OPPORTUNITY COMPLIANCE CERTIFICATE

As used in the Certificate, the terms “contract” and “subcontract” includes the term “Purchase Order” and all other agreements effectuating purchase of supplies or services.

This Certificate shall be renewed annually. Notwithstanding the foregoing, the certifications made herein shall remain applicable until completion of all non-exempt contracts/subcontracts awarded while this Certificate is in effect. The undersigned Bidder certifies the following to the County:

A. **REPORTS:** Within thirty (30) days after the County’s award to the Bidder of any contract, and prior to each March 31 thereafter, during the performance of work under said contract, the Bidder shall file Standard Form 100, entitled “Equal Employment Opportunity Employer Identification Report EEO-1” in accordance with instructions contained therein, unless the Bidder has either filed such report with the County within twelve (12) months preceding the date of the award or is not otherwise required by law or regulations to file such a report.

B. **PRIOR REPORTS:** The Bidder, if it has participated in a previous contract or subcontract subject to the Equal Employment Opportunity Clause 41 C.F.R. Sec. 60-1.4 (a) (1) through (7), or the clause originally contained in Section 301 or Executive Order No. 10925, or the clause contained in Section 201 if the Executive Order No. 11114, has filed all required compliance reports. The Bidder shall obtain similar representations indicating submission of all required compliance reports, signed by proposed subcontractors, prior to awarding subcontracts not otherwise exempt from the Equal Employment Opportunity clause.

C. **CERTIFICATION OF NON-SEGREGATED FACILITIES:** The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity Clause in this Certificate. As used in the certification, the term “segregated facilities” means any waiting rooms, rest rooms, and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or natural origin, because of habit, local customs or otherwise. The Bidder further agrees that (except where it has obtained certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to award of any subcontracts exceeding \$10,000.00 which are not exempt from the provisions of the Equal Employment Opportunity Clause; that it will retain such certifications in its files;

and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certification of Non-segregated Facilities: A Certification of Non-segregated Facilities, as required by Section 60-1.8 of Title 41 of the Code of Federal Regulations, must be submitted prior to the award of a subcontract exceeding \$10,000.00 which is not otherwise exempt from the provisions of the Equal Employment Opportunity Clause.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

D. **AFFIRMATIVE ACTION COMPLIANCE PROGRAM:** Prior to 120 days after receipt of any contract in the amount of \$50,000.00 or more from the County, Bidder, if it has fifty (50) or more employees and is not otherwise exempt under 41 C.F.R., Part 60-1, shall have developed for each of his establishments a written affirmative action compliance program as called for in 41 C.F.R., Sec. 60-1.40. Bidder will also require its lower-tier subcontractors who have fifty (50) or more employees and receive a subcontract of \$50,000.00 or more and who are not otherwise exempt under C.F.R., Part 60-1 to establish written affirmative action compliance programs in accordance with 41 C.F.R., Section 60-1.40.

E. Bidders are responsible to EEO compliance as provided in Executive Order 11246 and implementing regulations Title 41, Chapter 60-4.2, 60-4.3 (Equal Employment Opportunity Clause & Notification of Standard Specifications), 60-250, and 60-741, when applicable.

F. Bidder certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause or other such notifications or noncompliance with EEO regulations.

Signed this _____ day of _____, 20____.

Bidder: _____

(Signed) _____

Printed Name: _____

Title: _____

DECLARATION OF PERSONAL PROPERTY TAX DELINQUENCY

OHIO REVISED CODE 5719.04

I, the undersigned, hereby affirm that the bidder identified below IS/IS NOT (please circle the one that applies) charged at the time of submitting this Bid with any delinquent personal property taxes on the general tax list of personal property of the County.

COMPLETE THIS PARAGRAPH ONLY IF APPLICABLE:

The amount of any such due and unpaid delinquent tax and any due and unpaid penalties and interest is \$_____.

Signed this _____ day of _____, 20_____.

Bidder:_____

(Signed)_____

Printed Name:_____

Title:_____

STATE OF OHIO)
COUNTY OF _____) ss:

Before me, a Notary Public, in and for said County, personally appeared the person identified above, who did sign this document after first affirming that the execution of this document was an authorized act on behalf of the above Bidder.

IN TESTIMONY WHEREOF, I have affixed my hand and the seal of my office at this _____ day of _____, 20_____.

NOTARY PUBLIC

**CERTIFICATE OF BIDDER
UNRESOLVED FINDINGS OF RECOVERY
WITH AUDITOR OF STATE
ORC 9.24 & 9.241**

I, the undersigned, hereby affirm that the Bidder identified below:

CHECK & COMPLETE ONLY ONE

has no unresolved findings of recovery with the State of Ohio Auditor, as defined by;
ORC 9.24 & 9.241

has the following unresolved findings of recovery with the State of Ohio Auditor, as
Defined by ORC 9.24 & 9.241:

Signed this _____ day of _____, 20_____.

Bidder: _____

(Signed) _____

Printed Name: _____

Title: _____

HOLD HARMLESS CLAUSE

Defiance County, Ohio

INDEMNITY: To the maximum extent allowed by Ohio law, the Contractor shall defend, indemnify, and hold harmless the County and the Owner (i.e.: county, township, and/or municipality), if applicable, (hereinafter: the indemnified parties), and all of their elected and appointed officials, together with all their employees and agents from any and all claims, demands, causes of action, judgments, liens, penalties, costs, and expenses (including attorney fees and expenses) of any kind, including claims for bodily injury, illness, death, property damage, or loss of use, which may at any time be imposed upon, incurred by, or asserted against the indemnified parties as a result of any action of the Contractor, its officers, employees, invitees, or agents arising out of or in consequence of this Agreement, including, but not limited to: 1.) The performance or non-performance of the work or any obligation under this Agreement; 2.) The common law or any legislation, regulation or order including environmental laws, rules, and orders; or 3.) Negligence including any passive negligence of the indemnified parties. This indemnification shall survive any termination of this Agreement and is not limited by the Contractor's insurance coverage. In order to effectuate and facilitate the indemnification of the indemnified parties, Contractor does hereby waive any and all employer immunity provided by the workmen's compensation law under Section 35, Article II, of the Ohio Constitution. At the option of the indemnified parties, Contractor shall provide the indemnified parties with legal counsel, and shall further bear all costs and expenses including attorney fees in the defense of any suit arising hereunder. Additionally, Contractor shall repair or pay for the repair of any damage to the indemnified parties' property caused by the Contractor or its officers, employees, invitees, or agents.

INSURANCE: Contractor at its sole cost and expense shall furnish and keep in full force and effect during the time this Contract is in effect sufficient insurance to protect the indemnified parties from any claim arising from the Contractor's conduct as a result of this Agreement, including: workers' compensation coverage in compliance with State law; comprehensive general commercial liability insurance with limits of at least \$2,000,000.00 for products-completed operations aggregate and general aggregate; \$2,000,000.00 for personal and advertising limit and injury and aggregate, and motor vehicle liability insurance (including coverage for owned, non-owned or hired vehicles) with broad form property damage coverage with limits of at least \$1,000,000.00 for bodily injury or death per occurrence and \$1,000,000.00 aggregate, \$1,000,000.00 property damage per occurrence and \$1,000,000.00 aggregate (or a reasonable equivalent expressly accepted by the indemnified parties), plus loss insurance for the equipment used. If the above insurance sums are blank, Contractor shall provide insurance as specified. Such liability insurance policies shall insure the contractual liability assumed hereunder, shall name the indemnified parties as additional insured parties for all work under this Contract, and shall provide that such insurance is primary to any other of indemnified parties' liability insurance. Prior to commencing any work, Contractor shall furnish the indemnified parties with proof of such insurance with companies acceptable to the indemnified parties.

OHIO WORKERS' COMPENSATION COVERAGE

The Contractor must secure and maintain valid Ohio workers' compensation coverage until the County, as set forth in Section 109.12(E) of the Construction and Material Specifications Manual, has finally accepted the Project. A certificate of coverage evidencing valid workers' compensation coverage must be submitted to the County before the Contract will be executed.

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

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

NON-COLLUSION AFFIDAVIT

TO BE EXECUTED BY EACH AWARDEE OF A PRINCIPAL CONTRACT

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)§
)

_____, being first duly sworn, deposes and says that he is _____ (sole owner, a partner, president, secretary, etc.) of _____ (company name).

The party making the foregoing 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 directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived or agreed with any bidder or anyone else to put in a sham bid, not that anyone shall refrain from bidding; that said bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of said bidder or of any other bidder, nor to fix any overhead, profit or cost element of such bid price, nor that of any other bidder, nor to secure any advantage against the public body awarding the contract to anyone interested in the proposed contract; that all statements contained in such bid are true; and further, that said bidder has not, directly or indirectly, submitted his bid price or any breakdown thereof, nor the contents thereof, nor divulged any information or data relative thereto, nor paid and will not pay fees in connection therewith to any corporation, partnership, company, association, organization, bid expository, nor to any member or agent thereof, nor to any other individual except to such person or persons as have a partnership or other financial interest with said bidder in his general business.

(Signed) _____

Printed Name: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

NON-COLLUSION AFFIDAVIT

TO BE EXECUTED BY EACH "AWARDEE" OF A SUBCONTRACT

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)§
)

_____, being first duly sworn, deposes and says that he is _____ (sole owner, a partner, president, secretary, etc.) of _____ (company name) the party submitting a bid for a subcontract covering _____ (nature of the subcontract) 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 directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived or agreed with any bidder or anyone else to put in a sham bid, not that anyone shall refrain from bidding; that said bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of a said bidder or of any other advantage against the principal contractor or anyone interested in the proposed subcontract; that all statements contained in such bid are true; and further, that said bidder has not, directly or indirectly, submitted his bid price or any breakdown thereof, nor the contents thereof, nor divulged any information or data relative thereto, nor paid and will not pay fees in connection therewith to any corporation, partnership, company, association, organization, bid expository, nor to any member or agent thereof, nor to any other individual except to such person or persons as have a partnership or other financial interest with said bidder in his general business.

The provisions of the affidavit shall not be held as disqualifying a person, firm or corporation who has submitted a sub-proposal to one bidder from submitting separate sub-proposals or quoting prices for materials or work to other bidders.

(Signed) _____

Printed Name: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

or laborer having a just claim, as well as for the Obligee herein; then this obligation shall be void; 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 above Surety hereby certifies that it is authorized by the superintendent of insurance, State of Ohio, to execute the above bond and that the liability incurred is within the limits prescribed by Section 3929.121 of the Ohio Revised Code.

The said surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the said contract or in or to the plans or specifications therefore shall in any way affect the obligation of said surety on its bond and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or in or to the plans and specifications.

SIGNED AND SEALED this _____ day of _____, 20_____.

Principal:

Signature

Printed Name:_____

Title:_____

Surety:

Surety Company:

Name:_____

Address:_____

By:_____
Attorney-in-fact

Surety Agent:

Name:_____

Address:_____

VI. PROPOSAL

Defiance, Ohio, _____, 20_____

To the Board of County Commissioners:

The undersigned Bidder certifies the pre-bid examination, in its entirety, of all Bid Documents contained in or referenced by this Proposal, including the Notice to Bidders, Instructions to Bidders, General & Supplemental Provisions, Standard Specifications, Scope of Work, Plans & Specifications, and Planned Bid Items & Quantities, which shall govern this improvement and are made a part of this Proposal and the ensuing contract.

DESCRIPTION OF THE IMPROVEMENT

HARDING ROAD DECK REPLACEMENT

PID 104253

The undersigned Bidder proposes to furnish any and all material, tools, labor, transportation, machinery, appliances, and appurtenances necessary, and to prosecute to full completion, the Work called for hereunder, and in consideration thereof, to accept from the County, as full payment for completion of each item as specified, the respective unit or lump sum price hereafter set forth.

The undersigned Bidder agrees that, if this Proposal is accepted, said Bidder will, within ten (10) days after notification of such acceptance, enter into the contract for the performance of the Work proposed and, as a guarantee of the faithful performance thereof, to furnish at the time of executing the contract, a bond in the amount equal to 100% of the total Bid price, with a Surety subject to the approval of the County.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in the Notice to Proceed and to fully complete the Project by **August 12, 2022**. Bidder further agrees to pay as liquidated damages, per ODOT Item 108.07, ODOT specifications latest editions and as provided in Section II. (7) of these documents.

The Bidder hereby agrees that the Board of County Commissioners has the right to reject any and all bids, and the Bidder will not dispute the correctness of the quantities used to determine the lowest and best bid.

Accompanying this Bid is a bid guarantee or bond payable to the County. Upon any failure to execute the Contract or provide an adequate performance bond as aforesaid, it is agreed that the undersigned Bidder shall forfeit the bid guarantee or bond accompanying the proposal to the County, to the extent allowed by law.

Bidder acknowledges receipt of the following addendum:

Bidder (full name): _____

Bidder's Federal Tax ID Number (EIN): _____

State Contractor License Number (if applicable): _____

Signed: _____

Printed Name: _____

Title: _____

Bidder's mailing address: _____

Phone Number: _____

Fax Number: _____

E-mail Address: _____

- Attch: Bid Guarantee or Bond
- Bid Prices (completed unit & lump sum price list)
- Supplemental Bidder Qualification Forms (if any)
- Declaration: Personal Property Tax Delinquency
- Certificate: Unresolved Findings of Recovery
- Pg 15 and 16 of the contract

BID PRICES
Engineer's Estimate: \$910,178.00

Planned Bid Items & Quantities

Item	Description	Quantity	Units	UNIT PRICE	TOTAL COST
202	Portions of Structure Removed, Over 20' Span, As Per Plan	1	Lump		
202	Guard Rail Removed	1025	Foot		
516	Structural Expansion Joint Including Elastomeric Strip Seal, As Per Plan	63	Foot		
513	Welded Shear Stud Connectors	3120	Each		
511	Class QC2 concrete, Bridge Deck with QC/QA, As Per Plan	448	CY		
Special	Steel Drip Strip	1050	Foot		
509	Epoxy Coated Reinforcing Steel, As per plan	115,473	Pound		
512	Sealing Concrete Surfaces	251	SY		
517	Railing-Twin Steel Tube Bridge Railing	925	Foot		
606	Guardrail	100	Foot		
606	Bridge Terminal Assembly, Type TST	100	Foot		
614	Maintaining Traffic	1	Lump		
624	Mobilization	1	Lump		
				TOTAL	

EXTENSION ERRORS: Where an error in extension occurs, the unit price bid will be accepted by the Defiance County Board of Commissioners.

VII. ARTICLES OF AGREEMENT

This Agreement is made and entered into by the County, acting by and through its Board of County Commissioners, and the Contractor identified below, hereinafter called the Contractor.

WITNESSETH:

The Contractor, for and in consideration of certain payments to be made as specified herein, hereby covenants and agrees to perform and execute all provisions of its Proposal for construction of the subject public improvement, including fulfillment of the requirements of the Notice to Bidders, Instructions to Bidders, General & Supplemental Provisions, Standard Specifications, Scope of Work, Plans & Specifications, and Planned Bid Items & Quantities, and to be governed by the provisions contained therein, setting forth duties, relations and obligations of the Engineer, Contractor and the Surety, which are hereto attached and made a part hereof, and agrees to fully and completely perform the Work described hereby in a manner to achieve completion thereof by or before a completion date of **August 12, 2022**.

In consideration of the performance by the Contractor of the covenants and agreements as herein set forth, the County hereby covenants and agrees to pay the Contractor according to the schedule of rates and prices set forth in the attached Proposal of said Contractor, and at the time and in the manner hereinafter set forth herein.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands effective this _____ day of _____, 20_____.

COUNTY OF DEFIANCE

CONTRACTOR (full name)

(Signature)
Board of Commissioners

(Signature)
Contractor

(Printed Name & Title)

(Printed Name & Title)

(Mailing Address)

Approved on County's behalf as to form:

By: _____
For: Prosecuting Attorney

Date: _____

COUNTY AUDITOR'S CERTIFICATE

CONTRACT NO: _____

PROJECT: Harding Road Deck
Replacment

FUND: _____

VENDOR NO: _____

DATE: _____

VENDOR: _____

It is hereby certified that the amount to meet the obligation of this contract in the fiscal year in which the contract has been made has been lawfully appropriated for the purposes of the contract and is in the Defiance County Treasury of in the process of collection to the credit of the _____ Fund free from any previous encumbrances, obligations or certificates now outstanding.

Defiance County Auditor

It is hereby certified that the amount (\$ _____) required to meet the contract, agreement, obligation, payment or expenditure for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the Defiance County Treasury or in the process of collection to the credit of the _____ Fund free from any obligation or certification now outstanding.

Defiance County Auditor

It is hereby certified that the amount (\$ _____), for the fiscal year _____ required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the Defiance County Treasury or in the process of collection to the credit of the _____ Fund free from any obligation or certification now outstanding. Outstanding balance of contract, estimated (\$ _____) to be appropriated for the fiscal year(s) _____.

Defiance County Auditor

THIS CONTRACT IS NOT VALID UNLESS COUNTY AUDITOR'S CERTIFICATE IS SIGNED